For better or for worse: Flathead Indian Reservation governance and sovereignty

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The University of Montana

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FOR BETTER OR FOR WORSE: FLATHEAD INDIAN RESERVATION 
GOVERNANCE AND SOVEREIGNTY

by
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for the degree of
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Historically, American Indian tribes constituted sovereign nations with an inherent right to self-rule. As such, tribes were able to interact diplomatically, on their own behalf, with the European and then American governments through treaties. Early treaties centered on securing peace and friendship between local tribes and non-Indian settlers, but quickly evolved to express a focus on transferring Indian lands to the United States. In 1855, the Salish, Kootenai, and Pend d’Oreille tribes entered into the Treaty of Hell Gate with the federal government. This treaty mandated that the tribes remove from their traditional homelands to an area they specifically reserved from their land cession. This area would be called the Jocko Reservation and later renamed the Flathead Indian Reservation. Although the 1855 Treaty of Hell Gate recognized and preserved elements of tribal sovereignty, it was simultaneously the beginning of the tribes’ loss of sovereignty over much of their land and resources, which loss intensified when the reservation was allotted and then opened to white settlement in 1910.

However, the tribes were able to regain certain self-governing powers during the reorganization and self-determination policy eras. Under the terms of Public Law 93-638, the Indian Self-Determination and Education Assistance Act, the Confederated Salish and Kootenai Tribes (CSKT) were able to contract management of over one hundred federal and state-run programs on their reservation. In 1988, the CSKT were one of ten tribes nationwide chosen by the federal government to participate in the Self-Governance Demonstration Project. Five years later, in 1993, the CSKT received self-governance rights due to the success of their Demonstration Project. This status has entitled various tribal departments to enter into management compacts with the Bureau of Indian Affairs, which allows them greater flexibility in administering programs.

This effort by the CSKT to contract and compact management of federal programs does not conclude the discussion of tribal sovereignty. Rather, it leads to new developments revealing tribal member discontent and even injury due to various management decisions made by the tribal government. The pressure on Indian tribes to strive for and achieve self-governance status, and the resultant praise from federal agencies, can sometimes distort the reality that plays out on the most local of levels. While self-governance policies are often advantageous to tribal governments and tribal sovereignty, they can, at times, be injurious to the tribal membership. This dissertation reviews the evolution of tribal sovereignty on the Flathead Reservation and the disparity between perceptions on the national level, where policies are made, and on the local level where policies play out.
For Better or for Worse: Flathead Indian Reservation Governance and Sovereignty

Mary Sophie Woodcock, Antoine Woodcock, and Mary InHoostay Woodcock Conko

(Photograph courtesy of Francis C. Cahoon)
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Flathead Indian Reservation, Montana

(Map courtesy of the CSKT GIS Program)
Flathead Indian Reservation (Map courtesy of the CSKT GIS Program)
INTRODUCTION

I grew up on the Flathead Indian Reservation in western Montana, the second oldest of eight children. Shortly before I was born, my parents moved their trailer house from Pablo, Montana to a piece of land near Crow Dam Reservoir. My siblings and I spent most of our time outdoors helping our father, a licensed hunting and fishing guide, care for the animals he brought home from the woods. Our favorites were a baby bobcat named Bobbi, a black bear cub, Toby, and Joe, the coyote that lived with our hound dogs all thirteen years of his life. When I was in second grade our family moved from the Charlo area to my maternal grandmother’s allotment on Mission Creek, near St. Ignatius, where my parents began building a home.

My father continued to support his family as a guide, though my family also regularly helped him cut firewood and Christmas trees that he would sell for profit. Around 1990, my father began logging tribal timber, once using the sovereign nation status of the Confederated Salish and Kootenai Tribes (CSKT/Tribes) to export house logs to Japan. He eventually stopped logging for various reasons; one included a divorce from my mother. Two of my younger siblings and I moved into St. Ignatius with our father and spent the remainder of our secondary school years living in HUD housing by the Catholic Mission. We continued to work in the woods with our father, who had almost completely stopped guiding. Now, we walked the hills in search of dropped deer and elk.
antlers, which our father would make into antler lamps and chandeliers or simply sell outright.

In 1997, our father started logging tribal timber again. By this time, I had left the reservation to begin college at the University of Montana in Missoula. It was not until I enrolled in a number of Native American Studies classes that I really considered why my reservation existed or what was said about tribal sovereignty. I knew of the 1855 Treaty of Hell Gate, but I had never read it; I grew up on my maternal grandmother’s allotment, but I did not know the history behind allotment; my family hunted, hiked, and fished on tribal land without permits, but I never questioned why.

Throughout my college career, I witnessed my father’s struggle to support himself and his family. I saw his frustration with certain Tribal Forestry management policies that seemed to favor commercial logging companies over individual tribal member loggers. During this time, I also learned about the inherent right to self-rule that American Indian tribes originally possessed and the modern-day limitations on tribal sovereignty.

Since the inception of the United States, tribal sovereignty has been diminished, but not terminated, by numerous federal policies, Congressional acts, and Supreme Court rulings. However, after stripping tribes of many self-governing powers, federal policy shifted towards what on the surface seemed to

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be a small-scale return of certain powers to tribes in re-recognition of tribal sovereignty.\(^2\) While it is true that Indian tribes not only have the right to determine what is best for them and are also often better able to do so than Bureau of Indian Affairs employees in more removed locations, self-determination and self-governance policies can also be viewed as guises under which the federal government can withdraw from certain treaty and trust responsibilities to tribes, as fulfilling these responsibilities is usually quite costly. Matthew B. Krepps comments, “Although [Public Law 93-638] threatens to reduce the purview of the Federal Government by facilitating the transfer of control of certain enterprises from the U. S. Government to the tribes, it is nonetheless very attractive to the politicians who control the BIA’s purse strings.”\(^3\)

Additionally, earlier policies such as the 1934 Indian Reorganization Act, perceived by many to be supportive of tribal self-rule, are rooted in the desire of the federal government to decrease its various obligations to tribes, especially those that are financial. At the time, the Indian Reorganization Act was touted by officials as an opportunity for tribes to gain greater self-governing powers, though Indian Reorganization Act author John Collier “attributed this enlightening historical turning point in United States Indian policy [mainly] to Commissioner of Indian Affairs Charles Rhoads,”\(^4\) who had suggested in a 1929 memorandum that the federal government utilize the tribal government structures already in

\(^2\) See Indian Reorganization Act of June 18, 1934, 48 Stat. 984; Indian Self-Determination and Education Assistance Act, or Public Law 93-638; Public Law 100-472, amending the 1975 Indian Self-Determination and Education Assistance Act and authorizing the Tribal Self-Governance Demonstration Project; Tribal Self-Governance Act, or Public Law 103-413.


existence on reservations to “perform Office of Indian Affairs work and, thereby, relieve the United States of that financial burden.”

It is arguable that one of the federal government’s primary objectives regarding Indian tribes has been to free itself from ongoing treaty obligations since the end of the treaty making era in 1871. Nevertheless, if tribal assumption of the management of certain Bureau of Indian Affair-run programs eases responsibility off the federal government, it also reinforces a tribe’s right to self-rule.

Tribal sovereignty in contemporary times is a complex issue and tribes are often pressured to “use it or lose it.” As a result, many tribes have recently decided to use 638 contracts and compacting to assume management of various federal programs that serve their reservations. However, Loretta Fowler observes that “there are contradictions about politics in Native American communities. Namely, at a moment in time when there is arguably more potential for tribal sovereignty, why is it that memberships challenge their tribal government’s efforts to act on that sovereignty?” If, in contemporary times, increased tribal sovereignty means increased management responsibility of federal programs—which is itself arguable—then membership resistance would likely derive from effects felt locally. Fowler’s observation is the crux of this study. This is an examination of the effects of both tribal sovereignty in the past and the CSKT’s recent efforts at management of federal programs on the Flathead Indian Reservation in western Montana. Though the results of recent tribal self-

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5 Ibid.
governance efforts will remain in the forefront, when possible tribal perceptions of these results will be included.

On the Flathead Reservation, tribal member opposition to certain tribal government management policies stems directly from events that play out at the membership level. For example, in the 1980s, the CSKT contracted management of social services on their reservation and immediately doubled the number of staff from three to six. However, there was not money in the budget for more employees and as a result the additional salaries were paid from the money previously allocated for providing program services.\(^7\) Additionally, along similar lines, Paul H. Stuart writes that a “tribe’s overhead may be greater than the federal agency’s overhead because of the cost savings inherent in a large organization. Tribal indirect costs constituted ‘perhaps the single most serious problem with implementation of the Indian self-determination policy,’ according to the Senate Select Committee on Indian Affairs.”\(^8\) Thus, a common result of contracting and compacts is a tribe’s need for additional revenue to continue to provide adequate services to tribal members. This is precisely when assuming program management responsibility can be harmful to tribes, as the inevitable result is either that the program services decrease or tribes find other ways to supplement program budgets. At this point, tribal members begin to “challenge their tribal government’s efforts to act on [their] sovereignty.”

\(^7\) Johnny Neuman, interview by author, personal interview, Pablo, MT, 25 February 2005.

\(^8\) Paul H. Stuart, “Financing Self-Determination: Federal Indian Expenditures, 1975-1988” American Indian Culture and Research Journal, vol. 14, no. 2 (1990): 6. Stuart continues, “In some cases, indirect costs have been paid out of direct service funds; in other cases, the accumulation of inadequate reimbursement of indirect costs has increased the indebtedness of tribes participating in self-determination contracting.”
Fowler's question about this phenomenon reflects the gap between the national perception of the self-determination and self-governance policies and the results of these policies at the local level. The national perception is epitomized in well-known law professor and scholar of Indian affairs Charles Wilkinson's following statement. Wilkinson writes, "The modern tribal sovereignty movement can be fairly mentioned in the same breath with the abolitionists and suffragists of old and the contemporary civil rights, women's, and environmental movements." Although Wilkinson's stance suggests that the current policies create better situations for tribal people, many tribal members, including Francis C. Cahoon, would argue that these national policies of self-determination and self-governance generally make matters worse. This disparity between perspectives on the national level, where policies are made, and the results on the local level, where policies play out, is a primary focus of this study. This dissertation explores some of the adverse effects to individual CSKT tribal members that stem from tribal management contracts and compacts with the federal government.

In order to conduct this study, I received permission from the University of Montana's Institutional Review Board and the CSKT tribal council. I also consulted the Kootenai and Salish-Pend d' Oreille Culture Committees to ensure cultural and historical accuracy. I conducted the majority of my research in the University of Montana Mansfield Library, accessing books, newspaper and journal articles, and government documents. I also consulted the University of

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Montana K. Ross Toole Archives' Joseph Dixon Collection. In addition to these resources, I accessed the Salish Kootenai College D’Arcy McNickle Library’s extensive backlog of CharKoosta News articles and other items legitimately collected by CSKT tribal employees from the National Archives. These items relate mostly to reservation water and Flathead tribal enrollment. I also conducted several interviews with people on the Flathead Reservation, most of whom were tribal members.

Due to this study’s local focus, I did not visit the National Archives (NA). However, I did utilize some records from the NA’s Central Classified Files, Records of the Bureau of Indian Affairs, 1907-1939, .339 (Timber) and .056 (Flathead), as well as Special Case No. 55, which contains miscellaneous items pertaining to the Flathead Reservation.

Chapter by chapter, this dissertation tells the story of the Salish, Kootenai, and Pend d’Oreille peoples’ early loss of sovereignty over much of their land and resources, first through the signing of the 1855 Treaty of Hell Gate and then with allotment. The story examines how the Confederated Salish and Kootenai Tribes were able to regain certain powers during the reorganization, self-determination, and self-governance policy eras and the results of these recent national policies on the local tribal people. This is not a study of tribal water rights, tribal hunting and fishing rights, or other tribal rights. It is a study of the perception of tribal sovereignty on local and national levels.

Chapter 1 provides a historical background of the Salish, Kootenai, and Pend Oreille tribes, including tribal involvement in the fur trade; the coming of
the Jesuits in the 1840s; and the signing of the Treaty of Hell Gate in 1855, which was "a nation-to-nation form of intergovernmental interaction." Although the tribes ceded ownership and authority over most of their original homelands, the Treaty of Hell Gate nonetheless recognized and preserved tribal sovereignty. However, the federal government would soon abrogate the treaty and the Flathead Reservation—land the tribes never ceded, land they specifically reserved from their cession in 1855—would be allotted and opened to non-Indian homesteading. The federal government’s implementation of the allotment policy was devastating to tribal sovereignty, as it shifted tribal control over communally held reservation land and resources to the federal and Montana state governments and reduced the tribal government’s ability to exercise authority over its own people and property. Flathead Reservation allotment is the focus of Chapter 2.

The allotment of the reservation also created complications relating to control of the reservation’s natural resources, especially water. Chapter 3 addresses water on the Flathead Reservation, beginning with the construction of the Flathead Indian Irrigation Project and Kerr Dam. This chapter also reviews the creation of Mission Valley Power and examines the Tribes’ management of this utility. A discussion of tribal water rights and how the Tribes’ management of reservation water effects the local tribal population concludes the chapter.

Chapter 4 reviews the shifts in Flathead Reservation tribal governing systems following allotment and the Tribes’ political reorganization under the 1934 Indian Reorganization Act. This chapter also examines the 1975 Indian

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Self-Determination and Education Assistance Act and the 1994 Tribal Self-Governance Act. It reviews the impacts on tribal sovereignty and the tribal membership that result from management contracts and compacts with the federal government.

Chapter 5 addresses the history of Flathead Reservation forestry in the context of national forestry policies and practices. Additionally, this chapter reviews the creation of the Mission Mountain Tribal Wilderness and the 1995 management compact that allowed the Tribes to manage the Tribal Forestry Department. Although this compact significantly increased the Tribes’ freedom to manage the reservation’s forests, it has resulted in severe financial and economic injury for tribal member loggers who cannot compete with the non-Indian logging companies that purchase most of the reservation’s timber sales. In short, the need for additional revenue to support the tribal government outweighs ensuring the economic welfare of individual tribal member loggers.

The final chapter examines tribal sovereignty in light of tribal enrollment. Part of ensuring the existence of tribal sovereignty is ensuring that there is a “tribe.” Chapter 6 reviews how the CSKT tribal government and tribal membership have dealt with this issue and the motivations behind their actions. This chapter also examines the implications for descendents of less than one-quarter blood.
CHAPTER 1

THE 1855 TREATY OF HELL GATE AND SALISH, KOOTENAI,
AND PEND D’OREILLE TRIBAL SOVEREIGNTY

From the earliest years of the Republic the Indian tribes have been recognized as “distinct, independent, political communities,” and as such, qualified to exercise powers of self-government, not by virtue of any delegation of powers from the Federal Government, but rather by reason of their original tribal sovereignty.

Felix Cohen, *Handbook of Federal Indian Law*

When Europeans arrived to the “new world” they encountered numerous tribes of indigenous peoples already living here. As the explorers and settlers continued to come to what is now the United States of America, scholars and theorists in Europe were discussing the future of the indigenous peoples, their status, and rights. After acknowledging that the tribes here did indeed constitute “peoples,” in that they “comprised distinct communities with a continuity of existence and identity that link[ed] them to the communities, tribes, or nations of their ancestral past,”¹ they asked what rights the peoples had.

Franciscus de Victoria² (1480-1546), a Dominican priest and a professor of theology at the University of Salamanca, Spain, believed that tribal peoples possessed certain original autonomous powers and entitlements to their lands regardless of their non-Christian beliefs, because they were rational human

² Some scholars, such as Anaya, refer to him as “Francisco de Vitoria.”
beings. Victoria developed the following three arguments of natural law rights that helped establish the Law of Nations:

1) The inhabitants of the Americas possessed natural legal rights as free and rational people; 2) Any Spanish claims to title to the Americas on the basis of “discovery” or papal grant were illegitimate and could not affect the inherent rights of the Indian inhabitants; 3) Transgressions of the universally binding norms of the Laws of Nations by the Indians might serve to justify a Christian nation’s conquest and colonial empire in the Americas.3

Hugo Grotius was a seventeenth-century theorist who was heavily influenced by Victoria, although he did not specifically address American Indians in his writings. Like Victoria, he rejected the notion of acquiring land title by discovery, but agreed that title could be acquired either on the grounds of “just war” or through treaties.4 Both Victoria and Grotius saw all people as inherently possessing these rights as provided for by natural law.

In his book, *Indigenous Peoples in International Law*, S. James Anaya writes that “with the rise of the modern state came a marked evolution in naturalist thinking.”5 In the late seventeenth century, European theorists followed Thomas Hobbes’s thinking, transforming “the concept of natural law from a moral code for humankind into a bifurcated regime comprised of the natural rights of states. . . . This vision of humanity as a dichotomy of individuals and states . . . [developed into] a body of law focused exclusively on states under the rubric ‘law of nations.’”6

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4 On page 12 of *Indigenous Peoples in International Law*, Anaya clarifies this as being war for the purposes of “defense, recovery of property, and punishment.”
5 Anaya, 13.
6 Ibid.
These post-Westphalian concepts were seen in the writings of Emmerich de Vattel. Vattel defined the law of nations as "the science of the rights which exist between Nations or States, and of the obligations corresponding to these rights." Vattel adhered to the rhetoric of natural law and its presumptive universality, but viewed natural law as having distinct consequences when applied to states as opposed to individuals.\(^7\)

Vattel held that group sovereignty derived from the collective natural rights of the individuals who comprised the community. He wrote that to "enjoy any rights as distinct communities, indigenous people would have to be regarded as nations or states. Otherwise, indigenous people would be conceptually reduced to their individual constituents, presumably in a state of nature, and their rights of group autonomy would not be accounted for."\(^8\) Vattel also maintained that tribal peoples did not lose their independence when they fell under, or asked for, the protection of a more powerful nation, though he simultaneously held the contradicting theory that when "a people . . . has passed under the rule of another, [they are] no longer a State, and [do] not come directly under the Law of Nations."\(^9\)

Victoria, Grotius, and Vattel's varying ideas on the status and rights of America's tribal nations were inherited by the United States, which was "founded on natural law visions of civil society."\(^10\) The U. S. followed in the footsteps of the European nations and continued to view tribes as sovereign and to enter into

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\(^7\) Ibid. (Emphasis in original.)
\(^8\) Ibid., 14.
\(^9\) Ibid., 16.
\(^10\) Ibid.
treaties with them; however, the Americans used treaties to push American policies of land transfer, assimilation, and the end of tribalism. Dorothy V. Jones refers to this as an American example of colonialism, which is a policy by which a nation extends its control over other sovereign nations. In her book, *License for Empire: Colonialism by Treaty in Early America*, she explains, “One of the marks of colonialism is that it bends traditional diplomatic structures to exploitative ends. This can happen because accountability is not built into the diplomatic system. The only check is the assumption of countervailing force. When that is absent, as it invariably is in situations of colonialism, the whole treaty system becomes a weapon in the arsenal of the stronger power.”11 The treaties between Indian tribes and the U. S. quickly went from expressing mutual compromise and accommodation in the eighteenth century to conveying the domination of Indian tribes by the U. S. and America’s focus on acquiring tribal lands, or in other words, land transactions.12

*The United States and American Indian Nations*

Indigenous tribes in what is now the United States governed themselves from time immemorial.13 Their sovereignty was inherent and derived from the natural law rights of tribal people to determine their own laws and form of government. Just as European nations interacted diplomatically with tribal nations via treaties, so did the Americans upon their declaration of independence

12 Ibid., xii.
in 1776, signing their first treaty in 1778 with the Delaware Indians. Treaties are “a formal agreement between two or more fully sovereign and recognized states operating in an international forum, negotiated by officially designated commissioners and ratified by the governments of the signatory powers.”

That European nations and the United States entered into treaties with tribes supports the fact that tribes were viewed as sovereign, not only among themselves, but by other nations as well. Interestingly, although European nations perceived tribal nations to be sovereign, they viewed them as being less developed politically.

Originally, the treaties the United States initiated with tribal nations were peace and friendship agreements, as angry tribes often retaliated against the whites who invaded their lands and used tribal resources. There was constant conflict between the numerous groups and the government offered protection to both sides through the treaties. The Indians usually agreed to halt depredations on settlers and the United States promised to keep the whites off Indian lands and away from Indian resources. The U. S. often failed to enforce its treaty obligations so tribes responded. Thus, as was the case for the British Crown, the United States, after its war for independence, found itself increasingly assuming the role of protector of the tribes in order “to avoid prolonged and expensive Indian wars.” The U. S. quickly realized that “if stability were to be achieved, it had to be by placing Indian affairs in the hands of the federal government. After a

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period of uncertainty under the Articles of Confederation, the [ratification of the
United States] Constitution did just that."^16

With the federal government in charge of Indian affairs, Congress enacted
the Trade and Intercourse Acts, which established the boundaries of Indian
country; allowed for only the federal government to acquire Indian lands;
subjected trade to regulation by the federal government; and guaranteed
compensation to non-Indians for injuries inflicted by Indians, and vice versa. The
Trade and Intercourse Acts did not “attempt to regulate the conduct of Indians
among themselves in Indian country; that subject was left entirely to the tribes.”^17
Thus far in the history of the U. S., Indian tribes were viewed, for the most part,
as sovereign entities that were entitled to manage their own affairs. It was not
until the late 1790s that this would change. As the balance of power tipped in
favor of the U. S., treaties became the catalyst for transferring tribal lands to the
United States.

In 1823, a major case in Indian property rights, *Johnson v. M’Intosh,*^18 was
heard before the U. S. Supreme Court. The chiefs of the Illinois and Piankeshaw
nations sold pieces of their land to several grantees, including Thomas Johnson,
on July 5, 1773 and on October 18, 1775, prior to the creation of the U. S. as well
as before the passage of the Trade and Intercourse Acts. After the Treaty of
Greenville in 1795, the U. S. acquired a portion of the tribal lands, including that
owned by Johnson, and subsequently sold the same piece to William M’Intosh.
The question before the Court was “the power of Indians to give, and of private

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^16 Ibid., 11-12; U. S. Constitution, article 1:8.3 and article 2:2.2.
^17 Canby, 12.
individuals to receive, a title which can be sustained in the Courts of this country."\(^{19}\)

Supreme Court Chief Justice John Marshall wrote for the majority, ruling that the Indians did not have the right to sell their lands to anyone because they did not possess superior title to it; they merely had the right of occupancy. He further ruled that England's title to Indian lands by virtue of discovery had transferred to the U. S. after the American Revolution.\(^{20}\) Although sovereignty is the right to sell or not to sell to whomever the sovereign chooses, Marshall's ruling meant that tribes no longer had absolute control over what happened to their lands, and essentially, to themselves as nations—their rights to their lands were now "at the mere sufferance of the federal government."\(^{21}\)

This decision happened as the U. S. saw the need to acquire more lands for its citizens east of the Mississippi River. In 1830, President Andrew Jackson asked Congress to pass a bill providing for the removal of all eastern tribes to west of the Mississippi River, which was designated as "Indian territory." Congress passed the Indian Removal Act despite "protests that the act violated previous treaties and laws recognizing Indian sovereignty... The bill gave some individual tribal members a choice: they could stay... and submit to state laws, or they could move west."\(^{22}\) Those who chose to remain were relentlessly pressured for their lands.

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\(^{19}\) Ibid.
\(^{20}\) Ibid.
\(^{21}\) Canby, 14.
The state of Georgia had agreed to give up its western land claims in 1802 in exchange for the federal government to extinguish Cherokee title to all land within the state. The discovery of gold on Cherokee lands incited Georgia to take matters into its own hands and, without federal consent, Georgia passed legislation that “redistributed tribal lands to various counties, declared all Indian laws and customs void after 1830, and forbade the testimony of Indians against whites in court.”

During this time, Corn Tassel, a Cherokee Indian, killed another Cherokee. Standing on the legislation recently passed by their state government, Georgia tried and executed Corn Tassel, despite the fact that a federal treaty with the Cherokees secured to the tribe jurisdiction over all matters involving Cherokees.

This prompted the Cherokees to seek an injunction against the state, resulting in the 1831 U. S. Supreme Court Case, Cherokee Nation v. Georgia. The Cherokee’s lead lawyer, William Wirt, argued that the Cherokees were a sovereign, foreign nation and therefore Georgia’s state laws were inapplicable to them. Marshall denied the tribe’s request for an injunction on the grounds that the Cherokees were not a foreign nation; but neither were they conquered subjects nor state citizens—instead, they were a domestic, dependent nation. He defined their relationship to the U. S. as one that “resembles that of a ward to his guardian.”

This case set up the political standing of Indian tribes in relationship to the United States, furthering the cause of dependency and paternalism.

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23 Ibid., 56.
25 Getches, Wilkinson, and Williams, 106.
It is plausible that Marshall ruled against the Cherokees because the
legitimacy of the Supreme Court was at stake. If Marshall ruled in favor of the
Cherokees it was highly unlikely that President Jackson would enforce the ruling,
in effect nullifying both the ruling and the Court. Additionally, there also existed
the eminent possibility of an armed fight between federal troops and Georgia state
citizens. Thus, Marshall chose the easier way out, meanwhile serving a
devastating blow to tribal sovereignty by designating tribes as wards of the federal
government. The domestic, dependent status of tribes stemmed from international
law and established what came to be known as the protectorate relationship
between the federal government and tribal nations—a concept whose meaning
would spark a debate lasting for centuries. Both the federal trusteeship and
protectorate doctrines hindered tribal sovereignty by allowing an outside body
(the U. S. government) to have the ultimate control over tribal affairs.

In 1832, William Wirt brought a second Cherokee case, *Worcester v. Georgia*,
before the Supreme Court. Samuel Worcester and Elizur Butler were
missionaries to whom the Cherokees had given permission to live on Cherokee
land. The two missionaries did not possess a Georgia state license to live there
and were arrested for breaking Georgia state law; however, their salaries for being
there were paid from the Civilization fund, making them federal employees.
Worcester and Butler appealed their conviction to the U. S. Supreme Court where
John Marshall ruled that the state of Georgia’s interference in Indian affairs was
unconstitutional, as only the federal government had authority to interact with

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tribes. He further ruled that the “Indian nations as distinct political communities, hav[e] territorial boundaries, within which their authority is exclusive.”

Although Marshall ruled in favor of the Cherokees, he did not sign the order of execution for the same reasons he ruled against the tribe in *Cherokee Nation*, it would have put federal authorities in Georgia with the prospect of inciting a civil war over state rights. Marshall refused to demand that President Jackson honor the order of execution and uphold the duties of his office. After the John Marshall rulings, all but a few Indians were removed to west of the Mississippi River “under a program that was voluntary in name and coerced in fact.”

While each of these three Cherokee cases wore away at tribal sovereignty, as did numerous later cases, *Cherokee Nation v. Georgia* was especially damaging; establishing the political standing of Indian tribes as wards of the federal government provided “an opportunity for much later courts to discover limits to tribal sovereignty inherent in domestic dependent status.”

Although the federal government initially established the lands west of the Mississippi River as a permanent Indian Country, whites moving west soon demanded the land for settlement. This led to more treaties in which tribal nations ceded much of their lands to the U. S. government in the 1850s, though they often reserved small tracts on which to live in exchange for certain services. These treaties of the 1850s provide the basis for many tribal rights known as reserved rights (such as the right to hunt and fish in aboriginal territories). It was

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27 Canby, 16.
28 Ibid., 17.
29 Ibid., 16.
in this context that the 1855 Treaty of Hell Gate was signed, which will be addressed later in this chapter.

