1985

Blackfeet Agreement of 1895 and Glacier National Park: A case history

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The Blackfeet Agreement of 1895 and Glacier National Park: A Case History

by

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B.A. College of the Ozarks, 1966

Presented in partial fulfillment of the requirements for the degree of

Master of Science in Resource Conservation

UNIVERSITY OF MONTANA

1985

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In 1895 the Blackfeet Indians sold the western portion of their reservation to the United States Government for 1.5 million dollars. In addition to the monetary settlement the Blackfeet were to retain the rights to hunt, fish, and cut timber for domestic and agency purposes on the land for as long as it remained public land of the United States. In 1910 Glacier National Park was created using as its eastern half the land ceded under the Agreement of 1895. As part of a national park the land was no longer legally considered to be public land. Thus, the rights granted to the Blackfeet by the Agreement were no longer valid. Since the creation of the park the Blackfeet have made numerous claims concerning the status of the rights from their viewpoint, and at numerous times these claims have resulted in lawsuits and court cases. These claims, lawsuits, and court cases have resulted in several conflicts with the Government, especially the National Park Service and the management of Glacier National Park. These conflicts with the National Park Service have occurred because several of the rights claimed are contrary to management practices in Glacier National Park.

The purpose of this thesis is threefold: (1) To present in chronological order the sequence of events involving the Agreement of 1895 and Glacier National Park from 1895 to 1977. (2) To show from this sequence that all of the elements necessary to reach the conclusions in U.S. v. Kipp, 369 F. Supp. 774 (1974) and U.S. v. Momberg, 378 F. Supp. 1152 (1974) were present several years prior to 1974, and (3) To show how ignorance of this fact created many unnecessary problems for the Blackfeet and the National Park Service. In addition it is the conclusion of this thesis that none of the events involving the Agreement of 1895 and Glacier National Park occurred due to any unscrupulous or conspiratorial acts by the participants on either side.

As a case history the chronological sequence speaks for itself. The information in the case history was gathered primarily from public documents, although several other sources were used. Sources used included monographs, periodicals, newspapers, letters, memos, legal briefs, petitions, hearings, court records, proceedings, reports, government documents, and interviews.
Table of Contents

The Blackfeet Agreement of 1895 and Glacier National Park: A Case History

Chapter One-----Introduction 1
Chapter Two-----The Blackfeet Indians Prior to 1895 4
Chapter Three-----The Blackfeet Agreement of 1895 17
Chapter Four-----The Establishment of Glacier National Park 33
Chapter Five-----The Court of Claims Era 43
Chapter Six-----The Interim Years: 1930-1970 52
Chapter Seven-----The Era of Litigation and Confusion 61
Chapter Eight-----Analysis and Conclusion 74

Notes 79
Bibliography 90
Chapter One: Introduction

In 1895 the Blackfeet Indians signed an agreement with the United States Government to sell the western portion of their reservation to the Government for 1.5 million dollars. In addition to the monetary settlement the Blackfeet were to retain certain rights on the land for as long as it remained public land of the United States. These rights included the right to hunt, to fish, and to cut timber for agency and domestic purposes. In 1910 Glacier National Park was created using as its eastern half the land ceded under the Agreement of 1895. As part of a national park the land was no longer public land. As a result the rights granted to the Blackfeet by the Agreement of 1895 were no longer valid. Since the creation of the park the Blackfeet have made numerous claims concerning the status of the rights from their viewpoint, and at numerous times these claims have resulted in lawsuits. These claims and lawsuits have resulted in several conflicts with the Government, the National Park Service and the management of Glacier National Park. These conflicts with the National Park Service have come about because several of the rights claimed are contrary to management practices in Glacier National Park, i.e., hunting and timber cutting are both prohibited in the park.

The purpose of this thesis is threefold: (1) To present in chronological order a sequence of events involving the Agreement of 1895 and Glacier National Park from 1895 to 1977. (2) From this sequence to show that all of the elements necessary to reach the conclusions in United States v. Kipp, 369 F. Supp. 774 (1974) and United States v. Momberg, 378 F. Supp. 1152 (1974) were present several years prior to 1974, and (3) to show
how ignorance of this fact created many unnecessary problems for the Blackfeet and the National Park Service.

The sources used for the information necessary to this thesis are primarily public in nature, although this is not true of all of the sources. These sources include books, periodicals, newspapers, letters, memos, legal briefs, petitions to Government officials, court records, Congressional hearings, proceedings and reports, as well as several interviews.

There are several potential sources not utilized which should be noted. These include the records of the Blackfeet Tribal Government, Browning, Montana and the records of the Bureau of Indian Affairs, Browning, Montana. Permission was not given to me to have access to these sources. Also not utilized were the records of Glacier National Park stored in the National Archives, Washington, D.C. and the records of the Solicitor, Department of the Interior, Washington, D.C. These two agencies were not used due to: (1) the prohibitive expense of travelling to Washington, D.C. and (2) the prohibitive expense of having the agency do the research under the Freedom of Information Act and mailing the results to me. This was especially true in regard to the acquisition of any information from the Office of the Solicitor. There is no question that any of these four sources could have yielded valuable information for this thesis. However, there is nothing to indicate that the information from these sources would have altered the chronological sequence of events as presented. This is because the easily obtained public records, such as Congressional hearings and the transcripts of the Agreement negotiations, are quite explicit and complete. Sources such as these are probably the most important to the sequence of events, and they are all included in the paper.
This thesis is not the final word on this subject, and the questions that it leaves unanswered, such as why did the Blackfeet lawyers in 1925 choose to press for damages for a taking of the rights instead of attempting to claim the rights by virtue of Jones v. Meehan, merit further investigation.
The modern Blackfeet are the descendants of a people who were at one time the most powerful and numerous Indians of the northern Great Plains. Although commonly referred to as the Blackfeet Nation or Confederation, the Blackfeet were in reality three separate and distinct political groups united by a common language and common customs, but each having its own chief. These political units did, however, go to war together against common enemies when necessary.  

The Siksika, or Northern Blackfeet, lived in Canada along the area drained by the Northern Saskatchewan River; the Kainah, or Bloods, lived to the south of the Northern Blackfeet in the vicinity of the Milk River drainage; and the Pikuni, or Piegan Blackfeet, occupied a territory from below that of the Bloods south to the area around present-day Yellowstone National Park. It should be noted that while each tribal unit had its own territory, all three territories overlapped and each tribe freely entered the other's for hunting and social purposes. When the Blackfeet were at the height of their power in the early to mid-nineteenth century their total population was approximately 15,000 and their area of domination extended from just east of the Rocky Mountains north to the North Saskatchewan River and south to the Yellowstone Country. This was an area twice the size of New England.  

The land occupied by the Blackfeet was bounded on the west by the Rocky Mountains, and much of this mountainous area later became a part of Glacier National Park. Although many other Indian tribes that were located both east and west of the Rockies lived at one time or another in the
vicinity of land included in Glacier National Park, it was the Blackfeet who became most frequently associated with the area, and the Piegan Blackfeet the most associated of the three tribes. According to C.W. Buchholtz, Glacier Park historian, this association came about not because of longstanding historical relationship with the area, but rather because:

(1) The Blackfeet Indian Reservation, occupied primarily by the Piegan Blackfeet, lay directly east of Glacier National Park, and this alone resulted in a significant effect of one upon the other.

(2) The entire eastern half of Glacier National Park was created from land purchased from the Blackfeet by the Federal Government.

(3) Writers like James Willard Schultz provided a great amount of colorful publicity for the area. Schultz alone named many of the Park's features with Blackfeet inspired names which, while colorful, had little to do with the features for which they provided names.

(4) Publicity efforts by the Great Northern Railroad were intended to emphasize a close relationship between the Blackfeet and the park. The purpose of these efforts was quite likely to create an interest in the area and to attract tourists. This is a likely reason since the Great Northern Railroad not only operated the main form of transportation to and from the Park, but also the hotels within the Park. As colorful as such an association might seem, it is misleading in that it has caused many people, including numerous Blackfeet, to believe that the Blackfeet Indians were in the vicinity of Glacier National Park a long enough time to make the claim that the current Blackfeet Reservation is the ancestral home, and that the park area has played a major part in the cultural and religious traditions of the Blackfeet. However
many experts believe that the Blackfeet were not the original inhabitants of the plains to the east of Glacier National Park, but in fact came to reside in the area quite recently. John Ewers, ethnologist and recognized expert on the Blackfeet, stated before the Indian Claims Commission that no claim of aboriginal title to the land currently occupied by the Blackfeet could be made by them; nor could any such claim be made by the Blackfeet to any of the Great Plains. If this is the case then the following questions need to be asked: Where did the Blackfeet come from; how did they rise to such prominence in the history of the Great Plains; and how did they come to figure so prominently in the history of Glacier National Park?

Prior to moving onto the Great Plains the Blackfeet were an eastern woodland tribe who lived somewhere in the vicinity of the Great Lakes. Linguists consider this to be the case because the Blackfeet language is related to the Algonkian family of languages, the basic language family for the Indians dwelling in the Great Lakes area. In addition, the Blackfeet pottery and cooking utensils provide evidence to link the Blackfeet to this area. Sometime prior to the coming of the White Man to the New World, the Blackfeet probably began to migrate westward, and they are believed to be the first of the Algonkian family of Indians to do so. The exact reasons for this westward migration remain unclear, but it is possible that the migration was brought about by intertribal warfare and/or the hope of better hunting grounds in the west. This movement from the eastern forest land onto the Great Plains, and the transition from hunters and gathers into strictly nomadic hunters, did not take place overnight. The transition covered approximately three hundred years, and as late as the early 1700's the Blackfeet were living south of
of the North Saskatchewan River in what is now the province of Saskatchewa.

The Blackfeet were not alone on the Great Plains, but shared the area with numerous other Indian tribes: to the north lived the Sarsi, to the west were the Kutenais, to the southwest lived the Flatheads and the Shoshonis, to the southeast were the Gros Ventre, and to the east the Assiniboine. It is also possible that the Crees were living to the east of the Blackfeet.7

Because the Blackfeet kept no written records of their migration, and because their contacts with the White Man at this time were few in number, the actual events and dates of their southern movement are only approximations. Much of what is known is based on oral histories and anthropological evidence. According to Ewers, the best historical accounting of the southward movement comes from mountainman David Thompson. Thompson was told the tale of the movement by an old Cree Indian who lived with the Blackfeet during the movement period. According to the Cree, the Blackfeet were still living near the Eagle Hills south of the North Saskatchewan River, but knew that the plains to the south and west were better hunting grounds. Therefore, they moved onto the land that was already occupied by the Kutenais, the Flatheads, and the Shoshonis; all of whom were extremely antagonistic to the Blackfeet. Although there were many battles among these tribes over this hunting area the casualties were usually not very great. This was because none of the involved parties had the gun or the horse and therefore none of the obvious advantages either would have given the possessors. Instead, the warring parties lined up against each other just outside of spear or arrow range and fought to what amounted to a draw. But eventually the Shoshonis acquired the horse and the scales of
war quickly tipped in their favor. However, the advantage was short lived as the Blackfeet soon acquired the gun from the Crees and/or the Assiniboines. The horse may have given the Shoshonis more mobility, but the deadliness of the gun gave the Blackfeet the decisive battle edge. Soon the Blackfeet were not only beating the Shoshonis in battle, but were also capturing horses from them. It was no contest as to who was the most powerful. With the mobility of the horse and the firepower of the gun the Blackfeet were becoming the undisputed masters of the upper Great Plains.

By the 1780's the Blackfeet advanced from the Eagle Hills in Saskatchewan to the Red Deer River in Alberta. In doing so they had displaced the Shoshonis from their home territory. By the start of the nineteenth century the Blackfeet with their horses and guns had forced off the plains and into the safety of the mountains not only the Shoshonis, but also the Flatheads and the Kutenais. In the words of mountainman, David Thompson, the Blackfeet:

...by right of conquest have their west boundary to the foot of the Rocky Mountains, southward to the north branches of the Missouri, eastward for about three hundred miles from the mountains and northward to the upper part of the Saskatchewan.

This newly acquired land contained some of the best hunting grounds in the West and was taken by the Blackfeet from their enemies in less than a century. The Blackfeet had arrived on the land upon which they were to remain, at least in part, until the present. Included in this territory was land that would later become a portion of the Blackfeet Indian reservation, as well as a part of Glacier National Park.

Life for the Blackfeet at the beginning of the nineteenth century was very different from what it had been at the beginning of the eighteenth. The acquisition of the horse and the material goods of the white traders,
especially the gun, had enabled the Blackfeet to grow strong. This allowed them to enrich their lives in terms of goods and leisure time.\textsuperscript{11} Yet, all of this new prosperity had its price, and the full measure of that price was not known to the Blackfeet for many years.

By the early 1800's the Blackfeet had been acquainted with the White Man for nearly a century, and had traded with him for over a generation.\textsuperscript{12} By and large the relations between the two peoples had been good, although not without incidents. Yet, even these positive contacts were having a negative influence on the Blackfeet, and these negative aspects came in very subtle ways. For all their strength the Blackfeet were beginning to lose their independence by coming to rely more and more upon the goods of the White Man. No longer did the Blackfeet make everything that they needed from the natural resources around them. The White Man's goods had become an integral part of the lives of the Blackfeet.\textsuperscript{13} Also, the Whites, however few in number at the beginning, were still gaining a foothold in the land of the Blackfeet. Little did the Blackfeet know that within a few years the White Man would grow into a force sufficient to destroy forever the Blackfeet way of life.

The first White Men that the Blackfeet encountered were the French and English traders of Canada, and these initial contacts occurred in the early years of the eighteenth century. Not until the purchase in 1803 of the Louisiana Territory, and the subsequent Lewis and Clark Expedition, did the Blackfeet come in contact with Americans. Unfortunately this initial contact resulted in the death of a Blackfeet warrior and set the tone for Blackfeet-American relations for many years.\textsuperscript{14}

Shortly after the Lewis and Clark party returned to the eastern United States word quickly spread that the Louisiana Purchase lands were a
cornucopia of natural resources. This led to other exploring parties and in 1808 an outpost was built at the mouth of the Bighorn River. Although the post was not on Blackfeet land it was on the land of the Crow, enemies of the Blackfeet. The Blackfeet soon learned of the presence of the Americans and assumed that they were allies of the Crow. Sensing that even better hunting and trapping opportunities lay further west on Blackfeet land the trappers and traders attempted to negotiate with the Blackfeet for hunting and trapping rights. None of these attempts were successful, and after numerous unpleasant encounters with the Blackfeet the entire Blackfeet country was abandoned by the Americans in 1811.15

From 1811 until 1831 peaceful relations between the Blackfeet and the Americans were non-existent. Although numerous companies were formed to trade with the Blackfeet, as well as to trap within their land, virtually all were unsuccessful. For over a quarter of a century after their first contacts with the Blackfeet the Americans failed to make peace with them. So feared were the Blackfeet that wagon trains travelling to the Oregon Territory passed well to the south of the Blackfeet land.