The federal government continued to make treaties with Indian tribes until 1871. In *American Indian Treaties: The History of a Political Anomaly*, Francis Paul Prucha writes that after the War of 1812 the United States “acted from a position of assured dominance. The long-held republican principles of the government prevented any crushing destruction of the Indian communities, yet, even though the treaty procedures were retained, the councils became less and less a matter of sovereign nations negotiating on terms of rough equality.”30 The federal government sought to change their Indian policy, as “a question arose about the propriety of considering the Indian tribes, no matter what their power, political organization, and sophistication, as sovereign nations, with whom the only means of dealing was by formal treaty.”31

As the United States grew to encompass many tribes, and as treaties had given the federal government legal control over many Indian concerns and aspects of life, the federal government saw the Indians as wards. The John Marshall rulings of the 1830s helped to cement the perception of tribes as inferior governments to the U. S. and these opinions set a precedent for all future federal-tribal relations.32

As the federal-tribal relationship developed, Indian nations continued to lose elements that defined their inherent sovereignty. Finally, all treaty making

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30 Prucha, 129.
31 Ibid.
32 O’ Brien, 57.
with the Indians was ended on March 3, 1871.\footnote{See 25 U.S.C.A. § 71.} Congress stated that there would be no more treaties with Indian tribes, although no treaties were suddenly or completely abrogated.\footnote{Prucha, 289.} Prucha concludes, "Tribes outside the Indian Territory had already largely fallen under the domination of the United States—wards confined on Indian reservations, with the power and dignity of independent nations supported by treaty guarantees all but forgotten. Step by step the treaty system had faded away as the United States sought conformity and rejected alien enclaves within the boundaries of its sovereignty. Congress asserted its plenary power over Indian affairs, and that power was upheld by the courts."\footnote{Ibid., 358.}

After treaty making ceased, federal Indian policy focused on assimilating the Indians and as stated in the treaties, the federal government provided Indians with implements to pursue agrarian lifestyles and contracted with Christian church organizations to provide the Indians with Christian educations.\footnote{Ibid., 280-284.}

However, sixteen years before treaty making with tribes ended, Isaac I. Stevens on behalf of the federal government approached the Sélíš, Ksanka, and Qlispé tribes. It was within the context of growing western settlement, reduced tribal sovereignty, and diminishing tribal land bases that these tribal leaders negotiated the various agreements contained in the 1855 Treaty of Hell Gate. What follows is an examination of the signing of that treaty, beginning with an overview of the Sélíš, Ksanka, and Qlispé tribes and the events that led to the tribes' meeting with Stevens at Council Grove in the summer of 1855. The treaty's provisions

\footnotesize{33 See 25 U.S.C.A. § 71.} 
\footnotesize{34 Prucha, 289.} 
\footnotesize{35 Ibid., 358.} 
\footnotesize{36 Ibid., 280-284.}
continue to this day and still create problems for the United States, the
Confederated Salish and Kootenai Tribes (CSKT/Tribes), as well as local, county,
and Montana state governments.

The Kootenai Tribe

The Ksanka, or “Fish Trap People,” that are now part of the Confederated
Salish and Kootenai Tribes are the southernmost of seven Ktunaxa (Kootenai)
Nation bands. Ktunaxa traditional territory included three major ecosystems: “the
Columbia River Basin, the Rocky Mountain Region, and the Northern Great
Plains. Early Ktunaxa settlements spanned the Columbia River Basin and the
western corridor of the Rocky Mountains extending from British Columbia to
Wyoming and eastward onto the high plains of Alberta, [Canada].”37 The Ksanka
resided near Flathead Lake in western Montana.

Ktunaxa Legends, a publication by the Kootenai Culture
Committee/CSKT, states that while “scientific evidence dates the Ktunaxa
presence in the Rocky Mountain region as far back as 14,000 years ago, the
Ktunaxa trace their roots back to the beginning of time. The Ksanka are the
original inhabitants of Montana and have descriptive histories that chronicle the
geologic formations and other natural features of the region.”38 One particular
story that places them in western Montana at the end of the last Ice Age is about a
beaver dam that broke on the southwest edge of Flathead Lake, near present-day

38 Ibid.

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Elmo, Montana, creating the giant ripple marks on Camas Prairie.\textsuperscript{39} It was not until the late 1930s that an aerial photograph enabled geologist Joseph Thomas Pardee to recognize the area’s ripple pattern.\textsuperscript{40}

The \textit{Ktunâx̩a} consider themselves to be the true guardians of the region, which requires them to protect the land and to have “the utmost respect and protection for all the elements of the natural world.”\textsuperscript{41} In exchange for this service, the \textit{Ktunâx̩a} were “granted sustenance through the use of the abundant resources in the area.”\textsuperscript{42} To minimize the stress on the land, the \textit{Ktunâx̩a} chose to live in several different bands and to participate in seasonal migrations “to prevent environmental degradation of their territory.”\textsuperscript{43} Therefore, they engaged in:

seasonal traveling for hunting and harvesting began in the early spring when the bitterroots ripened and fisheries were bountiful. In early summer . . . the \textit{Ksanka} traveled east of the Rocky Mountains to hunt buffalo, returning in mid summer to process and store the meat. In late summer, camas, huckleberries, service berries, chokecherries and other plants were harvested. By fall, big game expeditions were organized and some of the hunters returned to the Great Plains for more buffalo.\textsuperscript{44}

The \textit{Ksanka} also cultivated a unique species of tobacco for personal use and for trade.\textsuperscript{45} Additionally, the \textit{Ktunâx̩a} language is unique to only the \textit{Ktunâx̩a} and “has never been linked to any other in the world. It is an anomaly that effectively contradicts any migration theory for the \textit{Ktunâx̩a} people.”\textsuperscript{46}

\textsuperscript{39} Dennis Olsen (lecture given at Salish Kootenai College, Pablo, MT, 2001).
\textsuperscript{41} \textit{Ktunâx̩a} Legends, xii-xiii.
\textsuperscript{42} Ibid., xii.
\textsuperscript{43} Ibid., xiv.
\textsuperscript{44} Ibid.
\textsuperscript{45} Patricia Hewankorn, Director of the Kootenai Culture Committee, was unaware of the exact name of this unique species of tobacco. Patricia Hewankorn, interview by author, telephone interview, 22 February 2005.
\textsuperscript{46} \textit{Ktunâx̩a} Legends, xiv.
The Ktunaxa were also known for their watercrafts and fishing gear. The authors of *Ktunaxa Legends* state that the Ktunaxa were “avid canoeists, trappers, and anglers. They excelled in engineering light craft to navigate some of the most treacherous waterways in the Northwest. They possessed extraordinary hunting and fishing techniques and developed ingenious devices to supplement these techniques.”

The Ksanka were not always on good terms with the local Salish-speaking tribes who also resided in the area; however, regardless of their tribal differences, “intermarriage between these tribes and with other Northwestern tribes was common.” Nevertheless, “despite the close proximity and easy exchange between these Indians, each tribe clearly functioned autonomously and maintained its own identity.”

*The Salish-Speaking Tribes*

The primary Salish-speaking people on the Flathead Reservation today are the Sélíš (Bitterroot Salish) and the Qlíspé (Upper Kalispel or Upper Pend d’Oreille). Many people refer to the Bitterroot Salish as “Flathead,” although this is an incorrect categorization. Tony Incashola of the Salish-Pend d’Oreille Culture Committee states that the name “Flathead” is a misnomer, that these Salish never

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47 Ibid., xv.
49 Ibid.
practiced head-flattening.\textsuperscript{50} In \textit{The Flathead Indians}, John Fahey provides a possible explanation for the name:\textsuperscript{51}

Flatheads deny that their ancestors flattened heads but accept the theory that they are called Flatheads because sign language identified them by pressing both sides of the head with the hands. Misinterpreting this sign, white explorers moving westward across North America expected to come upon people with flattened heads beyond the Rocky Mountains. The same sign, with an additional gesture indicating Flathead Lake, identified the Salish north of the Flatheads until French trappers found this tribe wearing dentalium earrings and called them Pend Oreille [sic].\textsuperscript{52}

As Fahey notes, the \textit{Qlispé} became known as “Pend d’Oreille,” which is French for “earring,” because of the round shell earrings that were worn by both men and women.\textsuperscript{53}

The Upper Pend d’Oreille (and not the Lower Pend d’Oreille, commonly called Lower Kalispel or simply Kalispel) participated in the 1855 treaty signing, though in the 1880s and 1890s, the federal government moved some members of the Spokane, Coeur d’Alene, and Lower Pend d’Oreille tribes onto the Flathead Reservation.\textsuperscript{54} This placing was an effort at assimilation as well as a way to reduce identity and nation sovereignty.

Linguistic evidence demonstrates that all the different Salish-speaking tribes lived together thousands of years ago before separating.\textsuperscript{55} Salish oral traditions also confirm this as truth. Tribal elder Pete Beaverhead has told the

\begin{footnotesize}
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\item[\textsuperscript{50}] Tony Incashola, interview by author, personal interview, St. Ignatius, MT, 16 April 2000.
\item[\textsuperscript{51}] In \textit{A Brief History of the Salish and Pend d’Oreille Tribes}, the comment is made that there are a number of other explanations, though none are certain. Salish-Pend d’Oreille Culture Committee/CSKT, \textit{A Brief History of the Salish and Pend d’Oreille Tribes} [hereafter cited \textit{Brief History}], revised ed. (n. pub., 2003), 11.
\item[\textsuperscript{52}] John Fahey, \textit{The Flathead Indians} (Norman, OK: University of Oklahoma Press, 1974) 6.
\item[\textsuperscript{53}] James A. Teit and Franz Boas, \textit{The Flathead Indians} (Seattle, WA: Shorey Book Store, 1975), 296; \textit{Brief History}, 6.
\item[\textsuperscript{54}] \textit{Brief History}, 7.
\item[\textsuperscript{55}] Fahey, 6.
\end{itemize}
\end{footnotesize}
story that at one time "all the Salish, Pend d’ Oreille, Spokane, Coeur d’ Alene, Shushwap, Okanagan, and Colville, among others—were all one Salish people, speaking the same language. The tribes split up long ago because food was becoming hard to gather as one big tribe. They then became several different tribes, each with a little different language or dialect."  

Consequently, Salish oral traditions state that the tribes did not migrate from the Pacific coast inland, but that they migrated from the northern Plains westward, towards the coast. Furthermore, the Salish language spoken by the tribes in Montana is often considered by many of the Plateau Salish-speaking people to be the true form of Salish, contrary to what some anthropologists and linguists claim, which is that the Salish spoken in the central Plateau region is the original Salish. This Salish claim would substantiate the idea that the true Salish language was spoken on the Plains and transformed as the Salish speakers traveled further west. 

Although many bands of Salish-speaking tribes resided on the Plains, some Pend d’ Oreille bands for centuries also frequented parts of western Montana, near where they are presently located. The Pend d’ Oreille were traditionally based in the Clark Fork River drainage system. The Salish-Pend d’ Oreille Culture Committee notes:

One [band] was traditionally located in western Montana, encompassing what is now the Flathead reservation, and all forks of the Flathead River, 

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56 Brief History, 11.
57 There is a story cited by John Fahey about the Bitterroot Salish splitting off from a main group and coming east to the Bitterroot Valley. This branching off, Fahey writes, is a result of a violent intra-tribal disagreement about whether the quacking sound from a flock of ducks came from their wings or mouths. The Salish-Pend d’ Oreille Culture Committee has stated that this story is not accepted by any of the tribes.
the Flathead Lake area, the Swan River, and other drainages. They were called the... People of the Broad Water, referring to... (Flathead Lake). Other major Pend d'Oreille bands were based downstream in what is now westernmost Montana, northern Idaho, and eastern Washington, around Lower Clark's Fork, Lake Pend d'Oreille and the Pend d'Oreille River.58

Some important areas of Salish-Pend d'Oreille population, ca. 1700

(Map courtesy of the Salish-Pend d'Oreille Culture Committee/CSKT)

Thompson Smith, a consultant with the Salish-Pend d'Oreille Culture Committee working on the Tribal History and Ethnogeography Projects, states that the Salish have Coyote stories that provide explanations of how the world came to be as the Salish know it and stories that record them inhabiting parts of western Montana dating back to at least the end of the last Ice Age, 13,000 years

58 Brief History, 11-12.

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ago. There are tribal stories about megafauna (giant beavers and buffalo) and stories about the battles between warm and cold, with the outcome being the seasons we have today.\textsuperscript{59}

For plant protein subsistence, the Salish and Pend d’Oreille tribes gathered bulbs and berries such as serviceberries, chokecherries, elderberries, strawberries, raspberries, huckleberries and roots, primarily camas and bitterroot. They also consumed wild game, including elk, deer, and bison (which they hunted on the western Plains), and traded bison robes and products with their Columbia Plateau neighbors for salmon.\textsuperscript{60}

The Salish and Pend d’Oreille tribes were eventually forced from the Plains as a result of: 1) the introduction of horses; 2) epidemic diseases; and 3) the introduction of guns/wars with other tribes, especially the Blackfeet. The Salish and Pend d’Oreille acquired horses from the Shoshones around 1700, which provided them with “much great[er] mobility, and easier access to buffalo and other foods and materials. However, the horse also made it easier to travel into the territory of enemy tribes and vice versa. And horses themselves were a newly mobile unit of wealth, prestige, and power.”\textsuperscript{61} Horses also facilitated the spread of European diseases by allowing people to travel much farther distances more often and in shorter periods of time.

\textsuperscript{59} Thompson Smith, interview by author, personal interview, St. Ignatius, MT, 6 March 2003.
\textsuperscript{60} Salish-Pend d’Oreille Culture Committee, interview by author, personal interview, St. Ignatius, MT, 19 April 2002. \textit{Brief History} also states that at “the Judith river treaty in October 1855, the Pend d’Oreille insisted on and won affirmation by the Piegans and others that they had always held aboriginal rights to hunt in the Sweetgrass Hills.” \textit{Brief History}, 17.
\textsuperscript{61} \textit{Brief History}, 21.
In his paper titled, "The Salish and Pend d'Oreille: History of relations with non-Indians," Thompson Smith writes that the earliest documented occurrence of disease "were waves of smallpox that struck from the west in the 1770s and from the upper Missouri in 1781-1782, although at least one major epidemic and population decline may have occurred before the 1770s throughout the Plateau region. One scholar estimates that the Salish and Pend d'Oreille population declined 45% between 1770 and the arrival of Lewis and Clark in 1805." Blind Mose Chouteh reported to the Salish-Pend d'Oreille Culture Committee that the Tšišáxw (a band of Salish that originally lived with the Pend d'Oreille and Ktunaxa along the Rocky Mountain front) were so devastated by smallpox that they eventually moved east of the mountains and mixed with the Gros Ventres and "disappeared as a distinct people." In his paper, Thompson Smith also reviews other documented disease epidemics that affected the tribes during the early and mid 1800s: "1801 (smallpox), 1807-08 (distemper), 1831-37 (respiratory diseases and smallpox), 1846-48 (smallpox and measles), and 1853-55 (cholera, fever, and smallpox)."

The third factor in the migration of Salish and Pend d'Oreille tribes to west of the Rockies was the Blackfeet. In 1780, the Hudson's Bay Company established Buckingham House on the Saskatchewan River. Here, the Blackfeet traded for guns long before the Salish and Pend d'Oreille had access to guns,

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63 Brief History, 23; Teit and Boas, 311; Thompson Smith, 2.
64 Thompson Smith, 2.
which was not until about 1811 from the North West Company, and then from the American fur traders in about 1820.65 The Salish-Pend d’Oreille Culture Committee notes:

Before the epidemics, and before horses and guns, the sqélix” [“people”] occupied nearly as much territory east of the Continental Divide as west. With the onset of the epidemics, the presence of horses, and the destabilizing effect of guns, the Blackfeet swept into the northern Montana plains, pushing the plains Shoshone bands south and west, and forcing the plains bands of Salish, Pend d’Oreille, and Kootenai west across the mountains. The western tribes continued to use their ancestral buffalo hunting grounds east of the mountains, but with the constant threat of Blackfeet raids, they could no longer live there permanently.66

The tribes would often form alliances with the Kalispel, Spokane, Nez Perce, and Coeur d’Alene peoples for bison hunts. The Salish and Pend d’Oreille also frequently intermarried with the Plateau tribes with whom they formed these alliances.

The Fur Trade and the Arrival of the Jesuits

It was not until after Lewis and Clark journeyed into the area that the Salish and Kootenai fur trade with whites escalated. Fur trader John McClellan was in the area briefly in 1807 and then in 1809, David Thompson of the North West Company established the Saleesh House near present-day Thompson Falls, Montana, though the post would later be taken over by the Hudson’s Bay Company.67 For the most part, though, the Salish and Pend d’Oreille were uninterested and did not participate heavily in the fur trade. This was because

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65 Ibid, 3.
67 Brief History, 24; Thompson Smith, 4.
"we already met our needs so well... The Salish and Pend d’ Orelle generally engaged in trapping only to meet our limited need for non-Indian goods, usually firearms, or metal pots, or a few simple trade items."\textsuperscript{68} Regardless, the fur trade was the precursor that brought future challenges to tribal sovereignty and to Salish, Kootenai, and Pend d’ Orelle religious and philosophical thought.

In the early 1800s, Ignace La Mousse and a small party of Iroquois arrived to Salish and Pend d’ Orelle country, having been sent "by the fur trade to try to bring our people into the fur trade, but instead several of the Iroquois married into the Salish and joined in our way of life. They taught the Salish about the medicine, the spiritual power, of the ‘Blackrobes’—the Jesuit missionaries who had worked among some Iroquoian bands in Canada since the 1600s."\textsuperscript{69}

The teachings the Iroquois shared with the Salish tribes were reminiscent of a portion of a vision had by Shining Shirt, which foretold of the coming of "strange men in black robes who would teach the people a new way of prayer."\textsuperscript{70}

The Salish sent four expeditions consisting of both Salish and Iroquois Indians to St. Louis, Missouri between 1831 and 1839. Thompson Smith comments that the "Salish began sending out parties in search of the ‘Blackrobes,’ whose power they sought to combat mounting losses from disease and Blackfeet raids."\textsuperscript{71} The first party was unsuccessful, as two members died while in St. Louis and the others passed away on their return trip home. All members of the second expedition were mistaken for an enemy tribe and were killed by the Sioux. Two French-

\textsuperscript{68} Brief History, 24.
\textsuperscript{69} Brief History, 25; Thompson Smith, 4.
\textsuperscript{70} Thompson Smith, 4. Thompson Smith also notes, "‘Shining Shirt’ is not the name of this man, but rather a gloss-translation of his name."
\textsuperscript{71} Ibid., 5.
Speaking Iroquois made up the third party, which was successful in reaching St. Louis and securing a bishop’s promise to send Jesuits sometime in the future. However, it was not until the fourth trip in 1839 that Father Pierre-Jean DeSmet was actually appointed to the Indians.  

On March 27, 1840, Father DeSmet journeyed to the Bitterroot valley for a short visit, after which he returned to St. Louis to raise money “to send missionaries and farm implements to the Flatheads.” Shortly thereafter, Father DeSmet and Fathers Nicholas Point and Gregory Mengarini departed for the Bitterroot valley. The Fathers were accompanied by three “coadjutor brothers, William Claessens, Joseph Specht, and Charles Huet, [who] were sent along as blacksmith, tinner, and carpenter.”

On September 4, 1841, Father DeSmet and his party arrived to the Bitterroot valley and established St. Mary’s Mission, near present-day Stevensville, Montana. St. Mary’s Mission, for the first two years, served as the destination for all Jesuits assigned to the Rocky Mountain Indians, which, due to Father DeSmet’s recruiting efforts in Europe, was a number that steadily increased. In *The Flathead Indians*, John Fahey reports, “In 1842 Fathers Peter DeVos and Adrian Hoecken reached [St. Mary’s Mission]; in the next year, Joseph Joset and Peter Zerbinatti arrived. In 1844 . . . Father Ravalli, John Nobili, and Louis Vercruysse reached the Flatheads. . . . Three years later Father Gregory Gazzoli, Anton Goetz, and Joseph Menetrey [arrived].” In 1842, Father Point went west to establish the Sacred Heart Mission for the Coeur d’ Alene Indians.

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72 *Brief History*, 25-26.
73 Fahey, 72.
74 Ibid.
and in 1844, Father Hoecken and Brother John McGean opened a mission for the Upper Pend d’ Oreilles near Flathead Lake.\textsuperscript{75}

\begin{figure}[h]
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\includegraphics[width=\textwidth]{St_Marys_Mission_in_the_Bitterroot_ca_1911.jpg}
\caption{St. Mary’s Mission in the Bitterroot, ca. 1911}
\end{figure}

\textsuperscript{75} Ibid., 80-81.
Although the relationship between the Jesuits and local Indian tribes appeared to be developing quickly and well, "a fundamental tension permeated the Salish relationship with the Jesuits."76 Thompson Smith explains:

the Salish sought to expand their existing spiritual pantheon with Christianity and to gain power in their struggle against the Blackfeet, while the missionaries were intent on complete conversion and the expunging of tribal traditions, which they characterized as "the work of the devil." It was probably a heightening of the priests' campaign against Salish spiritual practices, and their establishment of a mission among the Blackfeet, that led to the Salish apostasy in 1849.77

By the late 1840s, the Salish had stopped supporting and protecting the Jesuits and the "missionaries were driven . . . from their mission, St. Mary's, in the Bitter Root Valley, by reason of the depredations of the Blackfeet tribes."78 In 1849, the Jesuits sold St. Mary's Mission to trader John Owen, and left for eastern Washington, where they started the first St. Ignatius Mission. In 1854, Father Adrian Hoecken established the second St. Ignatius Mission in the Mission valley.79 One year later, this area would become part of the Flathead Reservation.

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76 Thompson Smith, 5.
77 Ibid.
79 In 1864, the Sisters of Charity of Providence arrived from Fort Vancouver and established the first school for the Salish and Kootenai on the Flathead Reservation. At first, the school only boarded girls, and "the boys attended a school kept by the same nuns, but this was only a day-school." In 1878, the girls' and boys' school became contract schools "with an allowance of the princely sum from the federal Indian Department of eight dollars and a few cents for each pupil." In 1885, the contract with the government ended and aid now was determined by the Commissioner of Indian Affairs. During this time, the school had become a boarding school, boarding one hundred, seventy-one boys and girls. The boarding school was favored over a day school because assimilation occurred faster when the kids were separated from their families, tribes, and culture. William Davis, A History of the St. Ignatius Mission (Spokane, WA: Gonzaga University, 1954), 38-42.
especially reserved by the Salish, Kootenai, and Pend d'Oreille tribes when they signed the 1855 Treaty of Hell Gate with the United States government.80

Catholic Mission at St. Ignatius, ca. 1899

(Photograph courtesy of K. Ross Toole Archives)

80 The Flathead Indian Reservation was first known as the Jocko Reservation; however, it was rarely called the Jocko by the turn of the twentieth century. See John Fahey, The Flathead Indians (Norman: University of Oklahoma Press, 1974), 279. The change in names may have to do with the transferal of Flathead Agency records from the Washington Superintendency to the Idaho Superintendency in 1863. See Guide to Records in the National Archives of the United States Relating to American Indians, ed. Edward E. Hill (Washington, D. C.: National Archives and Records Service General Services Administration, 1981), 145-146.
Though Stevens's treaties of 1854-55 gave every indication of general success, unfortunately they became negative symbols for both whites and Indians. Stevens and other whites believed that the Indians could not be relied upon to keep their word, and the Indians believed the eventual breakdown of the treaties proved white treachery. Perhaps the greatest tragedy was that Stevens might have stabilized Indian-white relations in the Northwest. Certainly he abundantly possessed the energy to do so. But he allowed his dogged determination to obscure reality. As a result, the treaties did not bring peace to the territory, but instead provided a stimulus for further hostilities.

Kent D. Richards, *Isaac I. Stevens: Young Man in a Hurry*

Two years before the 1855 Hell Gate Treaty council, Isaac I. Stevens, Governor of Washington Territory and Ex Officio Superintendent of Indian Affairs, stopped at Owens Fort in the Bitterroot valley in what is now western Montana on his journey west to survey for a transcontinental railroad route.82 There he met with a few Salish and “discussed the possibility of a peace between the Flatheads (including their allies the Pend d’Oreille and other local tribes) and their long-time enemies, the Blackfeet.”83 The real reason behind the meeting, as Robert Ignatius Burns, S. J., later wrote, was to extinguish the Indians’ title to lands so that the United States could realize the railroad route to the Pacific.84

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83 Lee Ann Smith, 100.
The railroad route Stevens surveyed in 1853 led through lands "where the Indians claimed sovereignty." The past John Marshall decisions and the era of Manifest Destiny gave the Americans an air of confidence of a greater nation, so "Governor Stevens had the harsh order from Washington[, D. C.] to extinguish that [tribal] sovereignty, to make the Confederacy surrender some 23,000 square miles of territory in Montana and Idaho for a reservation of 2,000 square miles."85

In her article, "The Flathead Treaty Council," Lee Ann Smith supports Father Burns's statement regarding Stevens's motivations for the treaty council. She writes, "Throughout 1855 Stevens had held treaty councils with the tribes of Washington Territory... His purpose in dealing with the Indians arose from his involvement in a larger project, which included exploration of the Northwest and surveying a northern transcontinental railroad route. Before the railroad could be built, however, Indian rights to lands on or adjacent to the route had to be extinguished. Methodically, but without delay, Stevens set out to achieve this end."87

On the morning of July 7, 1855, Stevens summoned the local Salish, Kootenai, and Pend d'Oreille tribal leaders to meet with him at Council Grove just west of present-day Missoula, Montana. On July 9, Stevens met with tribal delegates, leaders whom the tribes had selected in an ordinary expression of their sovereignty, and began the seven-day meeting that would end in the signing of the 1855 Treaty of Hell Gate.

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85 Ibid.
86 Ibid.
87 Lee Ann Smith, 99.
On the first day of the treaty council, Stevens reiterated his original promise to work towards securing peace between the tribes in attendance and the Blackfeet. He noted, “we expect to make a treaty which will keep the Blackfeet out of this valley, and if that will not do it we will have soldiers who will... The Great Father, the President, has directed us to make a treaty and he will see it carried out, and we hope it will forever settle your troubles with the Blackfeet.”

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88 “Official Proceedings at the Council held by Governor Isaac I. Stevens, Supt. Indian Affairs, W.T., with the Flathead, Pend Oreilles and Kootenay Tribes of Indians at Hell Gate in the Bitter Root Valley, Washington Territory, commencing on the seventh day of July, 1855 [hereafter cited...
And so, from the beginning, the tribes were under the impression that Stevens was there to make a peace agreement between all parties and to keep the Blackfeet out of the Mission Mountains and the Bitterroot Valley.\textsuperscript{69}

However, by the second day of the council the Indians realized that Stevens also wanted to discuss their land, but they were unsure of why and to what extent the Governor was interested in their real estate. Pend d' Oreille leader, Big Canoe, stated that the Indians had been misled, as Stevens had promised to help them deal with the Blackfeet, not discuss Indian land. He proclaimed, “It is our land—when I first saw you, you white man, when you were traveling through, I would not tell you take this piece it is our land—when you come to see me I believe[d] you w[ould] help me.”\textsuperscript{90} Big Canoe went on to tell Stevens and his officers to “go back to your country,”\textsuperscript{91} because the Indians were not interested in selling their land.

Big Canoe also discussed the friendship that these tribes had virtually always shown to whites. Given this good relationship, the assembled Indians were surprised that Stevens insisted that the treaty contain provisions that entailed the tribes ceding land and removing to reservations.\textsuperscript{92} To the tribesmen, treaties

\textsuperscript{89} When Stevens continued west, he left behind some of his men, including Lt. John Mullan. Mullan told the Indians, according to a statement made by Moses during the treaty negotiations, that Stevens and his men “will never talk about this land—they will help you against the Blackfeet,” which is why the Indians agreed to meet with Stevens at all. “Official Proceedings at the Council held by Governor Isaac I. Stevens,” reprinted in Bigart and Woodcock, 61.
\textsuperscript{90} “Official Proceedings at the Council held by Governor Isaac I. Stevens,” reprinted in Bigart and Woodcock, 31.
\textsuperscript{91} Ibid.
\textsuperscript{92} Lee Ann Smith, 106.
were to make peace between two enemies. Big Canoe stated, “Talk about treaty, where did I kill you? When did you kill me? What is the reason we are talking about treaties; that is what I said, we are friends, you are not my enemy.”

He continued, “There is a Frenchman (Indian name for all traders) coming. I will [not] hide where no one can see me and kill him. No; when I see a white man I go up to him; it makes me smile, I shake hands with him; that is the reason I ought to be let alone. . . . You will never see in your papers that the Flatheads or Pend d’ Oreilles have killed any of you.”

Lee Ann Smith maintains that in this speech Big Canoe “essentially expressed a desire for friendship with white people, but he clearly believed that whites had no right to enter Indian territory and take away their lands.” Not only was he defending his territory, but his tribe’s inherent sovereign rights as well. Lee Ann Smith further notes that Big Canoe saw no reason for a reservation because the Indians had always been friendly with the whites who were now beginning to be a common sight in the area. Regardless, Stevens persisted with the negotiations.

It is clear that the Indians were surprised that Stevens was asking them to relinquish title to much of their land, and they were confused as to how this request was tied to securing peace between them and the Blackfeet. Reluctantly, they tried to decide upon a reservation site.

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94 Ibid.
95 Lee Ann Smith, 107.
96 Ibid.
An immediate decision about the location of the reservation could not be reached. The Salish leader, Victor, wanted to remain in the Bitterroot and Alexander, the Pend d’Oreille leader, wanted to be near the St. Ignatius Mission in the Jocko valley. Michel,\textsuperscript{97} leader of the Kootenais, accepted Alexander’s invitation to reside on the northern reservation, to be located in the Jocko valley. Given the tribal leaders’ inability to agree to one reservation cite, Stevens “inserted complicated language in the treaty that required the President to direct a survey of the [Bitterroot] valley, which would determine which place was better

\textsuperscript{97} Also spelled “Michelle.”
suited to the ‘wants of the Flathead Tribe’. However, Victor and the rest of the Salish understood that they had secured a permanent title to the Bitterroot valley.

The tribes finally, but with regret, signed the treaty; though, even at this point the misunderstandings that existed between the tribesmen and Stevens were great. These misunderstandings stemmed from vast cultural differences and also from poor interpreters. Robert Ignatius Burns writes that “the secret of all the Indian frustration is revealed in the unpublished letters of Father Hoecken, S. J.” He quotes the Father, who wrote, “‘Not a tenth’ of the council was actually understood by either party, ‘due largely to incompetent interpreters. Not only were the words incompetently translated from Salish to English and from English to Salish, but the Salish mentality was completely missed.’” Along similar lines concerning discrepancies between what actually happened versus what the federal government perceived to have happened, the Kootenai Culture Committee writes, “The oral evidence from Kootenai Indian elders indicates that the Kootenai delegates to the council played a much more active role than the government transcript indicates. This may be because Michel, the Kootenai chief, coordinated his position at the talks with Alexander, the Pend d’Oreilles chief. Much of Michel’s input would have been in discussions among the Indian leaders. Then Alexander presented his and Michel’s position to Governor Stevens as recorded in the official English transcript from the National Archives.”

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98 Thompson Smith, 6.
99 Burns, 88.
100 Ibid.
101 Bigart and Woodcock, n. pag. (see page immediately before “Editors’ Note” at the beginning of the publication).
In her study of tribal rights, Dagny Krigbaum comments on the assembled tribes’ understanding of the agreement at the end of the negotiations. She writes, “The purpose of this agreement from the tribal standpoint appeared to be a contract in which each culture would be ensured safety, and would control its own defined territory with little interference from each other.”102 Stevens himself stated, “Within yourselves you will be governed by your own laws. The agent will see that you are not interfered with, but will support the authority of your chiefs. You will respect the laws which govern the white man and the white man will respect your laws.”103 It is conceivable that these two aspects—protection from the Blackfeet and other hostile tribes and being able to govern themselves as they always had—made the difference in whether the tribes signed or rejected the treaty.104 The treaty was acceptable enough as it was understood by the Indians and agreed upon.

The fact that the 1855 treaty contains contradictions that make it inherently flawed, along with the federal government’s violation of treaty agreements, drastically changed tribal life. It created a trust relationship between the federal and tribal governments, which automatically reduced tribal sovereignty due to the fact that the tribes now had to defer to the federal government. Other large problems created by the treaty concerned the reservation boundaries and wording regarding it. Sam Resurrection and other tribal leaders of...

104 Article 8 of the Treaty of Hell Gate states, in part, that the tribes were to “submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby.”
the past have maintained that "according to the way the treaty was translated to the chiefs in 1855, the [Jocko] reservation’s boundaries were supposed to be considerably bigger than was stated in the written treaty, particularly on the west and north sides. Many said that the northern boundary was supposed to be the Canadian line," and not, as was stated in Article 2, "a point half way in latitude between the northern and southern extremities of the Flathead Lake."105

The conditional Bitterroot reservation established in Article 11 of the treaty "set up a long, bitter, but largely non-violent struggle between the Salish and whites who coveted the fine grazing lands, soils, and timber of their valley. This conflict began to intensify following the construction in 1859 of the Mullan Road, a rough military track running from [Fort] Benton to Fort Walla Walla, and further increased with the first gold rushes in Montana in 1864."107

The official survey was never conducted, but President Ulysses S. Grant issued an Executive Order in 1871 declaring that the northern Jocko Reservation was better suited to the wants of the Salish than their home in the Bitterroot and ordered them to be removed.108

In 1872, when Charlot and the Salish refused to leave the Bitterroot, future president James A. Garfield "recommended that the government proceed as if the chief had signed and Charlot’s X mark was forged onto the copy of the agreement that was sent to the U. S. Senate for ratification. The ‘Garfield agreement’

105 Brief History, 29.
107 Thompson Smith, 7.
108 Ibid.
unleashed a sudden influx of new settlers. Charlot was reviled in the press as a treaty breaker until the counterfeit signature was exposed by Senator G. G. Vest in 1883.\textsuperscript{109}

James A. Garfield and Chief Charlot with their sons, ca. 1905

(Photograph courtesy of K. Ross Toole Archives)

For many years, Charlot quietly refused to leave the Bitterroot, staying out of trouble. In 1877, when local whites expressed their fears of an Indian uprising

\textsuperscript{109} Ibid.
in Montana and Idaho due to the flight of the Nez Perce, the federal government built Fort Missoula on the southwest edge of the city of Missoula.\textsuperscript{110} Shortly after this, Chief Joseph and the Nez Perce arrived to the area with the U. S. army in pursuit, and although the Nez Perce and Salish were allies, the Salish refused to join them. Flathead Indian Agent Peter Ronan wrote that the Salish “not only refrained from joining their ancient allies the Nez Perces, but they gave them warning that if an outrage was committed either to the person or property of any settler of the Bitter Root Valley... they would immediately make war upon them.”\textsuperscript{111} Today, the Salish-Pend d’Oreille Culture Committee writes that Charlot “was really trying to prevent further war—which would have probably been disastrous for the Salish—by forming a buffer between the Nez Perce and white Montanans.”\textsuperscript{112} Regardless of this gesture, Montana Territorial Governor Benjamin F. Potts imposed a ban on the sale of guns and ammunition to all Indians, “even though this would directly harm Salish hunters trying to get meat for the winter.”\textsuperscript{113}

In 1884, Charlot and a group of Salish, accompanied by Agent Peter Ronan, traveled to Washington, D. C. to protest any removal attempts. In 1888, the Missoula and Bitterroot Valley Railroad was completed, which helped to increase development in the Bitterroot. In 1889, General Henry B. Carrington was appointed to remove the Salish to the Jocko Reservation; because of the removal, the Salish did not plant crops, expecting to be moved at any time. It was

\textsuperscript{110} Fahey, 188-189.
\textsuperscript{112} Brief History, 33; Thompson Smith, 8.
\textsuperscript{113} Brief History, 33.
not until October 1891, however, that Carrington and his troops arrived to march the Salish to the northern Jocko Reservation.

In addition to the controversy surrounding the Salish claim to the Bitterroot, a claim validated by the 1855 Hellgate Treaty, other problems quickly arose regarding land. After the establishment of a geographical boundary line separating the land the tribes reserved for themselves from the land they ceded to the federal government, the two parties negotiated the rules concerning land use. Article 2 of the Hellgate Treaty states that the land not ceded is "for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without the permission of the confederated tribes, and the superintendent and agent." 114

Article 6 of the same treaty also allowed for the allotment of the reservation to "willing" tribal members, "on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas." 115 Nothing more, only a reference to another treaty made the previous year, in 1854. CSKT tribal member and former tribal council chairman, Ron Therriault, has candidly stated that Montana Senator Joseph Dixon had the

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115 Ibid. Article 6 of the Omaha treaty states: "The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe [specified acreages of land according to a certain ranking system]. . . . And the residue of the land hereby reserved, or of that which may be selected in lieu thereof, after all of the Indian persons or families shall have had assigned to them permanent homes, may be sold for their benefit under such laws, rules or regulations, as may hereafter be prescribed by the Congress or President of the United States." "Treaty with the Omahas, 1854," in Indian Affairs: Laws and Treaties, ed. Charles Kappler (Washington, D. C.: Government Printing Office, 1904), 612-613.
Flathead Reservation "opened on the basis that our treaty was the same status as the Omaha treaty which had a page and a half clearly stating how the reservation would be allotted and opened up. Hell, we didn’t even know what an Omaha was."\textsuperscript{116}

Additionally, the Salish-Pend d’Oreille Culture Committee notes, "Historians, as well as the U. S. Court of Claims, have long concluded that this obscure clause could never have been translated sufficiently during the 1855 negotiations. . . . [Senator] Dixon seized upon it anyway, and used it to push his bill through Congress without tribal consent—in fact, in the face of obvious tribal opposition."\textsuperscript{117}

The option to allot Indian reservations would be taken up on a large scale during the late 1880s as part of the federal government’s policy to assimilate Indians into mainstream America by teaching them "self-sufficiency" through yeoman farming. This was intended to relieve the federal government from many of their treaty obligations to tribes, especially those that were financial.

However, these intentions behind allotment went unrealized as allotment tended to intensify a bad situation. The following chapter will review allotment on the Flathead Reservation. Although the tribes ceded millions of acres of their land when they signed the 1855 Hellgate Treaty, they still were able to utilize their inherent sovereign right to govern themselves as they saw fit with minimal interference by the federal government. This changed with allotment, as this

\textsuperscript{116} Mark Matthews, "This is my water, this water ain’t your water: an Easterner looks into the struggle over water between Indians and non-Indians on the Flathead Indian Reservation," (M.A. professional paper, University of Montana, 1995), 20.

\textsuperscript{117} Brief History, 47.
policy period saw the most devastating breakdown in traditional forms of tribal
government. During allotment, the federal government created the first “official”
tribal enrollment lists and began parceling out pieces of the reservation to
individual Indians. This resulted not only in tribal loss of control over
communally held reservation lands, but a decline in tribal governance over most
aspects of their lives as well, which had a devastating affect on tribal self-
governing powers.\footnote{Besides Hellgate Treaty Articles 2, 6, 8, and 11, which are highlighted in this chapter, there are eight additional articles. To summarize, Article 1 defines the area of land the tribes ceded to the United States; Article 3 states that roads may be made through the reservation and recognizes the right of the Indians to hunt, fish, and gather berries at all usual and accustomed places; Article 4 specifies the payments the United States will make to the tribes for their land cessions and how the payments shall be applied; Article 5 states that the United States will establish schools, a mechanics shop, and a hospital; specifies payments to tribal chiefs, and outlines “certain expenses” to be borne by the United States and not charged on annuities; Article 7 stipulates that annuity payments are not to be used to pay individual debts; Article 9 states that annuities shall be withheld from those who drink ardent spirits; Article 10 guarantees the reservation against certain claims of the Hudson’s Bay Company; and Article 12 mandates that the treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States. See Appendix A of this dissertation for a complete copy of the 1855 Hellgate Treaty.}
CHAPTER 2

LAND ALLOTMENT ON THE FLATHEAD RESERVATION

It requires no seer to foretell or foresee the civilization of the Indian race as a result naturally deductible from a knowledge and practice upon their part of the art of agriculture; for the history of agriculture among all people and in all countries intimately connects it with the highest intellectual and moral development of man. Historians, philosophers, and statesmen freely admit that civilization as naturally follows the improved arts of agriculture as vegetation follows the genial sunshine and the shower, and that those races who are in ignorance of agriculture are also ignorant of almost everything else. The Indian constitutes no exception to this political maxim. Steeped as his progenitors were, and as more than half of the race now are, in blind ignorance, the devotees of abominable superstitions, and the victims of idleness and thriftlessness, the absorbing query which the hopelessness of his situation, if left to his own guidance, suggests to the philanthropist, and particularly to a great Christian people like ours, is to know how to relieve him from this state of dependence and barbarism, and to direct him in paths that will eventually lead him to the light and liberty of American citizenship.

J. D. C. Atkins, Commissioner of Indian Affairs, Annual Report of the Commissioner of Indian Affairs, 1885

A Federal Policy of Assimilation and Allotment

At the time of the Declaration of Independence, national policy towards American Indian tribes focused on interaction between various parties via treaties. The treaties initially focused on “four areas of mutual concern—peace, friendship, trade, and an Indian-white boundary.” However, treaties quickly evolved to become the chief means of real estate transfer between tribes and the federal government. The treaty system “was the primary vehicle of [land] transfer. After 1796, when the treaty system was well established, with the federal government

1 Dorothy V. Jones, License for Empire: Colonialism by Treaty in Early America (Chicago, IL: University of Chicago Press, 1982), 95.
of the new United States as the dominant member, the system functioned—for the most part, legally—to reduce the landholdings of the Indians. (After 1871, treaties were no longer made with the Indians, and their landholdings were reduced by other means.)\textsuperscript{2} During the treaty making era, many tribes ceded millions of acres of their homelands and relocated to smaller tracts designated as Indian reservations.

The cost of fulfilling their end of treaty agreements—which meant, essentially, that the federal government had to support thousands of Indians on hundreds of reservations—was so immense that the federal government quickly began to look for solutions to what they termed the "Indian problem." This led to the next phase of federal Indian policy after treaties and the negotiation of land transfers to cut federal costs: assimilation. As is evident in the excerpt from Commissioner of Indian Affairs J. D. C. Atkins's annual report for 1885, federal policy was intended to make Indians self-sustaining by "transform[ing] Indians and their cultures according to Jeffersonian values of yeoman husbandry."\textsuperscript{3}

Commissioner Atkins's 1885 report suggests that Congress was going to seek programs to impress upon the Indians "that they must abandon their tribal relations and take lands in severality as the corner-stone of their complete success in agriculture, which means self-support, personal independence, and material thrift . . . they must give up their superstitions; they must forsake their savage

\textsuperscript{2} Ibid., xi.
habits and learn the arts of civilization." The report also outlined the basic tenets of the assimilation, or civilization, policy that would be adopted in the February 8, 1887 General Allotment Act, also commonly called the Dawes Act after its sponsor Senator Henry Dawes of Massachusetts.

The Dawes Act "delegated authority to the Office of Indian Affairs to allot parcels of tribal land to individual Indians—160 acres to each head of family, 80 acres to each single person over 18 years of age. Each individual allotment would remain in trust (exempt from state tax laws and other state laws) for 25 years." At the end of twenty-five years, Indian landholders were to be issued a fee patent for their allotment and granted American citizenship and the right to vote. Perhaps the most detrimental aspect of the Dawes Act was that, after allotting lands to individual Indians, it provided for the federal government to purchase the "surplus" land and to sell it to non-Indian settlers.

Between 1887 and 1934, Indian land-holdings dropped from 138 million acres to 48 million. What remained of the reservations affected was a checkerboard pattern of ownership, which quickly led to jurisdictional disputes with states that resulted in the additional loss of tribal control over reservation lands and resources. Politically, allotment "eroded the role and authority of tribal government," and subsequently increased the importance of the Office of Indian

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6 24 Stat. 388.

Affairs. Economically, allotment “brought further poverty and loss of land to the tribes.”

8 Allotment was ultimately disadvantageous to the majority of tribes whose lands were allotted, due to the decrease in land base and the increased paternalism of the federal government.

Flathead Reservation Allotment

From 1877 until his death in 1893, Peter Ronan worked as the Indian Agent on the Flathead Reservation with a mixed record. During this time, he enforced federal policies that pushed for the devastation of traditional tribal practices and beliefs, including the banning of “dances, ceremonies, feasts, and other traditional public gatherings. He worked closely with the Jesuit priests to enforce adherence to church law, including imprisonment for adultery or for marriage outside the church.”

9 He withheld rations and other supplies from Indians who resisted sending their children to the Catholic boarding school in St. Ignatius. He also “supported the priests in their ongoing effort to discredit, isolate and disempower non-Christian spiritual leaders and healers.”

10 However, Agent Ronan simultaneously “protected the boundaries of the Reservation against non-Indian intruders, and, unlike many Indian agents, he passionately forwarded the concerns of tribal leaders to officials in

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10 Ibid., 6.
Washington.” As a result, no acts proposing to allot the Flathead Reservation were passed during Ronan’s tenure as agent. Things changed after Ronan’s death when his successors, Joseph Carter (1893) and William Smead (1898) filled the position. A Brief History of the Salish and Pend d’Oreille, published by the Salish-Pend d’Oreille Culture Committee/Confederated Salish and Kootenai Tribes (CSKT/Tribes), reports that when Smead, a former Montana senator and author of an 1895 memorial asking Congress to open the Flathead Reservation to white settlement, “was dismissed as agent [in 1904] under a cloud of corruption, he founded a land agency in Missoula where he used his inside knowledge to help homesteaders locate and gain title to the best lands on the reservation.”

In the late 1800s, hundreds of whites began moving into western Montana at an astounding rate, searching for land of their own. In The Place of the Falling Waters, CSKT tribal member Ron Therriault states that the white mind-set was “the Indians had all this good farming land but weren’t utilizing it.” The fact of the matter, however, was that many of the Indians had been successfully participating in farming and ranching endeavors for decades—without pressure from whites or the federal government’s assimilation policies.

The tribes’ first exposure to ranching and yeoman farming techniques was from the Jesuits in the mid-1800s. For decades later, tribal members used their successful farming and cattle ranching operations to supplement their hunting,

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11 Ibid., 10.
12 Salish-Pend d’Oreille Culture Committee/CSKT, Brief History of the Salish and Pend d’Oreille Tribes [hereafter cited Brief History], revised ed. (n. pub., 2003), 46; Thompson Smith, 12.

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fishing, and gathering activities and traditional culture still thrived. Although the three tribes took to farming and ranching at varying paces, the presence of the Jesuits seemed to be a primary motivating factor. In 1857, Flathead Indian Agent Richard Lansdale wrote that, though they owned four thousand horses and one thousand head of cattle, the Bitterroot Salish “almost wholly neglected the cultivation of the soil” after the 1849 departure of the Jesuits from St. Mary’s Mission in the Bitterroot. In contrast, he reported that since the Jesuits’ return to the Mission valley in 1854, the Pend d’Oreille “have made very marked progress in cultivating the soil. Their crops in 1856 were so abundant as to supply much of their food to many of them.” Lansdale also noted that Pend d’Oreille cattle numbered four hundred head, with horses at three thousand. Conversely, Lansdale wrote that the Kootenais “do not cultivate the soil, except a few at the Mission of St. Ignatius,” but that they did not cross over to the plains to hunt bison as regularly as the Salish and Pend d’Oreille, relying instead on elk, deer, mountain sheep, fowls, and fish.

In addition to the Jesuits’ encouragement, the disappearance of the buffalo pushed the Indians towards more permanently adopting agrarian lifestyles. By 1868, white settlement along the Rocky Mountain front had driven the buffalo from the traditional hunting grounds of the Salish and Pend d’Oreille and into the enemy territories of the Sioux, Cheyenne, and Blackfeet, which “produced an increased desire [for the Flathead tribes] to give up the precarious mode of living

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14 *Brief History*, 48.
15 ARCIA, 1857, 379.
by the gun and bow, and a disposition to turn to the plough and hoe as a surer and safer means of support.”

In 1871, Flathead Indian Agent Charles S. Jones reported that the Pend d’Oreille had seventy cultivated farms, two thousand horses, eight hundred head of cattle, and one hundred hogs. The Salish had thirty-five farms, eleven hundred horses, six hundred head of cattle, and about one hundred hogs. By contrast, Jones noted that the Kootenai had “nothing” compared to the Salish and Pend d’Oreille. By 1874, the Salish were cultivating fifteen hundred acres of land and had 250 hogs, twenty-five hundred horses, and eighteen hundred head of cattle. This trend continued without any aid from the federal government.

By 1877, Peter Ronan reported that six families of Kootenais had “excellent crops of wheat, oats, potatoes, onions, turnips, &c. The tribe also owns 100 head of horned stock and 300 head of horses.” That year, chief Eneas of the Kootenais purchased for the use of his tribe a mowing and reaping machine and a set of blacksmith’s tools, “pledging in payment the money coming to him from [the federal] Government for the next two quarters as chief of the tribe.”

In 1879, Ronan described Indian agriculture, writing that the reservation “is dotted everywhere with Indian farms and habitation, where heavy crops of wheat, besides other grains and vegetables, are raised; and the past year shows a steady increase in the number of Indians thus engaged in civilized pursuits. . . . By reference to accompanying statistics it will be seen that an estimate of some

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16 ARCIA, 1868, 211.
17 ARCIA, 1871, 425.
18 ARCIA, 1874, 51.
19 ARCIA, 1877, 135.
20,000 bushels of wheat, 4,000 bushels of oats, besides large quantities of potatoes, turnips, and other vegetables has been made of the product of the reservation during this season." Without a doubt, the tribes had found economic success through farming and cattle ranching in addition to their traditional modes of subsistence. This success was due to the fact that the tribes were in control of their own resources—land, water, animals, and farms. The successful adjustments that the Indians had made, and were continuing to make, to early reservation life would be severely disrupted by the advent of allotment.

In 1882, Ronan acknowledged the desire of non-Indians to open the reservation for homesteading. After describing the geographical beauty of the reservation, he wrote, "It cannot therefore be a matter of wonder that this country is now looked upon with covetous eyes by advancing settlers, who are drawn hither by the construction of the Northern Pacific Railroad, which has been located, and is now about to be built through the reservation." He continued, "A fierce spirit of opposition still prevails on the part of many of the Indians to the construction; they regarding the road as fatal to their interests, and the sure precursor of the abandonment of their homes and lands to the whites." The tribes had consented to allow the railroad to pass through their reservation only after Assistant Attorney General of the United States Joseph K. McCammon, representing the federal government in the negotiations, promised to "urge upon the government the propriety of granting a desire, which [the Indians] entertain very strongly, viz, that they should have ceded back to them that portion

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20 ARCIA, 1879, 94.
21 ARCIA, 1882, 103.
of the national domain lying between the present northern boundary of this reservation and the forty-ninth parallel, or what is generally known as the British line.\textsuperscript{22} The tribes were correct in assuming that the building of the railroad would attract more whites to the area and hasten the opening of their reservation to non-Indian settlement.

Four years later, in 1886, Ronan again noted the Indians' progress in "civilized" pursuits. He wrote that "16 heads of families . . . purchase[d] from the Geneva (New York) Nursery, at their expense and transportation to this agency, young fruit-trees, such as plum, apple, and cherry, which were planted out into orchards, and which shows the spirit that animates them to compare with, if not rival, the white farmers of the county of Missoula."\textsuperscript{23}

In Ronan's 1887 report to the Commissioner of Indian Affairs (CIA), he addressed the proposed General Allotment in Severalty bill, "At present the Indians of this reservation look with suspicion upon this bill, which no doubt arose from a common inspiration to secure legislation having for its object the making out of the Indian a self-supporting citizen of the United States." He went on to note that a majority of the Indians were against allotment, as they believed that the "residue will be sold by the Government to white settlers." Ronan erroneously assured the Indians that "the severalty provisions of this act has only the legal effect whereby one or more of several owners of land in common can secure the separate and exclusive enjoyment of his share apart from the rest, and

\textsuperscript{22} Ibid. The Tribes understood the 1855 Treaty of Hell Gate to have established the "British line," or Canada, as the northern boundary of their reservation. \textit{Brief History}, 29.

\textsuperscript{23} ARCIA, 1886, 179.
that in law not an acre of land can be taken from the Indian without his consent and in conformity with his title."\textsuperscript{24}

In that same report for 1887, Ronan confirmed that the tribes were successful farmers and ranchers. He stated, "It is a notable fact that the Indians of this reservation each year increase their acreage of planting, and that new families break up and fence in land, until now, in all directions from the agency, the eye is gladdened by the sight of Indian fields of grain, vegetables, and meadows."\textsuperscript{25}

Clearly, many of the Indians on the Flathead Reservation did not need additional encouragement to take up agricultural pursuits; there was a "consistent trend toward economic development primarily through cattle ranching and farming."\textsuperscript{26} Reservation farming and ranching steadily increased as tribal farms and ranching operations began to spread across the reservation and tribal families utilized the lands best suited to their needs. In 1895, Flathead Indian Agent Joseph Carter reported that the tribes excelled at farming and ranching. He commented:

They are not grouped into villages, but each head of family has a definite, fenced, but not allotted, holding, and nearly all make more or less of an attempt at tilling the soil. A large majority live in houses, and use the lodge only in traveling. Many have large well-cultivated farms, some have orchards, and nearly all at least a small garden. Quite a number have accumulated cattle, and a few have amassed a considerable wealth in this business. Last fall fully $40,000 worth of fine beef was shipped direct by these Indians to the Chicago market, one full-blood Indian shipping steers that netted him $6,000. These progressive Indians manage their affairs shrewdly and well.\textsuperscript{27}

\textsuperscript{24} ARCIA, 1887, 140.
\textsuperscript{25} Ibid., 137.
\textsuperscript{26} Lorraine Boehm, "For the Benefit of the Indians: Tribal Responses to Social Engineering on the Flathead Reservation in the Early Twentieth Century" (McNair Scholars thesis, University of Montana, 1998), 29.
\textsuperscript{27} ARCIA, 1895, 190.
Although it appeared that the Indians were developing private land ownership systems similar to whites, theirs differed substantially in that tribal farming and ranching was dependent on the communal land ownership by the tribe. With communal land ownership, the Indians “controlled where and how much land to farm and the size of their herds. This enabled flexibility in their management decisions to capitalize fluctuating market conditions.”

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Boehm, 30.

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Tribal cattle near Stingers on the Flathead Reservation, ca. 1905

(Photograph courtesy of the K. Ross Toole Archives)
Tribal leaders were generally supportive of their people’s farming and ranching attempts on the reservation and many leaders participated in the same ventures themselves. A good economy, whether or not it was based solely on traditional modes of subsistence such as hunting, fishing, and gathering, was desirable because it meant that people’s basic survival needs were being met. Ironically, one of the main impetuses for allotment—to encourage Indians to be self-sufficient—was already the reality without allotment on the Flathead Reservation; thus, implementing the allotment policy on this reservation would have seemed unnecessary. However, what began as a governmental plan to rid themselves of the cost of fulfilling their treaty obligations to tribes quickly became an idea that was very appealing to much of the white population; for them, it was an opportunity to acquire land and to push American citizenship.

Although many traditional tribal leaders favored economic growth by incorporating farming and ranching into their lives, they whole-heartedly opposed the allotment of their reservation. In Carter’s 1895 report, he also wrote, "Allotment in severalty is unpopular with nearly all the full-blooded Indians, and though a few progressive mixed bloods favor it, they, because of its extreme unpopularity, do not openly favor it. I am of the opinion that under the existing feeling and prejudice it is not practicable at present."\(^29\)

In 1896, Congress created a special commission to negotiate land cessions and allotment agreements with several tribes, including those residing on the

\(^{29}\) ARCIA, 1895, 190.
Flathead Reservation. The 1896 Annual Report of the Commissioner of Indian Affairs states, "The Crow, Flathead, etc. Commission . . . has consumed the greater portion of the year conducting negotiations with the Indians of the Fort Hall reservation, Idaho, and of the Yakima reservations, Wash. One or two members of the commission have made short visits to the Flathead Reservation, but no considerable amount of work has been done there. No agreement has yet been negotiated by them."30 The story was the same a year later when Agent Carter stated in his 1897 report, "No allotments have been made, as [the Indians] are extremely opposed to the survey and allotment of their reservation."31

In 1898, the new agent at Flathead, Major William Henry Smead, wrote that the Commission "made a proposition to the Indians for about one-fourth of their lands. The Indians are, however, loth [sic] to sell."32 However, he also commented that the portion of land discussed was one which, to him, seemed fine to sell, since it was "largely occupied, with the exception of Chief Eneas's band of Kootenais, by white men with Indian or half-breed wives."33 Regardless of what was happening on the land, it is clear that the majority of the Flathead Reservation tribes was opposed to allotment and did not want to sell any part of their reservation.