In 1831 the first post was constructed in the Blackfeet territory. This post, or fort, was called Fort Piegan, and it was located at the mouth of the Marias River. In order to be allowed to build Fort Piegan the Americans agreed to the Blackfeet stipulation that all trapping in the land of the Blackfeet would be done by the Blackfeet, with the skins being traded to the Americans. The fort was constructed by the American Fur Company, and as business with the Blackfeet grew the Company built more and more forts deeper and deeper into the Blackfeet land. In 1847, six miles from the mouth of the Teton River and 2400 miles up the Missouri River
from St. Louis, Fort Clay was constructed. It was later named Fort Benton and became the most important trading center in the Montana Territory.\(^\text{16}\)

By the mid-point of the nineteenth century the Blackfeet were trading with the Americans on a regular basis. This trade, while not entirely trouble free, was operating smoothly. However, the Blackfeet were still creating havoc with neighboring Indian tribes, even to the point of crossing over the mountains with war parties to raid for horses. To the south of the Blackfeet the American settlers were still trekking westward, but no true American settlements existed on Blackfeet land save those of the traders. The Blackfeet were still the masters of the upper Great Plains in the year 1850. By this year the Blackfeet had been trading with the Americans for nearly a quarter of a century. However, this association had taught the Blackfeet very little about the American civilization. The trappers and traders were only a small part of a much larger civilization, and a part that did not prepare the Blackfeet for the full impact of that civilization. This impact was not to come until the land-hungry settlers arrived a few years later.\(^\text{17}\)

The Blackfeet were considered the most aggressive of the Indians of the northwestern plains, and at the mid-point of the nineteenth century they were at the height of their power. So great was their reputation for hostility and war making that the wagon trains continued to pass far to the south in order to avoid contact with them. The other tribes, upon whose lands the wagon trains passed, were not initially concerned with the presence of outsiders on their land. However, by the late 1840's the number of wagon trains had increased to the point that conflicts occurred with some regularity. In order to minimize the conflicts and keep the way to the Pacific Coast open, the United States Government decided to
meet with representatives of all the Indian tribes occupying land between Texas and the Missouri River and negotiate a peace treaty. The Blackfeet were to be included in the negotiations to be held at Fort Laramie, but time problems caused the meeting to be held without them. The meeting was held in September 1851 and defined the Blackfeet land and set its boundaries. The overall purpose of the council and subsequent Treaty of Fort Laramie was to define the territories of the Indians of the Great Plains, and make peace among the Indians, as well as between Indians and the settlers.

Even as the Treaty of Fort Laramie was being negotiated the number of settlers crossing the Great Plains was growing rapidly. In fact, the number became so great that a more reliable form of transportation was needed. In 1853, Congress appropriated $150,000 to fund explorations to determine the best route for a transcontinental railroad across the Great Plains. One of the routes considered began at St. Paul, Minnesota, and terminated at Puget Sound in the Washington Territory. This route passed directly through Blackfeet territory. As the leader of the party exploring this route, Governor Issac I. Stevens of Washington Territory met with Blackfeet leaders at Fort Benton in the fall of 1853. In addition to discussing the route with the Blackfeet, Stevens gave them many presents and urged them to make peace with their Indian neighbors. He then continued westward with his exploring party. After meeting with the Blackfeet, Stevens believed that a formal treaty between the Blackfeet and the United States would be wise, and he dispatched a representative to Washington, D.C. to lobby for such a treaty council.

This treaty council, the first such meeting between the Blackfeet and United States, was originally set for the summer of 1854, but was postponed
until Governor Stevens could be present. Governor Stevens returned to the Blackfeet region in the fall of 1855, and upon his return he was certain that the route that he had just explored had no chance of being used for the railroad road. Still he was enthusiastic for a treaty to be concluded with the Blackfeet. He believed that the Blackfeet had the potential to become farmers and ranchers, and to cease being warlike nomads.

So it was that the first formal treaty council between the United States and the Blackfeet convened on October 16, 1855. The council site was located one hundred miles down the Missouri on its north bank, just below the mouth of the Judith River. Besides the Blackfeet there were representatives from the Flathead, Pend d'Oreille, Nez Perce, and Cree tribes, but no representatives from the Crows. After a little less than two days of negotiations a treaty was concluded. The treaty was signed on October 17, 1855, and then sent to the Senate where it was ratified on April 15, 1856. Under the terms of the treaty the Blackfeet:

1. Agreed to live in peace with the United States, as well as with their other Indian neighbors.
2. Agreed that a portion of the Great Plains under their domination would be used as a common hunting ground.
3. Agreed to allow settlers to pass through their lands unmolested, and
4. Agreed to allow the United States to build roads, telegraph lines, and military posts, as well as agencies, missions, and other buildings when deemed necessary.

In return for these concessions the United States agreed to:

1. Spend $20,000 annually on the Blackfeet for goods and provisions for a period of ten years and
2. Spend an additional $15,000 annually for ten years for the establishment
of the Blackfeet in agricultural and mechanical pursuits, for education, and in other ways that would promote the welfare of the Blackfeet.21

One of the purposes of the treaty of 1855 was to stop the Blackfeet from waging continual war upon the neighboring Indians. In this area the treaty had little effect. The signatories of the treaty had little control over the young warriors when it came to making war. However, as a watershed in the history of the Blackfeet the treaty was of great importance.

In the years following the Treaty of 1855 life began to change rapidly for the Blackfeet. Much, if not all of this change, can be attributed to the advancing civilization of the Americans. As more and more settlers, ranchers, and miners moved into Montana, they clamored for more land, and much of the desired land was under the control of the Blackfeet. In 1865 and 1868 two more treaties were concluded with the Blackfeet, and the main purpose of these treaties was to reduce the size of the Blackfeet territory. However, neither of the treaties was ever ratified by the Senate and did not become law.22

In 1871, the United States ended formal treaty making with the American Indians, and would no longer deal with them as though they were sovereign nations. Instead, dealings with the Indians were handled through Executive Orders and Agreements. Through a series of such Executive Orders the Blackfeet territory was diminished in size and the southern boundary moved farther and farther north. The Blackfeet were not compensated for this loss of land.23

The years from 1855 to the late 1880's were difficult ones for the Blackfeet. Not only were their land base reduced during this period, but the staple of their life, the buffalo, had nearly become extinct. By the
"starvation winter" of 1883-84 the once powerful Blackfeet were greatly impoverished. Not only were their numbers reduced, but they were wards of the Government and totally dependent on it for their very existence. The Blackfeet nomadic way of life was no longer possible, and they were finding it very difficult to adjust to a new, necessary way of life.24

While it was true that the Blackfeet could no longer rely on the buffalo, they did have land in abundance. When the Blackfeet were nomadic hunters this land had been of great value to them, but as the buffalo disappeared the Blackfeet had little traditional use for the land. The goal of the U.S. Government was to eventually turn the Blackfeet into farmers and ranchers, and since the land formally under the legal control of the Blackfeet appeared to be much more than what was needed for this purpose, the Blackfeet were persuaded to sell some of their land to the Government and use the money to help in the transition to a new way of life.

On February 8, 1887, a Congressionally authorized negotiating committee arrived at the Blackfeet Agency to begin negotiations for the land. On February 11 an agreement was signed by the United States and the Blackfeet, Gros Ventre, and River Crow that ceded to the Government 17.5 million acres, including the Sweet Grass Hills. The Blackfeet Indian Reservation established by this agreement included 1.76 million acres, and extended from the Rocky Mountains east to Cut Bank Creek, north to the Canadian border, and south to Birch Creek. The committee believed that the established reservation would provide an adequate land base for the needs of the Blackfeet.

In return for selling their land the Blackfeet received $150,000 annually for a total of ten years. This money was to be used for livestock,
farming and ranching equipment, goods, clothing and subsistence, education, medical care, shops, schools, and homes. In addition, the agreement provided that employment preference for federal jobs be given to Blackfeet living on the reservation, and it also provided land allotments.

On May 1, 1888, Congress ratified and confirmed the Agreement of 1888. The money provided by this agreement was to provide the Blackfeet with the means to assimilate into and survive in the White Man's world. This was the last agreement between the Blackfeet and the Government until 1895.25
In the summer of 1862 gold was discovered in the Montana Territory near the town of Bannack. This discovery brought many prospectors westward to seek their fortunes in the gold fields. The gold fields around Bannack were just to the west of the Blackfeet land in the vicinity of the Bozeman Trail, and many of the prospectors crossed this land to get to the fields. As the numbers of people using this passageway grew, the Blackfeet chiefs became concerned and complained to their Indian Agent about the intrusion. The chiefs feared that in time the Americans would not be content to just use the land for a passageway, but would eventually want the land for themselves. In response to these fears Indian Agent Henry Reed told the chiefs that the Americans already had more land than they knew what to do with, and that the Great White Father had no intention of taking any more of the Blackfeet land.¹

The Americans continued to trek westward across the Blackfeet land in ever increasing numbers. At about the same time the United States was engaged in the Civil War; fulfilling treaty obligations to the Indians was given a low priority. The situation of seeing more and more trespassers on their land and not seeing the goods promised to them by the treaties caused the Blackfeet to grow angry toward the Americans. This was especially true regarding the Americans living in proximity to the Blackfeet. Beginning around 1865 and continuing until the early 1870's many of the Blackfeet waged a form of guerilla war against the Americans living on or near their land. This guerilla war never involved all of the Blackfeet, but consisted of small groups of Indians harassing the
Americans. Nevertheless, the warfare covered a wide area and was quite brutal at times, with many casualties on both sides. In time this harassment had the effect of uniting the Americans into demanding to the Government that something be done. They wanted the warring Blackfeet stopped once and for all.²

The Americans talked to the Blackfeet chiefs about the problem, and gave them what they felt was an adequate time to control their warriors and put an end to the warfare. When the warfare continued the Americans turned to the U.S. Cavalry for help. On January 19, 1870, four cavalry companies under the command of Col. E.M. Baker set out from Fort Benton, Montana Territory. Col. Baker's orders were to strike hard at the camp of Mountain Chief, where it was believed that the most troublesome of the Indians were being given refuge. During the early morning hours of January 23, 1870, Baker and his men attacked an Indian camp on the Marias River. However, this camp did not belong to Mountain Chief, but instead was the camp of Heavy Runner, a longtime friend of the Americans. Nevertheless the camp was totally destroyed, and 173 Indians, most of whom were women, children, and men ill with smallpox, were killed. The survivors were turned loose in the snow to fend for themselves.³

The attack on the camp of Heavy Runner became known as the Baker Massacre, and did not meet with universal approval. In fact the furor it raised had the effect of preventing the transfer of the Indian Bureau from the Department of the Interior to the War Department. It also halted the practice of using U.S. Army officers as Indian agents. Still the white residents of the Montana Territory were very vocal in the support of the Army's actions. Regardless of the ethical implications of the Baker Massacre one fact cannot be denied: it had the immediate effect
of pacifying the Blackfeet. No longer would the Blackfeet pose any real threat to the residents of the Montana Territory. By allowing the prospectors a safer access to the mining region of the northern Montana Rockies the Baker Massacre was a crucial factor in the mineral exploration of the area.4

As soon as the troubles with the Blackfeet died down a renewed interest quickly arose over the potential wealth of the northern Montana Rockies. The first known party to visit the region on a prospecting trip after the Baker Massacre was led by Frank Lehman. The Lehman party may have been unsuccessful in its efforts to hit paydirt, but that did not deter other wealth seekers. Other parties returning from adjacent to the Blackfeet land with even minor success helped spread the rumors of the great wealth that existed just for the picking. One rumor spread that a 30 ounce gold nugget had been discovered, but by and large the prospecting efforts were in vain. From 1870-1890 the mineral exploration of the area was rather aimless and sporadic, and no real gold rush ever materialized. In the early 1890's, however, reports filtered out of the copper capitals of Butte and Anaconda that large veins of copper existed in the upper Montana Rockies and miners again became interested in the area. The eastern portion of the region was part of the Blackfeet Reservation and was closed by law to mining, or even exploration. Still, the prospectors crossed over to the reservation side of the mountains and explored it. Many of the prospectors returning from the region stated that the reservation lands were the richest lands of all. Soon the story began to circulate that the Government had put the land into an Indian reservation to "lock up" the land and prevent the taking of the valuable minerals. The talk of "lock up" attracted even more miners, and soon attracted the
attention of Congress. In a short time Congress was being pressured by numerous interested parties to open up the area to mineral exploration.

The illegal prospecting was also creating problems for the officials of the Blackfeet Reservation. Not only were the officials legally obligated to keep the illegal prospectors off the Indian land, but the Blackfeet soon found out about the prospecting and were demanding that an end be put to it. As early as 1893 Agent George Steell had spoken of the problem in one of his reports, and had recommended that the western portion of the Blackfeet Reservation be sold and opened to mineral exploration. He stated that the sale would solve the trespass problem, and at the same time provide the Indians with monies vital to their future well being. The request, or suggestion, was not acted upon at the time. However, as more and more wealth was reported to be locked up in the area more and more pressure was placed on Congress to take some course of action. The desired action, of course, was to acquire the land from the Blackfeet and open it to mining. The funds due the Blackfeet from the Agreement of 1887 were due to run out in the latter portion of the 1890's and as that time drew near there was increasing pressure placed on the Blackfeet to try and get them to sell the land. It also increased, or seemed to, as various reservation officials and other White Men living with the Blackfeet became convinced that the desired land actually did contain valuable minerals, and that there were large fortunes to be made in the mountains. So, nearly thirty years after Agent Reed assured the Blackfeet that the White Men had no further desire for Blackfeet land, plans were already in the works to further reduce the size of the Blackfeet Reservation.

In January of 1895 Agent Lorenzo Cooke, acting on orders from the
Commissioner of Indian Affairs, called a meeting with the leading men of the Blackfeet Reservation. He wanted to discuss with them the possibility of selling the western, or mountainous, portion of their reservation to the Government. He explained the situation to them, possibly in a manner leading them to believe that they had no real choice but to sell, and then left the Indians to themselves. After discussing the matter in private the Blackfeet voted 16 to 5 to negotiate a sale of the Reservation's western portion to the Government. The Blackfeet requested that their longtime friend, George Bird Grinnell, be a member of the negotiating committee, along with one other Montanan.8,9

The Indian Appropriations Act of March 2, 1895,10 authorized the Secretary of the Interior to negotiate with the Blackfeet and Belknap Indians for the sale of certain portions of their reservations.11 The Act also authorized the Secretary to appoint a negotiating commission, and appropriated $300,000 to cover the expenses of the negotiations. The Secretary then appointed Walter M. Clements, William C. Pollock, and George Bird Grinnell to serve as the members of the commission. The Commissioner of Indian Affairs gave the commission members their instructions and the party set out for the Blackfeet Reservation, arriving there on August 30, 1895. Shortly after their arrival the commissioners met with the Blackfeet and found them very excited about the upcoming negotiations. The Blackfeet also appeared to be quite excited about the suspected mineral value of their land and felt they would get a very good price for the land. Before the start of any formal negotiations the Blackfeet wanted the commissioners to visit the western portion of the Reservation and see first hand the mineral wealth that existed there. This meeting adjourned after a group of Blackfeet, both full and mixed
bloods, was selected to accompany the commissioners on the inspection trip. The formal negotiations were delayed until after the completion of this trip.  

The inspection trip took approximately two weeks to complete. The Commissioners felt that with the limited amount of time available for inspecting the land it would be necessary to concentrate their efforts where it could be determined the kind, character, and amount of mineral deposits. In keeping with their instructions it was also their intention to inspect the land with an eye toward setting a boundary which would delete all of the mineral lands from the Reservation and at the same time leave on the Reservation as much of the timber and grazing lands as possible. Thus, the inspection trip was done not only to satisfy the Indians, but also to comply with the Commissioner's instructions. The party completed the inspection trip and returned to the Agency headquarters. The commissioners then prepared to open formal negotiations with the Blackfeet.

The first session with the Blackfeet following the inspection trip took place on September 20, 1895. At the meeting the Blackfeet requested additional time to allow them to choose a thirty-five member negotiating committee. They also wanted some additional time to discuss matters among themselves. Their requests were granted and the negotiations postponed until the following day.

The session of Saturday, September 21 began with opening remarks by the commissioners. The commissioners expressed a desire to hear from as many of the Indians as possible. Mr. Clements said that in dealing with the Indians it was not the intention of the commission to obtain a bargain for the Government, but rather to buy the unwanted land for the price
that the land was worth. He further stated that it was the commission's
duty to be fair to both the Indians and the Government. In his statement
Mr. Clements also made reference to an accident which incapacitated him
for a number of weeks. Thus, it seems that only Grinnell and Pollock
made the inspection trip into the mountains.15

In their opening remarks the Indians got right to the point; they
wanted to know just how much the commissioners were willing to pay for
the land. This was before the desired land had even been defined. Some
of the Indians were suspicious of the whole affair and said as much.
Although they seemed to feel that the land in question, i.e., the mountain-
ous area, was of little value to them, they still stated that they
planned to negotiate with caution.16

As the negotiations progressed it became clear that they would
center around the exact land to be sold and the price to be paid for the
land. Initially the Government wanted the land north of the Great Northern
Railroad tracks up to the Canadian border. Mr. Pollock expressed, however,
a desire for setting the southern boundary at Birch Creek. It was his
belief that a natural feature, such as a river or bluff, made a good
dividing line. He said that with such a southern boundary all of the
mineral bearing land would be excluded from the reservation, effectively
ending the trespass problem with the non-Indians. If Birch Creek were
accepted as the southern boundary the land sold would encompass an area a
third again as large as a land transaction having the railroad as the
southern boundary. Birch Creek was not an acceptable boundary to the
Blackfeet. In fact they wanted the southern boundary set at the Cut Bank
River, which was to the north of the Great Northern tracks. Regardless
of where the eventual boundary was set the Blackfeet wanted to retain a
certain amount of timber and grazing land. The amount of land that the Blackfeet were willing to sell was not as much as the Government had anticipated. Mr. Grinnell stated that the Government would certainly not be willing to pay as much for the land if the Cut Bank River were the southern boundary. The rest of the negotiations was a rather dignified haggling over boundary and price.\footnote{17}

The next session was held on Monday, September 23. The Blackfeet began by asking the commissioners what the Government would be willing to pay for the land north from the Railroad to the Canadian border. Although not specifically detailed in the negotiations, the Blackfeet had evidently told the commissioners that they would take two million dollars for the land north of Cut Bank River, an offer the commissioners refused. The commissioners said that they would pay one million dollars for the land north of the Railroad and 1.25 million dollars for the land north of Birch Creek. Again the Indians rejected the proposal.\footnote{18}

Little Dog, speaking for the Blackfeet, said that he was going to "make a proposition that would make them faint and fall down". He then offered to sell the land north of the railroad for three million dollars. Considering that represented three times the commissioners' original offer, he probably was rather close to the mark in predicting a fainting spell. All three commissioners immediately rejected the offer, saying that such an offer if presented to Congress would make both the commissioners and the Indians look like fools. However, the commissioners declared that the land was the Indians' to sell and at whatever price. The commissioners did not have to buy it though. At this point the Blackfeet spoke at great length on the matter, and in plain language it was three million for the land north of the railroad or nothing. The Blackfeet
stated that in past dealings with the Government they had been taken advantage of, and that was not going to happen to them this time. They declared their knowledge of the worth of the land, and said that the mountainous part of their reservation was probably the most valuable of all of their lands, including all past holdings.\textsuperscript{19}

Mr. Grinnell, after hearing the resolve of the Blackfeet to take nothing less than three million dollars, said that the one million dollars offered by the commissioners was a really good offer. It was his opinion that the land wasn't all that valuable, and that the White Men would soon find that out. So firm was he in his belief that the land was really worthless for mineral exploration that he had persuaded the Government to buy the land outright and dispose of it. It had been suggested earlier that instead of the Government buying the land that the Government should sell the land for the Indians on a parcel-by-parcel basis and give the proceeds to the Blackfeet. Grinnell felt that this method would not have been fair to the Blackfeet, since once the true worth of the land was known very little would have been sold. He went on to say that if the Blackfeet wanted the Government to sell the land for them, that could probably still be arranged. One of the Blackfeet suggested that the Government help the Blackfeet develop the land and not sell it all. Replying to this suggestion Grinnell said he did not believe that arrangement was possible under present laws, and the matter was quickly dropped. The Blackfeet remained firm in their desire for three million dollars. Pollock, believing the Blackfeet would eventually change their minds and modify their offer, suggested that another session be held the following day. The Blackfeet rejected this call for another meeting, and Pollock declared the negotiations ended. In his final remarks Pollock
expressed regret at not being able to reach an agreement. He also said that he and the other commissioners bore no ill will toward the Blackfeet. He concluded his remarks by saying that, "We would willingly stay longer, but do not wish to urge you or force you to sell. The land is yours." 20

Following the end of the formal talks on the 23rd an informal "negotiating" session was held, minus the commissioners. This meeting was conducted by Agent Steell and attended by a group of Blackfeet, as well by numerous interested non-Indians. At this meeting the Blackfeet were urged to review their final offer. Eventually they were persuaded to modify it somewhat. This news was relayed to the commissioners and another formal negotiating session was scheduled for Wednesday, September 25th.

After Mr. Pollock opened the session on the 25th, Chief White Calf went right to the point. White Calf said that Agent Steell had convinced the Blackfeet of their folly in demanding three million dollars for the land. The Blackfeet were now willing to sell the land from Birch Creek north to the Canadian border for 1.5 million dollars. In addition to the asking price he stated that Blackfeet wanted to be able to fish, hunt game, and cut timber on the land after it was sold. In making this offer White Calf expressed a certain amount of pleasure in being able to reach an agreement with the commissioners, but his offer was not without a touch of sadness, and possibly bitterness, for he said:

Chief Mountain is my head. Now my head is cut off. The mountains have been my last refuge. We have been driven here and now are settled. ...I shake hands with you because we have come to an agreement, but if you come for any more land we will have to send you away. 21

Mr. Pollock, speaking for the commissioners, readily accepted White Calf's offer, although originally the commissioners were opposed to paying
paying more than 1.25 million dollars for the land. He said that in general the terms of the Agreement would be the same as those of the Agreement of 1887, and that money owed the Blackfeet would be paid in ten yearly installments. Anticipating a successful session, a rough draft of the Agreement had already been drawn up. Pollock then read the draft to the Blackfeet. The Blackfeet, in general, accepted the draft of the Agreement, but put forth a question concerning interest to be paid on the deferred payments. It was decided that in lieu of interest the first payment would be $250,000, or $100,000 more than originally agreed upon. The subsequent payments would then be for the original amount of $150,000. The Blackfeet agreed to this method of payment and the signing ceremony for the agreement was set for the following day. All of the adult male Blackfeet on the reservation were urged to be present for the signing of the Agreement.

The commissioners, Indians, interpreters, and other interested parties gathered at 10:00 a.m. on Thursday, September 26, 1895, to listen to and sign the final draft of the Agreement of 1895. After the clarification of a minor point the Blackfeet listened as the Agreement was read to them by George Bird Grinnell. The Agreement was interpreted to the Blackfeet by Charles Simon, Special Interpreter and James Perrine, Indian Interpreter. Richard Sanderville, United States Agency Interpreter was also present at the signing ceremony. The Agreement was then signed by the three commissioners, 306 Blackfeet, witnesses J.E. Webb, R.B. Hamilton, James Willard Schultz, and the three interpreters. Indian Agent George Steell also signed the Agreement, and certified that the total male population on the reservation was 381. The Agreement would go into effect after ratification by Congress.22
The Agreement as signed consisted of eleven articles, and as stated earlier followed the terms of the Agreement of 1887. Articles I and II stated that for the price of 1.5 million dollars the Indians of the Blackfeet Reservation would release to the Government their right, title, and interest in that portion of their reservation lying to the west of a line:

Beginning at a point on the northern boundary of the reservation due north from the summit of Chief Mountain, and running thence south to said summit: thence in a straight line to the most northeasterly point of Flat Top Crag: thence to the most westerly of the mouths of Divide Creek: thence up said creek to a point where a line drawn from the said northeasterly point of Flat Top Crag to the summit of Divide Mountain intersects Divide Creek: thence to the summit of Divide Mountain: thence in a straight line to the western extremity of the Lower Two Medicine Lake: thence in a straight line to a point on the southern line of the right of way of the Great Northern Railway Company four miles west of the western end of the railway bridge across the north fork of the Two Medicine River: thence in a straight line to the summit of Heart Butte and thence due south to the southern line of the present reservation.23

However, the Blackfeet would reserve to themselves the right to enter the area in order to cut and remove wood for agency, school, domestic, and private purposes. They could do this so long as the land remained public land of the United States.24 They also had the right to hunt and fish on the land as long as it remained public land. However, the rights to hunt and fish were to be in accordance with Montana fish and game laws.

Articles III-VII outlined the employment rights of the Blackfeet under the Agreement, the ways and means by which the goods and services provided under the Agreement would be distributed, the usage of the reservation for livestock raising, the necessity for surveys, and the right-of-ways retained by the Government. Article V declared the Blackfeet Reservation to be unfit for agricultural purposes and also prohibited
land allotments on the reservation for the length of the Agreement. This latter prohibition was important to the Blackfeet because they were bitterly opposed to having the reservation "allotted".

Articles VIII-XI detailed the prohibition of using any money from the Agreement to settle claims arising from Blackfeet action prior to the Agreement, stated the Agreement of 1887 to still be in effect, provided that it did not conflict with the present Agreement, defined the word "Indian" as used in the Agreement, and declared the Agreement not to be in effect until ratified by Congress.25

The commissioners presented a transcript of the proceedings of the negotiations and a copy of the signed Agreement to the Commissioner of Indian Affairs in a report dated December 14, 1895. The letter accompanying the report was a brief narrative of the events surrounding the negotiations as well as a brief rundown of the terms of the Agreement. The final paragraph of the letter stated that:

We were careful that the Indians should fully understand everything connected with these negotiations, and to that end secured the services of one person to interpret into the Indian language all that was said by the members of the commission, and another to interpret into English all that was said by the Indians. We also studiously avoided making any promise or saying anything that could be construed into a promise that something outside of what appears in the agreement would be done for the Indians.26

D.M. Browning, Commissioner of Indian Affairs, presented the Agreement and related materials to the Secretary of the Interior on January 11, 1896. This report to the Secretary was similar to that received by the Commissioner in that it briefly outlined the negotiations and accompanying Agreement. However, the report went into considerable detail to explain the instructions given to the commissioners, and the carrying out of the instructions. According to the instructions the commissioners
were to fully examine the western, or mountainous, portion of the Blackfeet Reservation and determine just what portion could be spared by the Blackfeet and not be damaging to their future wellbeing. The instructions were especially concerned with the timber lands left the Blackfeet. The commissioners were instructed that:

...if upon this investigation they found that the Indians have(sic) not a sufficient supply elsewhere than in the mountain area to meet all their future wants, they should see that they retained a sufficient area of this mountain region affording good timber to supply them abundantly for all purposes.27

Furthermore the report went on to say:

There is nothing contained in the reports of the commissioners nor in the record of the proceedings of council accompanying the agreement from which to determine whether the timber and water privileges of the Indians have been impaired by this session, but I have been informally assured by Mr. Pollock, the chairman of the commission, that the water rights of the Indians will not be in any way impaired by the cession, and that they have retained enough wood and water for their uses for all time.

In addition it will be observed that by Article I the Indians retain the right to get wood and timber from the ceded portions of the reservation so long as it shall remain public land of the United States. I am, therefore, satisfied that in making this agreement the water and timber rights of the Indians have received the due consideration of the commissioners and have been preserved intact.28

The report was submitted to the Secretary with no suggestions as to the method to be used for disposing of the land once the Agreement was approved by Congress. It was Browning's belief that such matters were best left for the federal land office to decide.29

Secretary of the Interior Hoke Smith submitted the Agreement to the United States Senate for ratification. In a letter dated February 12, 1896, that accompanied the Agreement he stated that he believed the better policy would be for the United States to sell the land and give the proceeds to the Indians. Secretary Smith believed this method to be
in the best interests of the Government from a purely economic point of view. Smith believed that by selling the land for the Indians the Government would not risk losing any more money, even if no one decided to buy the land. Secretary Smith believed that the Government paid too much for the land and might never recover the amount paid for the land. In order to lessen the risk of such a loss he urged a quick granting to the Department of the Interior an authorization to dispose of the land. However, he closed his letter by saying he was only expressing his views and the approval of the Agreement was a matter for Congress to decide.30

The Agreement was approved, as written, by an act of Congress on June 10, 1896.31

The land ceded by the Agreement was not legally opened to prospecting and settlement until April 15, 1898. On that date over 500 people rushed into the area to stake out their claims. In his report to the Commissioner of Indian Affairs for 1898 Agent Thomas P. Fuller stated that the opening had taken place without serious incident. He went on to say that little in the way of precious minerals had so far been found, and predicted that the prospecting boom would be over by November.32

The newly opened land contained many valleys, but it was in the Swift­current Valley that the mining efforts were most concentrated. In addition to the various claims and mines an actual town grew up in the valley. The town was named Altyn, and it contained many of the amenities of civilization, including several saloons and a dance hall. However, very little in the way of minerals was found in paying quantities, and the mining boom, especially in the Swiftcurrent Valley never panned out. By 1903 most of the mining activity, as well as the town of Altyn, had died out.33
In addition to the prospecting for the hard minerals of gold and copper, the ceded strip also experienced oil exploration. This too was concentrated in the Swiftcurrent Valley. In 1901, the owner of the hotel in Altyn discovered traces of oil in his mine shaft. This discovery led to an organized effort to find oil in the valley. At one time the entire valley floor from what is now the Sherburne Dam to the Swiftcurrent Falls was staked out in oil claims. However, only about ten wells were actually drilled and none ever produced oil or gas in any amounts sufficient to sustain a commercial interest. The oil exploration was completely finished by 1907.34

By 1910, for all intents and purposes the mining and oil exploration efforts in the ceded strip were finished. The earlier doubts expressed about the mineral wealth of the region had proven to be accurate, and the United States held title to nearly 800,000 acres of land for which it had paid 1.5 million dollars.
Chapter Four: The Establishment of Glacier National Park

The Government's reason for acquiring the land ceded in the Agreement of 1895 was so that the area could be opened to mineral exploration. However, as early as the 1880's there were men other than miners and oil explorers who had an interest in the ceded strip. These men were conservationists, and it was their intention to have the ceded strip, and the adjacent land just to the west of it, made into some form of protected preserve, possibly a national park. They felt that this land was too rich in scenery and natural history to be exploited solely for private gain. They believed the area should belong to the nation as a whole. When the predicted mining boom failed to materialize, some of the men in this movement believed the time was right to make their move. The Government already owned the land and relatively little damage had taken place. It simply would be a matter of the Government changing the land's status from public land to that of a national park. The establishment of Yellowstone National Park in 1872 had set a precedent in this area, and several other national parks had subsequently been created.