Again in 1899, Smead wrote to the CIA, "No allotments as yet have been made" on Flathead,34 and the Commissioner of Indian Affairs himself reported that the Commission "has divided its time during the past twelve months between

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30 Arcia, 1897, 37.
31 Arcia, 1897, 166.
32 Arcia, 1898, 191.
33 Ibid.
34 Arcia, 1899, 219.
the Crow and Flathead reservations in Montana and the Yakima reservation in Washington, endeavoring to secure agreements with the Indians thereof for the cession of portions of their respective reserves. Negotiations with the Indians of the Flathead and Yakima reservations have not yet been successful.\footnote{35}

Authorization for the Commission for the Crow, Flathead, and others expired on November 14, 1899 and Congress funded a new commission on June 25, 1900 to continue the work. This commission was to focus on Flathead and Yakama,\footnote{36} the two remaining reservations with which the previous commission had been unable to reach an agreement.\footnote{37} The new commission traveled to Montana in October of 1900, where "negotiations were continued until April 3, 1901, during which time the Indians were met in council several times. Chairman James McNeely then finally reported the inability of the commission to secure an agreement with the Flatheads for the cession of a portion of their reserve."\footnote{38} Obviously, the Indians on the Flathead Reservation were unwilling to relinquish any portion of their reservation.

Montana Senator Joseph Dixon would step in at this point and successfully force allotment on the Flathead Reservation tribes. However, tribal leaders continued to work against allotment, sending "countless letters\footnote{39} and making numerous trips to Washington between 1905 and 1910, and even after that, to ask President Theodore Roosevelt to halt allotments and cancel the

\footnote{35}{ARCIA, 1899, 32-33.}
\footnote{36}{Yakama is the modern-day spelling of "Yakima."}
\footnote{37}{ARCIA, 1900, 52-53.}
\footnote{38}{ARCIA, 1901, 49.}
\footnote{39}{One of the letters included a petition signed by 130 prominent tribal men, all objecting to the opening of the reservation. Brief History, 49.}
opening of the reservation. But government officials would not change their decision.\textsuperscript{40}

\textit{Joseph Dixon}

Joseph Dixon was a Missoula lawyer and “part of the Missoula business community, with ties to the Higgins and Worden families and the Missoula Mercantile, which had been trying for many years to get access to the Flathead Reservation’s lands and resources.”\textsuperscript{41} Dixon was elected to the United States Congress in 1902. In 1903, Dixon submitted the first of four bills proposing the allotment of Flathead Reservation and its opening to white homesteading. On December 18, 1903, Senator Dixon submitted House Resolution 8324 to the Committee on Indian Affairs.\textsuperscript{42} This bill called for “the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment.”\textsuperscript{43} Section 17 of House Resolution 8324 contained a provision that called for the approval of a majority of the tribes’ adult male population before it would take effect.

The day after Dixon submitted his bill to the House, he wrote to Flathead Indian Agent William Henry Smead on the reservation asking for suggestions on the bill. He also asked, “What about the provision [in House Resolution 8324] making it take effect only when a majority of the male adults have ratified it?

\textsuperscript{40} Brief History, 49.
\textsuperscript{41} Ibid., 47.
\textsuperscript{42} Congress, House, A bill for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment, 58\textsuperscript{th} Cong., 2\textsuperscript{nd} sess., H. R. 8324, Congressional Record, 38, part 1 (18 December 1903): 393.
\textsuperscript{43} Ibid.
Will that nullify the bill or not? Because the majority of adult males opposed allotment, the provision would likely present a barrier in getting the bill passed.

On January 23, 1904, barely a month after Dixon had submitted his bill to Congress, Secretary of the Interior Ethan A. Hitchcock submitted a report on the bill to the House Committee on Indian Affairs. His report included suggestions

4 Joseph M. Dixon, Montana Senator, to Major W. H. Smead, Flathead Indian Agent, December 19, 1903, Folder 3, Box 5, Ms 55, Joseph M. Dixon Collection, K. Ross Toole Archives, Mansfield Library, University of Montana [hereafter cited Dixon Collection].
for amendments with the most damaging being a proposed amendment to Section 17. He wrote:

This section provides for the consent of the Indians to the provisions of the bill before the same shall become effective. The bill if amended as above recommended, will fully safeguard and protect the rights and interest of the Flathead Indians, and there is no occasion for presenting the matter to the Indians for the purpose of procuring their consent thereto. It is accordingly recommended that said section 17 be entirely stricken out.45

House Resolution 8324 did not make it out of committee, but Dixon did exclude the concept in Section 17 from his next draft, House Resolution 11349.46 House Resolution 11349 also died in committee, and so did his third Flathead allotment bill, House Resolution 11673.47

Dixon’s last attempt to get a Flathead allotment bill through that session was House Resolution 12231, which he submitted on February 11, 1904.48 On February 14, Dixon expressed concern with his bill in a letter to P. M. Reilly, a Missoula businessman. He wrote that the “one trouble in the way of the Flathead Reserve is the fact that we have never had any treaty with the Indians agreeing to the proposition.”49 His fears were put to rest however, on March 17, 1904, when the House Committee on Indian Affairs submitted a report recommending the

45 Congress, House, Survey, Etc. of Flathead Indian Lands, Montana, 58th Cong., 2nd sess., 1904, Rept. 1678, 5.
46 Congress, House, A bill for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment, 58th Cong., 2nd sess., H. R. 11349, Congressional Record, 38, part 2 (29 January 1904): 1404.
47 Congress, House, A bill for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment, 58th Cong., 2nd sess., H. R. 11673, Congressional Record, 38, part 2 (3 February 1904): 1595.
48 Congress, House, A bill for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment, 58th Cong., 2nd sess., H. R. 12231, Congressional Record, 38, part 2 (11 February 1904): 1903.
49 Joseph M. Dixon to P. M. Reilly, February 15, 1904, Folder 2, Box 5, Dixon Collection.
passage of the bill. They called attention to the allotment provision in Article 6 of the Hellgate Treaty and its reference to the Omaha treaty, which treaty, the committee noted, "expressly provides for the sale of all surplus lands, paying the proceeds to the Indians." Additionally, the 1903 U. S. Supreme Court decision in *Lone Wolf v. Hitchcock* asserted the plenary authority of Congress to abrogate treaties to allot and sell Indian lands without tribal consent, as long as it was in the "best interest" of the Indians. Thus, Congress was justified in passing the allotment bill without securing the consent of the Flathead Reservation tribes.

The House passed House Resolution 12231 on April 2, 1904. As it went to the Senate, Dixon began recruiting local support for his bill. On April 4, 1904, Dixon wrote to C. M. McLeod of the Missoula Mercantile Co. that he had been "feeling so good ever since I got the Flathead Bill through Saturday" and that he knew "the Bill can be gotten through the Senate before we adjourn, provided the right kind of work is done and done quick."

Dixon then wrote, "For that reason I wired you to send in the telegrams to both [Senator William] Clark and [Senator Paris] Gibson, urging them to push the thing in the Senate... [Clark] is in New York, but I thought these telegrams might stir him up and get him over here to get these Bills through the Senate." He added, "Senator Gibson will do everything he can, but Clark is a Member of the Indian Committee, and naturally should give the matter his attention. It would be criminal to let the matter go by default after the fight I have had to get through the Congress, House, Survey, Etc. of Flathead Indian Lands, Montana, 58th Cong., 2nd sess., 1904, Rept. 1678, 1-2.


*51* Dixon to C. M. McLeod, April 4, 1904, Folder 4, Box 5, Dixon Collection.
House.” Dixon also noted, “there is no reason on earth why we should not have the Flathead open for settlement within the next few months. When I came here I thought it was an impossibility, but I have put in the greater part of my time working on that one proposition. With Speaker Cannon, I made it a political demand, and told him I would almost trade my hope of Heaven if he would help me get it through the House, which the Old Man did in fine shape.” When Dixon wired C. M. McLeod, he also telegraphed Harry Keith and Sidney Logan at Kalispell, Montana; Leo Faust at Libby, Montana; and Alex Rhone at Plains, Montana, asking them “to fire in the telegrams to the Montana senators urging immediate action.”

Dixon reported that “the medicine must have worked” because both of Clark and Gibson’s secretaries asked Dixon what he had “been doing to the people in western Montana, as they said the telegrams had been coming thick and fast all day long.” Dixon also suggested to McLeod that he should have:

the business men’s association at Missoula hold a mass meeting of some kind and adopt resolutions addressed to Clark and Gibson urging the great importance of the matter, and telegraph them in too. It will keep the thing from getting cold here, and to tell you the truth we need some "ginger" pumped into the situation. Of course, if the Bill does not get through the senate before we adjourn, it will be fresh on the docket in the Senate when we come back here next Fall.54

The Senate approved Dixon’s bill during that session of Congress and on April 23, 1904, President Theodore Roosevelt signed the Flathead Allotment bill into law.

52 Ibid.
54 Ibid.
The 1904 Flathead Allotment Act\textsuperscript{55} forced private land ownership on individual tribal members, making it impossible for the tribes to continue their current system of farming and cattle ranching, which was dependent upon communal ownership of the reservation land. Allotment had a damaging effect on the tribes economically, but it was even more devastating to tribal sovereignty. Prior to allotment, tribal leaders utilized their inherent sovereign right to govern themselves with minimal interference by the federal government. The allotment policy became the catalyst for shifting control of Indian land and Indian people to the federal government; “official” tribal enrollment lists were created and maintained by the federal government and the communally held reservation was divided among tribal members whose allotments were soon fee patented and subject to taxation. All remaining reservation land was deemed “surplus,” purchased by the federal government, and then opened to non-Indian homesteading.

\textit{Interest in Flathead Land}

The prospect of acquiring land on the Flathead Reservation incited immediate interest from people across America. Throughout the month of March 1904, Dixon received numerous written inquiries about his bill asking when the land would be available for homesteading.\textsuperscript{56} J. H. Lynch complimented Dixon “on the good work you are doing for Montana” and requested a copy of the bill with the hope that he might “be in time to procure some of the very choice

\textsuperscript{55} 33 Stat. 302.
\textsuperscript{56} J. H. Lynch to Dixon; R. A. Mullinix \textit{[sic]} to Dixon; Phil Green to Dixon; Geo. B. Dygert to Dixon; Charles M. Blair to Dixon, Folder 2, Box 5, Dixon Collection.
land.” On March 15, the Missoula Chamber of Commerce sent Dixon a letter congratulating him “upon your efforts in regard to the Flathead Indian reservation bill.” Dixon and most of the non-Indian Montana community were intent on getting the reservation open for settlement for various reasons: settlers supported allotment for the prospect of acquiring land and local businessmen knew more people in the area would increase the demand for goods sold in local markets—from food and clothing to fencing and farming machinery.

On January 2, 1904, C. M. McLeod of the Missoula Mercantile Company informed Dixon that “if this bill can become law and can be carried out on the lines you indicated in your bill, it will do more to stimulate business in Western Montana than anything else possibly can.” Another key supporter of allotment was William Henry Smead, former Flathead Indian Agent and now Missoula businessman specializing in “Real Estate, Loans, and Insurance.”

In an informational booklet, titled “Land of the Flatheads,” Smead provided an overview of the area proposed for allotment and homesteading. The booklet also included a copy of the Allotment Act of 1904 signed by President Roosevelt, as well as a detailed description of the reservation’s agricultural results and yields, proximity to markets, mines and mining, live stock, lumber, etc. In the booklet Smead made claims such as:

The statement has been made that the Montana market is the best in the world; The light fall of snow during the winter season has made it possible

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57 J. H. Lynch to Dixon, March 1904, Folder 2, Box 5, Dixon Collection.
58 Charles M. Blair (Missoula Chamber of Commerce) to Dixon, March 15, 1904, Folder 2, Box 5, Dixon Collection.
59 C. M. McLeod to Dixon, January 2, 1904, Folder 3, Box 5, Dixon Collection.
61 Ibid, 73-82.
for [cattle] to feed upon the ranges for twelve months during the year. . . . [The cattle industry in Montana] has made thousands of men, and companies, wealthy; These forests will furnish an almost inexhaustible supply of lumber for many future generations; Montanans know no such thing as failure of crops; Labor in Montana is exceptionally well paid.62

An ad for the W. H. Smead Company follows the enticing literature on the Flathead land.

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**W. H. SMEAD COMPANY**

*(Incorporated)*

**CAPITAL, $50,000.00**  **MISSOULA, MONTANA**

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**Real Estate, Loans and Insurance**

A large list of property for sale in all parts of Montana. We have many properties ranging in price from $1,000.00 to $250,000.00. We have listed a number of the finest cattle and sheep ranches in the West. These are now paying as high as 30% on capital invested.

Farm and Fruit Lands a Specialty. Farm Lands from $10 to $60 per Acre. Improved City Property and Town Lots in Missoula; 5 Acre Tracts Adjoining the City.

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**LOANS AND INVESTMENTS**

We make a specialty of making loans for non-residents. We loan 70% of the actual value of property and require borrower to insure his property in favor of borrower. We require abstracts of all property on which we make loans and have same passed upon by a reputable attorney. We make no charge for handling your money, the borrower pays our commission and attorney fees. Rates of interest from 7 to 10%. 

We refer by permission, as to our responsibility and integrity, to the following Montana business houses and banks:

Missoula Mercantile Company. Capital, $500,000.
First National Bank. Capital and surplus, $225,000.
Missoula Trust and Savings Company. Capital, $100,000.

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**ADDRESS:**

**W. H. SMEAD COMPANY**  **MISSOULA, MONTANA**

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62 Ibid., 87, 99, 103, 111, 115.
Despite all the advertising, the tribes continued to make it obvious that they were not willing to give up any part of their reservation. In 1905, Flathead Indian Agent Samuel Bellow reported that “there have been no allotments made to the Indians on this reservation as yet” and that “a few of the older chiefs and headmen feel that the new state of affairs would deprive them of all semblance of authority.” The fears of the older leaders were realized as several younger Indians and those with mixed blood relented to the pressure and began taking up allotments on the reservation.

Although the reservation was not yet open for settlement, there was much propaganda to lure homesteaders to Montana and it was all made readily available to the public. In 1906, William Henry Smead published another article in The Coast titled, “The Flathead Indian Reservation.” He commented, “The country is splendidly watered; The Flathead reservation has an almost ideal climate; The pure, dry air makes the most healthful conditions prevail. There are practically no contagious diseases; To the miner and prospector these mountain ranges offer many golden opportunities; The [Flathead River falls furnish] one of the greatest opportunities for developing an immense water power to be found in the West.” The article ended with an alluring, optimistic statement:

Flathead reservation will, when opened to settlement, furnish land for thousands of settlers where by labor, industry and thrift, happy and prosperous homes will be builded [sic]. Great mines will be opened up, adding their quota to the world’s wealth. Smelters will be erected to reduce the ores. Sawmills will cut the virgin forests into lumber. Flouring mills will be required to grind the wheat. Cities will spring up to handle the business of this new country, and railroads will be builded [sic] to haul

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63 ARCA, 1905, 241.
its produce to market. Steamers will ply over the great Flathead lake, and on its shores summer homes and health resorts will be built. The abundance of fish and game, together with the perfect climatic conditions, make this an ideal spot for camping, hunting and fishing. The beauty and grandeur of the scenery is unsurpassed in the West. No more lovely country than this can be found, and it will become the favorite resort of the tourist and pleasure-seeker.\[65\]

Interested homesteaders continued to arrive to await the opening of the reservation and the allotment process on Flathead picked up.

In 1906, Commissioner of Indian Affairs Francis E. Leupp reported, "It is believed that the Flathead allotments will be completed at an early date,"\[66\] reporting again the following year that "of the 2,170 persons known to be entitled to allotment, 1,573 had their selections scheduled on July 27, 1907, and the work was proceeding at the rate of about 75 selections a week, which indicates that the field work will be completed by the middle of October."\[67\]

At the end of 1908, Leupp recorded that 2,378 trust patents had been issued to the Indians during 1908.\[68\] He also reported that the "surplus lands here will be opened to settlement under the act of April 23, 1904. ... Approximately 1,000,000 acres will be subject to entry under the homestead, mineral and town-site laws."\[69\] In 1909, the new Commissioner of Indian Affairs, Robert G. Valentine, wrote that allotment at Flathead was completed during the fiscal year 1908. He noted that "allotments of 80 acres of agriculture or 160 acres of grazing lands have been made to some 2,390 Indians."\[70\]
The opening of the reservation had been so heavily publicized since Congress passed Dixon’s allotment bill in 1904 that things only sped up after the President issued his proclamation on May 22, 1909, stating that the reservation would be formally opened in April 1910. Businesses far and near continued to advertise their products recruiting settlers to the area. The Northern Pacific Railway Company, which had recently laid tracks through the reservation, published a pamphlet with the headline, “Uncle Sam will Give you a Home in the Flathead Indian Reservation, Western Montana—Directly on the line of the Northern Pacific Railway.”

71 Morton J. Elrod, “Uncle Sam will Give you a Home in the Flathead Indian Reservation, Western Montana—Directly on the line of the Northern Pacific Railway” (St. Paul, MN: privately printed, 1909), n. pag. (see front cover).
The article inside, written by University of Montana professor Morton J. Elrod, was titled, “Some of the Last Free Government Homestead Land: The Flathead Reservation.” The article opened with a map of the area, including the railroad routes, and the statement, “Prospective settlers will not be disappointed in a visit to the country to be opened for settlement, and are urged to see it for themselves.”\textsuperscript{72} The back page of the pamphlet provided a price list for round trip ticket fares on the Northern Pacific Railway with stops listed to Missoula, Arlee, Ravalli, Plains, Coeur d’ Alene, and Spokane (as the Spokane and Coeur d’ Alene Reservations were also allotted and opened for homesteading at this time).\textsuperscript{73}

On May 23, 1909, the headline of the \textit{Daily Missoulian} was, “President Proclaims Reservation Opening: Taft Signs Proclamation Fixing Dates for Registration and Entry on Valuable Lands. Registration Open From July 15 to August 5: Drawing Will Be Held at Coeur d’ Alene City on August 9 But Entries Will Not Be Permitted Until April 10—Conditions Governing the Opening Are Set Forth in Detail.”\textsuperscript{74} The exact rules and regulations of the act, information on the drawing, and a copy of President Taft’s proclamation followed.\textsuperscript{75}

In June 1909, one year prior to the opening of the reservation, the Montana Press Bureau published the “Pocket Manual of the Flathead Country,” which was a step-by-step guide for people wishing to acquire a homestead on the
Flathead Reservation. Then on May 10, 1910, the headline on the front page of the Daily Missoulian proclaimed: "This Week the Gates Swing Open to the Host of Earnest Homebuilders of the Reservation." The article began, "Long has it been habit to refer to the Flathead Indian Reservation as the 'Land of Promise.' Now this title is no longer meet for the promise is about to be fulfilled." The article addressed the reservation land, the process of allotment and securing a homestead, and discussed the irrigation system that was being constructed which would "make sure that the settler on land watered by the government will never know what a season of drought means."

As the opening day drew near, newspapers throughout Montana announced the opening, many making sure to comment on the extensive tribal irrigation system being constructed to serve the farmers of the reservation. Many also mentioned the Newell Tunnel site on the Flathead River falls where the government planned to build a powerhouse. The Daily Missoulian devoted an entire front page to the subject on April 10, 1910, with the headline, "Reclamation Engineers are Doing Great Work Toward Irrigating the Flathead Reservation."

Promises of easy acquisition of fertile land with the option of irrigation, pleasant weather conditions, and close proximity to good markets all attracted thousands of hopeful homesteaders to the reservation. Everyone wanted a piece...
of the Flathead Reservation. The guidelines of the Act of April 23, 1904 established a five-person committee to survey and appraise the land, as well as to classify it as either first or second-class agricultural, grazing, mineral, or timber land.

All of the non-timber lands were to be sold first, the timber lands being held to be "sold and disposed of by the Secretary of the Interior under sealed bids to the highest bidder for cash or at public auction." The Act also stated that half of the proceeds, after deducting the "expenses of the commission, of classification and sale of lands, and such other incidental expenses as shall have been necessarily incurred, and expenses of the survey of the lands," were to be used partly to fund the construction of irrigation ditches, purchase cattle, farming implements, and other "necessary articles to aid the Indians in farming and stock raising, and in education and civilization." The remaining half was to be "paid to the said Indians . . . or expended on their account, as they may elect."

By the time 1910 came to an end, life on the Flathead Indian Reservation had drastically changed. In less than one decade, the majority of reservation land had been either allotted to individual Indians or sold to whites. Tribal leaders fought the entire process to no avail. Even those who were meant to protect their interests, such as Indian agents and the federal government, did not uphold their duties. The opening of the reservation meant more land and more people moving into the area and that was good for the newly-created state of Montana, as

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82 33 Stat. 302.
83 Ibid.
84 Ibid.
85 Ibid.
increased demand meant increased production, more jobs, and more money flowing through the local economy.

Although it may have benefited the local non-Indian economy, allotment had a widespread negative impact on the tribal economy on the reservation. In 1947, Bert Hansen conducted a “Full Blood Flathead Indian Montana Study Group” where two elders addressed the repercussions of allotment. Sophie Moeise reported that “before the reservation was opened it was easy for people to get rich. It was not fenced and they had free pasture and they had lots of cattle and horses. But since they closed [fenced] up they cannot do that.” Paul Charlot also commented, “I could go anywhere and see the cattle and the horses all over the reservation. The cattle were plentiful. They were everywhere you looked [and] there was Indian horses mixed up with the cattle. Over at the Mission, in Camas Prairie—wherever the Indians lived—it was just the same. They even had buffaloes, and they were the Indian’s [sic] buffaloes. Ever since they threw the reservation open we all went broke and the stock disappeared. There wasn’t an Indian among the tribe that was poor like they are today. They had too much stock and they could not take care of it on the allotments that they got, so the Indian just gave up his ambition and sold their stock and got poor.”

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Besides devastating the tribal economy on the Flathead Reservation, the implementation of the allotment policy also had destructive repercussions on tribal sovereignty. By taking the reservation land out of communal ownership and handing out parcels to individual Indians, the strength of the tribal government was significantly diminished, as their power to oversee (on that particular piece of land) now shifted to the individual Indian, under the closely observing eye of the Office of Indian Affairs.
Indian Office Inspector Major James McLaughlin's issuance of fee patents to "competent" Indian allottees in 1915 contributed to the loss of tribal sovereignty by further decreasing tribal control over reservation land and tribal members. Allottees who received fee patents became subject to paying state property taxes. Often times fee patented allotments ended up in the hands of non-Indians due to the common inability of allottees to make their property tax payments. Before long, much of the reservation's land and resources had been transferred to non-Indian ownership and was beyond the control of the tribal government.

The 1904 Flathead Allotment Act also created complications relating to control of the reservation's natural resources; especially water. After the reservation was opened in 1910, hundreds of non-Indians arrived and began using reservation water and the partially completed tribal irrigation system that was started in 1908. Although tribal funds from the sale of "surplus" reservation land and tribal timber were initially used to begin building the irrigation system, the federal government changed this policy in 1916 due to the fact that approximately ninety percent of the water users were non-Indian. After 1916, Congress began appropriating reimbursable funds to continue construction of the system. Individual irrigators, Indian and non-Indian alike, became responsible for reimbursing the federal government by paying for the construction of the ditches that served their land.

However, reservation irrigators were unable to fulfill their repayment contracts due to the economic depression that swept across the United States in

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the early 1930s. The unresolved and enormous debt of construction for the irrigation system led to the involvement of the Montana Power Company (MPC) in reservation water-related affairs. Part of the agreement allowing MPC to build Kerr Dam stipulated that MPC sell the federal government a block of power at wholesale cost that could in turn be sold to reservation residents at regular price. The profit created by this agreement would go directly towards repaying the federal appropriations and liquidating the irrigation project’s debt of construction.

In addition to the Flathead Indian Irrigation Project and Kerr Dam, other water issues involve the Confederated Salish and Kootenai Tribes’ right to regulate reservation water by looking at Flathead Lake riparian rights, and tribal reserved and aboriginal water rights. The following chapter will review this complex history of water management on the Flathead Reservation.
CHAPTER 3

FLATHEAD RESERVATION WATER

As a matter of law the Confederated Salish and Kootenai Tribes reserved to themselves by their Hell Gate Treaty—did not grant—the title to the lands comprising the Reservation as described in the Treaty. Part and parcel of those lands are the rights to the use of water in the lakes, streams and other sources of water which arise upon, border upon or traverse the Reservation. Those rights, similar to the lands of which they are a part, were not conveyed by the Tribes to the United States—they were retained by the Treaty to meet present and future needs of the Indians. Those rights are not acquired by use nor can they be legally lost by disuse. Those rights are interests in real property having all the dignity of a freehold estate. They are not subject to the laws of Montana and are not open to acquisition pursuant to those laws as distinguished from rights to the surplus water on the “public lands” of the Nation.

William H. Veeder, “Inventory of Rights to the Use of Water on the Flathead Indian Reservation”

The story of Flathead Reservation water is intertwined with the construction of the Flathead Indian Irrigation Project and Kerr Dam, tribal Flathead Lake riparian rights and the Flathead Reservation tribes’ reserved and aboriginal water rights. The Flathead Indian Irrigation Project, later also called the Flathead Irrigation Project, has its roots in the Flathead Allotment Act of 1904. Section 14 of the Act stipulates that one half of the proceeds from the sale of reservation land and timber would be used for, among other things, “the construction of irrigation ditches,” the rationale being that it would encourage the Indians in their agricultural endeavors by bringing water to 150,000 acres on the...
reservation. Because it was originally “for the benefit of the Indians,” tribal monies were to fund the entire project.¹

By the end of 1907, the process of allotting land to individual Indians was nearly complete and on April 30, 1908, Congress authorized the commencement of the irrigation system by appropriating $50,000 to begin the preliminary surveys.² The Office of Indian Affairs arranged for the Reclamation Service to conduct the surveys and to later build the project.³ When the surveys found that much of the reservation could be “successfully and cheaply irrigated,” Congress amended the 1904 Flathead Allotment Act to allow the Secretary of the Interior to put all proceeds from the sale of tribal land and timber toward the irrigation system until it was finished.⁴ By an Act of March 3, 1909, Congress appropriated an additional $250,000 for construction of irrigation systems and authorized the

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¹ 33 Stat. 302; Congress, House, Irrigation of Flathead Reservation, Mont., 60th Cong., 1st sess., 1907, Doc. 419; 35 Stat. 83. The irrigable area of the project was first set at 152,000 acres, although that area was later reduced and today stands at 127,000.
² Ibid; Congress, House Estimate for Irrigation of Flathead Reservation, Mont., 60th Cong., 1st sess., 1908, Doc. 427; 35 Stat. 83; Congress, Senate, Subcommittee of the Committee on Indian Affairs, Survey of Conditions of the Indians in the United States: Hearings before a Subcommittee of the Committee on Indian Affairs, October 18-21, 1933, November 9, 1933, October 17, 1934, part 31: 16821.
³ Shortly after construction began on the irrigation project, conflict arose concerning the Reclamation Service’s practice of cutting timber from power reserves and reservoir sites without paying stumpage to the Tribes. The Reclamation Service argued that the Tribes no longer had an interest in the lands reserved for the power and reservoir sites and therefore were not entitled to payment for any timber taken from the sites. This dispute went unresolved for three decades as the Reclamation Service continued to ignore the bills they received from the Indian Office. Finally, in 1944, the Tribes received $3,452.13 “for timber products cut from tribal lands of the Flathead Project, Montana.” Historical Research Associates, Timber, Tribes, and Trust: A History of BIA Forest Management On the Flathead Indian Reservation, 1835-1975 (Dixon, MT: Confederated Salish and Kootenai Tribes, 1977), 67-69.
⁴ Congress, House, Amending an Act Opening to Settlement the Flathead Indian Reservation in the State of Montana, 60th Cong., 1st sess., 1908, Rept. 1189.
Secretary of the Interior to reserve and withdraw certain lands “valuable chiefly for power or reservoir sites.”