Lt. John Van Arsdale is credited with being the first person to actually suggest that the ceded strip and adjacent land be made into a national park. Lt. Van Arsdale had visited the region and had been extremely impressed with it. In December 1883, he sent a letter to the Ft. Benton (Montana) River Press. He wrote:

I sincerely hope that publicity now being given to that portion of Montana will result in drawing attention to the scenery which surpasses anything in Montana or adjacent territories. A great benefit would result to Montana if this section could be set aside as a National Park. The country included in such a park is not fit for
agricultural or grazing purposes, but by placing it under the pro-
tection of the Government the forests would be protected and sub-
sequently some of the sources of water of three great river systems,
 viz; the Missouri, the Columbia and the Saskatchewan.³

The land, or at least a part of it, was still in the hands of the Black-
feet and no immediate action was taken on the suggestion.

Two years after the Van Arsdale letter appeared, an effort was made
to establish a forest preserve in the area. A bill introduced in the
United States Senate in 1885 would have established a Forest Reservation
on the headwaters of the Missouri River and the headwaters of the Clark's
Fork of the Columbia. The ceded strip land was to have been included
within the boundaries of this reservation. However, the bill did not
pass, and the matter, at least for the time being, was dropped.⁴

Although 1885 saw the failure of the Forest Preservation bill to
pass, it also saw the emergence of the man whose name is most synonymous
with the establishment of Glacier National Park: George Bird Grinnell.
Grinnell was the owner and editor of the magazine, *Forest and Stream*. He
was also a conservationist and a recognized expert on the Plains Indians.
His interest in the Plains Indians caused him to become quite sympathetic
to their problems. During the Blackfeet's starvation winter of 1883-84
James Willard Schultz, who was living with the Blackfeet, wrote Grinnell
and asked him for help for the Blackfeet. Grinnell was impressed with
Schultz's plea and contacted the Bureau of Indian Affairs. Through
Grinnell's efforts the Bureau was goaded into easing the plight of the
Blackfeet somewhat. In addition to seeing the misery in Schultz's
letters, Grinnell, ever the editor, was also able to see the makings of a
good story. So he wrote Schultz and asked him for some stories about his
life with the Blackfeet. Schultz was more than willing to oblige, and
soon his stories were being published in *Forest and Stream*.⁵
Schultz's stories of the Blackfeet and the land they lived on greatly intrigued Grinnell. He decided that he would visit Schultz in the spring of 1885 and see the Blackfeet first hand. On the night of Grinnell's arrival at the Blackfeet Reservation Schultz introduced him to several prominent Blackfeet men. In doing so Schultz spoke glowingly of Grinnell saying it was through his efforts that additional supplies had reached the Blackfeet during the winter of 1883-84. This greatly impressed the Blackfeet, and they thanked Grinnell for all of his help. Throughout the evening the Blackfeet referred to Grinnell as "friend" and "chief", and they bestowed upon him the Blackfeet name, Pinutoyilstsimokan, or Fisher Hat.6

During his visit to the Blackfeet land Grinnell travelled to the mountain lakes later named St. Mary, Sherburne, Swiftcurrent, and Josephine. While in the mountains he also observed numerous glaciers, one of which would later bear his name. Although the Blackfeet and their reservation impressed Grinnell it was this mountainous portion that impressed him the most. Upon his return to the east Grinnell began to share his impressions with his readers. Beginning in December 1885 and continuing through March 1886, Grinnell published in Forest and Stream a total of fourteen articles detailing the events of his recent trip west.7

Grinnell returned to the Blackfeet Reservation and the ceded strip, or Land of the Walled in Lakes as he called it, in 1887 and thereafter almost yearly for as long as he was able. In 1891 while visiting the upper St. Mary Lake region he wrote in his notebook that the area should be purchased by the Government and made into a national park. At that time the Great Northern Railroad was being built, and the main line of the railroad would cross over Marias Pass just south of the Walled in Lakes
region. Grinnell believed that the builders of the railroad, James J. Hill and son, Louis, could be persuaded to see the business advantages of the area being made into a national park and use their influence to help see that such a park came about. However, no concrete action was taken at this time.8

On March 3, 1891, Congress authorized the President to set aside forest reserves on the nation's timbered lands. This legislation not only authorized the creation of the national forests, it also put forth the basic regulations that would allow the forest resources to be utilized in a rational manner. This authorization of national forests was one of the major successes of the nineteenth century conservation/preservation movement, a movement whose members included John Muir and Gifford Pinchot, as well as George Bird Grinnell.9

In 1896, as an ex officio member of the National Forest Commission, Muir visited the land just to the west of the ceded strip. Muir was a strict preservationist, and believed that some lands should be set aside in order to protect them from exploiters, and even the wisest of the wise-use-conservationists. To him the land that he had recently visited in Montana fit into that category. However, the land he desired, as well as the ceded strip, was currently being used by a great many people, and total withdrawal into what amounted to a national park was just not possible at that time.10

The following year on February 22, the Lewis and Clark Forest Reserve was created. This was done largely through the efforts of the National Forest Commission. This reserve included all of the ceded strip, as well as what is now the Kootenai, Flathead, and Lewis and Clark National Forests.11
There were other individuals besides Muir and Grinnell who were pushing to make a national park out of the area. In 1891, two United States Geological Survey members surveyed the ceded strip region and were impressed enough with the area to suggest that it be made into a national park.12

In September 1901, Grinnell wrote an article entitled, "Crown of the Continent", that was published in Century Magazine. This article described in glowing terms the tremendous beauty of the ceded strip. At the conclusion of the article Grinnell called for placing the ceded strip into a national park. This was the first time that Grinnell had publicly put forth such a proposal. Grinnell was also able to persuade the noted writer, Emerson Hough, to visit the area. Hough then wrote a series of favorable articles on the region and Grinnell published them in Forest and Stream.13

On June 9, 1903, President Theodore Roosevelt issued Proclamation Number Three. This proclamation consolidated the Lewis and Clark Forest Reserve and the Flathead Forest Reserve into the Lewis and Clark National Forest Reserve. This proclamation, like Proclamation Number Thirty-One that created the original Lewis and Clark Forest Reserve, affected the ceded strip. Both of these proclamations contained clauses stating that the rights of the Blackfeet, as outlined in the Agreement of 1895, would be protected.14,15

During the next few years the mining and oil boom on the ceded strip faded from the scene. The preservationists believed the time was right to push hard for the creation of a Glacier National Park. Grinnell again spoke with officials of the Great Northern Railroad to try to enlist them in his cause. The owner of the railroad, James J. Hill,
listened to Grinnell with interest. Although there was no way that James J. Hill could be described as a preservationist, he was a good businessman, and quickly saw that a national park located just north of the mainline of his railroad would be good business. Therefore, after considering Grinnell's proposal, Hill decided to use his influence to goad the Montana Congressional delegation into seeking the creation of Glacier National Park. Without the influence of the Hill family the setting aside of Glacier National Park would probably have taken many more years.16

On December 11, 1907, Senator T.H. Carter of Montana introduced Senate Bill (S.B.) 2032 to set aside a large tract of land, including the ceded strip, as Glacier National Park.17 The bill was not received favorably by the Senate, and it was returned to Carter for revision.18 Carter reworked the bill and reintroduced it on February 24, 1908, as S.B. 5648.19 The bill was then sent to the Committee on Public Lands. The Committee examined the bill and returned it to the Senate with a recommendation that it be passed. In addition, the bill was accompanied by Senate Report (S.R.) 580. This report expressed some concern over the timber and water resources that would be locked up within the proposed national park. S.R. 580 made no mention of the effect, if any, that the creation of Glacier National Park would have on the rights of the Blackfeet as outlined in the Agreement of 1895.20 The bill was passed in the Senate and sent to the House of Representatives on May 6, 1908. Congressman Charles N. Pray of Montana took responsibility for the bill and helped guide it through the House Committee on Public Lands. The Committee on February 9, 1909, reported the bill back to the full House and recommended that it be passed. H.R. 21100, which accompanied the bill
also made no mention of any rights of the Blackfeet. The bill, though favorably recommended, died from inaction.

Senator Carter on June 26, 1909, again introduced legislation to create Glacier National Park. The bill, S.B. 2777, was sent to the Committee on Public Lands. On Thursday, January 20, 1909, Senator Dixon of Montana reported the bill out of committee, along with S.R. 106. This report was basically the same as H.R. 2100 and S.R. 580, and made no mention of any conflicts with the Blackfeet should Glacier National Park come into being. In the debate which followed the introduction of S.B. 2777 the main concerns were over the costs involved in establishing a national park. Additionally, there was some concern voiced over any legal rights which might be affected. To this concern Senator Dixon replied that:

Nothing is taken from anyone. The rights of these few settlers and mineral entry men are protected in the bill, where they have heretofore initiated their rights.

At the conclusion of the debates the bill was voted upon, passed, and referred to the House.

H.R. 767 to accompany 2777 was virtually the same as H.R. 2100, and was released on March 15, 1910. House debates on Glacier National Park took place on April 14, 1910. As was the case in the Senate, there was concern expressed over the costs of a national park. However, the House was well aware that many people across the country were in favor of the creation of the park. Representative F.W. Mondell of Wyoming stated in the debate that:

It will doubtlessly cost something to maintain the park, but the naturalists and nature lovers of the country and societies interested in the preservation of natural scenery and game have petitioned Congress time and time again for the park. It is a matter that has
been before Congress a considerable time. This is the second time that the committee has unanimously reported the bill. There is a very strong sentiment in the country in favor of the creation of Glacier National Park.29

In response to a question over land titles in the area Senator Dixon said:

There is not a foot of it which the Government does not already own...And I don't think there is a ranch within its confines. All of it is now in a forest reserve. So there will not be a great deal of difference in its future status from the present. There are no settlements.30

At the close of the House debates a vote was taken and the bill passed, but with numerous amendments added to it. The Senate objected to the House amendments, and at Senator Dixon's request a conference committee was formed to work out the differences. The conference report, H.R. 1142, was released on April 16, 1910. Both the Senate and House agreed to the compromises of the report. On May 2, 1910, the bill, S.B. 2777, was examined and signed in the House of Representatives, and the same was done in the Senate on May 3, 1910. The bill was then sent to President William Howard Taft who signed it into law on May 11, 1910; Glacier National Park finally came into existence.31,32

On February 17, 1911, the Twelfth Assembly of the Legislature of the State of Montana passed an act ceding jurisdiction over Glacier National Park to the United States. In granting exclusive jurisdiction of the park to the United States, the State of Montana only reserved for itself the right of taxation and the right to serve criminal process within the park for criminal acts committed outside the park boundaries.33

On February 22, 1911, Senator Carter introduced a bill in the Senate to accept the cession by Montana over Glacier National Park. Carter's bill was referred to committee, and it died there.34

Over the next few years several cession bills were introduced in both the House and Senate, but all of these bills were rejected for one
reason or another. The main problem in these failed bills seems to have involved the legalities of appointing a U.S. Commissioner for the area. However, in H.R. 812, which accompanied H. R. 1679 some concern was expressed over any existing Indian claims which might be affected. In a letter within the report Fredrich K. Vreeland, Chairman, Subcommittee on National And International Parks, The Camp-Fire Club of America, stated to Representative James H. Graham that:

We have inquired of the Interior Department, and have been assured that these questions have been fully considered, and that all Indian titles have been extinguished, and that there is ample precedent for conferring such authority on United States commissioners. Permit us to quote from the statement of the Department of the Interior, as follows:

"In relation to the Indian title to the land now embraced in Glacier National Park, I have to state the boundaries of the Blackfeet Indian Reservation were defined by the agreement of February 11, 1887, ratified by the act of May 1, 1888 (25 Stats., 129), and by the agreement of September 26, 1895, with the Indians, ratified by the act of Congress of June 10, 1896 (29 Stats., 353), what is now the eastern boundary line of the Glacier National Park, as defined by the act of May 11, 1910 (36 Stats., 354), was fixed as the western boundary of the reservation, and the lands thereto forewithin the reservation west of that line were ceded to the Government.

"By the agreement ratified by Congress June 10, 1896, the Indians reserved the right to go upon any part of the lands ceded to United States for the purpose of cutting and removing timber for agency and domestic purposes, including personal use, and to hunt on the lands and fish in the streams in accordance with the game and fish laws of Montana so long as the ceded lands remained public lands of the United States.

"The lands referred to were withdrawn from all forms of entry or other disposition by the act of May 11, 1910, establishing the park, except that under the act bona fide homestead entries, mineral entries, etc., are to be respected, and consequently on the date of approval of the act the said lands ceased to be public lands of the United States, and their right to remove timber, fish in the streams and lakes and hunt upon the lands, the only rights reserved to them, ceased, and therefore they have not now, and have not had since May 11, 1910, any right of any character within the park superior to that to any citizen of the United States."

This letter from Vreeland also appeared in H.R. 1456 accompanying S.B. 7318, a Senate bill to accept from Montana the jurisdiction over
Glacier National Park. With the exception of these two reports there was little mention of the Blackfeet and their rights, as outlined in treaties and agreements, in the debates and discussions regarding the establishment of Glacier National Park.36

Finally, on August 22, 1914, what began as S.B. 654 was approved by both the House and Senate. The approved bill, Public Law 177, gave to the United States exclusive jurisdiction over Glacier National Park.37,38
Chapter Five: The Court of Claims Era

The Agreement of 1895 gave the Blackfeet the right to enter the ceded strip to hunt, fish, and cut timber. These rights were to remain in effect as long as the ceded strip remained public land. When the ceded strip became a part of Glacier National Park it ceased to be public land and the rights were terminated. The enabling act for Glacier National Park stated that the:

...park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as possible, to make and publish such rules and regulations not inconsistent with the laws of the United States as he may deem necessary for the preservation of the park in a state of nature so far as is consistent with the purposes of this Act, and for the care and protection of the fish and game within the boundaries thereof...he may also sell and permit the removal of such matured, or dead or down timber as he may deem necessary or advisable for the protection or improvement of the park.1

In addition Public Law 177, passed August 22, 1914, gave sole and exclusive jurisdiction over Glacier National Park to the Federal Government. In reality this law was an acceptance of the jurisdiction ceded by the State of Montana on February 17, 1911. Section 4 of Public Law 177 stated:

That all hunting or the killing, wounding, or capturing at any time of any bird or wild animal, except dangerous animals when it is necessary to prevent injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. That the Secretary of the Interior shall make and publish such rules as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoilage of all timber, mineral deposits other than those located prior to the passage of the Act of May eleventh, nineteen hundred and ten...and for the protection of all the animals and birds in the park from capture or destruction, and, to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes in the park.2

Thus it would seem that the establishment of Glacier National Park and the passage of Public Law 177 either terminated or severely curtailed the
rights reserved for the Blackfeet under the Agreement of 1895. An attempt to exercise any such rights after the park was established would certainly have brought the Blackfeet into conflict with the park's management goals.