Also in 1909, Congress approved the use of additional tribal monies for the construction of the Newell Tunnel near modern-day Polson, Montana. This tunnel would be dug through the canyon wall at the top of the Flathead River falls in order to divert the river while the federal government built a small power development that would serve the irrigation project. Many tribal members strongly opposed the construction of the tunnel due to the cultural significance of the area; Kootenai elder Tony Mathias later explained that the falls were sacred because “that’s where the spirits were.” Despite tribal opposition, Congress exercised its plenary power over Indians, which the United States Supreme Court recognized in 1903 with *Lone Wolf v. Hitchcock*, and pushed ahead. The irrigation project “would profoundly change the natural water tables of the valley, ruining Indian gardens and devastating the fisheries. In effect, if not in intention, the project was part of the destruction of the economic and cultural independence of the people.”

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6 MPV is born, prod. Salish Kootenai College and dir. Frank Tyro, 30 min. Salish Kootenai College Media Center, 2002, videocassette.

7 *The Place of the Falling Waters*, prod. and dir. Roy Big Crane and Thompson Smith, 90 min. Salish Kootenai College Media Center/Native voices T. V. Works, 1991, videocassette.


9 *The Place of the Falling Waters*. 

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life, those ways were beginning to be rapidly displaced by a dependency on the cash economy.\textsuperscript{10}

The Flathead reservation was opened to white settlement in 1910 and work on the Newell Tunnel and the irrigation system continued.\textsuperscript{11} The irrigation system was to consist of approximately fifteen reservoirs that would collect water from streams coming out of the Mission Mountain Range. The main canal would run along the foot of the mountains, enabling the collected water to be spread over the irrigation project. There would also be another six canals totaling sixty miles, and 910 miles of laterals, as well as three pumping plants, one that would lift 335 feet, one, forty-three feet, and one, seventy-nine feet.\textsuperscript{12}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{image.png}
\caption{Construction of Nine Pipes Reservoir in the Mission Valley}
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\footnotesize{(Photograph courtesy of K. Ross Toole Archives)}
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\footnotesize{\textsuperscript{10} Ibid.}
\footnotescript{\textsuperscript{11} Many of the materials used to build the irrigation ditches were purchased from Missoula Mercantile, in which Montana Senator Joseph Dixon had an interest, and from Beckwith Mercantile in St. Ignatius. \textit{The Place of the Fallowing Waters}.}
\footnotescript{\textsuperscript{12} Congress, House, Subcommittee on Indian Affairs of the Committee on Public Lands, \textit{Flathead Irrigation Project, Montana: Hearings before the Subcommittee on Indian Affairs of the Committee on Public Lands, 80\textsuperscript{th} Cong., 2\textsuperscript{nd} sess., February 16-19, 1948, March 4, 1948, 6.}
\end{flushright}

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White irrigators quickly grew to outnumber Indian irrigators as thousands of non-Indians entered the area and began farming. Soon, the ethics of using tribal funds to pay for an irrigation system used mostly by non-Indians were called into question. In a 1914 report titled, “Irrigation Problems in Montana,” S. M. Brosius of the Indian Rights Association wrote:

Unless the Government is very prompt in protecting the interests of these Indians, they will suffer loss in water rights, being almost reduced to bankruptcy, and suffer hardship as a result of these unwarranted conditions. . . . The Indians [on this reservation] are doomed, under existing laws, to suffer gigantic wrongs through legislation enacted within the past ten years which provides for the construction of irrigation projects on their tribal lands.13

Brosius concluded that it was unfair for the tribes to be forced to pay for the construction of the irrigation system when “their white neighbors” utilized it more than the Indians. He also commented that it was a precarious situation for the tribes, as they “may suffer loss of their assets by reason of the failure of the irrigation projects.”14 This spurred the federal government to alter the system for funding the project. The Act of May 18, 1916 provided for the reimbursement of all tribal funds used thus far on the irrigation project and stipulated that from this point forward, individual landowners would be responsible for the cost of the irrigation system construction that served their lands.15 This now included Indian

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14 Ibid.
15 39 Stat. 123. Of the $300,000 tribal funds used, only $235,000 was returned until 1948, when Section 5 of H. R. 4736 called for the amounts of $64,161.18 and $409,38 to be reimbursed as well. In the House Hearings before the Subcommittee on Indian Affairs of the Committee on Public Lands (80-1), discussion of this section led William Lemke (of North Dakota), to double-check the reason for Section 5: “Feeling it had not been morally or rightfully taken from them; is that right? Congress generally does not return things they take—from Indian tribes at least.” Congress, House, Subcommittee on Indian Affairs of the Committee on Public Lands, Flathead
lands, which had been exempt prior to 1916. No longer able to use tribal money, the federal government was now forced to front reservation irrigators the money needed to complete the irrigation project.

A decade later, Congress appropriated reimbursable money to begin construction of the proposed power development at the Newell Tunnel site, the tunnel having been completed in 1911.\(^\text{16}\) This development was to be a small-scale power plant, undertaken exclusively by the federal government, to help the Flathead Indian Irrigation Project by furnishing roughly 15,000 horsepower for pumping to supplement the gravity water supply for irrigation. This action resulted in what secretary of the American Indian Defense Association John Collier\(^\text{17}\) called “complete confiscation,” as no use fees of any kind would be paid to the tribes for the water pumped into the reservoirs and canals, which would be used by a majority of non-Indian irrigators. But an “uninformed Congress, led by the Indian Bureau and by [Louis C.] Cramton of Michigan, enacted the appropriation bill joker,”\(^\text{18}\) approving the construction.

Although money had been appropriated, construction could not begin until repayment contracts had been drawn up to ensure that the federal government would be reimbursed. During the next two years, several irrigation districts were created under Montana state law, providing entities able to enter into repayment


\(^{\text{17}}\) In 1933, President Franklin D. Roosevelt appointed John Collier as Commissioner of Indian Affairs.

\(^{\text{18}}\) “Flathead Power Site Contest Record Made Complete,” American Indian Life, Bulletin No. 16 (July 1930): 12.
contracts with the federal government. The irrigation districts “do not own any assets. They are simply collection agencies.”\textsuperscript{19} Representatives from the irrigation districts make up the Joint Board of Control, which board has “limited authority to assist in the operation and maintenance of [Flathead Indian Irrigation] Project works and with construction debt repayment contracts.”\textsuperscript{20}

Repayment contracts went unfulfilled as economic times grew difficult in the years leading up to the Great Depression. Poverty swept over the reservation and within a short time the Indians, who had grown more dependent than ever on the cash economy, were almost completely reliant upon government rations for survival. Many white farmers on the reservation also faced economic ruin.\textsuperscript{21} Despite these realities, “more Congressional appropriations were used with little or no repayment to the federal government.”\textsuperscript{22} Government officials wanted to complete the irrigation project as soon as possible so it could begin generating money, but completing it meant that they had to continue fronting millions of dollars. By 1926, this had resulted in a $5,141,497 debt for the irrigation project and an estimated $2 million still needed for completion.\textsuperscript{23}

In his 1926 report, Commissioner of Indian Affairs Frank Knox addressed the situation in depth. He explained that although 112,000 acres were “under ditch,” only 29,839 acres were actually getting water, which meant that each acre

\begin{quote}
\textsuperscript{19} Congress, House, Subcommittee on Indian Affairs of the Committee on Public Lands, \textit{Flathead Irrigation Project, Montana: Hearings before the Subcommittee on Indian Affairs of the Committee on Public Lands, 80th Cong., 2\textsuperscript{nd} sess., February 16-19, 1948, March 4, 1948, 19.}
\textsuperscript{21} \textit{The Place of the Failing Waters}.
\textsuperscript{22} Inez Siegrist and the Publication Committee, \textit{In the Shadow of the Missions, Part II} (Ronan, MT: Mission Valley News, 1986), 46.
\end{quote}
irrigated cost about $175, while the gross crop value for the same acre averaged about $19. Knox wrote, “Even if every acre of land available were brought under ditch, after an expenditure of $2,000,000 more, the average cost per acre of putting water on the land would be $60. The present cost is an impossible one, viewed from an economic standpoint, and the ultimate cost, if the project were completed and all land put under ditch, would be prohibitive.” It was precisely this repayment dilemma and the prospect of having to fund the rest of the project that led to the Montana Power Company’s involvement in the irrigation project.

_Montana Power Company and the Flathead Indian Irrigation Project_

The Montana Power Company (MPC) was part of a chemical-fertilizer-metallurgical monopoly under the direction of John D. Ryan with Frank M. Kerr as vice president and general manager. The American Power and Light Company owned MPC, Washington Water Power Company, Pacific Power and Light Company, and Puget Sound Power and Light Company, which in turn formed one of the Electric Bond and Share Company groups. In 1931, Robert Gessner wrote in _Massacre: A Survey of Today’s American Indian_, that in 1930, the Electric Bond and Share Company grossed $53,263,165, netting $41,095,006, which meant that the company “takes each year an excess of profit of 4.7 percent on its assets, that is, profit above the legally permitted earnings. This has been accomplished by the Montana Power Company slashing its earnings through the giving of reduced rates to its affiliated Anaconda Copper Company. In other

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24 Ibid.
words, taking money from one pocket and depositing it in another but keeping the valuable pants on all the time.”

MPC had contracted with the Anaconda Company to “deliver 25,000 kilowatt-hours and upward at a date two or three years hence,” but they did not have a development to provide that power. They saw the tribes’ sacred falls on the Flathead River as the solution, while the federal government viewed MPC’s wealth as the answer to the financial hole into which they had dug themselves.

Part of the Flathead River falls before Kerr Dam

(Photograph courtesy of C. Owen Smithers)

27 *The Place of the Falling Waters.*
At a private meeting in February 1927, representatives from MFC, the Flathead Irrigation District, the Office of Indian Affairs (OIA), and the Federal Power Commission met in Washington, D. C. to discuss the situation.\textsuperscript{28} Tribally selected attorney A. A. Grorud was not present at the meeting, as the OIA refused to recognize his appointment. Additionally, the OIA refused to release tribal funds to pay him for the work he preformed as the tribes' lawyer.\textsuperscript{29}

After negotiating, the four parties reached an agreement that gave MFC permission to build a hydroelectric dam at the Newell Tunnel site on Flathead River. The agreement stipulated that MFC would pay a rental fee for use of the site, sixty percent of which, according to critic John Collier, would go to “the organized whites [or the irrigation district] of the Flathead region, whose legal, equitable or moral claim on the rentals is zero,”\textsuperscript{30} and ten percent to the Federal Power Commission. This left only thirty percent for the tribes, despite the fact that Section 17 of the Federal Water Power Act of 1920 stipulated that, “all proceeds from (power development on) any Indian reservation shall be placed to the credit of the Indians of such reservation.”\textsuperscript{31} This meant that the irrigation districts, made up of more than eighty-five percent white settlers, would not have been entitled to any money, even though they were “drawn by the Bureau into an unwise and unprofitable venture which is likely to prove disastrous to them unless

\textsuperscript{28} John Collier, “Is the Bursum Indian Raid to be Outdone with Montana Victims?,” \textit{American Indian Life}, Bulletin No. 9 (September 1927): 3.


\textsuperscript{31} Collier, “Are our Treaties with The Indians Scraps of Paper?,” 4.
the charges are reduced.\textsuperscript{32} The agreement also stipulated that MPC would reimburse the federal government the $101,000 they had spent thus far on the Newell Tunnel, "an ill advised and abortive expenditure undertaken not in the interest of the Indians, but of the irrigation district."\textsuperscript{33}

The authorization for governmental development of the power plant at the Newell Tunnel site had to be rescinded before the site could be developed by MPC. This fact made it necessary to bring the matter before Congress—though the agreement with MPC was hidden inside another bill, taking the form of an amendment to the Second Urgent Deficiency Bill.\textsuperscript{34}

In a letter to Congress, President of the United States Calvin Coolidge stressed that deficiency fiscal legislation was needed. He also expressed his approval of Director of the Bureau of the Budget H. M. Lord's proposal, which addressed the still-incomplete Flathead Indian Irrigation Project (FIIP), repayment problems, and MPC's proposal. Lord concluded his proposal by stating that the Secretary of the Interior "believes the acceptance of this proposal would be advantageous to both the Indians and the irrigation project."\textsuperscript{35} With the support of so many officials involved, the House passed the bill, no questions asked.

The House had passed the bill on very short notice, on the recommendation of the President and others involved, but what happened in the Senate is another story. The agreement had become public by this time, due to the efforts of John Collier and the American Indian Defense Association; the

\textsuperscript{32} Ibid., 8.
\textsuperscript{33} Ibid., 4.
\textsuperscript{34} Collier, "Is the Bursum Indian Raid to be Outdone with Montana Victims?", 3.
\textsuperscript{35} Congress, House, \textit{Irrigation Systems, Flathead Reservation, Mont.}, 69th Cong., 2nd sess., 1927, Doc. 757, 2.
Indian Rights Association; the National Council of American Indians; the National Popular Government League; tribal attorney A. A. Grorud; and U. S. Congressmen Burton K. Wheeler, Thomas J. Walsh, Lynn J. Frazier, and Robert M. LaFollette. The Second Urgent Deficiency Bill was killed in the Senate.

After eleven months of in-depth examination of the agreement, the Senate took action in 1928 that essentially repealed the “Cramton confiscation rider” of 1926, reestablished tribal ownership of the power-sites, and found that all rental fees, “other than a nominal payment to the Federal Power Commission, should belong to the tribes. The House concurred. The following year, through a subsequent amendment, it was provided that all rentals, without exception, should belong to the tribes.”

Congress and government officials focused on deciding the correct allocation of the rental fee MPC would pay, as though MPC was the only entity that had applied for the license. However, the tribes had already signed a lease agreement with Walter H. Wheeler, a Minneapolis, Minnesota engineer whom the tribes specifically solicited to submit a bid to develop the site.

Wheeler proposed to sell the power to chemical, metallurgical, and fertilizer companies that would be attracted to the area by the unprecedented low

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rates at which he proposed to sell the power.\(^\text{38}\) He also offered "to sell the generated power at fifteen dollars per horse-power year, or about one-half of the average switchboard rate of the MPC and 58 per cent below that company's wholesale rate to customers other than the Anaconda Copper Company."\(^\text{39}\) Wheeler also offered to pay the tribes a rental fee of $1.12 ½ per horsepower year, while MPC offered them only $1.00.

When Wheeler submitted his bid the tribes immediately signed a contract with him for development of all the power sites.\(^\text{40}\) However, a Congressional memorandum on the issue stated:

Attention may be called to the agreement between Mr. Wheeler and the Flathead Indian Tribal Council made in December, 1927, in which that council agreed to accept Mr. Wheeler's offer of $1.12 ½ per developed horsepower. This agreement has of course no standing in law, because the Secretary of the Interior alone has the legal right to bind the Government in its trust for these Indians. Naturally the Indians have never been in a position to analyze the actual earnings of their power sites.\(^\text{41}\)

The MPC deal appealed more to the federal government than Wheeler's offer, as Wheeler's did not include an agreement to reimburse the government for the cost associated with building the Newell Tunnel, and more importantly, it made no mention of FIIP and offered no way of liquidating the $5 million debt.

Another aspect of this controversy was that the final agreement would affect the general public; MPC's development of the site would eliminate competition in the power producing business, giving MPC (or the Electric Bond and Share Company) full authority to dictate power rates. Although the federal

\(^{38}\) "The Flathead Power Site Contest Record Made Complete," 14.
\(^{39}\) Ibid.
\(^{40}\) Gessner, 315.
government cannot regulate power rates within state boundaries, they could have created competition by issuing the power development license to someone other than MPC. 42

Despite the advantages of Wheeler's proposal, to both the tribes and the public, "he was met by the argument: 'You cannot sell the power; you cannot attract the industrial market.'" Wheeler and the tribes petitioned for the preliminary permit to be issued to Wheeler, "on the strength of which customers can be signed up and finances demonstrated." 43 In the end, the federal government chose to issue the power development license to MPC's "dummy corporation," Rocky Mountain Power, on May 30, 1930. "Ignoring all questions of tribal sovereignty, the [OIA] merely saw a way to clear the debt on the still uncompleted irrigation project. Big business and big government together pursued a destruction of the tribal way of life." 44 Kerr Dam would become the funding for completion of FKP and the way the federal government would be reimbursed for the millions of dollars they had spent on the project to this point.

The license gave MPC permission to build a power project at the sacred falls on the Flathead River, four miles south of Polson, Montana. The Federal Power Commission required MPC to enforce Indian-preference hiring during construction of the dam and, despite the sacred nature of the area, many Indians worked to build it. By that time, "the independent tribal economy had been largely broken as a direct result of federal policies. Native people had become

43 "The Flathead Power Site Contest Record Made Complete," 15.
44 However, by the time the dam was completed in 1939, the license had been transferred to MPC. The Place of the Falling Waters.
poor and dependent on the cash economy for their survival, so the sudden chance to earn good wages loomed larger than their cultural and spiritual objections to the dam."45

Indians at the Kerr Dam Dedication

(Photograph courtesy of C. Owen Smithers)

45 The Place of the Falling Waters.

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At the time of the initial agreement, MPC was to pay a rental fee of $140,000 a year to the tribes. The rental fee was increased to $235,000 a year in 1955, when MPC was allowed to build an additional generator. One provision of the lease stipulated that MPC renegotiate its lease of the Kerr Dam site every twenty years. After the first twenty years, MPC and the tribes came together to renegotiate, but it was not until 1972 that the rental fee was increased to $950,000 a year, retroactive to 1959, totaling a one-time payment of $11.25 million. The rental fee was again increased to $2.6 million in 1979.

In 1933, MPC's lease was cancelled briefly when they defaulted and the tribes unsuccessfully attempted to take over management of Kerr Dam. Although MPC's license was reinstated, the tribes would continue to apply for management of the dam. Knowing that MPC's 50-year license would expire in 1980, the now reorganized Confederated Salish and Kootenai Tribes (CSKT/Tribes) tribal council approved a resolution in March 1975 to apply for the Kerr Dam license. The Federal Energy Regulatory Commission (FERC) did not understand that the water originally belonged to the Tribes; the hearing examiner viewed the situation as simply another licensing issue. Since the Tribes could not prove that they had a buyer for the power, FERC directed the Tribes and MPC to negotiate a settlement. MPC posed two offers to the Tribes: "an annual payment of $5 million or continuation of the current payment of $2.6 million a year, plus a

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46 Ibid.
47 "Tribes Bid to Take Over Kerr Dam License," Char Koosta News, 1 April 1975, 2.
48 The Flathead Reservation Indians reorganized in October 1935 under the Indian Reorganization Act of 1934, after which their official name changed to the Confederated Salish and Kootenai Tribes.
49 The Place of the Falling Waters.
onetime, up-front payment of $5,000 to each tribal member.”50 When the tribal council refused both offers, a division was sparked within the tribal community. The self-appointed Kerr Dam Relicensing Team, a group of tribal members represented by spokespersons E. W. Morigeau, Stella Morigeau Jamison, William Gefeller, and Pat McAlphin, were in favor of MPC’s latter offer that included the up-front payment of $5,000. Although the Kerr Dam Relicensing Team circulated a petition that was signed by numerous tribal members, the tribal council took no action when Morigeau presented it to them.51

When a final settlement was reached in 1985, it specified a fifty-year joint license between MPC and the Tribes, with MPC in control of the dam for thirty years and turning it over to the Tribes in 2015, for the remaining twenty years. For the “first 30 years, MPC will pay the Tribes $9 million a year in quarterly installments. . . . At the end of 30 years, the Tribes will pay MPC its net investment in the facility which will be the cost of construction plus subsequent improvements, minus depreciation. MPC will train tribal members to operate the dam so the transition period will go smoothly.”52 The $50 million a year produced by Kerr Dam will also go to the Tribes at that time. The Tribes spent the revenue from the joint offer settlement for “per capita payments, assistance to

51 “Petitioners take their show on the road,” CharKoosta News, 1 June 1984, 1.
52 “KERR SETTLED: Tribes to get more money and license, but . . . ,” CharKoosta News, 16 October 1984, 1.
the elderly, financial aid to students, land acquisition, economic development, and buying the dam facilities in 30 years.”

In 1996, MPC offered the Tribes the option of buying the dam outright, nineteen years before their rental license expired. MPC president Bob Gannon stated that the dam had become too expensive to run, partly due to the deregulation of the electrical utility industry; the “higher-than-expected FERC imposed mitigation costs of $47.4 million;” and the annual rental fee paid to the Tribes. The Tribes hired economist and CSKT tribal member Ronald L. Trosper to analyze the offer, which they quickly rejected after Trosper found that the Tribes made more money from the rental fee than they would if they were to own and operate it themselves. After the CSKT declined to purchase the dam, MPC sold it to PPL Montana. Aside from Kerr Dam, there are other water control issues at stake on the Flathead Reservation.

CSKT’s Right to Regulate Reservation Water

A debate has long persisted between the CSKT and the reservation’s non-Indian landowners over who should control the bed of the southern half of Flathead Lake below the high water mark. The Tribes claim ownership by virtue of the wording in the 1855 Hellgate Treaty, which outlines the northern boundary of the reservation as “the point halfway in latitude between the northern and

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southern extremities of the Flathead Lake. In the surveying phase of the allotment process, a government surveyor determined the high water mark at an elevation of 2,893 feet. When the reservation was allotted, many of the lands immediately bordering Flathead Lake were taken out of trust and divided into "villa sites" that were sold to the wealthier non-Indian settlers who arrived in 1910. All properties on the southern half of the lake ended at this elevation.

It was not until 1930, when MPC received the license to construct Kerr Dam, that the issue of who owned the lake bed arose; prior to this, it had been considered "public domain, and property owners felt free to do whatever they wanted with it." After the license was issued, the Federal Power Commission required MPC to pay the Tribes a rental fee for using the site and the water. However, between the 1930s and the 1970s, "there were several federal court cases involving the Tribe's ownership of the power value and the lake bed. One went all the way to the U.S. Supreme Court."

In 1973, the Tribes sued Polson resident and marina owner James M. Namen in federal court on the grounds that Namen's docks, breakwater, and storage shed extended past the high water mark and were therefore trespassing on tribal land. This was based on a 1968 tribal ordinance that allowed the Tribes to "establish environmental engineering specifications for structures occupying the

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58 Ibid.
59 Ibid.
Federal District Judge William J. Jameson found that
"although the Tribes do own the bed of the lake, non-Indian lakeshore owners
share a so-called riparian right to use lake bed lands adjacent to their property. . . .
The ruling, however, left open the question of to what extent landowners could
exercise their riparian rights." The Tribes appealed to the Ninth Circuit Court of
Appeals in San Francisco and lost. The U. S. Supreme Court refused to hear
further appeals.

In November 1975, the city of Polson, with the encouragement of
members of Montanans Opposed to Discrimination (MOD), filed a suit against
the Tribes to attempt to prove that Polson did not lie within reservation
boundaries and that the reservation in fact no longer existed, claiming that
Congress intended to dissolve it with the passage of the 1904 Flathead Allotment
Act. The state of Montana later filed a motion intervening on behalf of the City
of Polson.

In 1977, the Bureau of Indian Affairs (BIA) approved the Tribes'
Shoreline Protection Ordinance 64-A. This recognized the Tribes' right to
"enforce dock restrictions and engineering and to assess annual lease rentals for
structures and landfills." Acting Commissioner of Indian Affairs Raymond V.
Butler wrote:

Timely implementation of this Ordinance will fill the vacuum left by the
absence of state jurisdiction and enforcement of conservation measures,
and will ensure that the ecological balance of Flathead Lake and its

62 Ibid.
64 The Office of Indian Affairs was renamed the Bureau of Indian Affairs in 1947.
65 "Flathead Lake Jurisdictional Background: Who Owns What?,” 1.
shoreline are not irreparably despoiled by unregulated development. The Bureau views this Ordinance as a necessary step by the Confederated Salish and Kootenai Tribes for the preservation of their natural resources and fully endorses the motivation behind the creation of the Ordinance.  

Shortly after the Tribes enacted the Shoreline Protection Ordinance, they amended their complaint against Namen, adding allegations that Namen’s structures violated Tribal Ordinance 64A and degraded water quality as well as interfered with tribal fishing rights. In June 1977, the Polson suit was consolidated with the Tribes’ suit. The United States intervened as a plaintiff in October 1977. In December 1977, “the United States, as trustee for the Tribes, filed a separate lawsuit against Polson and Montana, seeking a declaratory judgment that the Flathead Reservation had not been terminated and that the Tribes had authority to regulate use of the bed and banks of the south half of the lake. That suit was consolidated with the other two.”

The year 1977 was a busy year for tribal leaders. In addition to the ongoing water rights litigation concerning the Namen case, the Tribes began the process of applying for contract management of FIIP’s power division by requesting technical assistance from the BIA. The Tribes’ primary motivation for wanting to contract management was the fact that all of the water being used by FIIP was owned by the Tribes “by virtue of the 1855 Hellgate Treaty and

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66 “BIA Approves Shoreline Ordinance,” CharKoosta News, 1 August 1977, 1; Upon approval of the ordinance, the Tribal Council established a seven-member board with non-Indian representation to carry it out. Tribal members fill four of the seven seats; the remaining three are filled by a representative from the Lake County Commissioners, Polson City Council, and the Flathead Lakers.  
68 Ibid.  
Winters Doctrine Rights. [Winters v. United States\textsuperscript{70} was a 1908 U. S. Supreme Court decision which established the principle of reserving future beneficial use of reservation water for Indians.\textsuperscript{71} Also in 1977, the CSKT filed three separate suits against the Lake County Commissioners; Can-Mont Corporation of Polson; and Clyde Thompson of Big Arm, Montana.

The suit naming the Lake County Commissioners maintained that the Commissioners attempted to enforce the State of Montana Shoreline Protection Act on the reservation, outside of their jurisdiction. The second suit concerned “a landfill on the east shore of Flathead Lake, which has done irreparable damage to the shoreline.” The Tribes filed the third suit after Clyde Thompson was charged with “dredging the bed and bank of Flathead Lake on the west shore near Big Arm, in order to construct a man made inlet. Thompson’s property is a villa site and does not possess riparian rights under present court definition.”\textsuperscript{72} The CharKoosta News points out that these three cases show “the lack of a regulatory authority to control development on the lake. The Tribes are the only government agency on the reservation with the legal authority to check development and to assess environmental impact of the lake and surrounding area.”\textsuperscript{73}

On April 8, 1980, Montana’s Federal District Court determined that: 1) the U. S. holds title to the southern half of the Flathead Lake bed in trust for the Tribes; 2) the Flathead Reservation was not dissolved in 1904 with the Allotment Act; and 3) the Tribes did not have authority to regulate riparian rights. All the

\textsuperscript{70} Winters v. United States, 207 U. S. 564 (1908).
\textsuperscript{71} "A Number of Agencies Eying Reservation Water," CharKoosta News, 15 March 1975, 9.
\textsuperscript{72} "Tribes Expand Suit," CharKoosta News, 1 August 1977, 2.
\textsuperscript{73} Ibid.
parties involved appealed and on January 11, 1982, the Ninth Circuit Court of Appeals reaffirmed points 1 and 2 and reversed the third. On November 1, 1982, the U. S. Supreme Court declined to review these findings.

After the Appeals Court’s ruling in January 1982, the tribal council created the Water Resources Program to monitor water and to “quantify the volume and quality of water on and flowing through the Flathead Reservation.” Upon determining that instream flow levels, which were dictated by FIIP’s distribution of water, threatened the existence and preservation of tribal fisheries in violation of the Hellgate Treaty, the Tribes, in July 1985, “commenced an action to enjoin the dewatering of streams and reservoirs.” Because the BIA administered FIIP, the U. S. was named as defendant. However, upon that motion, the Court permitted the Joint Board of Control (JBC) to intervene, since the JBC represented “the 2,000 water users served by FIP, and of the State of Montana, which claimed an interest arising from its statewide water adjudication process.”