Although the early administration of Glacier National Park was plagued with difficulties, those difficulties did not stem from the Blackfeet attempting to exercise their Agreement rights in the park. Glacier's problems, which were quite numerous, can be traced to the following: a lack of Federal jurisdiction (not remedied until 1914), boundaries that did not encompass enough land to include a winter range for the larger park animals, squabbles involving both private and state in-holdings, inadequate or non-existent roads and trails, concession difficulties, and forest fires. All of these problems had far more to do with politics than with any Indian agreements.3

A review of the early Glacier literature, especially the Annual Superintendent Reports, shows little mention of any hunting, fishing, or timber cutting problems attributed to the Agreement of 1895.4 The Annual Report for 1917 gives the first mention of the Blackfeet killing game in the Glacier National Park vicinity under the protection of the Agreement, but the report is unclear whether the game was being killed inside or outside the Park. Quite possibly the report referred to Glacier game being killed once it left the park for winter range, winter range which was on the Blackfeet Reservation. It was very likely that it was not necessary for the Blackfeet to hunt in the Park since the game came to the Blackfeet on their own lands.5

In the annals of Government-Indian relations the years 1871-1928 were known as the Era of Allotments and Assimilation.6 During this period several major laws were passed, including the Indian Department Appropriations Act (1871)7, the General Allotment Act (1887)8 and the Indian
Citizenship Act of 1924. These laws, and many others, were designed to put an end to the "Indian Problem" in the United States.

It was also during this period that the Congress passed several jurisdictional bills allowing the Indians the right to bring suit against the Government in the Court of Claims. In the case of the Blackfeet, as early as 1909, the Indian Office had investigated land transactions between the Blackfeet and the Government. At that time the Office found numerous incidents serious enough to justify a claim against the Government. The Office believed that the best way to handle such problems would be via the courts because such a hearing would be fair and the court decision would be binding. The Indian Office enlisted the services of a private law firm, Serven, Joyce and Barlow, to look into the matter and draft legislation granting the Blackfeet (and others) the right to sue the United States Government in the Court of Claims. The draft legislation was presented to Senator Thomas H. Carter of Montana who welcomed it, saying that there had been trouble over this matter for the last twenty years. The bill was introduced several times over the next ten years (1911-1921), but never passed.

On April 11, 1921, Representative Carl Riddick of Montana introduced House Resolution 2432 for the "Relief of Certain Tribes of Indians in Montana". The purpose of this resolution was to confer jurisdiction upon the:

....Court of Claims with the right of appeal to the Supreme Court of the United States, to consider and determine all legal and equitable claims, if any, of the Blackfeet, Blood, Piegan, Gros Ventre, River Crow, and Assiniboine Nations or Tribes of Indians residing upon the Blackfeet, Fort Belknap, and Fort Peck Reservations, respectively, in the State of Montana against the United States, and also any legal or equitable defenses, set-offs, or counterclaims which the United States may have against the said nations or tribes, and to enter judgement thereon, all claims and defenses to be considered without
regard to lapse of time; and the final judgment and satisfaction therein shall be a full settlement of all claims whatsoever of said Indians against the United States in so far as such claims have been considered by the said courts.

On February 3, 1922, hearings on H.R. 2432 were held by the House Committee on Indian Affairs. In addition to the Committee members, those present at the hearing were Abram R. Serven and John C. Carter, representing the Blackfeet and Gros Ventre, Burton K. Wheeler, representing the Flatheads, and the Assistant Commissioner of Indian Affairs. A letter from E.C. Finney, Acting Secretary of the Interior, sent to the Chairman of the House Committee on Indian Affairs was inserted into the Committee Report. The letter was dated October 1, 1921, and stated that with noted exceptions:

...the Indians have made sufficient showing to warrant the passage of the jurisdictional bill, and that the most satisfactory adjudication of their claims can be through the courts.

The hearing began and ended quite amicably. All parties to the hearing seemed to believe that the purpose of H.R. 2432 was to be a general clean-up of the accounts of the Indians involved. As Mr. Serven said, "It will certainly clean up everything with their land. There is no doubt about that." With only minor differences there was a general agreement that H.R. 2432 should be passed. There was, however, an interesting exchange between Representative Albert W. Jefferies of Nebraska and Assistant Commissioner Meritt concerning the Government's authority over the Indians. Meritt told Jefferies that the Congress is supreme in dealings with the Indians, and that Congress can abrogate a treaty with the Indians whenever it wants. Meritt went on to say that that right was upheld by the Supreme Court in the Lone Wolf case. Representative Jefferies stated that such an ability may be legal under the law, but that it was founded in poor law just the same.
On March 6, 1922, Representative Washington J. McCormick of Montana representing the House Committee on Indian Affairs, submitted to the Committee of the Whole House H.R. 2432 and House Report 773. This report, entitled Relief of Certain Tribes of Indians in Montana, was basically a "do pass report" and stated that:

Your committee believes that these questions can only be adjudicated in the Court of Claims, as neither the Congress nor the Department are in a position to pass upon or construe the legal questions here involved. That this legislation meets the approbation of the Department of the Interior as well as of your committee is evidenced by the report of the Secretary of the Interior attached herewith.18

The legislation as reported out of committee would have given the Indians who were party to the treaties of July 16 and October 17, 1855, the right to be heard by the Court of Claims for lands and hunting rights taken by the United States without proper legislation and/or inadequate compensation. The decision rendered by the Court of Claims could be appealed to the Supreme Court, and the final judgment would be considered the full and final settlement of all said claims.19 For some reason House Resolution 2432 was never passed by the House of Representatives and it faded from the legislative scene.

On December 13, 1923, Representative John Evens of Montana introduced House Resolution 3444, Relief of Certain Nations or Tribes of Indians in Montana, Idaho, and Washington. H.R. 3444 was essentially the same legislation as H.R. 2432, and in Report 64 the House Committee on Indian affairs stated that:

This legislation provides that the Indians who were parties to the treaties above set forth shall be given the right to be heard by the Court of Claims, with right of appeal to the Supreme Court of the United States, for the alleged taking of certain lands and hunting rights which were given them under the treaties of July 16 and October 17, 1855. It is alleged by the claimant that certain of these hunting rights were taken from them without adequate legislation or compensation. It is further alleged that certain lands were taken
from the claimants by unratified treaties in 1868, and that these treaties were so worded that they could only be binding upon their ratification by the President and the Senate. It is also claimed that by an act of April 15, 1874 (18 Stat. L. 28), the Government took from certain of the claimants a strip of land given them by the treaty of October 17, 1855, without their consent and without compensation therefore.20

It was also stated by the committee that only through the court system could this matter be settled. The Department of the Interior was in full support of this legislation.21

On February 5, 1924, H.R. 3444 was read three times and passed.22 It was then introduced in the Senate on February 7, 1924, where it was referred to the Senate Committee on Indian Affairs.23 On February 13, 1924, Senator John W. Harold of Oklahoma submitted Report 141 to the Senate to accompany House Resolution 3444. The Report recognized and accepted the facts as set forth in House Report 64, and the committee recommended that the resolution be passed without amendment.24 H.R. 3444 was read and explained in the Senate by Montana Senator Joseph Walsh on March 5, 1924. The measure was read two more times and passed by the whole Senate.25 The bill as passed was signed by the Speaker of the House on March 7th and in the Senate on March 10th.26,27 House Resolution 3444 was presented to President Warren G. Harding on March 11, and the President signed the bill into law on March 13, 1924.28,29

The Act of March 13, 1924, gave the Blackfeet and several other Indian tribes permission to sue the Government in the Court of Claims, with appeal rights to the Supreme Court. The suit, or suits, by the Indians were limited to claims for:

...lands or hunting rights claimed to be existing in all said nations or tribes of Indians by virtue of the treaty of October 17, 1855 (11 Stat. 657), and...the treaty of July 16, 1855 (12 Stat. 975)... and all claims arising directly therefrom, which lands and hunting
rights are alleged to have been taken from the said Indians by the United States.30

The Act further states that:

...suits under this act shall be begun by the filing of a petition within two years of the date of approval of this...31

and that:

...the final judgement and satisfaction thereof shall be in full settlement of all said claims.32

The Blackfeet and other Indians, in compliance with the act, filed suit against the United States on July 25, 1925.33 There were numerous claims, or charges, presented in this lawsuit, but only one involved the Blackfeet, the 1895 Agreement, and Glacier National Park.34 In this suit it was the ...

...claim of the plaintiff, the Blackfeet Tribe based on the acts of the defendants, under the act of Congress of May 11, 1910 (36 Stat. 353), in taking from them and depriving them of the right to cut and remove wood for agency and school purposes, and for their personal use for houses, fences, and all other domestic purposes, and to hunt and fish thereon, a tract of land constituting a part of Glacier National Park, which rights have been reserved by the plaintiff in an agreement with the defendant ratified by the Act of June 10, 1896 (29 Stat. 321). $250,000.35

In this suit the Blackfeet did not claim to still possess the ownership of the Agreement rights, but only that they had not been compensated for the loss of the rights. Thus, the suit was only for the monetary value of the lost rights.36

The entire suit against the Government, entitled Blackfeet et al Indians v. United States, was very complicated and it took ten years to move completely through the court system. The claim involving the Agreement of 1895 was only a minute part of this suit. However, details of the testimony, arguments, and decisions for the years 1925-35 were available from the Government Printing Office. James Willard Schultz, George Pablo, George Ground, and Francis X. Guardipee all testified for the
Blackfeet. They stated that approximately 200 Blackfeet used the involved land between the years 1895-1910.37 Among letters and reports introduced by the Government as defense evidence there was a letter from the Acting Secretary of the Interior, John H. Edwards. In this letter to the Attorney General, Edwards stated that only the right to hunt was nullified by the creation of Glacier National Park. Fishing and timber cutting, if practiced in accordance with park regulations could still be carried out by the Blackfeet.38 Still the prohibition to hunt within the park would not seem to have had much of an effect on the Blackfeet because most of their hunting in the vicinity of the park occurred on the reservation when the animals left the sanctuary of the park.

The Government filed its formal petition of defense on July 10, 1925. The defense was based on two points:

(1) The land in question ceased to be public land when Glacier National Park was established. Thus, the rights granted the Blackfeet under the Agreement of 1895 were terminated.

(2) The Blackfeet had failed to establish the extent to which they used the reserved privileges during 1895-1910, and they had also failed to establish the value, if any, to them of these privileges.

The Government based its position on legal precedent obtained from Northern Lumber Company v. O'Brian (139 Fed. 614-616), affirmed in the Circuit Court of Appeals and the U.S. Supreme Court in 204 U.S. 197.39

After studying the evidence in the Agreement of 1895-Glacier National Park claim the court reached a preliminary ruling. The ruling, published in 1930, was in favor of the Government and stated that:

The record fails to establish the extent to which, prior to the Act of May 11, 1910, the Indians of the Blackfeet Reservation availed themselves of the rights reserved in the aforesaid Agreement of September
26, 1895, to hunt and fish and remove timber from the land ceded in the said agreement, or the value to them of said rights.40

In a later ruling given on December 4, 1933, the court maintained its original ruling and enhanced it somewhat by stating that:

Prior to the Act of May 11, 1910, the Indians of the Blackfeet Reservation did not exercise to any appreciable extent the rights reserved in the aforementioned Agreement of September 26, 1895, to hunt and fish in and remove timber from the land ceded in the agreement, and such rights were authoritatively terminated by the limitations of the Act of May 11, 1910.41

The final ruling in the case of Blackfeet et al Indians v. United States came on April 8, 1935. In the portion of the suit involving the Agreement of 1895 the Court held to the earlier decision reached on December 4, 1933. The court again stated that the land in question ceased to be public land with the creation of Glacier National Park on May 11, 1910. Since the land was no longer public the rights reserved for the Blackfeet by the Agreement of 1895 were no longer valid, but were authoritatively terminated. In addition the court stated that the Blackfeet had neither proved the extent to which they used the land between September 26, 1895 and May 11, 1910, nor placed any monetary value on this unproven usage.44 The Blackfeet did not appeal this portion of the suit to the United States Supreme Court. Under the terms of the Act of May 13, 1924, this unappealed ruling by the Court of Claims should have been the final judgement in the suit involving Glacier National Park, the Blackfeet Indians, and the Agreement of 1895.
Chapter Six: The Interim Years: 1930-1970

The lack of an adequate winter range on the east side of Glacier National Park continued to plague park officials into the 1930's. However, by the early 1930's illegal hunting within the Park, especially on the east side, also became a problem. On April 1, 1931 Superintendent E.T. Scoyen sent a letter to the Director of the National Park Service requesting a copy of any treaty or treaties between the Blackfeet and the Government. He also requested copies of Congressional acts, laws, and agreements relating to the purchase of the east side strip. His reasons for the request were twofold:

1. The documents would have historical value for the Park and
2. The documents would have informational value in assisting park officials in handling the Indian problem on the east side.

With this letter the concern of park officials shifted from outside to inside the park.

The next year, presumably after receiving a reply to his letter of April 1, 1931, Superintendent Scoyen again wrote the Director of the National Park Service regarding Indian treaties and agreements. In a letter dated May 26, 1932, he intimated that any problem on the east side, especially within the park itself, might be more serious than anticipated. He asked:

...just what legal rights have we to prevent the Indians from cutting timber on the park land, or from hunting or fishing in the area which they sold to the Government under this agreement? I suppose there have been some previous decisions on this matter, but I would like any information you might have. It may be that it will not be to the best interests of the Park Service to have a decision made on these matters.

Prior to this letter Superintendent Scoyen had also written the National
Park Service Director on April 22, 1932. In this letter he had included copies of correspondence that he had received from Peter Oscar Little Chief of the Blackfeet Reservation. The topics of Mr. Little Chief's letters were the hunting, fishing, and timber cutting rights guaranteed by the Agreement of 1895. The letters of both Scoyen and Little Chief were then turned over to the Assistant Secretary of the Interior who in turn gave them to the Solicitor of the Department of the Interior for a legal opinion. E.C. Finney, Solicitor replied to the Secretary of the Interior in a lengthy opinion dated June 21, 1932. Finney stated that in his opinion:

...the claim made on behalf of the Blackfeet Indians of rights to cut timber and to hunt and fish within the boundaries of Glacier National Park can not be sustained.

His reasoning was based in part on the implications of the proviso contained in Article One of the Agreement which stated that the Blackfeet would have the right to hunt, fish, and cut timber on the lands conveyed as long as they remained public lands of the United States. He went on to say that:

It will be noted that no restraint was placed by the agreement on the power of the United States to dispose of the land or to reserve it for public purposes, either of which would be inconsistent with the continuance of the privileges mentioned in the agreement. It is plain that it was the intention of the parties to the agreement and of Congress when it ratified the same and made certain provisions for survey and disposition of the land that the rights were only temporary in nature, and that they would terminate with respect to any or all of the lands when they ceased to be public lands of the United States by reason of such disposition as Congress may have seen fit to make.

The power over the public lands is vested in Congress by the Constitution without limitation, and has been considered the foundation on which the territorial governments rest. United States v. Gratiot (14 Pet. 526.) It was a lawful exercise of the power to provide that the lands should be subject to disposition under the mining laws or other public land laws, and it was likewise within the power of Congress to set the lands apart for a public purpose. When the lands were disposed of or reserved for a public purpose,
they ceased to be public lands of the United States as the term is understood in legislation. As generally used, the term applies to such lands as are subject to sale or other disposal under general laws. Newall and Sanger (92 U.S. 761.) Lands which have been appropriated or reserved for a lawful purpose are not public lands and are to be regarded as impliedly excepted from subsequent laws, grants and disposals which do not especially disclose a purpose to include them. United States v. Minnesota (270 U.S. 181.)