At the time of the hearing, the Tribes and the U. S. presented the Court with a stipulation that set forth certain procedures by which instream flows and

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76 The program was revamped and renamed the Water Management Program in 1989 and now consists of “a network of over 80 continuous recording surface water gauging stations and over 40 groundwater monitoring wells . . . [that] provided crucial technical data for the management of the Reservation water resource.” “Water Management,” Official Website of the Confederated Salish and Kootenai Tribes; available from http://www.cskt.org/nr/water; accessed 7 June 2004.
78 Ibid.
minimum water levels for reservoirs were to be established. Upon acceptance of this stipulation by all parties, the Court dismissed the case.\textsuperscript{79}

Over the course of the following year, the JBC “expressed concern that it was not being included in the decisionmaking [sic] process, but merely asked to comment on a decision already made,”\textsuperscript{80} and on August 4, 1986, the JBC filed suit against the BIA in Federal District Court, claiming that the BIA “abused its discretion by wholly failing to consider the rights and interests of JBC members in its efforts to develop a water allocation plan for the 1986 irrigation season.”

The Court granted a motion to intervene by the Tribes and “after an ex parte hearing at which both sides appeared, on August 6, 1986, [the Court] issued a Temporary Restraining Order enjoining the Project from continuing implementation of the 1986 interim flows established by the BIA.”\textsuperscript{81}

Ron Therriault, CSKT tribal council chairman at the time, stated, “The lawsuits might name the Bureau of Indian Affairs and the Department of the Interior, but in fact they’re a direct shot against Tribal self-government, here on Flathead and across the country.” Therriault continued, “The Joint Board, through the lawsuits and the attendant publicity, are trying to escalate the issue into an Indian-versus-non-Indian war, just like what happened over ten years ago with the Namen (lakeshore jurisdiction) case.”\textsuperscript{82}

\textsuperscript{79} Ibid.
\textsuperscript{80} Ibid.
\textsuperscript{81} Joint Board of Control v. United States and Confederated Salish and Kootenai Tribes, 832 F. 2d 1127 (1987), court denied, 486 U. S. 1007 (1988).
In Joint Board of Control v. United States, District Judge Charles Lovell found that "it was improper for the BIA to look only at Tribal demands in establishing instream flows and pool levels for the Project." Additionally, Lovell determined that "the JBC has sustained its burden of showing a likelihood that the BIA’s decision was arbitrary and constituted an abuse of discretion. In the presence of a sufficient showing of irreparable injury, this warrants issuance of a preliminary injunction." 83

In his opinion, Judge Lovell also addressed the 1985 Comprehensive Review Report, Flathead Indian Irrigation Project. Lovell noted that the report recommended "that management of the irrigation division be transferred to the water users themselves, and that administration of the power division be transferred to the Tribes" also pointing out that the report "reflects many of the problems expressed by the parties to this litigation. The authors found a ‘serious lack of communication and coordination’ between the Project, the Tribes, the JBC and the Flathead Agency.” Lovell commented that although the 1985 report was "available at the time the Bureau was making its determinations with respect to 1986 interim flows [they appear] not to have proceeded cautiously and conscientiously in making those determinations." 84

Lovell’s reference to the possibility of turning over management of FIIP to the water users hit on a lively decades-long debate between the JBC and the Tribes. In an editorial in the March 1, 1984 issue of Char Koosta News, chairman of the JBC Everitt Foust stated that "turnover [of the FIIP] to user

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84 Ibid.
control has been anticipated for over 70 years and actively sought for nearly 20.”

The JBC based their right to assume management control of the irrigation project on a “turnover” provision included in the Act of April 30, 1908. They claimed that “Congress intended control of the Project to go over to the ‘water users’ when a majority of the debt of construction had been repaid to the federal government,” also alleging that “the water users have paid for the construction cost associated with both [of FIIIP’s power and water] systems.” The Act of April 30, 1908, however, contains no turnover provisions of any kind; it simply appropriates $50,000 for “preliminary surveys, plans, and estimates of irrigating systems to irrigate the allotted lands of the Indians of the Flathead Reservation in Montana and the unallotted irrigable lands to be disposed of under the Act of April twenty-third, nineteen hundred and four.”

The only mention of a turnover provision concerning FIIIP is found in the 1948 U. S. House of Representatives Hearings on the proposed resolutions affecting the Flathead Indian Irrigation Project. Proposed Section 9 (e) of House Resolution 5669 contained “a provision whereby after the irrigators have shown their ability to pay their debt and manage the project, the project will be turned over then to them for operation, care, and maintenance.” However, during the hearings, Montana Representative Wesley A. D’Ewart, chairman of the House Subcommittee on Indian Affairs of the Committee on Public Lands,

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85 35 Stat. 83.
87 35 Stat. 83. See Appendix B of this dissertation for copy of 35 Stat. 83.
88 Congress, House, Subcommittee on Indian Affairs of the Committee on Public Lands, Flathead Irrigation Project, Montana: Hearings before the Subcommittee on Indian Affairs of the Committee on Public Lands, 80th Cong., 2nd sess., February 16-19, 1948, March 4, 1948.
made the important point that "there is nothing in this contract that proposes ever to turn this thing over to the irrigators for their operation, care, and maintenance. In other words, it proposes in perpetuity to have the Indian Bureau run this thing instead of the irrigators." The final draft of House Resolution 5669, the Act of May 25, 1948, contained no mention of a turnover provision, only mandating: "Electric energy available for sale through the power system shall be sold at the lowest rates which, in the judgment of the Secretary of the Interior, will produce net revenues sufficient to liquidate the annual installments of the power system construction costs . . . and the irrigation system construction costs [which were] chargeable against the lands embraced within the project."90

Thus, the JBC's claim that the irrigators had repaid the debt of construction to the federal government was unfounded, as was their claim that it was the intent of Congress, via a turnover provision, to turn over management of FIIP to the irrigators. However, if the Act of April 30, 1908 would have contained a turnover provision, it would not have meant a turnover of management to the JBC, as the 1908 Act was written at a time when all water users on the reservation were still Indian.91

Mission Valley Power, CSKT Reserved Fishery Waters, and Tribal Sovereignty

In May 29, 1987, almost three hundred non-Indian irrigators drove their tractors and pickup trucks to a field near the Tribal Business Complex in Pablo.

89 Ibid., 27.
90 62 Stat. 269, Section 2 (g). See Appendix C of this dissertation for copy of 62 Stat. 269.
91 "More about the Flathead Irrigation Project," 2.
They came to voice their dissatisfaction with the management situation of the FIIP to Flathead Superintendent Wyman Babby. The irrigators had three main points of contention: “First, they were upset that their per-acre cost of water was due to increase by $1.62 in 1988. Second, they say this summer’s proposed minimum in-stream flow levels favor the Reservation’s fisheries over its farmers. Lastly, they don’t agree that the BIA should be in charge of FIIP. It’s their water and their project, they contend.”92 The irrigators failed to take into account that the Tribes own the rights to all the water on the reservation. Originally, the irrigators were supposed to pay for the construction of the ditches to their property, and some probably did. But ultimately, the construction of the ditches and the entire irrigation system was financed by federal appropriations that were later reimbursed by all reservation residents via an agreement whereby the U. S. purchased 15,000 horsepower from MPC “at the bus bar,” which was then sold to reservation residents at regular price. The profit margin went directly towards repaying the federal appropriations and liquidating FIIP’s debt of construction.93

Also during the 1980s, the issue of proposed tribal management of FIIP’s power division arose again when the non-Indian FIP Electric Cooperative Task Force launched a campaign to keep the Tribes from managing it. The Task Force was pushing for the power division to be managed by a rural electric cooperative, run by a board of trustees. This was in response to the tribal council’s unanimous vote on July 18, 1986 to adopt a resolution of intent to contract under the

92 Congress, House, Subcommittee on Indian Affairs of the Committee on Public Lands, Flathead Irrigation Project, Montana: Hearings before the Subcommittee on Indian Affairs of the Committee on Public Lands, 80th Cong., 2nd sess., February 16-19, 1948, March 4, 1948, 24-25.
provisions of Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, for the management of FIIP’s power division. Under this act, Indian tribes are able, upon the Secretary of the Interior’s approval and lengthy demonstration of their abilities, to contract with the BIA to take over management of certain BIA-run programs on their reservations.

In September 1986, Montana Senator John Melcher, siding with the Electric Cooperative Task Force, attempted to stop the Department of the Interior from signing a utility management contract with the Tribes. Melcher amended the Department of the Interior’s FY-87 appropriations bill to include a provision that would have prohibited the Secretary of the Interior from transferring management control of the power division from the BIA to the Tribes. Melcher’s amendment was thrown out on October 7.

On October 21, 1986, Assistant Secretary of the Interior Ross Swimmer signed the contract to allow the Tribes to operate and manage the electric power distribution system of FIIP, which was renamed Mission Valley Power (MVP). Shortly afterwards, the JBC attempted to enjoin the Tribes from assuming management of MVP, which attempt was denied in an unreported district court opinion. At first, the non-Indian reservation population was very critical of the Tribes’ ability to run MVP, which motivated the Tribes to hold public meetings where reservation residents could voice their concerns. The Tribes also created a

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95 “Management of FIIP power division may be decided soon,” CharKoosta News, 10 October 1986, 1.
Utility Board and Consumer Council; prior to tribal management, there was no public or consumer input available concerning the operation of the utility.

The Utility Board’s role is to set the policy direction for the system. This includes “developing a plan of operations, rate schedules, annual budgets, supervision of the general manager, oversight of annual reports and audits, and operational planning.” Utility Board member, David Rockwell, explains that the Utility Board has a leadership role when it comes to rate changes: “The staff comes with a recommendation to the Board, and generally that recommendation is based on an independent cost of service analysis and revenue requirement study that is done by an outside consulting firm.” This study “tells the utility how much money they should be bringing in; the cost of service study tells the utility how those costs should be distributed among our various ratepayers.” MVP is quick to point out that the tribal council plays a minor role in the rate change process; the council comments on the change like any other customer.

The purpose of the Consumer Council is to “provide the consumer with the opportunity to participate in the development of the policies and rate structure. They also hear appeals of complaints of power consumers.” The Consumer Council is made up of seven members who are selected based upon the location of their residence, not on tribal membership. One member is selected from Missoula County, one from Sanders County, two from Lake County, and three at-large. All representatives must reside on the reservation. Today, consumer-friendly MVP.

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98 MVP is born.
99 Ibid.
100 Ibid.
101 Ibid.
is one of the best-maintained utilities in the state of Montana and offers its customers one of the lowest rates in the U. S. MVP operates solely on the money received from the power consumers.102

The Tribes’ contract for management of the power division of FIIP affirmed tribal sovereignty by recognizing the Tribes’ right to participate in matters that affect them. Although the contract did not permit the Tribes to assume full ownership of FIIP, the managerial role it offered was “a historical milestone for the Salish and Kootenai Tribes and [their] quest for self-determination.”103

Another affirmation of tribal sovereignty was the final ruling in Joint Board of Control v. United States.104 After the District Court’s ruling, the Tribes appealed and on November 17, 1987, the Ninth Circuit Court of Appeals reversed the District Court’s order granting the motion for the preliminary injunction on the grounds that it failed “to accord potentially superior tribal fishing rights the protection that federal law gives them against claims and considerations of junior appropriators.” Judge Canby stated, “Because any aboriginal fishing rights secured by treaty are prior to all irrigation rights, neither the BIA nor the Tribes are subject to a duty of fair and equal distribution of reserved fishery waters. Only after fishery waters are protected does the BIA, acting as Officer-in-Charge of the irrigation project, have a duty to distribute fairly and equitably the

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102 Ibid.
104 Joint Board of Control v. United States and Confederated Salish and Kootenai Tribes, 832 F. 2d 1127 (1987).
remaining waters among irrigators of equal priority."105 On May 16, 1988, the U. S. Supreme Court refused to review the case, leaving intact the Ninth Circuit Court’s ruling.106

Challenges to Tribal Sovereignty Continue

In December 1984, the Montana Supreme Court determined in State ex rel. Greely v. Water Court of State of Montana,107 to realign the parties negotiating Indian reserved water rights in the state of Montana. After agreeing with several of the Montana tribes that Montana Attorney General Mike Greely and the Montana Water Court are not “adverse parties and that as a result a live controversy does not exist,” the Supreme Court realigned the parties “so that opposing views on the substantive issues may be properly presented.” The Court determined that the negotiations should be between the state of Montana/the Montana Water Court (petitioners) and the United States of America/the individual Indian tribes of the state of Montana (respondents).108

A year later, in December 1985, in State ex rel. Greely v. Confederated Salish and Kootenai Tribes, the Montana Supreme Court found, in part, that the state of Montana’s constitutional provision disclaiming jurisdiction over lands held by Indians did not prohibit the Montana Water Court from exercising jurisdiction over Indian reserved water rights due to an amendment to the federal statute that allowed state courts concurrent jurisdiction. The Court also found that

105 Ibid. (Emphasis in original.)
108 Ibid.
the Montana legislature’s enactment of the Water Use Act constituted valid and binding consent of the people to grant state jurisdiction over Indian reserved water rights.\textsuperscript{109} This ruling, in addition to other ongoing water rights related events at the time, brought the CSKT to the negotiating table in an attempt to reach out-of-court settlements. Final settlements were never reached and the negotiations eventually came to a complete halt. The issue was set aside until 1995 when the state of Montana attempted to issue new water use permits on the reservation, forcing the Tribes to take the state to court. This time, as well as in all subsequent instances regarding the issuance of water use permits on the reservation, the court ruled in favor of the Tribes.\textsuperscript{110}

For example, in 2001, the state of Montana issued a water use permit for Reginald Lang to bottle groundwater tapped from below his property on the Flathead Reservation. Tribal attorneys immediately filed a case directly with the Montana Supreme Court and on December 6, 2002, the Court ruled in \textit{Confederated Salish and Kootenai Tribes v. Stults}, that the state cannot issue use permits.\textsuperscript{111} In a 5-2 ruling, the Supreme Court declared that “reservation groundwater is included in the ban on state permitting.”\textsuperscript{112}

Justice Terry N. Trieweiler wrote, “We cannot say it more clearly: the [Montana Department of Natural Resources and Conservation] cannot process or

\textsuperscript{112} “Court ruling favors Confederated Salish and Kootenai Tribes’ water rights,” \textit{CharKoosta News}, 12 December 2002, 1.
issue beneficial water use permits on the Flathead Reservation until such time as the prior pre-eminent reserved water rights of the tribes has been quantified.\(^{113}\)

Judge James C. Nelson concurred and harshly criticized dissenting Justice Jim Rice for his stance, which ignored tribal reserved water rights and previous court rulings that established and reaffirmed them. Nelson wrote, “These rules do not originate in rocket science: Indians own their reserved water rights; those rights are superior to state appropriative water rights; to date those reserved water rights have not been quantified as to amount or priority on the Flathead Reservation; therefore the State cannot grant to some third party a right to appropriate or use water that the State may not own.”\(^{114}\)

In the same vein, Chris Kenny of the Federal Negotiating Team working with the Tribes and the state of Montana to quantify the Tribes’ reserved water rights, comments that the Tribes believe and can make a very good case for their right to access all the water on the reservation due to the fact that the reservation


\(^{114}\) Confederated Salish and Kootenai Tribes v. Stolls, 312 Mont. 420, 59 P. 3d 1093, 2002 MT 280. Judge Nelson also stated: “If as the dissent states, this Court’s trilogy of cases is ‘legally artificial,’ then the bench, bar and public are owed a legal explanation and analysis as to why that is so. If, as the dissent postures, there is a ‘crisis’ and ‘calamity’ of ‘monumental’ proportions threatening ‘civilization’s advancement and, indeed, its survival’ on the Flathead Reservation, then, to be fair and intellectually honest, the dissent should be prepared to demonstrate unequivocally why this Court’s prior opinions and instant decision are legally incorrect and how we have erred in applying the clearly established legal principles and the extensive body of federal law and jurisprudence that govern Indian reserved water rights—principles, law and jurisprudence which, incidentally, this Court did not create, but is, nonetheless, constitutionally obligated to follow. As is written, the dissenting opinion will accomplish little more than provide sound bites for media; further strain relations between Indians and non-Indians and the Tribal and State governments; and provide fodder for those who, as a matter of course and in furtherance of their own misguided agendas, misrepresent to the public the law and this Court’s opinion. More to the point, instead of railing against settled law, the dissent’s frustration might be more profitably directed towards encouraging the State to put its unqualified efforts into quantifying the Tribe’s reserved water rights using the legal tools provided, instead of constantly trying to devise statutes to thwart those rights.” Confederated Salish and Kootenai Tribes v. Stolls, 312 Mont. 420, 59 P. 3d 1093, 2002 MT 280.
was created for their use and nothing has transpired to change that. He states, “as trustee, the federal government has the right to protect the resources that came about as a result of the creation of the reservation.”

In June 2001, the Tribes submitted their water rights proposal to the state and federal negotiating teams. The Tribes’ seven-page proposal titled, “A proposal for negotiation of reserved and aboriginal water rights in Montana, June 2001,” contains six main points and attempts to “solve the apparent dilemma between tribal ownership and the existence of junior water users on the reservation by defining a reservation-wide tribal water administration and water management program that will recognize tribal ownership and recognize existing users.” The Tribes hope that their proposal will speed the process of quantifying the reserved water rights from “a decade or more” to “maybe even five years.” Additionally, the Tribes state that they do not want to hurt any reservation water users—Indian or non-Indian—and that they do not plan to “turn off the spigot to any water users.”

Although repeatedly challenged, the CSKT’s right to regulate and manage reservation water has been recognized and upheld by the courts and aggressively asserted by the Tribes. While the Tribes’ management of water has not drawn significant protests from the tribal membership, due mostly to the fact that Indians make up approximately ten percent of the reservation’s farmers and ranchers, reservation water policy affects them the same as it does non-Indians. However,

\[\text{\textsuperscript{115}}\text{ Blood of the Earth: Water Rights on the Flathead Indian Reservation.} \]
\[\text{\textsuperscript{116}}\text{ Ibid.} \]
\[\text{\textsuperscript{117}}\text{ Ibid.} \]
\[\text{\textsuperscript{118}}\text{ Ibid.} \]
the low occurrence of Indian ranchers and farmers—of the 4,742 tracts of land
utilizing the irrigation system, only 536 are tribal trust lands—lends validity to the
Tribes’ claim that their plans for water management reflect their concern for the
past, present, and future of their people and cultures.119

In terms of tribal sovereignty and government responsibility to its citizens,
the Tribes are making decisions based upon the best interest of the greatest
number of their people, as well as the best interest of the tribal government, while
also attempting to preserve the resource for future generations of tribal members.
This ideal fades when examining tribal policies for managing the reservation’s
forest resource; these policies reflect the Tribes’ need for supplemental income
due to funding limitations derived, in part, from their management contracts and
compacts with the federal government. Although the Tribes are ensuring their
general tribal membership various benefits derived from the sale of tribal timber,
they are making it difficult for individual tribal member loggers to compete with
the larger non-Indian commercial logging companies that purchase most of the
reservation’s timber sales. This situation is the focus of Chapter 5 and will be
addressed after the following chapter, which examines the rapid evolution of
Flathead tribal governing systems and the resulting effects on tribal sovereignty.

119 Flathead Irrigation Project, interview by author, telephone interview, 6 May 2005; Joint Board
of Control, interview by author, telephone interview, 6 May 2005. Although approximately 11.3
percent of the lands served by the irrigation project are held in trust by the federal government,
there are additional tribal member farmers and ranchers who own land in fee. As both the
Flathead Irrigation Project and Joint Board of Control track irrigation water use based on land
status, an exact number of tribal members using the irrigation system cannot be determined.
However, the Joint Board of Control estimates that the property tax exemption of trust lands offers
enough incentive for many tribal members, especially those farming or ranching large acreages, to
keep their lands in trust status.
CHAPTER 4

THE ROAD TO TRIBAL SELF-GOVERNANCE

Today we are proud of our accomplishments. We continue to achieve greater self-reliance through our leadership in self-governance, diversifying our economic base, protecting our homelands, improving family services, and by expanding the educational and job opportunities that allow our communities the strength they need in this day. As strong nations, our future leaders will draw from the lessons of those who have gone before. The children of today will be the ones to protect the rights of our people tomorrow. The right to determine our own destinies as the proud tribes of the Confederated Salish, Kootenai and Pend d’Oreille Nations.

Letter from the Tribal Council Leadership, Confederated Salish and Kootenai Tribes 2004 Annual Report

Although the federal government’s assimilation policies directing Flathead Reservation land allotment, the management of the Flathead Indian Irrigation Project, and the disposal of reservation timber, affected tribal sovereignty by restricting tribal control over resources and livelihoods, the federal government’s establishment of a Flathead Business Committee in 1910 instigated the first drastic changes to the tribal governing structure. After the reservation was opened in 1910, Flathead Superintendent Fred C. Morgan established the Business Committee, which consisted mainly of whites married to Indians and “progressive” mixed-bloods. The Business Committee became the federally recognized decision making body on the reservation regardless of the objections of other tribal groups.

Thompson Smith writes, “the Committee’s arbitrary establishment gave rise, over the ensuing two decades, to the formation of numerous groups claiming to be the legitimate representatives of the tribe.” One such group was the so-called Tribal Council. In addition to Flathead Reservation tribal members, the Tribal Council also included some non-Indians and Indians from other tribes. It consisted of a president, two vice presidents, a secretary and treasurer, three trustees, sixteen delegates, and nine chiefs. The Tribal Council was organized in 1916 by members of the tribal community who were upset when the Interior Department failed for a decade to hold elections—which were supposed to be held every two years—to enable tribal members to elect new Business Committee members.

In 1917, a Tribal Council delegation traveled to Washington, D.C. as representatives of the Flathead Reservation. While the Tribal Council was in D.C., the Business Committee protested “against any agreements or contracts entered into by them on behalf of the Indians of the Flathead Reservation, as said Indians do not represent the Flathead Reservation, and should not be recognized as representing this reservation in any way.” Upon their return, the Tribal Council wrote to the Commissioner of Indian Affairs, requesting that the Indian

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2 Ibid. Thompson Smith also notes that during this time, “hundreds of millions of board feet of virgin timber, much of it old growth Ponderosa pine, were logged off of Tribal lands in secretive arrangements with private logging firms and almost no scrutiny from tribal members.” Thompson Smith, 14-15. Smith cites National Archives PAR 299: Report on Logged over Ponderosa, 1937.

3 Theodore Sharp, Flathead Indian Agent, to Superintendent to Cato Sells, Commissioner of Indian Affairs [hereafter cited CIA], June 16, 1920, 109764-1919-056, Central Classified Files, 1907-1939, [hereafter cited CCF], Flathead Reservation, Record Group [hereafter cited RG] 75, National Archives and Records Administration, Washington, D.C. [hereafter cited NA]. (Reel #8, frame 1077)

4 Flathead Delegation to Cato Sells, CIA, April 22, 1920, 109764-1919-056, CCF, Flathead Reservation, RG 75, NA. (Reel #8, frame 1091)

5 Proceedings from meeting of the Business Committee, January 6, 1917, 1438-1917-056, CCF, Flathead Reservation, RG 75, NA. (Reel #8, frame 0410)
Office “recognize the authority of the Flathead Tribal Council, which is regularly organized and represents the will, wishes and the power of the tribes occupying the Flathead Reservation . . . we especially request that in the future all proposed leases or sales of tribal property affecting the tribal rights of the Flathead Nation of Indians be submitted to the Flathead Council in writing.”

This led to much confusion in the Indian Office over whether the Business Committee or the Tribal Council was the authorized governing body of the tribes. The fact that Indian Office officials in Washington, D. C. sometimes appropriated tribal funds to cover the Tribal Council’s travel costs only added to the confusion. This latter act was one that Flathead Indian Agent Theodore Sharp declared lent “color to their claims that they are recognized by the authorities as duly qualified representatives of the tribe, and lays the foundation for other and additional trips by themselves and other self-elected delegations who may desire ‘a trip to Washington.’”

When, in 1921, the Indian Office ordered “that no money shall be paid from Government funds nor from tribal funds held in trust by the Government, for the payment of expenses, etc. of Indians or Indian delegations coming to Washington unless special authority to make such visit at Government or tribal expense is obtained in advance,” they essentially overruled the tribal people’s right to express themselves through any means other than the federally recognized

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6 Flathead Delegation to Cato Sells, February 18, 1918, 10804-1918-056, CCF, Flathead Reservation, RG 75, NA. (Reel #8, frame 0556)
7 Theodore Sharp to Cato Sells, January 1, 1920, 109764-1919-056, CCF, Flathead Reservation, RG 75, NA. (Reel 8, frames 1103-1104)
8 Charles H. Burke, CIA to Thomas J. Walsh, U. S. Senator, November 10, 1921, 35851-1921-056, CCF, Flathead Reservation, RG 75, NA. (Reel, #9, frame 0033)
Business Committee. Despite opposition to their claims of authority, the Tribal Council continued to be politically active, holding frequent meetings, passing tribal resolutions, and adopting numerous people into the tribe—many of whom the Business Committee had rejected for enrollment. The Tribal Council also continued to maintain that “any other delegated or representatives selected by the Business Committee, the Superintendent at Dixon, Montana or otherwise are imposters and not representatives of the Flathead Nation.”

The Business Committee was also politically active during this time, concerning themselves with issues such as tribal enrollment and allotment processes; the conservation of birds, fish, and wildlife; as well as implementing the use of hunting and fishing permits on the reservation. The Business Committee also spent a significant amount of time protesting the actions of the Tribal Council and the Council’s relentless assertions that they were the true representatives of the tribes.

The confusion grew so intense that Assistant Commissioner of Indian Affairs E. B. Meritt directed Frank E. Brandon, Indian Service Special Supervisor, to “proceed to Flathead Agency and investigate conditions referred to in the office file herewith which embrace the proceedings of a so-called tribal council.” Brandon reported back that the Tribal Council personnel “is not such as

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9 Fred C. Campbell, Flathead Superintendent, to CIA, March 15, 1921, 109764-1923-056, CCF, Flathead Reservation, RG 75, NA. (Reel #8, frames 1023-1024)
10 Resolutions adopted by the Flathead Tribal Council, January 21, 1922, 35851-1922-056, CCF, Flathead Reservation, RG 75, NA. (Reel #9, frame 0032)
11 Proceedings from meeting of the Business Committee, January 6, 1917, 1438-1917-056, CCF, Flathead Reservation, RG 75, NA. (Reel #8, frame 0410)
to inspire confidence, and leaders are principally mixed blood Indian agitators who desire publicity."\textsuperscript{12}

However, in response to Brandon's claims, on April 22, 1920, Tribal Council member Mary Lemery attempted to validate the authority of the Tribal Council when she wrote that the Interior Department "has refused to officially recognize the [Tribal Council] representatives selected by the Flathead people at a general council. The result is that the members of the tribe refuse to recognize the council recognized by the Department, and the Department refuses to recognize the council recognized by the Indians. My people desire only fair treatment and the Department certainly can desire only a dependable expression of my people."\textsuperscript{13}

Despite the fact that the Business Committee remained the federally authorized decision maker for the tribes, the Tribal Council continued to claim to be the governing body and continued to hold meetings, draft resolutions, and forward the proceedings of Tribal Council meetings to officials in Washington, D.C. Commissioner of Indian Affairs (CIA) Charles H. Burke's 1923 efforts to clarify the issue of legitimacy only deepened the federal government's involvement in tribal affairs. On January 23, 1923, CIA Burke wrote to the Tribal Council that "to avoid confusion and disputes arising from different groups of Indians holding meetings and claiming" to be the authorized representatives of the tribes, all Flathead tribal government meetings had to be called by official order.

\textsuperscript{12} Frank E. Brandon, Indian Service Special Supervisor, to E. B. Meritt, Assistant CIA, April 22, 1921, 19764-1919-056, CCF, Flathead Reservation, RG 75, NA. (Reel #8, frames 0659-0660).
\textsuperscript{13} Flathead Delegation to Cato Sells, CIA, April 22, 1921, 109764-1919-056, CCF, Flathead Reservation, RG 75, NA. (Reel #8, frame 1091)
or held under the supervision of the Flathead superintendent. Burke also stated that proceedings not showing official action or not submitted to the Indian Office by the superintendent would not be considered "official." This meant, Burke informed them, that the Indian Office would consider all future proceedings of Tribal Council meetings as unofficial.\textsuperscript{14} Although opinions varied concerning the form that the tribal governing system should take, Burke’s actions infringed upon the Flathead Reservation tribes’ inherent right to determine for themselves the most suitable form of tribal government, thus limiting tribal sovereignty.