In addition Solicitor Finney stated that:

In my opinion the rights to cut timber and to hunt and fish in accordance with the terms of the agreement were terminated as to any lands which had been disposed of under the public land laws, and as to the remainder when the lands were included within the Glacier National Park, by the act of May 11, 1910, supra, as the lands were no longer public lands of the United States.

This letter and opinion left little doubt as to the position that the National Park Service was taking on the Agreement of 1895. Shortly thereafter such a position was tested in court.

In October 1932, R.E. Momberg, L.J. Momberg, N.T. Armstrong, and George Plummer were arrested by Park Rangers for possessing firearms within the park and trespassing on a closed area without the Superintendent's permission. Confiscated with the arrested persons were five horses, three riding saddles, two pack saddles, four rifles, and a complete backcountry camping outfit. The four men were Blackfeet Indians and they claimed to be exercising their hunting rights as guaranteed by the Agreement of 1895. They appeared before the U.S. Commissioner on November 14, 1932. They were all found guilty and fined a total of one hundred dollars. The four men then requested counsel and appealed their case to the United States District Court in Great Falls.

The appeal was not handled until the Spring of 1933. Superintendent Scoyen was interested enough in the case to travel to Great Falls to hear the appeal first hand. The appeal was heard in District Court by Judge Charles N. Pray, and the four men pleaded guilty to the charges. The
decision was reported in the Great Falls Tribune under the headline banner, "All Hunters Barred from Park Reserve: Indians Do Not Hold Hunting Rights by Treaty". Superintendent Scoyen was quoted in the article as saying:

...the decision could only mean that the government was clearly within its rights in arresting and bringing to trial Indians who hunt in the park and that the rights under the treaty of 1896(sic) do not exist in view of laws that have been passed by the Congress to the contrary.\(^{11}\)

Although the newspaper headline clearly states that the Indians lost the case and so does the quotation by Scoyen, the article does not give any details as to how the ruling was reached. There also were not any newspaper editorials in the Montana papers for or against the decision, and the ruling does not seem to have appeared in any commonly used legal reporting system. There is no doubt as to the outcome of the case, but only to the reasoning used to arrive at the outcome.\(^{12}\)

As stated earlier Superintendent Scoyen was extremely pleased at the outcome of the Momberg trial and appeal. In his Annual Report for 1933 he discussed the matter at great length and declared that the decision was "definitely in favor of the government and could only be interpreted as meaning that we have the authority to keep Indians from hunting in the Park".\(^{13}\) As to the importance of the decision he felt it to be one of the two significant things to occur during the year, the other being the opening of the Going to the Sun Road. He also felt it would be an important event in the general Park history.\(^{14}\)

The next few years were quiet regarding poaching matters and any poaching cases which arose appear to have been won by the National Park Service. However, any action concerning the extension of the park's boundaries seems to have dissipated. In early April, 1935, Scoyen discussed the matter with J.H. Brott, Acting Superintendent of the
Blackfeet Reservation and Joseph W. Brown, President of the Blackfeet Tribal Business Council and received such a negative reaction that he felt it prudent to inform the Director of the National Park Service. In a letter dated April 23, 1935, he stated that, "I again want to emphasize that it is useless for the NPS to initiate any action or to support any project which has for its objectives the gaining of control over lands in the so-called Blackfeet Strip." It was also at this time that the final ruling in Blackfeet et al Indians v. U.S. was handed down, but this does not appear to have had any immediate impact on Park officials.

On January 21, 1939, Superintendent Donald S. Libby wrote the Director of the National Park Service for a copy of the Agreement of 1895. For whatever reason Superintendent Libby did not receive a copy as requested until August 4, 1939. The Park record does not say why he wanted such a copy, or what he planned to do with it.

The forties and early fifties were quiet years in Glacier with regard to Indian problems on the east side. There were some poaching cases, but no apparent attempt by the Blackfeet to force the park officials to recognize the rights outlined in the Agreement of 1895. In fact, in December 1942 a wood cutting permit was given to the Blackfeet to allow them to cut firewood on the east side of the Park. This was due to a severe shortage of firewood on the reservation.

In the 1920's the Blackfeet were able to sue the Government due to the passage of a special jurisdictional act. Without such an act any suit would have been impossible because an 1863 law forbade Indians to sue the Government. This method of addressing Indian claims against the Government proved entirely unsatisfactory, and in the 1930's Congress
began efforts to establish a review board for Indian claims. These efforts ended in the passing of the Indian Claims Commission Act of 1946. The Commission, consisting of three members, was to receive claims until 1951 and finish its business in ten years. The purpose of the Commission was to settle Indian claims against the United States. The Commission was an administrative agency with final determination on all claims. Congress also granted jurisdiction to the Court of Claims to review the Commission's decisions. Determinations of questions of law were subject to review by the Supreme Court on applications for a writ of certiorari. The Blackfeet filed numerous claims with the Commission and some of the claims involved the items decided in Blackfeet et al Indians v. U.S.

In the early 1950's the Blackfeet and the Gros Ventre filed suit against the United States in the Indian Claims Commission. The suit, Blackfeet and Gros Ventre Tribes of Indians v. United States, was identical to that of Blackfeet et al v. U.S. minus any claim based on the Agreement of 1895. The purpose of the new suit was to obtain an increased amount in the monetary judgment based on a delay in payment by the Government. The Commission using the defense res judicata ruled against the Indians.

The Blackfeet and Gros Ventre appealed the Commission's decision to the Court of Claims and in a decision reached on March 2, 1954 the Court said:

We hold that this court had jurisdiction under the special jurisdictional act to award interest as a part of just compensation in the former case; that the claim being presented is but an element of that claim for just compensation which has been adjudicated on its merits; that the intention of Congress as manifested by the Act and legislative history was to reserve to the United States all defenses except the defense of the statute of limitations or laches, and therefore to permit the defense of res judicata in its entirety. The "fair and honorable dealings" clause has no application to the facts of this case.
The final determination of the Indians Claims Commission sustaining the motion of the United States for summary judgment and dismissing appellant's claim is affirmed.23

The case was subsequently appealed to the Supreme Court on a Petition for Writ of Certiorari. The Writ was denied on October 14, 1954.24,25

On May 16, 1957 Ernest L. Wilkinson of the law firm, Wilkinson, Cragun, Barker and Hawkins filed a petition before the U.S. Court of Claims. This petition requested compensation for the Blackfeet for lands taken illegally. The petition stated that the Government erroneously located the western boundary so that 45,000 more acres were included in the ceded strip, and that the Blackfeet were deprived of any money for the lands, as well as the lands. The petition claimed that the Government had continually failed to pay for the lands and still failed to do so. In addition the petition stated that the Blackfeet Tribe had suffered damages in the amount of $225,000, plus damages for delay in the payment of just compensation. The claim did not mention any other rights lost by the Blackfeet via the Agreement of 1895 and Glacier National Park. The Court ruled against the Blackfeet in this case, and on appeal the decision was affirmed by the Court of Claims.26,27

However, the Blackfeet received some encouraging news in the summer of 1957. Earlier in the year Peter Redhorn, Public Relations Officer for the Blackfeet Tribal Business Council, wrote the Washington, D.C. law firm of Strasser, Spiegelberg, Fried and Frank about the Agreement of 1895. He received a letter dated August 13, 1957 from Arthur Lazarus, Jr. of the law firm.28 Concerning the Agreement and its present relationship to the Blackfeet Mr. Lazarus addressed the rights of hunting, fishing, cutting timber, and entry into Glacier National Park. Specifically he said that under the Agreement:
(1) The Blackfeet Indians have no special hunting rights in Glacier National Park. This is because Congress has the power to enact legislation which repeals or modifies the provisions of treaties with Indian tribes. Cases which have upheld this right are Lone Wolf v. Hitchcock, 87 U.S. 553, 566 (1903); Thomas v. Gay, 169 U.S. 264, 271 (1898); The Cherokee Tobacco Co., 11 Wall, 615, 621 (1871); and also Cohen, Handbook of Federal Indian Law, p.34. The right of the Blackfeet to hunt in Glacier National Park was unilaterally abrogated by the Act of August 22, 1914, which prohibited such hunting. The same applies to the right of the Blackfeet to fish in the eastern portion of Glacier National Park, but the right is only modified and not totally diminished.29

(2) The Blackfeet Indians have a right to cut timber in the park for domestic purposes. There are specific laws and rules which prohibit hunting and modify the right to fish. No such law or laws exists with regard to cutting timber. (The portion of the Agreement of 1895 that deals with timber cutting is unclear and ambiguous, and this is very true regarding the definition of "public land". The law is quite clear that treaties and agreements must be liberally construed and any doubtful expressions or clauses must be resolved in favor of the Indians. This is supported by case law in United States v. American Trucking Association, 310 U.S. 534, 542 (1940); Catooman v. Squire, 351, 1, 6-7 (1956); Choctaw Nation v. United States, 318 U.S. 423, 432 (1943); Tulee v. Washington, 315 U.S. 681, 694-685 (1942); United States v. Shoshone Tribe 304 U.S. 111, 116 (1938); Winters v. United States, 207 U.S. 564,576 (1908); and Jones v. Meehan, 75 U.S. 1 (1899).30
(3) The members of the Blackfeet Tribe have a right to enter Glacier National Park without the payment of any fee. People who own land within Glacier do not have to pay a fee to go onto that property, and neither do the Blackfeet in order to exercise the rights of fishing or woodcutting. This opinion is supported by Tulee v. Washington. Although this was only an opinion and not a legal ruling it still was a favorable opinion for the Blackfeet concerning the rights from the Agreement of 1895. However, the Blackfeet did not file a suit based on the opinion of Mr. Lazarus at this time. The Blackfeet also did not contact Glacier National Park officials concerning the Lazarus letter.

The Blackfeet decided in late 1964 to again pursue their claim that the western boundary of their reservation as set by the Agreement of 1895 was incorrect. This decision was made at the urging of the Tribe's few remaining full-bloods. The disputed boundary line stretched seventy two miles south from the international boundary line, and separated Glacier National Park from the Blackfeet Reservation. The decision to pursue the matter was made in spite of a recently completed re-survey that indicated that the Tribe would have little to gain in pressing the claim.32

The decade of the 60's ended with little change in the conflict between the Agreement of 1895 and Glacier National Park. However, the 70's would begin with an attempt by the Blackfeet to resolve the issue.
The decade of the 1970's began in the United States with the American Indians beginning to use the political process to obtain their civil rights much as the Blacks had done during the 1960's. Much of this activity among the Indians centered around the hundreds of treaties and agreements signed by the Indians and the American Government. This was the method used by the Blackfeet to solve the problems that they continued to have over the Agreement of 1895 and Glacier National Park.

On December 3, 1971, the Field Solicitor from the Billings, Montana Office of the Bureau of Indian Affairs sent a memo to the Director, Midwest Regional Office, National Park Service. The memo was a request for a legal review and a determination of the treaty rights of the Blackfeet Indians as they affected Glacier National Park. This memo to the Regional Director was in response to a memo that the NPS official had sent to the Regional Solicitor, Bureau of Indian Affairs, Denver, Colorado. All of the correspondence came about due to a letter written by Superintendent William J. Briggle of Glacier National Park in October of 1971. Mr. Briggle's concern was over the Blackfeet Indian claims to a right to a water flowage and impoundment area in Glacier National Park, and a right to woodcutting and free entry privileges in Glacier National Park. The flowage rights were claimed by the Blackfeet under the Glacier Park Act of 1910 and are not the subject of this paper. However, the right to cut wood within the Park, as well as the right of free entry, was claimed by the Blackfeet to be guaranteed to them by the Agreement of 1895. Solicitor A.E. Bielefeld agreed with the claims of the Blackfeet and gave as the basis for his opinion the 1957 letter of Arthur Lazarus, Jr. to Peter Redhorn. In
addition to the Lazarus letter Solicitor Bielefeld quoted from the Land
and Water Conservation Fund Act of 1964, which stated that:

No such fee shall be charged any person for travel by private non-com-
mercial vehicle over any road or highway to any land in which such per-
son has any property right if such land is within any such designated
[park or recreational] area.¹

In response to this opinion from the Bureau of Indian Affairs concern-
ing the Agreement of 1895 Assistant Solicitor Charles M. Soller, Division
of Indian Affairs, Department of the Interior sent an opinion from his of-
fice to the Assistant Solicitor, Division of Parks and Recreation, Depart-
ment of the Interior. It was his opinion that when the land in question
became a part of Glacier National Park and ceased to be public land the
rights guaranteed by the Agreement of 1895 ceased to exist.²

On February 10, 1972, a news article appeared in the Out Bank Pioneer
Press which stated that the Blackfeet had a right to enter Glacier National
Park without paying a fee. The basis for this story was the memo written
in December 1971 by Solicitor Bielefeld. The article went on to say that
the Superintendent of the Blackfeet Reservation concurred in the opinion,
and that tribal officials would look into the matter during an upcoming
trip to Washington, D.C.³

On March 8, 1972, Solicitor Bielefeld dispatched a memo to the Director,
Midwest Region, National Park Service. The memo was in response to a request
for a legal review and determination of treaty rights regarding the Agree-
ment of 1895 and Glacier National Park. Mr. Bielefeld enclosed Solicitor
E.C. Finney's opinion M 27068 (June 21, 1932) on Blackfeet Treaty rights,
and Assistant Soller's memorandum of December 15, 1971. Bielefeld stated:

You will note that the opinions of the Solicitor and Assistant Solic-
itor differ from the views expressed in the second item of my memo-
randum to you, dated December 3, 1971, on the subject matter.
The views of the Solicitor and the Assistant Solicitor are, of course controlling.  

Mr. Bielefeld's memo clearly stated that his original memo of December 3, 1971 if not factually incorrect was at least overridden by his superiors. This memo and enclosures were sent to the Superintendent, Glacier National Park; Area Director, Bureau of Indian Affairs, Billings; Superintendent, Blackfeet Indian Agency, Browning, Montana; as well as to the Assistant, Associate, and Regional Solicitors. However, there were no retraction or restatements in any Montana newspaper during the first six months of 1971.  

The original statement by Bielefeld as it appeared in the Cut Bank Pioneer Press was taken as the truth by the Blackfeet. During the summer months of 1972 hundreds of Blackfeet attempted to enter Glacier National Park without paying the required fee. These Blackfeet were disappointed and somewhat angry when told by the Entrance Station Rangers that they would have to pay the required fee if they wished to enter the Park. This caused needless animosity between the Blackfeet and the personnel of Glacier National Park. Still, nothing was done to alleviate this problem during the next eighteen months, and this problem continued during the summer of 1973.  

On September 15, 1973, Woodrow Kipp, an enrolled member of the Blackfeet Tribe, entered Glacier National Park through the St. Mary entrance without paying the legally required fee. He was then arrested and charged with failure to pay the entrance fee as required by law. Normally such cases are heard by the U.S. Magistrate, Kalispell, Montana. But since Mr. Kipp's expressed purpose was to "test" the right of entry as outlined in the Agreement of 1895 the case was bound over to Federal District Court,
Missoula, Montana, with the Honorable Russell E. Smith presiding, for a more definitive ruling. The case was scheduled to be heard in early January 1973.