\textit{Tribal Opposition to the Governing Systems}

Interestingly, there existed as much tribal member opposition to the Tribal Council as to the Business Committee. Several older full blood Indians were skeptical of the Tribal Council. In a speech they asked to be transcribed and sent to Flathead Superintendent Charles E. Coe, Sah Pierre, Pellasie Kizer, and Michel Deleware, stated that they were “worried about what the [Tribal Council] will do. The Council was called by breeds who came here from other tribes. They have no real rights here. They have been holding councils for a long time and trying to do things against the Redman.” The three men also expressed their beliefs that the Tribal Council used fear tactics to get Indians to signs papers and that the Tribal Council would destroy the Indians’ trust relationship with the federal government. They closed by stating that “while only a few of us came here this morning there

\textsuperscript{14} Charles H. Burke, CIA to Thomas Burland, President of the Flathead Tribal Council and Richard McLeod, Vice President of the Flathead Tribal Council and Philip A. Moss, Secretary of the Flathead Tribal Council, January 27, 1923, 35851-1923-056, CCF, Flathead Reservation, RG 75, NA. (Reel 9, frame 0016)
are many who stand behind us and with the Government against what these outsiders are wanting to do.”

However, not every full blood tribal member opposed the Tribal Council, and the Business Committee had several supporters as well. Tribal members’ opinions concerning what was best for Indian people varied and were “indicative of one thing—Indian people’s desire to take care of their own business. Although the Business Committee derived its power from federal recognition, it nonetheless represented a form of self-governance on the reservation. On the other hand, the Tribal Council did not need recognition by the federal government to exist, organize, and gain power. They defined self-governance as an inherent right—one that always existed in various forms—not something that was created or allowed by the U.S. government.”

Their power to recognize the reservation’s “real” tribal governing body imbedded the Indian Office in tribal politics and decisions concerning the reservation. Instead of realizing their goal of furthering Indian self-sufficiency, the federal government’s interference in tribal affairs more often worked to further federal paternalism and to create tribal factions. This fact became evident to a variety of people in Congress and the Indian Office, resulting in a reform movement in the 1920s and several changes to federal Indian policy.

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15 Sah Pierre and two other full-blood tribal members to Charles E. Coe, Superintendent, January 16, 1923, 35851-1923-056, CCF, Flathead Reservation, RG 75, NA. (Reel #9, frames 0019-0020)
Federal Indian Policy Reform Movement

The realization that allotment and other assimilation policies were not working prompted a reform movement during the 1920s. The direction of this movement was influenced by numerous studies on the conditions under which Indians were living. One of the first such studies was “The Red Man in the United States,” by G. E. E. Lindquist, for the Inter-church Movement in 1919. Although Lindquist’s report exposed reservation poverty and disease, it had little effect on federal Indian policy “because it was written in old-style missionary language and spoke optimistically about those Indians who walked the ‘Jesus Road’.”

In 1922, Florence Patterson, a registered nurse who worked for the American Red Cross, conducted a second study at the request of CIA Charles H. Burke. Patterson’s report, “A Study of the Need for Public Health Nursing on Indian Reservations,” revealed substandard health conditions on reservations and in boarding schools and the lack of Office of Indian Affairs’ (OIA) effort to rectify the situations. Like Lindquist’s, Patterson’s study had little affect on federal policy. However, Congress authorized more intense studies in 1926, one of which would greatly influence future federal Indian policy. Congress authorized the studies after the OIA “rather crudely introduced a measure to formalize the reservation courts of Indian offenses by giving them jurisdiction.

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18 Ibid., 43.
over certain enumerated offenses and civil matters under rules and regulations prescribed by the secretary of the interior."\textsuperscript{19}

When the federal government held hearings on the proposed measure, so many tribes and tribal supporters voiced opposition that in the end the hearings worked mostly to "demonstrate the inadequacy of the [OIA's] management of Indian affairs."\textsuperscript{20} After the hearings, Secretary of the Interior Hubert Work asked the Brookings Institution to study the situation. The result was two major reports: \textit{The Office of Indian Affairs} (1927), by Laurence F. Schmeckebier and \textit{The Problem of Indian Administration} (1928), by Lewis B. Meriam and associates. Meriam's report received more attention, "because, unlike Schmeckebier's historical account, it offered policy recommendations."\textsuperscript{21}

\textit{The Problem of Indian Administration}, or the Meriam Report as it is popularly known, declared that the federal policy of assimilation was not working; the OIA was not meeting the health or educational needs of Indians; and, among other things, Indians were absent from the management of their own affairs.\textsuperscript{22} In their book, \textit{The Nations Within: the Past and Future of American Indian Sovereignty}, Vine Deloria Jr. and Clifford M. Lytle write that the major recommendation of the Meriam and other reports "involved the appropriation of more funds and the increase of efficiency in delivering existing government services to the Indians." However, it became evident that "no reforms would be

\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
\textsuperscript{21} Ibid., 44.
\textsuperscript{22} Sharon O'Brien, \textit{American Indian Tribal Governments} (Norman, OK: University of Oklahoma Press, 1989), 80-81.
lasting or significant unless they were tied to a larger revision of federal Indian policy.\textsuperscript{23}

In 1928, Congress commissioned additional studies\textsuperscript{24} but it was not until Franklin D. Roosevelt took office as President and appointed Harold Ickes as Secretary of the Interior and John Collier as Commissioner of Indian Affairs that any significant changes took place.\textsuperscript{25} In February 1934, Collier instigated a transformation that revolutionized Indian affairs when he submitted a bill to the U. S. House of Representatives as House Resolution 7902 (and to the Senate as Senate Bill 2755). Edgar Howard of Oklahoma sponsored the bill in the House and Burton K. Wheeler of Montana sponsored it in the Senate. Collier's bill reflected several issues addressed in the Meriam Report. The bill was forty-eight pages with four main titles: "Indian Self-Government;" "Special Education for Indians;" "Indian Lands;" and "Court of Indian Affairs." The House Committee on Indian Affairs made suggestions for thirty amendments. After the bill had gone to Congress, Collier organized ten Indian congresses (in Oklahoma, Arizona, Oregon, California, and Wisconsin) to inform Indians about the bill and to gain their support. Recommendations and suggestions made by the Indians during these meetings were encouraged.

Throughout the course of the meetings, it became evident that many Indians were misinformed about the bill and many were simply against it. Some feared that individuals who still held their allotments would be forced to give that

\textsuperscript{23} Deloria and Lytle, 53-54.

\textsuperscript{24} "Report of Advisors on Irrigation on Indian Reservations," "Preston-Engle Report" (1930); "Law and Order of Indian Reservations of the Northwest" (1932); "An economic Survey of the Range Resources and Grazing Activities on Indian Reservations (1932).

\textsuperscript{25} John Collier served as Commissioner of Indian Affairs from 1933 until his resignation in 1945.
land to the tribe. There were a number of testimonies and speeches for and against the bill. Overall, Collier’s proposals were very controversial within the national Indian community.

After the Indian congresses, Collier faced the Senate Committee on Indian Affairs where Burton K. Wheeler was chair. If Collier thought that Senator Wheeler would be supportive because he had sponsored the bill, he was wrong. Throughout the hearings, Wheeler, a firm believer in assimilation, managed to rewrite the entire bill to suit his own ideas. Deloria and Lytle state, “Without tracing the whole history of the hearings, there would have been no way to link the final version to the draft of the original proposal submitted by Collier.”

The bill was held up in the senate for so long that Collier convinced Harold Ickes and Secretary of Agriculture Henry Wallace to approach President Roosevelt and urge him to give the bill a high priority. On April 28, Roosevelt sent letters to Howard and Wheeler stating that he strongly supported the bill, and urged them to take immediate action. On June 18, 1934, Roosevelt received the bill and signed it into law as the Indian Reorganization Act.

Although the Indian Reorganization Act (IRA) did not incorporate all of Collier’s larger ideas, such as a National Court of Indian Affairs, it did include many of the smaller ones. Ultimately, the IRA put an official end to the allotment of reservation lands and:

- extended indefinitely the trust period for existing allotments still in trust.
- The Act also authorized the Secretary of the Interior to restore to tribal ownership any “surplus” lands from the tribes under the Allotment Act, so long as third parties had not acquired rights in that land. The Act

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26 Deloria and Lytle, 138.
27 48 Stat. 984.
authorized the Secretary to acquire lands and water rights for the tribes, and to create new reservations.28

Although the IRA made steps toward returning some self-governing powers to tribes, it was not designed to confer complete autonomy and not all tribes were inclined to adopt it. Each tribe had to specifically vote against the IRA for it not to be implemented. Because many of the Indians who were against the IRA were traditionalists, they avoided voting at all. This lack of votes against the IRA was counted as votes for it.

Ultimately, 181 tribes voted for the IRA, and seventy-seven (including the Klamath, Crow, and Navajo) did not. During the congressional hearings, Congress excluded Oklahoma and Alaska Indians from the bill. However, in 1936, Congress passed the Oklahoma Indian Welfare Act, which extended to Oklahoma tribes many of the same opportunities provided for in the IRA. Also in 1936, Congress passed the Alaska Indian Welfare Act to extend to Alaska Natives all of the IRA sections, where before they fell under only six. The few exceptions were those sections that referred to tribal lands and reservations.

The IRA on Flathead

When Congress passed the IRA in 1934 the Flathead Business Committee favored reorganization and after a tribal vote of approval, the Flathead Nation signed on as the first U.S. tribe to be reconstituted. After their October 28, 1935 reorganization under the IRA, the tribes of the Flathead Reservation became

officially known as the Confederated Salish and Kootenai Tribes (CSKT/Tribes).  

Section 16 of the IRA, "established a basis for the adoption of tribal constitutions approved by the Secretary of the Interior, which could not thereafter be changed except by mutual agreement or by an act of Congress."  

A circular letter from the Commissioner of Indian Affairs that explains Section 16, which is called "Tribal Organization:"

Under this section, any Indian tribe that so desires may organize and establish a constitution and by-laws for the management of its own local affairs. Such constitution and by-laws become effective when ratified by a majority of all the adult members of the tribe, or the adult Indians residing on the reservation, at a special election. It will be the duty of the Secretary of the Interior to call such a special election when any responsible group of Indians has prepared and submitted to him a proposed constitution and by-laws which do not violate any Federal Law, and are fair to all the Indians. . . . If a tribe or reservation adopts the constitution and by-laws in this manner, such constitution and by-laws may thereafter be amended or entirely revoked only by the same process.

The circular letter continues:

The powers which may be exercised by an Indian tribe or tribal council include all powers which may be exercised by such tribe or tribal council at the present time, and also include the right to employ legal counsel (subject to the approval of the Secretary of the Interior with respect to the choice of counsel and the fixing of fees), the right to exercise a veto power over any disposition of tribal funds or other assets, the right to negotiate with Federal, State and local governments, and the right to be advised of all appropriation estimates affecting the tribe, before such estimates are submitted to the Bureau of the Budget and Congress.

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31 Ibid., 130.
Section 17 of the IRA provided tribes with the option of also drafting corporate charters "to convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands" as well as the power to issue interest in corporate property and to conduct corporate business. The CSKT elected to incorporate in April 1936.

Critics of the IRA, such as Graham D. Taylor, have noted that it "was fatally weakened by its emphasis on tribal reorganization and the assumptions about contemporary Indian societies which formed the basis for the tribal idea." Collier's focus on the tribal unit "in many cases created and sustained an essentially artificial institution in Indian life." This gave rise to increased factionalism on many reservations.

No matter the benefits, greater hindrances to tribal sovereignty stemmed from the implementation of the IRA, namely the perpetuation of federal paternalism. Even though the IRA allowed for the reestablishment of tribal governments, those governments were fashioned after the U. S. government and tribal constitutions, virtually all of which were reproductions with minute variations of a model produced in Washington, D. C., were subject to the approval of the Secretary of the Interior. Deloria and Lytle comment:

This description of a partnership is hardly equivalent to self-government. It suggests at best a compromise from the very beginning of the

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32 48 Stat. 984.
34 Canby, 61.
relationship so that the governed people do not recognize the degree to which they have made or are making accommodations. The traditional Indians saw immediately that the wrong kind of accommodations were being made and much of their opposition to the Collier program was not because they rejected self-government per se but because they wanted free and undisturbed government of their own choosing... They wanted independence, and partnership was not independence.35

Anti-IRA Factions on Flathead

Under their newly drafted constitution, an elected ten-person council governed the CSKT, with chiefs Martin Charlot (Salish) and Koostahtah (Kootenai) as honorary, non-voting members. However, upon their deaths the chiefs would not be replaced and their positions would be officially abolished. Thompson Smith writes that traditional people had “serious problems” with the IRA. He states that “many ‘full-bloods’ felt that the new system only gave more entrenched power to a group of ‘mixed-bloods’ who were more conversant in white power structures and more able to use the system for their own benefit. The Pend d’ Oreilles noted that though they constituted the largest tribal group on the reservation, they were excluded in the new official name of the government and in chiefly representation on the new council.”36

Although the IRA was an enabling bill and the Flathead tribes were given the right to reject it, it is clear that the choice to accept it was not a unanimous decision among all tribal members. In 1944, various CSKT tribal members testified that they wanted the new tribal council and IRA government thrown out,

35 Deloria and Lyle, 189.
36 Thompson Smith, 15.
maintaining that the council was not acting in the best interest of the tribal
membership.

In 1944, a U. S. House Subcommittee on Indian Affairs held hearings at
various locations across Indian country. On Friday, August 4, 1944, the
subcommittee gathered at the Browning, Montana High School on the Blackfeet
Reservation. Subcommittee chairman James F. O'Connor began by stating that
the reason for the meeting was to determine “whether or not we can do anything
to help or benefit the Indians.” However, he also stated, “There is another thing
that is very important. It is costing the American people, and as a matter of fact
you Indians, in the neighborhood of $32,000,000 a year to run the Indian
Department. We have, I think, 360,000 Indians in the United States. Now, you
understand that is not as high as it has been, but it is too high. There are many
agencies that are overlapping and those things have got to be cut out.”

Next, Senator Burton K. Wheeler, co-sponsor of the IRA, took the floor,
stating that the committee was there to find out “how the Wheeler-Howard Act is
working.” He stated:

I know in some reservations they are not satisfied with it. I want to say to
you Indians that while the law bears my name it was an administrative bill.
When the administration first came in Mr. Collier came and asked me to
introduce this bill. I introduced it; we modified it very much in the
committees, both in the House and in the Senate, but I am frank to say it
has not worked out as a lot of us had hoped it would work out. I would
like to go into it with some of the Indians testifying to see what they think
about it, because Jim O’Connor and I want to do what the Indians
themselves want done, and we want to do what is for their best interest.

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37 Congress, House, Subcommittee of the Committee on Indian Affairs, Investigate Indian Affairs: Hearings before a Subcommittee of the Committee on Indian Affairs. 78th Cong., 2nd sess., July 22-August 8, 1944, October 1-3, 1944, November 9-22, 1944, 395.
38 Ibid., 396.
39 Ibid., 396-397.

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After Wheeler spoke, chairman O'Connor introduced Mr. Murdock (Arizona), Mr. Fernandez (New Mexico), Judge Gilchrist (Iowa), and Karl E. Mundt (South Dakota). When Mundt spoke, he reiterated that the committee was there “to listen to your story, to hear your problems, to have you tell us what you think Congress can do to be helpful in solving the Indian problems.” But when it was brought to the subcommittee’s attention that many of the full bloods did not speak English and wanted “all the discussions” interpreted, the committee took a stance on cross-lingual comprehension that was reminiscent of the treaty making era. O’Connor responded by saying that they were pressed for time but “if you give them the highlights of our talks, that will be satisfactory.”

Members of the Blackfeet tribe were given the opportunity to speak first, though O’Connor pointed out that there were six people from Flathead there, and they “must give these boys a chance to speak who came all [this] way.”

After the Blackfeet speakers, Peter Adam from Flathead spoke. Through his interpreter, Baptist Perclutte, Adam said:

I still remember the treaty of 1855 and I still live in my reservation and I hope that it will be there the rest of my life. I do not have any money to pay all these taxes, if I was to be turned loose and become a citizen. I feel this way, that I should still be under the government and a ward of the government the rest of my life, and right to this day back in my reservation I have 10 councilmen and these councilmen are no help to me. I wish to abolish the councilmen. In my reservation there are only about 1,000 full-blood Indians and the rest are half-breeds, and thereby they outvoted us when the Wheeler-Howard Act was introduced.
The next to speak from Flathead was Paul Charlot. Perclutte acted as his interpreter also. Charlot began by saying, "On account of a lot of trouble, this and that, from our council, I will not say anything at all—just that all are against it; and if [you] do not believe these few words I have said about them you ask the councilmen sitting right there. All they do is for gain. It is not their problem to help us poor Indians; that is not the kind of help we want and need."\[^{44}\]

\[^{44}\] Ibid., 449-450.
Charlot concluded by reporting that the tribal council made and enforced laws that “affect the tribe whether they were satisfactory or not.” He also stated that the tribal councilmen “do not invite us Indians to the meetings and that is just the way our tribal funds are handled; they get together, call their own secret meetings, and they are spending our money in that manner; they are spending it without our knowing it at all.”

Eneas Conko spoke after Charlot, testifying:

When the Wheeler-Howard Act was introduced on my reservation I thought at the time this was going to be a good thing for us Indians. At that time L. W. Shockwell [sic] was our superintendent. I went along, accompanied Mr. Shockwell [sic], to Washington, D.C., thinking that this Wheeler-Howard Act was going to be a great help to us Indians. Then... we appointed or selected our councilmen - 10 councilmen and 2 chiefs... Now, my two chiefs are both dead, they passed away, and my councilmen told the tribe that there will not be any more chiefs from here on, and that was the end of our chiefs when they passed away. Now, I do not want to take so much of your time but I will make my story short and say that my councilmen are no help to me whatever.

These same sentiments were expressed by a group of elders that participated in a Flathead Indian study group organized by Bert B. Hansen in 1947. Participant Pullassie Cocowee stated, “I am sure there was some misunderstanding to the Indians about the two chiefs with the councilmen, but they did not understand that when these two chiefs passed away that would be the end of the chiefs. They did not understand that at all.”

Pete Pierre, interpreter for the study group, confirmed that the Indians did not fully comprehend the political ramifications of the IRA, due mostly to the way

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45 Ibid., 450.
46 Ibid., 450-451. The correct spelling of the Flathead Superintendent’s name is “Shotwell.”
Flathead Superintendent L. W. Shotwell had explained it to the Indians. Pierre related:

I was present at that meeting. Shotwell had a pencil and paper and he drew out a line in the form of a corral and he said, "Now listen. If you people want to do this I will draw this out and we will say this is a wagon, and this is a horse, and a plow and different implements on the plow, and if you people should want to use this wagon or horse or plow, that you need, you are welcome to get in there and use it." And that was the form that he put out for them to understand it, and they did not quite get it, and they did not understand what he meant.\footnote{48}

Paul Chariot, who testified at the House Subcommittee on Indian Affairs Hearings in 1944, also participated in the 1947 study group. Chariot stated that he was under the impression that the IRA government and resulting tribal council would exist for a trial period of ten years, after which time the Indians would "think it over. If they liked it they would continue. But I understood that in a certain time they would change the council. I understood that if I wanted to get rid of the tribal council I could."\footnote{49}

Chariot expressed a common misunderstanding among several older Indians that stemmed from the Tribes' incorporation six months after their reorganization under the IRA. In April 1936, in order to further the economic development of the CSKT, the Tribes were "chartered as a body politic and corporate of the United States." This entitled them to "certain corporate rights, powers, privileges and immunities" and allowed them "to secure for the members of the Tribe and assured economic independence; and to provide for the proper

\footnote{48}{Ibid.}
\footnote{49}{Ibid.}
exercise by the Tribe of various functions heretofore performed by the Department of the Interior."\(^{50}\)

Section 6 of the CSKT Corporate Charter states that "at any time after 10 years from the effective date of this charter," the tribal council could request the "termination of any supervisory power reserved to the Secretary of the Interior." If the Secretary approved, he would submit the question of termination to the adult members of the Tribes residing on the reservation, enabling the membership to decide via a tribal vote."\(^{51}\)

Charlot understood that this vote would be to determine whether or not the Tribes wished to continue the government that came about after the passage of the IRA. This misunderstanding was the reason some of the older Indians had voted for the IRA. However, several Indians quickly determined that they were not satisfied with it. At the 1947 study group, Sophie Moeise stated that she would be satisfied only if the council was abolished. Louis Combs commented that he would like to see "at least nine full bloods and one mixed blood" on the tribal council.\(^{52}\)

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\(^{51}\) Ibid.

\(^{52}\) Hansen, 18.
It is clear from the 1944 hearings and 1947 study group that several older Indians were dissatisfied with the IRA. Interestingly, at the same hearings where Adam, Charlot, and Conko expressed their dissatisfaction with their new government, the CSKT tribal council was also there expressing dissatisfaction with the structure. As it was, neither group was free to govern themselves as they saw fit; the elders wanted the tribal council thrown out and the tribal council
wanted the federal government out of their business. At the hearings, CSKT tribal council chairman Stephen C. DeMers proposed to terminate the CSKT's trust relationship with the federal government. DeMers requested that Congress allow the Tribes to manage their own affairs without any involvement from the federal government, financial or otherwise. Ultimately, Congress denied the request, though a decade later this idea would resurface and the CSKT would be one of the first tribes with whom the federal government would attempt to terminate their trust responsibilities.

*The Road to Self-Governance*

Most groups affected by the IRA seemed unhappy with it for various reasons: traditional Indians often opposed the shift in tribal decision making from chiefs and community input to the tribal councils; tribal councils resisted the interference of the federal government (via Collier’s Secretary of the Interior approval clause); and the federal government was frustrated that the IRA did nothing to reduce their time, energy, and money spent on Indian affairs. As Senator Wheeler remarked during the 1944 hearings, the IRA “did not work out as a lot of us had hoped it would.”

Three years after the passage of the IRA, Wheeler introduced a bill to repeal it, for the reason that the IRA “was philosophically designed to preclude Indians from becoming self-sufficient and operating within the mainstream of

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53 Congress, House, Subcommittee of the Committee on Indian Affairs, *Investigate Indian Affairs: Hearings before a Subcommittee of the Committee on Indian Affairs, 78th Cong., 2nd sess., July 22-August 8, 1944, October 1-3, 1944, November 9-22, 1944, 452.

54 Ibid., 396-397.
white society. Tribal corporations, not individual Indians, controlled the economic resources of Indian communities. This arrangement not only went against Wheeler’s commitment to the idea of ‘rugged individualism,’ but it also placed enormous power in the hands of the Indian Bureau, the federal agency that so many of the tribal corporations relied upon.” 55 This effort to repeal the Act was unsuccessful, as was a second effort in 1944. When the Senate Committee on Indian Affairs approved a bill to repeal the IRA, they reported that “ten years after the passage to the IRA, there was no more self-government than before the act.” 56

Within fifteen years of the passage of the IRA, Congress passed termination legislation intended to terminate the federal–tribal trust relationship and to encourage assimilation. The Indian Claims Commission (ICC) was created on August 2, 1946 to aid with this. 57 The ICC provided a venue to which tribes could bring their land claims against the United States. The ICC was actually “established for two purposes: to repay tribes for lands illegally taken but also to clear the slate of tribal claims, thereby allowing the government to express a new orientation in Indian affairs.” 58 Tribal land was never returned and the monetary awards for land taken by the U. S. were computed at the value during the time they were taken. The U. S. was also allowed “‘gratuitous off-sets,’ in the amount of past services provided to tribes, against claims awarded to tribes. . . . Finally,

55 Deloria and Lytle, 177-178.
56 Ibid., 181.
57 60 Stat. 1049.
58 O’ Brien, 84.
the monetary award was distributed to individual tribal members, rather than to tribes, so that an opportunity to strengthen tribal institutions was lost.\textsuperscript{59}

In 1947, William Zimmerman compiled a list of Indian tribes grouped according to their readiness for termination of Office of Indian Affairs services. The criteria for this grouping included the tribe’s degree of acculturation; economic resources; the willingness of the tribe to be relieved of federal supervision; and the willingness of the state to assume responsibility on the reservation.\textsuperscript{60} Among the first group considered ready for immediate termination of federal supervision and services was the Flathead Reservation. The Flathead Reservation was not terminated after “inquiries indicated that withdrawal of federal supervision would impose extreme hardships on [Montana’s] State and county agencies and that the Federal Government should be required to assist the State in the implementation of State control over the Flathead Indian Reservation.”\textsuperscript{61} Also, several tribal members from Flathead argued that the reservation’s resources could not support the Tribes without the additional support from the federal government.

Continuing with their desire to end the federal trust relationship with Indian tribes, in 1953 Congress passed House Concurrent Resolution 108,\textsuperscript{62} which

\textsuperscript{59} Indian Tribes as Sovereign Governments (Oakland, CA: American Indian Resources Institute Press, 1988), 12. However, not all tribes accepted the judgment money; some simply wanted to prove their claims.

\textsuperscript{60} William Zimmerman, Jr., testimony, February 8, 1947, reprinted in Congress, House, Report with respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs, 82\textsuperscript{nd} Cong., 2\textsuperscript{nd} sess., 1952, Rept. 2503, 163.


called for making Indians subject to the same laws, privileges, and responsibilities as the rest of America’s citizens.\textsuperscript{63} Termination meant that all federal protection and aid in the form of various programs (from health care, state tax exemptions, and the protection from imposition of state civil and criminal jurisdiction) ceased. Oftentimes, reservation lands were sold and the revenue was distributed to individual tribal members. The even greater change came to tribal sovereignty, which, “as a practical matter, was ended.”\textsuperscript{64} Also in 1953, Congress passed Public Law 280,\textsuperscript{65} which provided for the extension of state civil and criminal jurisdiction to Indian country in five states and Alaska (though sixteen states eventually acquired partial jurisdiction). This “assumption of jurisdiction by the state displaced otherwise applicable federal law and left tribal authorities with a greatly diminished role.”\textsuperscript{66}

\textit{Public Law 280 on the Flathead Reservation}

By the 1950s, tribal members were the minority population and landowners on the Flathead Reservation. The Tribes’ law and order budget was $25,000 and there were two tribal police officers to serve the entire reservation population, both Indian and non-Indian. In addition to these facts, the Tribes considered the federal government lax in providing adequate law enforcement on the reservation. These are the likely reasons that in 1963, a Montana legislator and CSKT tribal member introduced legislation authorizing the state of Montana

\begin{footnotesize}
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\item \textsuperscript{63} Canby, 25.
\item \textsuperscript{64} Indian Tribes as Sovereign Governments, 13. Congress has since restored some of the tribes to federal status, though reservation lands sold are still gone.
\item \textsuperscript{65} 67 Stat. 588.
\item \textsuperscript{66} Canby, 28.
\end{itemize}
\end{footnotesize}
to assume Public Law 280 (P. L. 280) jurisdiction over all of Montana’s seven Indian reservations. However, after finding that all of the other reservations opposed the legislation, legislators amended the bill so that it affected only Flathead.

In May 1963, the CSKT agreed to allow the state of Montana to “concurrently prosecute and punish the on-reservation criminal conduct of Indians, including tribal members, and regulate their conduct in eight areas of civil law mostly related to traffic regulation, juvenile delinquency, and domestic relations.”

Almost immediately, however, the Tribes attempted to withdraw their consent. This attempt in 1966 was upset by Flathead Superintendent P. T. Breche’s refusal to approve the Tribes’ resolution. Breche stated that the “Council could not give me a good enough reason for rescinding concurrent jurisdiction.”