The case for Woodrow L. Kipp was handled by Professor John T. McDermott, Director, Indian Law Program, University of Montana; with J. Martin Burke, and Dennis Wood, Student Interns, Indian Law Program. On December 6, 1973, the lawyers for the defense filed with the court a Memorandum in Support of a Motion to Dismiss. In this memorandum the question was whether a Blackfeet pursuant to the Agreement of 1895 could enter Glacier National Park without paying an entrance fee. The memo stated that the rights retained by the Blackfeet were to remain in effect so long as the land was "public land". Although the land ceased to be "public land" in a strict legal sense when it became part of a national park, it was and still is "public land" under the meaning of the 1895 Agreement. The Blackfeet originally asked $3,000,000 for their land during the 1895 negotiations, but they were only offered $1,250,000. A compromise was reached wherein the Blackfeet agreed to accept $1,500,000, plus the retention of certain rights on the land itself. The Blackfeet considered these retained rights to be very important to them and they felt that the Agreement protected their retained rights. To the Blackfeet the term "public land" must have meant what it does to the ordinary layman, i.e., lands belonging to the Government and open to the public. If the Indians had accepted the rights using a strict legal definition of the term, "public land", the rights would have had little worth since the Government could abolish the rights by simply reclassifying the land. The term, "public land", must be interpreted, not as a lawyer would understand it, but as the Indian would understand it. Legal precedent for this argument may
be found in Winters v. United States, 207 U.S. 564, 576 (1908); Jones v. Meehan, 175 U.S. 1, 10-11 (1899); United States v. Shoshone Tribe, 304 U.S. 111, 116 (1938); and Choctaw Nation v. U.S., 318 U.S. 423, 432 (1943). Given the definition of "public land", as the Blackfeet surely understood it the land still remains "public land" under the Agreement of 1895, and the Blackfeet still retain the rights.

In addition, the memo stated that even if the term "public land" was not defined as stated above the rights would still exist. This existence was derived from the Glacier National Park Act which stated:

Provided, that nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land.

Thus, the defense memo claimed that under either the Agreement of 1895 or the Glacier National Park Act of 1910 that the Blackfeet still retained rights within land currently a part of Glacier National Park. This would entitle them to go upon that land to exercise their rights, and to do so without paying an entrance fee. The memo stated that Mr. Kipp did not break any law when he entered Glacier National Park without paying the required fee and the charges against him should be dismissed.

On December 18, 1972 the lawyers for the Government filed with the District Court a Memorandum in Opposition to Defendant's Motion to Dismiss. This was in essence a rebuttal to Mr. McDermott's motion to dismiss. In this motion the Government's main contention was that the rights guaranteed by the Agreement of 1895 ceased to exist when the land was no longer public land. This latter fact occurred when Glacier National Park was created in 1910. As proof of its argument the Government cited the June 21, 1932, opinion of the Solicitor of the Department of the Interior. It also cited numerous cases, all of which dealt with "public land". These included
Newhall v. Sanger, 92 U.S. 761, 763 (1876); Barton v. Northern Pacific Railroad Company, 145 U.S. 535, 538 (1892); Northern Lumber Company v. O'Brian, 204 U.S. 190, 196 (1907); United States v. Minnesota, 270 U.S. 181 (1925); Oklahoma v. Texas, 258 U.S. 574 (1921); and Rawson v. United States, 225 F. 2d 855 (9th Cir., 1955). All of these cases dealt with the definition of "public land" and affirmed the true legal definition to be that land which has been appropriated or reserved for a lawful purpose. The definition of "public land" was the backbone of the Government's argument.\(^{15}\)

The rest of the Government's memo dealt with discussing and dismissing Mr. McDermott's argument against placing any weight on the 1932 Solicitor's Opinion. This was done to help preserve one of the main arguments in the Government's case, which was the Solicitor's Opinion itself. Thus, the Government argued heavily that the Solicitor's Opinion contained the legally correct definition of "public land", correctly ignored the view that the Blackfeet were protected by a pre-existing land claim, was not given under a conflict of interest, and expressed a view still held to be correct by the Department of the Interior.\(^{16}\)

The Government closed the Memo by again stating that Congressional action destroyed the nature of the land ceded by the Blackfeet. The land was no longer "public land" and the Blackfeet no longer retained any rights in Glacier National Park.\(^{17}\)

The case against Woodrow Kipp was heard on January 3, 1974, and the charge against him dismissed. Judge Smith ruled that the reserved rights given the Blackfeet under the Agreement of 1895 were not extinguished by the act creating Glacier National Park.\(^{18}\) In his decision Judge Smith stated that:

The first problem is(sic) whether ... the lands ceased to be public lands of the United States... and were the problem merely one of
statutory construction it is quite clear that the lands in Glacier Park would be held not to be public lands of the United States. See Oklahoma v. Texas, 258 U.S. 574 (1922).

The writing to be interpreted, however, is not a statute but an agreement with an Indian Tribe. The fact that the agreement was ratified by a law of the United States does not in my opinion make the problem one of statutory construction. All Indian treaties were ratified, and the rule of interpretation applied to them is: "...that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers but in the sense in which they would naturally be understood by the Indians". Jones v. Meehan, 175 U.S. 1, 11 (1899). To the same effect see United States v. Shoshone Tribe, 304 U.S. 111, (1938). The same rule applies to agreements. Merlin v. Lewallen 276 U.S. 58 (1928).

Judge Smith using the Proceedings of the Councils of the Commissioners appointed to negotiate with the Blackfeet pointed out that the Indians intended to retain the rights over a long period of time and that the agreement fully expressed the Indians' wishes. The Indians were not told that the rights could be abolished by reclassification of the land. He concluded that:

Whatever rights the Indians may have obtained as a result of their agreement could have been extinguished by the United States which had a plenary power over the Indian property. Lone Wolf v. Hitchcock, 187 U.S. 553 (1903); Nicodemus v. Washington Water Power Co., 364 F. 2d. 614 (9th Cir. 1959).

As he interpreted the agreement the United States promised the Blackfeet the reserved rights as long as the United States owned the lands. The words of the Glacier Park Act did not alter the ownership of the land, but only its use. The Government did not exercise its plenary power over the land.

Judge Smith in a footnote to his decision stated that, "Nothing is involved in this case but the bare right of entry, and nothing said here purports to pass upon the nature or quantum of any other right". This was an obvious referral to the other rights of hunting, fishing, and timber cutting guaranteed under the Agreement.

In a following footnote Judge Smith mentions that Kipp requested that
his case be returned to the U.S. Commissioner where he would plead guilty to the charge. It was his intention to raise the issue of the rights in a more favorable climate and forum. However, Smith had already concluded that no crime had been committed and so he could not abide by the wishes of Woodrow Kipp. Under the Federal Rules of Criminal Procedure a court may not enter a judgment on a guilty plea unless it is satisfied that there is a factual basis for the plea.23

In an article entitled, "Judge Rules Blackfeet Can Enter Glacier Free", Phillip Roy, Blackfeet tribal attorney, said that in addition to free entry the tribe is, "attempting to have a further look at all the rights in the park". He declined any further comment on the subject until meeting with tribal officials.24

Less than a month after the ruling in the Woodrow Kipp case several Tribal members attempted to get the other rights tested in court. On January 23, 1974, Ranger Bill Pierce issued citations to the following for committing prohibited acts within the boundaries of Glacier National Park: George Kipp II for discharging a firearm (an act of "hunting"), Charles Momberg, Jr., for fishing out of season (an act of "fishing"), and Darrell Momberg for cutting a live tree (an act of "timber cutting for domestic purposes"). The three Blackfeet again requested that their cases be tried in Federal District Court rather than by the U.S. Magistrate in Kalispell, Montana. Their request was granted and the cases scheduled for a non-jury trial in Great Falls, Montana with Judge Russell E. Smith again presiding.25,26

On June 5, 1974, Judge Smith received a letter from attorney Dan Israel on behalf of George Kipp and Charles Momberg, Jr. In the letter Mr. Israel said that:
These defendants have taken the position that it would be preferable for the Blackfeet Indian Tribe as a tribal entity to raise the important treaty issues pertaining to hunting and fishing rights in Glacier National Park directly with the Secretary of the Interior rather than raising these questions in a criminal proceedings involving individual members of the tribe. As a result, Mr. Charles Momberg, Jr. and Mr. George Kipp do not intend to raise the treaty defense in their case.27

The above position by the defendants was possibly taken due to the magnitude of the Government's evidence for prosecution. In a Memorandum In Opposition to Motion to Dismiss dated June 17, 1974, the Government said that recently tried case of U.S. v. Kipp, 369 F Supp 774 (1974) only the right of entry was recognized. However:

There has been...a case which speaks directly about the hunting, fishing, and timber cutting rights that were reserved in the 1895 Agreement. See Blackfeet Nations et al v. United States, 81 Ct. Cls. 101 (1935). Among the four claims filed by the Blackfeet Nation was a claim for the taking of their hunting, fishing, and timber rights that were reserved in the 1895 Agreement.

The Government's memo went on to say that the Court of Claims in Finding XVI of this case declared the rights of the Blackfeet terminated by the act creating Glacier National Park. The memo concluded by saying that:

The fact that there was no recognition of prior rights of anyone in the Congressional bar to hunting and fishing coupled with the findings of the Court of Claims as to hunting, fishing, and cutting of timber by the Blackfeet is determination of the issue herein.28

In further correspondence with the Court the Government said on July 3, 1974, that:

The plaintiff has taken this additional step because of the magnitude of the case before the Court of Claims in 1935. At that time the Blackfeet Nation recognized that they had indeed been deprived of the rights that they are now attempting to re-establish through this Court. The Court of Claims also recognized that the Blackfeet Nation had lost these rights by the Act of 1910, but denied it compensation as it had not significantly exercised its rights. The 1935 claim and discussion would appear to dispose of the motion before the Court. (29)

On June 24, 1974, in Federal District Court pleas of nolo contendre were entered by Charles Momberg and George Kipp II. They were each given
$100 fines, with the fines suspended, and placed on a non-supervisory 90
days probation. The trial for Darrell Momberg was scheduled for July.30

The trial for Darrell Momberg was held on July 22, 1975. Mr. Momberg
was found guilty, and fined $1.00 with the sentence suspended. Judge Smith
said in his opinion that:

...the defendant ...cut a piece of dead wood from a live tree
in Glacier National Park...and he did this for the purpose of testing
the Indian rights in that part of Glacier Park lying east of the Rocky
Mountains. The wood so cut was obviously not cut for any of the pur­
poses mentioned in the agreement of September 26, 1895, ratified
June 10, 1896 (29 Stat. 353) and hence the defendant has no defense
based on that agreement.31

Judge Smith then said that:

There has now been called to my attention for the first time the
decision of the Court of Claims in The Blackfeet (and other) Tribes of
Indians v. United States, 81 Ct. Cl. 101 (1935). In view of the dis­
position which I have made of the case it is now unnecessary to deter­
mine, and I do not now determine, whether the Court of Claims did not
in fact adjudicate the rights of the Blackfeet Indians to the lands
in Glacier Park lying east of the Rocky Mountains. Nor do I determine
the effect of the unappealed decision in United States v. Kipp, 369
F. Supp. 774 (D. Mont. 1974), which reached a contrary, perhaps theo­
retically correct, but possibly impermissible conclusion as to the
effect of the Act of May 11, 1910 (36 Stat. 354) creating Glacier
Park.32

Mr. John McDermott, one of the lawyers for Kipp and Momberg, said in
an interview following the trial that when preparing for the United States
v. Kipp case he had overlooked the 1935 Court of Claims decision. He also
stated that he was somewhat surprised that the Government neglected to
appeal the decision in United States v. Kipp, especially in light of the
1935 decision. It was also his opinion that the whole affair regarding
the Agreement of 1895 was back where it started and that the National Park
Service would probably be legally correct in ignoring the ruling made in
United States v. Kipp, i.e., not allowing Blackfeet to enter Glacier Na­
tional Park free of charge.33
In the Spring of 1975 the Blackfeet Tribal Council announced that it had petitioned the Secretary of the Interior for recognition of Blackfeet rights within Glacier National Park. The petition was in the form of a sixty page proposal entitled, Petition of the Blackfeet Tribe of Indians to the Secretary of the Interior to Approve a Conservation Agreement Providing for the Regulation of Blackfeet Reserved Rights on the Eastern Portion of Glacier National Park, and the involved rights were the right to hunt, fish, and cut timber for domestic purposes. The proposal was written and submitted by Phillip E. Roy, general counsel for the Blackfeet Tribe, and Daniel H. Israel and Sally N. Willet of the Native American Rights Fund, Boulder, Colorado. The document consisted of four parts, plus an attached copy of the conservation agreement. The agreement assumed that the rights under the Agreement of 1895 would be upheld, and the agreement was a proposal for the Blackfeet Tribe and the National Park Service to oversee the carrying out of the rights in Glacier National Park. The proposal stated that all of the rights, including hunting, would be used by the tribal members. The agreement made no concession to the fact that hunting and timber cutting were contrary to normal National Park Service policies. Under the terms of the conservation agreement there would be a conservation committee of three members from the Blackfeet tribe appointed by the Blackfeet Tribal Council. The three tribal members would have voting rights. The Director of the National Park Service would appoint two members to the committee. The National Park Service representatives would not have voting rights. The five member committee would oversee the carrying out of the Conservation Agreement.

The Conservation Agreement was not greeted with approval by National
Park Service officials. In a meeting with the National Park Service Rocky Mountain Regional Advisory Committee Superintendent Phillip Iversen, Glacier National Park, said that there continued to be problems with the Agreement of 1895. He went on to say that the federal courts hadn't clarified the rights of the Indians. He further stated that if the Blackfeet claims of hunting and other rights were upheld, the portion of the Park included in the Agreement of 1895 would cease to exist as a natural area. The Park Service clearly perceived that the exercise of the Agreement rights by the Blackfeet could have detrimental effects on Glacier National Park.36

The National Park Service was not the only organization concerned with the Agreement rights. The National Parks and Conservation Association in a staff report entitled, "Triple Jeopardy at Glacier National Park" said of the problem that:

Indian attempts to penetrate national Park lands for exploitative purposes, like the successful efforts by the Havasupai Indians to acquire part of Grand Canyon National Park during passage of the Grand Canyon National Park Enlargement Act of 1974, represent another sad commentary in Native American History. The failure of our nation to afford equal rights to Indian nations is now being paid for in full--by the National Park Service--while the Indians, understandably desperate for redress, may destroy something of value to both themselves and the rest of the nation.37

Further concern was voiced by the association in a following article entitled, "Glacier: Beleaguered Park of 1975" which ran in the association's monthly magazine for November 1975.38

In late 1975 Solicitor H. Gregory Austin addressed the question of a Conservation Agreement in a lengthy letter to Phillip E. Roy. Mr. Gregory stated that no legal basis existed for granting the petition, and that the petition was being rejected on legal grounds. He said that the matter had been decided in The Blackfeet et al Nations v. United States in 1935. He
further declared that the current position of the Tribe was inconsistent with the position taken in 1935, i.e., not having the rights in 1935 in order to be compensated for their loss and claiming to still have the rights in 1975. The letter further stated that it had been the long-standing position of the Solicitor's Office, as evidenced in Solicitor Finney's opinion of 1932, that the reserved rights did not survive the creation of Glacier National Park. And if the 1910 act did not destroy the rights then the 1914 Act prohibiting hunting and timber cutting and allowing only limited fishing certainly did eliminate the rights. As for the recent cases of United States v. Kipp and United States v. Momberg it was plain that they were not clear judicial decisions. Thus, the 1910 and 1914 acts would be adhered to. The letter to Mr. Roy closed by saying:

Due to the previous court involvement, a judicial forum may be the most appropriate place to resolve the issues you have raised. Should the Tribe wish to initiate litigation, you may treat this letter as the final administrative decision on your request.39

During 1976 and 1977 the Blackfeet continued to enter Glacier National Park without paying a fee. In 1975 the Blackfeet announced plans to begin logging operations in the Many Glacier Valley, as well as to continue logging on the Reservation near the town of St. Mary.40 The Blackfeet in 1975 also placed numerous gates across the road into the Cut Bank Campground.41 At the end of 1977, however, the Blackfeet had not initiated further action regarding the Agreement of 1895. Newspaper articles appearing in the Spring of 1977 led one to believe that their attention regarding treaties and agreements might be turning elsewhere.42
Chapter Eight: Analysis and Conclusion

Chapters Two through Seven present in detail the sequence of events related to the Agreement of 1895 and Glacier National Park. Not counting the prehistory of the Agreement and the Blackfeet, the case history covers 83 years, i.e., 1895-1977. This thesis is the first attempt at a comprehensive recounting of the Glacier National Park-Agreement of 1895 conflict using the aforementioned sources. There is no doubt that other material exists which could shed further light on the story, especially with regard to the behind the scenes information, and as any student of history can say it is that type of information which is sometimes the most informative. However, this case history, which is primarily made up of public documents, tells an informative story in itself. It shows the many participants in the conflict involving the Agreement of 1895 and Glacier National Park making many of the same mistakes over and over again. It also shows the participants on both sides asking over and over again questions that were supposedly legally answered years ago. The case history also shows how unnecessary this repetition was since most, if not all, of the information needed to solve the conflicts caused by the establishment of Glacier National Park and the Agreement of 1895 were present from the beginning and available to any researcher legal or otherwise.

In addition, and as stated in the introduction, the sequence of events also shows two very important things. It shows that all of the information necessary to reach the conclusions in United States v. Kipp, 369 F. Supp. 774 (1974) and United States v. Momberg, 378 F. Supp 1152 (1974) was available much earlier than 1974. And had these decisions been reached
earlier, especially the one involving United States v. Kipp, the story involving the Agreement of 1895 and Glacier National Park might possibly have been different.

The decision reached by Judge Smith in United States v. Kipp was based on the long standing precedent that ambiguous or technical phrases in Indian treaties were to be interpreted in the way that the Indians would understand them. Specifically applied to the Agreement of 1895 this meant that "public land" had to be construed as a Blackfeet Indian would understand the term and not as a learned lawyer would. The Blackfeet could argue that "public land" meant land owned by the Federal Government. The case used by the defendant's lawyers to persuade the judge to rule in Kipp's case was Jones v. Meehan, 175 U.S. 1, 11 (1899). The guideline was also affirmed to apply to agreements in 1928 in the case of Merlin v. Lewallen, 276 U.S. 58 (1928). The case of United States v. Kipp was a criminal one and required no enabling legislation. Thus a case identical to United States v. Kipp, with the plaintiff's lawyers using the same defense could have been taken to court as early as 1910, or the year that Glacier National Park was established. Even if the "language interpretation" defense was not applicable until after the Merlin v. Lewallen case, it still could have been used as early as 1928.

In the case of United States v. Momberg the decision is in reality no decision at all. In order to avoid dealing with the effect that the revelation of Blackfeet et al Indians v. United States might have on Momberg and Kipp, Judge Smith chose to exit gracefully by avoiding the entire issue. Judge Smith did this by saying that Momberg did not cut his wood for any of the purposes outlined in the Agreement of 1895. Thus, Momberg could not use the Agreement as a defense and Judge Smith found him guilty of
illegally cutting wood in Glacier National Park. The case of Blackfeet et al Indians v. United States, a case involving several treaties and agreements, was initiated under the Act of March 13, 1924. One of the stipulations of this jurisdictional act was that the judgement and satisfaction therein would be a full settlement of all claims whatsoever of said Indians against the United States in so far as such claims have been considered by the said courts. The ruling in the portion of that suit involving the Agreement of 1895 was against the Blackfeet and the ruling was never appealed to a higher court although the option was there for the Blackfeet. Judge Smith said that the decision in Blackfeet et al Indians v. United States could very likely affect the decision reached in United States v. Kipp. This would be because the ruling in Blackfeet et al Indians v. United States could possibly bar any further legal action concerning the Agreement of 1895. It is almost as if Judge Smith was saying that both of the cases involving Kipp and Momberg should never have happened. If the lawyers for the plaintiffs and defendants had better researched the law regarding the Agreement of 1895 and Glacier National Park, this is certainly so. The use by the Government of a strategy based on Blackfeet et al Indians v. United States would very likely have won the Kipp case for them. This would have cancelled out any further test cases, such as Momberg's, and put forth a definitive ruling.

In Blackfeet et al Indians v. United States the Blackfeet were not making a case for still having the rights given by the Agreement of 1895. They were asking for a quarter of a million dollars for having lost the rights when the national park was created. The court in its ruling denying the Blackfeet their claim stated that the rights were authoritatively lost when Glacier National Park was created. In addition to the
Blackfeet admitting the loss of the rights, this decision affirmed the legality of the taking away of the rights by the Government. Based on the Act of March 13, 1924, this decision should have been the definitive ruling on the retained rights under the Agreement of 1895.

The failure to be aware of the two mentioned cases caused a certain amount of embarrassment to the Department of the Interior, the Blackfeet, the National Park Service, and Judge Smith. However, no real or lasting damage was probably done to either side. But there are two areas where it is possible to point out longer lasting and further reaching effects.

(1) The net result of the decision in United States v. Momberg is that the whole affair in 1977 was back where it was prior to United States v. Kipp. The one exception to this was that the Blackfeet were still allowed to enter Glacier National Park without paying an entrance fee. In reality there is no legal reason to justify this situation.

(2) As mentioned earlier the case of Jones v. Meehan was decided in 1899. This means that it could have been cited as a precedent case any time after that date. Yet, the Blackfeet in 1925 went to the Court of Claims only to be paid for a taking of their rights. If this was done only because the precedent case was overlooked then the lawyers for the Blackfeet did them a great disservice. Any time prior to the Court of Claims decision the Blackfeet could possibly have "won back" the rights with Jones v. Meehan, but after the decision the door was very likely closed forever.

In this case history one sees things that almost give the appearance of fraud or collusion. Specific instances include Grinnell's interest in the ceded strip as a potential national park prior to his negotiations with the Blackfeet, and the Blackfeet lawyers making a claim for compensation in
the Court of Claims rather than claiming that the rights still existed. However, nothing in the material researched for this thesis indicates anything other than honesty and an aboveboard approach to the problem over the years. This is true regarding the actions taken by both the Blackfeet and the government. If anything, many of the problems exist even today simply because the participants did not do sufficient research at critical times.
Notes: Chapter Two

2. Ibid.
10. Ewers, Blackfeet Indians, p. 44.
11. Ewers, The Blackfeet, p. 44.
13. Ewers, The Blackfeet, p. 44.
17. Ibid., pp. 70-71.
18. Ibid., pp. 205-206.

2. Ibid., p. 244.

3. Ibid., pp. 248-250.


5. Ibid., pp. 35-37.


9. Foley in *An Historical Analysis* states that originally Grinnell was opposed to the land sale, and had made his opposition known to the Secretary of the Interior. Grinnell not only doubted the presence of any mineral wealth in the area, but also believed that severing the land from the Blackfeet Reservation was not in the best interests of the Blackfeet.


11. The negotiations with the Ft. Belknap Indians are not relevant to the agreement signed by the Blackfeet and are not discussed in this paper.

12. U.S., Congress, Senate, *Agreement with Indians of Blackfeet Reservation in Montana*, Senate Document 118, 54th Congress, 1st Session, 1896, pp. 6-8. (This report is 36 pages long and consists of the following:
(a) Letter from the Secretary of the Interior to the President of the Senate, pp. 1-2.
(b) Letter from the Commissioner of Indian Affairs to the Secretary of the Interior, pp. 2-6.
(c) Letter from the Commissioners Appointed Under Authority of the Act of Congress Approved March 2, 1895 to the Commissioner of Indian Affairs, pp. 6-8.
(d) Proceedings of Councils of the Commissioners Appointed to Negotiate with Blackfeet Indians, pp. 8-28.
(e) A Bill to ratify an Agreement with the Indians of the Blackfeet Reservation, Montana, including Agreement Concluded September 26, 1895, pp. 28-35.
(f) Letter from the Commissioner, General Land Office, Department of the Interior to the Secretary of the Interior, pp. 35-36.)

13. Ibid., p. 7.

14. Ibid.

15. Ibid., pp. 8-9.

16. Ibid., p. 9.

17. Ibid., pp. 9-11.

18. Ibid., pp. 11-12.
19. Ibid., pp. 12-17.
21. Ibid., pp. 18-19.
22. Ibid., pp. 20-28.
23. Ibid., p. 21.
24. Public land is defined as, "The general public domain; unappropriated lands; lands belonging to the United States and which are subject to sale or other disposal under general laws, and not reserved or held back for any special government or public purpose. Newall v. Sanger, 92 U.S. 761, 23 L. Ed.," Blacks Law Dictionary (St. Paul, West Publishing Co., 1979), p. 1106.
26. Ibid., pp. 6-8.
27. Ibid., pp. 2-6.
28. Ibid.
29. Ibid.
30. Ibid., pp. 1-2.
34. Ibid., pp. 40-43.
Notes: Chapter Four

1. The term "ceded strip" will be used from this point on to refer to the land sold to the Government under the terms of the Agreement of 1895.

2. For a definition of "public land" see Chapter Three, p. 11, footnote 24. A national park, being land designated for a specific purpose, and not subject to sale or any other form of disposal, is not public land.


4. Donald H. Robinson (with editing and new material by Maynard C. Bowers), Through the Years in Glacier National Park (West Glacier, Montana: Glacier Natural History Association, 1960), p. 50.


10. Ibid., pp. 143-144.

11. Robinson, Through the Years, p. 51.


13. Robinson, Through the Years, p. 53.


15. Proclamation Number Three, Statutes at Large 33, 2311 (1903).


22. Robinson, Through the Years, p. 54. 23.


27. Ibid., 45: 1639.


30. Ibid., p. 4669.

31. Ibid., pp. 5134, 5431, 5542, 5570, 5691, 5697, and 6322.

32. An Act to establish "The Glacier National Park" in the Rocky Mountains south of the international boundary line, in the State of Montana, and for other purposes, Statutes at Large 36: 354 (1910).

33. Robinson, Through the Years, p. 55.

34. Ibid.


38. An Act to accept the cession by the State of Montana of exclusive jurisdiction over the lands embraced within the Glacier National Park, and for other purposes, Statutes at Large 38: 699 (1914).
2. An Act to accept the cession by the State of Montana of jurisdiction over Glacier National Park, Statutes at Large 38: 699 (1914).
12. Relief of Certain Indian Tribes, Hearing before the Committee on Indian Affairs on H.R. 2432, p.3.
13. Ibid.
15. Ibid., p. 11.
17. Relief of Certain Indian Tribes, Hearing before the Committee on Indian Affairs on H.R. 2432, p. 28-29.
19. Ibid., p. 2.
24. Ibid., pt.65:2346.
25. Ibid., pt.65:3619.
27. Ibid., pt.65:3867.
28. Ibid., pt.65:4000.
29. Ibid., pt.65:6423.
31. Ibid.
32. Ibid.
34. The Act of March 13, 1924 did not specifically give the Blackfeet standing to sue for problems arising from the Agreement of 1895. However it appears from the Congressional debates that the treaties and agreements covered in the Act would include all of those subsequent to the two treaties of 1855.
35. 81 Court of Claims 101, 117.
36. The U.S. Constitution. Amend. V states that, "No person...shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without compensation." In this suit the Blackfeet claimed their property rights as guaranteed under the Agreement of 1895 were taken from them without just compensation. This portion of the suit is for $250,000 to compensate them for such a taking.
40. Ibid., pp. 268-269.
Notes: Chapter Six


2. E.T. Scoyen, Superintendent, Glacier National Park to Director National Park Service, 1 April 1931, Files of Glacier National Park, West Glacier, Montana.


4. E.T. Scoyen, Superintendent, Glacier National Park to Director, National Park Service, 22 April 1932.


6. Ibid., pp.4.

7. Ibid., p.5-6.

8. Ibid., p.7.


12. Ibid.


14. Ibid.


19. Ibid.


22. "Res judicata. A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction the merits is conclusive as to the rights of the parties, and, as to them, constitutes an absolute bar to a subsequent acting involving the same claim, demand, or cause of action. Matchett v. Rose, 36 Ill. App. 3d 638, 344 N. E. 2d. 770,779...The sum and substance of the whole rule is that a matter one judicially decided is finally decided. Massie v. Paul, 263 Ky 183, 92 S. W. 2d. 11, 14". Blacks Law Dictionary, 5th ed. (St. Paul: West Publishing Co., 1979). p. 1774.
25. "The problem of res judicata has arisen in connection with some of the claims presented to the Indian Claims Commission and appealed to the Court of Claims. Res judicata is no bar, of course, where Congress has provided new statutory grounds for recovery. However, where the same claim has been or could have been litigated earlier in the Court of Claims under a special jurisdictional act which permitted the litigation of every matter advanced later under the Indian Claims Commission Act, the defense of res judicata was available to the United States under Section 2 of that act. A second litigation is possible only if there are not involved the same parties, the same facts, and the same law as in the prior case". Federal Indian Law. (Washington: United States Government Printing Office, 1958), p. 347.
26. Montana State University, Manuscript File 732.
29. Ibid., p. 2-3.
30. Ibid., p. 3-6.
31. Ibid., p. 7.
1. A.E. Bielefeld, Field Solicitor, United States Department of the Interior, Billings, Montana to Director, Midwest Region, National Park Service, Omaha, Nebraska, 3 December 1971.
2. Charles M. Soller, Assistant Solicitor, Division of Indian Affairs, Department of the Interior to Associate Solicitor, Division of Parks and Recreation, Office of the Solicitor, 15 December 1971.
4. A.E. Bielefeld, Field Solicitor, United States Department of the Interior, Billings, Montana to Director, Midwest Region, National Park Service, Omaha, Nebraska, 8 March 1972.
5. Ibid.
6. During the summers 1971-74 I was employed by the National Park Service as Entrance Station Supervisor for the St. Mary Entrance to Glacier National Park. These comments are based on my personal experiences while in that capacity.
7. 43 C.F.R. 18.3, 18.7.
10. Ibid., p. 4.
11. Ibid., p. 4-5.
12. Ibid., p. 6-12.
13. Ibid., p. 12.
17. Ibid., p. 6.
19. Ibid., p. 774-775.
20. Ibid., p. 777.
22. Ibid., p. 779.
23. Ibid.
24. "Judge Rules Blackfeet Can Enter Glacier Free".
27. Dan Israel, Attorney for George Kipp and Charles Momberg, Jr. to Judge Russell E. Smith, 5 June 1974, Files of Federal District Court, Missoula, Montana.
28. Memorandum in Opposition to Motion to Dismiss, United States v. Darrell Momberg, 17 June 1974, Files, Federal District Court, Missoula, Montana.
32. Ibid.
33. Personal interview with John McDermott, Associate Professor of Law, University of Montana, Missoula, Montana, 13 May 1975 and 23 May 1975.
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