The following year, the Tribes attempted again to withdraw their consent to concurrent jurisdiction. This time the Flathead superintendent approved the Tribes’ resolution and forwarded it to Montana Governor Tim Babcock, who also approved it. Thus, the Tribes understood that their consent had been withdrawn. However, “in 1972, the Montana Supreme Court invalidated the Governor’s actions . . . and decided that the state still had the jurisdiction assumed in 1965.”

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67 Bonnie Bozarth, “Public Law 280 and the Flathead Experience,” JOW vol. 39, no. 3 (summer 2000), 47.
69 Bozarth, 47-48.

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In 1989, the Tribes attempted to find a sponsor in the Montana legislature to introduce a bill by which they could withdraw their consent. This endeavor was unsuccessful. However, in February 1991, the Tribes secured a sponsor and House Bill 797 was introduced. By this time, the Tribes had over 1,200 employees and an annual operating budget of more than $70 million. They also "had one of the largest tribal law enforcement programs in the state, with officers trained at the Montana Law Enforcement Academy or the Federal Training Center. They had a trial court, appellate court, and youth court with three full-time judges, a part-time judge, visiting judges, prosecutors, paralegals, social workers, and probation officers." However, opponents, most of whom were non-Indian officials from Lake County, "argued that retrocession would allow a minority of tribal members to govern the majority of non-tribal members [on the reservation], who could neither vote nor otherwise directly participate in tribal government." The Senate Judiciary Committee killed House Bill 797, leaving the Tribes to attempt to withdraw their consent during the next state legislative session.

By the time the 1993 legislative session began, the Tribes had significantly scaled back their 1991 proposal from full retrocession to partial retrocession of P.L. 280. The Tribes placed a full-page ad in the local tribal newspaper to clarify their aim: "The Confederated Salish and Kootenai Tribes seek a fundamental governmental right enjoyed by all Montana tribes: the right to govern our own people who commit misdemeanor crimes on our reservation. We do not seek any

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70 Ibid., 48.
71 Ibid., 49.
criminal jurisdiction over non-Indians, which is prohibited by federal law."\textsuperscript{72} Tribal Executive Secretary Joe Dupuis stated, "We're not asking for something we don't already have; we're asking that it be exclusive."\textsuperscript{73} Senate Bill 368, introduced by Senator Steve Dougherty (Great Falls), "sailed through the Senate . . . with a vote of 40 to 9." However, even with the support of Montana Governor Marc Racicot, Attorney General Joe Mazurek, and the Missoula County Commissioners, the House Judiciary Committee voted down the bill. Shortly thereafter, the House, with the encouragement of Lake County Representative John Mercer (Polson), killed the bill with a final vote of 52 to 47 on March 26, 1993.\textsuperscript{74}

CSKT tribal council chairman Mickey Pablo remarked, "Mercer's fingerprints are all over this bill's corpse," calling Lake County's defeat of the bill "a slap in the face to the Tribes, Governor Racicot and the principle of government-to-government relations." Pablo also stated that these actions were forcing the Tribes to "pursue other options."\textsuperscript{75}

Within a week of the House's defeat of Senate Bill 368, the tribal council passed Resolution 93-122, "calling for the transfer of tribal banking functions to banks outside Lake County, as part of an effort to put economic pressure on Lake County" until the retrocession issue was resolved. Tribal Resolution 93-122 also stated that the Tribes would not grant future easements or rights-of-way to Lake County. Additionally, the CSKT tribal government stopped purchasing goods

\textsuperscript{72} "Give Change a Chance in Lake County," \textit{CharKoosta News}, 2 April 1993, 10. (Emphasis in original.)
\textsuperscript{73} "Tribes use economic pressure to push retrocession issue," \textit{CharKoosta News}, 2 April 1993, 1.
\textsuperscript{74} Ibid.
\textsuperscript{75} "House Committee votes down SB 368, 10 to 8," \textit{CharKoosta News}, 26 March 1993, 1.
from non-Indian owned businesses in Lake County and encouraged individual
tribal members to “support retrocession by spending their personal dollars at
tribally owned businesses or out of the county.”76 The tribal council stated that
Lake County’s officials “cannot reap the economic benefits of the tribal economy
and deny the Tribes’ self-rule over their own people.”77

The Tribes’ boycott was of great financial consequence for non-Indian
businesses. The “most comprehensive economic analysis ever completed on the
influence of the tribal economy on the Flathead Reservation” determined that in
1987, tribal government-related expenses equaled eighty percent of Lake
County’s $114 million in retail trade and services. Additionally, in 1990, the
Tribes paid approximately forty percent of the $94 million paid in wage labor to
Lake County residents.78

The boycott lasted two weeks before the tribal council agreed “to lift
economic sanctions against Lake County . . . at the request of Governor Marc
Racicot and Attorney General Joe Mazurek.”79 Racicot and Mazurek also met
with tribal and county officials in an attempt to resolve the jurisdictional dispute.
Soon, the Lake County Commissioners and the Tribes reached an agreement and
Representative Howard Toole (Missoula) reintroduced Senate Bill 368. The
House passed the bill with a vote of 96 to 3, and the Senate voted for the bill

77 The Tribes also stated, “We believe the majority of people do not support the extreme position
taken by a few elected officials in Lake County, and we are very appreciate of the support and
good relationship we have enjoyed with our friends and many reservation businesses. However,
we see no other way to get our message to these few Lake County officials.” “Give Change a
Chance in Lake County,” CharKoosta News, 2 April 1993, 10.
78 Confederated Salish and Kootenai Tribes, Tribal Resolution No. 93-122, 6 April 1993, Records
Office, Tribal Business Complex, Pablo, MT.

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Governor Racicot signed Senate Bill 368 into law on April 24, 1993, "authorizing the Tribes to resume criminal misdemeanor jurisdiction over cases involving Indian defendants." 

Additionally, in 1968, Congress passed the Indian Civil Rights Act, which extended to Indians many rights named in the U. S. Bill of Rights. One provision of the Indian Civil Rights Act amended Public Law 280 "so that states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for the purpose. This amendment brought such extensions of jurisdiction to a virtual halt. In addition, the Act set forth a procedure by which states that had assumed Public Law 280 jurisdiction could retrocede such jurisdiction to the federal government." 

Other Advancements in Tribal Self-Rule

In January 1964, President Lyndon B. Johnson declared war on poverty and Congress passed the Economic Opportunity Act, which "had significant implications for individual Indian people and tribes, although the special needs of Indians were not addressed in the final bill. Some of the Job Corps centers authorized in the act would be located on reservations. Tribal councils could apply for grants to fund local development programs to combat poverty, and might provide training opportunities for Indian youth. Indian-owned businesses

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81 "Mazurek helps work out local retrocession agreement: Spirit of trust and cooperation generated in talks," CharKoosta News, 23 April 1993, 1,8.
82 Canby, 30.
could also apply for Small Business Administration loans."83 Two years later, in 1966, Senator George McGovern called for a National Indian Policy Statement that would lead to tribal self-determination, which call Congress did not answer for almost a decade.

In 1970, President Richard Nixon declared that the termination policies of the recent past had failed. Nixon also emphasized “the importance of the trust relationship between the federal government and the tribes. Finally, he urged a program of legislation to permit the tribes to manage their affairs with a maximum degree of autonomy.”84 In 1975, Congress passed Senator Henry Jackson’s Indian Self-Determination and Education Assistance Act, or Public Law 93-638.

Although the federal government presented self-determination as a new and improved policy in support of tribal governments, self-determination had a mixed reception within the Indian community; it “appeared to many Indians and non-Indians as a mixed blessing at best and possibly a step toward a renewed drive for termination. [Those who opposed the policy] argued that Federal trust responsibility was based not on the ‘incompetency’ of the tribes to manage their own affairs; it was established as a treaty obligation and a Federal commitment to the tribes in exchange for land cessions.”85 Supporters of self-determination “sought to encourage Indian economic independence by developing Indian natural

83 Newell, Clow, and Ellis, 4.17.
84 Ibid. See 116 Cong. Rec. 23258.
85 Newell, Clow, and Ellis, 6.4.
resources and enlarging the profits that the tribes received from the utilization of those resources."\(^8^6\)

Certain provisions of the 1975 Act encouraged tribes, “through grants and contracts . . . to assume administrative responsibility for federally funded programs that were designed for their benefit and that were previously administered by employees of the Bureau of Indian Affairs and the United States Indian Health Service.”\(^8^7\) When tribes are able to enter into a so-called “638 contract” the money allocated by the Bureau of Indian Affairs (BIA) for that specific program must continue to be used for that program; in other words, it must be administered as it was before the contract. This fact has sparked a debate concerning whether contracting management of various BIA-run programs truly recognizes and increases tribal self-government or simply replaces non-Indian employees with Indian employees. Regardless of this debate, some tribes view increased involvement in the management of various programs as more desirable than no involvement and eagerly apply for the contracts.

In 1988, Congress passed Public Law 100-472, amending the 1975 Indian Self-Determination and Education Assistance Act and authorizing the Tribal Self-Governance Demonstration Project. This allowed the Secretary of the Interior to negotiate annual funding agreements with up to twenty tribal governments, allowing the tribal governments to “(1) plan, conduct, consolidate, and administer programs services, and functions provided to Native Americans by the Department of the Interior; (2) obtain funds equal to the amount tribes would

\(^{8^6}\) Ibid.
\(^{8^7}\) Indian Tribes as Sovereign Governments, 15. Additional educational and health programs were expanded during this period as well.
have been eligible to receive under contracts and grants under Public Law 93-638, including direct program and indirect costs; and (3) redesign programs, activities, functions, or services and reallocate funds for these efforts. This project was to be conducted for a period not to exceed 5 years. In 1992, Congress extended the Demonstration Project for three additional years and increased the number of tribes allowed to participate in the program to thirty. The following year, in 1993, Congress expanded the Self-Governance Initiative to include the Indian Health Service.

Finally, on October 8, 1994, Congress passed the Tribal Self-Governance Act to establish self-governance as a permanent program in the Department of the Interior. Under the Tribal Self-Governance Act, as amended by the Fiscal Year 1997 Omnibus Appropriations Bill, up to fifty tribes may be selected to participate each year in the self-governance program. Title 25 of the Code of Federal Regulations, Part 1001.1 to 1001.10, governs the application and selection process for tribes.

All tribes seeking inclusion in the self-governance program applicant pool must meet the following criteria:

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89 Public Law 103-413.
91 Public Law 104-208.
(a) Be a federally recognized tribe or consortium of federally recognized tribes as defined in Public Law 93-638; (b) Document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior (Department) under the Tribal Self-Governance Act authority. In the case of a consortium of tribes, the governing body of each participating tribe must authorize participation by an official action by the tribal governing body; (c) Demonstrate financial stability and financial management capability by furnishing organization-wide single audit reports as prescribed by Public Law 96-502, the Single Audit Act of 1984, for the previous three years. These audits must not contain material audit exceptions. In the case of tribal consortiums, each signatory to the agreement must meet this requirement. Non-signatory tribes participating in the consortium do not have to meet this requirement; (d) Successfully complete the planning phase for self-governance. A final planning report must be submitted which demonstrates that the tribe has conducted—(1) Legal and budgetary research; and (2) Internal tribal government and organizational planning; (e) To be included in the applicant pool, tribes or tribal consortiums may submit their applications at any time. The application should state which year the tribe desires to enter negotiations.

Once an application is complete it enters an applicant pool where the Office of Self-Governance ranks it according to the other applications. Applications are accepted on an on-going basis.

Self-Governance on Flathead

The CSKT was one of ten tribes nationwide selected by the federal government to participate in the Self-Governance Demonstration Project in 1988. Five years later, in 1993, the Tribes received self-governance rights and status due to the success of their Demonstration Project. Since then, the Tribes have compacted departments such as Natural Resources, Tribal Health, Division of

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Lands, and parts of Fire Management. Currently, the CSKT have management responsibility for "more than one hundred federal, as well as state programs on the Reservation. In addition, the Tribes manage 70 tribal programs and have repurchased more than two hundred forty-five thousand acres of Reservation land since 1944."\textsuperscript{96} In 2004, the Tribes spent $13.5 million dollars on acquiring over nine thousand acres of land within the exterior boundaries of the Flathead Reservation, increasing tribal landholdings to 790,000 acres, or approximately sixty-one percent of the reservation's total land base.\textsuperscript{97} The Tribes' effort to purchase land to become the majority landowner on the reservation is an attempt to ward off future threats of termination based on the Tribes' status as minority population and landowner; it is also aimed at strengthening tribal sovereignty by allowing the Tribes to regain control of reservation land and resources.

\textit{Overview of Flathead Tribal Government Today}

The \textit{Confederated Salish and Kootenai Tribes 2004 Annual Report} states that the Tribes' mission is to: "adopt traditional principles and values into all facets of tribal operations and services. We will invest in our people in a manner that ensures our ability to become a completely self-sufficient society and economy. And we will provide sound environmental stewardship to preserve, perpetuate, protect and enhance natural resources and ecosystems."\textsuperscript{98} Today the CSKT are governed by a ten-person council representing eight districts on the

\textsuperscript{97} \textit{Confederated Salish and Kootenai Tribes 2004 Annual Report} (Pablo, MT: CSKT, 2005), 8.
\textsuperscript{98} Ibid., 1.
reservation: St. Ignatius, Arlee (two representatives each), and Ronan, Pablo, Polson, Elmo, Dixon, and Hot Springs (one representative each). The tribal membership elects the tribal council and the council selects the chairman, vice chairman, secretary, and treasurer, from amongst themselves.

The CSKT’s three primary tribal administrative offices are the tribal council, executive treasurer, and executive secretary. The tribal council is the main governing body, as outlined in the CSKT constitution. However, the Kootenai Culture Committee/Kootenai Elders Committee and the Salish-Pend d’Oreille Culture Committee/Elders Advisory Council offer advice to the tribal council “on cultural issues that affect Tribal policy and provide information to assist tribal programs in project development.” For example, the Elders Advisory Council:

perform a number of tasks [within the tribal government] to ensure the presence of a cultural perspective. The [Culture] Committee and elders give presentations and cultural orientation workshops to various departments and outside entities when called upon. Various elders from the Advisory Council are called upon regularly by various Tribal Departments and Tribal Council to attend meetings on things like water rights negotiations, treaty rights celebrations, timber sales, tobacco conferences, hi-way expansions, cutting meat, beading, story telling, preservations of sites to name a few.

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CSKT Legal System and Law Enforcement

The tribal council has vested the judicial power of the Tribes in the Tribal Court and Tribal Court of Appeals. Additionally, the CSKT have a Tribal Defenders Office that aims "to provide a requisite balance of quality legal representation to Indian criminal defendants in the prosecution of criminal cases within the courts of the Tribal system and State system." The Defenders Office:

provides legal representation to Indian criminal defendants who are enrolled members of ANY federally recognized tribe in the Tribal Court; juveniles who are either enrolled or enrollable members of any federally recognized tribe or who are first generation descendents of such tribes in a Montana State Court. The Tribal Defenders also provide, on a case-by-case basis, legal representation to CS&KT members in [sic] civil disputes and provides a balanced resolution forms [sic] to qualified individuals (eligible pursuant to existing guidelines) who want to initiate uncontested actions on their own in Tribal Court.

In 1986, the CSKT created the Tribal Law and Order Department. The Department consists of sixteen officers, ten detention officers and dispatchers, three drug investigators, three community officers, one police clerk, and one police cook. Of the twenty-one uniformed police officers, one hundred percent are tribal members. There is also a Drug Task Force that "responds as part of the North West Drug Task Force, which covers a five county area that encompasses most of western Montana."105

104 (Emphasis in original.)
In July 1996, the tribal council authorized the separation of Tribal Probation and Parole from the Tribal Court and a month later the two departments physically separated. In October of the same year, the department budgets became separate also. Today, Tribal Probation and Parole consists of Adult Probation, Juvenile Probation, Youth Community Services and Administration.\textsuperscript{106}

In 2004, the Tribes spent a total of $112,763,865, of which, $2,057,739 went to law enforcement; $677,060 to Tribal Legal; and $1,142,159 to the Tribal Court System. Of the remaining budget, $15,596,573 went to Tribal Administration. Tribal revenues brought $23,795,473 to the Tribes’ operating budget, of which $15,493,795 came directly from the Kerr Dam lease and $2,138,298 from the sale of tribal timber.\textsuperscript{107} Also, contributing to the overall revenue were the tribally owned businesses: S & K Developments (the Best Western KwaTaqNuk Resort); S & K Technologies; S & K Electronics; and S & K Holding Company.

Recently, the Tribes and the U. S. Fish and Wildlife Service successfully negotiated a National Bison Range Complex Annual Funding Agreement, which enabled the Tribes to perform activities and functions for the Biological, Maintenance, Fire, and Visitor Services programs.\textsuperscript{108} The Annual Funding Agreement negotiated in December 2004, became effective March 15, 2005.\textsuperscript{109}

\textsuperscript{107} Confederated Salish and Kootenai Tribes 2004 Annual Report, 12.
\textsuperscript{108} Ibid., 15-17.
\textsuperscript{109} "MBR APA implementation is underway," CharKoosta News, 24 March 2005, 1.
Scholars such as Ronald L. Trosper maintain that the federal government's self-determination legislation was not significantly different from the other federal policies governing Indians. He states that every policy thus far has been:

a fluctuation between two different strategies of assimilation. One strategy, represented by the periods of reservation, reorganization, and self-determination, is to recognize a degree of Indian self-government and self-regulation while the federal government attempts to change the internal structure of Indian society through indirect means. The second strategy, represented by allotment and termination, is forcibly to break up tribal government and tribal structure in order rapidly to put the Indians into the same status as whites.\textsuperscript{110}

Regardless of this debate, the CSKT have elected to contract and compact management responsibility for as many federal programs as possible.

This action by the Tribes, however, does not conclude the discussion of CSKT tribal sovereignty. Rather, it leads to new developments revealing tribal member discontent and even injury due to various management decisions made by the tribal government. Although contracts and compacts have enabled the Tribes to more fully participate in their own affairs, they have also allowed the federal government to back away from fulfilling various treaty obligations to tribes under the pretense of federal support for tribal self-rule. On a local level, for tribal member loggers, self-governance policies mean struggling economically to make ends meet despite the reservation's abundant timber resource. Although timber is the second leading revenue-producing industry for the Tribes, Indian loggers face numerous difficulties in securing bids when competing with non-Indian logging companies. This history will be the focus of the following chapter.

CHAPTER 5
FLATHEAD RESERVATION FORESTRY
AND TRIBAL SOVEREIGNTY

Indian forest land management activities undertaken by the Secretary [of the Interior or tribally compacted managing department] shall be designed to achieve . . . the development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding.

25 Code of Federal Regulations 163.3

The early history of Flathead Reservation tribal forestry is intertwined with the timber policies of the United States, tribal self-rule, and the conservation movement in the late 1800s as the European-derived forestry practice of sustained yield became a driving force in American forestry practices. Forest-related activities on the Flathead Indian Reservation began in 1855 when the Hellgate Treaty established the reservation. Article 5 of the treaty provided for, among many things, the construction of a sawmill, to be built and paid for by the federal government within one year of the ratification of the treaty.¹ Despite the fact that roughly one-third of the reservation was forested—containing Ponderosa pine, Douglas fir, lodgepole pine, grand fir, Englemann spruce, subalpine fir, whitebark pine, and alpine larch²—the federal government intended for the Indians to use

² Flathead Indian Reservation Forest Management Plan: An Ecosystem Approach to Tribal Forest Management (Pablo, MT: CSKT, 2000), 50.
the sawmill for farming purposes such as clearing land and constructing fences and buildings; they did not want the tribes to utilize the mill for commercial logging operations.

Despite treaty language, the sawmill did not appear on the reservation for six years. It was not until 1860, when Flathead Indian Agent John Owen purchased the Page’s patent sawmill used in the building of the Mullan Road that construction began on the government-promised sawmill. A year later the sawmill was completed; it was built on the Jocko River at the Flathead Agency headquarters near present-day Arlee, Montana. However, as many of the Indians lived near the Catholic Mission in St. Ignatius, this location proved too great a distance for the Indians to travel with their timber, thus the mill could “never be of the slightest utility” to them. Despite this fact, when the first mill burned down in 1869 the federal government constructed another one near the old site in 1871.

Regardless of its location, the Indians would have been able to use the sawmill for only one purpose: agricultural use, as federal policy intended to make the Indians into farmers. Although the policy stemmed from the federal government’s trust responsibility to protect tribal timber resources, it did “not accord with the needs of Indians to raise money with which to feed and clothe

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3 There was, however, a private sawmill on the reservation which the Catholic priests built at St. Ignatius in 1856 “to provide lumber for erecting a church and upgrading mission buildings.” Historical Research Associates, Timber, Tribes, and Trust: A History of BIA Forest Management on the Flathead Indian Reservation, 1855-1975 [hereafter cited Timber, Tribes, and Trust] (Dixon, MT: Confederated Salish and Kootenai Tribes, 1977), 8.
6 Fahey, 160.
themselves—having been largely deprived of traditional sources of sustenance.”7 Additionally, this policy contrasted with the rights of other Americans who were allowed to utilize their timber resources in any manner they desired. The federal regulations placed on sawmill use hindered the Indians’ right to determine for themselves the ways in which they would use their timber, thus reducing tribal sovereignty.

A major factor affecting reservation timber policy was the 1873 Supreme Court ruling in United States v. Cook.8 In 1872, the Secretary of the Interior approved a ten-year contract between George Cook, a white logger, and the Indians on the La Pointe Indian Reservation in Wisconsin. The terms of the contract “were so loose and indefinite as to the amount of timber sold that it was impossible to protect adequately the interests of the Indians.”9 Soon, the United States took action against Cook on behalf of the Indians in a case that was brought before the Supreme Court in 1873. The court ruled that reservation timber could be cleared only for agricultural purposes and that Indians had only the right of use and occupancy in lands held in common.10 This meant that Indians did not have the right to cut timber for sale from their lands because that timber belonged to the United States. The outcome of the Cook case derived in part from earlier precedent established by John Marshall’s Supreme Court rulings in Cherokee Johnson v. McIntosh (1823), Nation v. Georgia (1831), and Worcester v. Georgia

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(1832); it also stemmed from the political climate of the decade, which was one of growing conservationism, and discussion of the sovereignty of Indian tribes.

In “American Indian Timber Management Policy: Its Evolution in the Context of U. S. Forest History,” Alan G. McQuillan writes, “From the outset, U. S. policy was to dispose of public domain lands by sale to encourage settlement and raise revenue.”11 With homesteading came an almost insatiable need for timber to build fences, construct buildings, and use as fuel. Although the unauthorized cutting of trees was prohibited by an act of Congress, they provided no funds for its implementation; an act which McQuillan says “reflects [Congress’s] reluctance to formally admit its de facto policy of waiving its property rights in the interest of developing the West.”12 The authors of A Forest in Trust: Three-Quarters of a Century of Indian Forestry, 1910-1986, write, “Given the Government’s ambiguous concern for public forests, private citizens took the lead, advocating conservation of resources instead of discriminate cutting of trees. In 1864, George Perkins Marsh published Man and Nature, a treatise illustrating the effects of forest destruction on climate and water supply. Marsh was one of the first individuals in the United States to recognize the need for forest conservation.”13

Others who followed Marsh included Franklin B. Hough, whose 1873 paper, “On the Duty of Governments in the Preservation of Forests” led to his appointment as the first U. S. forestry agent. In 1875, “John Warner started the

11 McQuillan, 74.
12 Ibid., 75.
American Forestry Association and in 1882 he organized (with Hough and [Prussian-born forester Bernard] Femow) the first American Forest Congress. By 1879 there was sufficient disgruntlement with the lack of effective timber policy to cause Congress to create a Public Land Commission to at least review the situation.\footnote{McQuillan, 80-81.}\footnote{Ibid., 79-80.}

However, the fact remained that after the Cook ruling “Indians were deprived of one of their very few means of raising money.”\footnote{McQuillan, 80-81.}\footnote{Ibid., 79-80.} The policy that derived from Cook was maintained and included in the 1887 General Allotment Act, which stated that Indians could clear their allotments for farming, but they could not sell timber commercially. Consequently, tribal sovereignty was removed from decisions concerning reservation timber resources.

\textit{Early Logging Operations on Flathead}

Although the Flathead Reservation tribes initially opposed the construction of the Northern Pacific Railroad, they agreed in 1882 to allow it to pass through their reservation. This event instigated the first major purchase of reservation timber and would later provide the means by which tribal timber was transported to off-reservation markets. Prior to this, “the Agency and Mission sawmills were the only significant users of timber aside from the logs utilized whole in construction of Indian residences and outbuildings. There had been no commercial use of Reservation timber except in the few cases associated with
misconduct by agents." The railroad company agreed to purchase the timber separate from the right-of-way through tribal land and to employ Indians to cut the timber whenever possible. In his Annual Report to the Commissioner of Indian Affairs for 1883, Flathead Indian Agent Peter Ronan noted that "many Indians have been engaged in furnishing piles, ties, and cord-wood for the Northern Pacific Railroad company."

The following year, the Northern Pacific Railway Company completed cutting the 2,729,006 board feet of timber they needed and the following May paid $5,458 to the tribes. The Commissioner of Indian Affairs instructed Agent Ronan to distribute the money to the Indians directly in per capita payments; between January 5-9, 1885, 1,510 eligible Indians received $3.61 each. The $16,000 payment from the right-of-way land sale was deposited in the U. S. Treasury in the tribes' name.

In 1884, Ronan began working to get the Flathead Agency moved from the Jocko valley to a more central location, as "the transportation by wagon of..."
lumber or wheat for any considerable distance exceeds the value of the article itself." The agency was not moved, however, until 1913. During the interim, there were several other issues with which Ronan and his predecessors had to deal; one was timber trespass.

The first significant instance of timber trespass was in December 1887 when Kenneth Ross constructed a sawmill and other camp buildings just inside reservation boundaries. Ross apologized to the tribes and claimed to have been misinformed about the boundary lines. He immediately halted his operation and moved it off the reservation. Because Ronan determined the violation was unintentional he accepted Ross’s apology and did not file suit in court. The ordeal ended with Ross purchasing the cut timber at a fair market value.

A second trespass case occurred in 1888 when Thomas Slocum cut timber from land owned by Chief Aldoph. However, Slocum had paid $508 to Steven James who had misleadingly claimed ownership of the land. After investigating, Ronan determined that Slocum, like Ross, “had acted in good faith but in ignorance of the law.”

Indians’ Right to Cut Timber

On November 20, 1888, U. S. Attorney General Garland issued his opinion that Indians, in light of the 1873 Cook case, did not have the right to cut and sell dead and down timber from trust land and that the dead and down timber not needed for agricultural purposes, improvements, or fuel by the Indians, was

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23 Ibid., 19.  
24 Ibid., 20-21.  
25 Ibid.
the property of the United States.26 Furthermore, on January 26, 1889, Garland issued another opinion concerning the right of individual allottees to cut and sell merchantable timber from their allotments during the trust period. Garland stated that “to sell timber growing on the land, or cut it for sale for commercial purposes, except such as may be cut in clearing the land, or for improvements to be erected thereon, would be inconsistent with the obligation of the trustee to preserve and protect the trust.” Garland also charged the Department of the Interior with preventing “the cutting of timber, except for the purposes above indicated (clearing and improvements), whether the land is or is not within an Indian reservation.”27

However, on February 16, 1889, Congress passed the so-called Dead and Down Act authorizing the President to permit “Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, sell, or otherwise dispose of the dead timber standing or fallen, on such reservation or allotment for the sole benefit of such Indian or Indians.” The Act also stipulated that “whenever there is reasonable cause to believe that such timber has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this act then in that case authority shall not be granted.”28 Although it was limited in scope—applying only to dead and down timber—this was the first legal recognition of Indians' right to sell their timber.

In May 1890, Attorney General W. H. H. Miller issued an opinion reaffirming an allottee's right to cut and sell dead timber. He wrote, “the removal

26 ARCIA, 1890, cxii.
27 Ibid.
of dead wood, particularly when standing and threatening the safety of trees near it, and valuable for timber, seems more like a benefit than an injury. It would be entirely out of harmony with the more liberal American doctrine of waste, as applicable to timber, to hold that a tenant who is by that doctrine in many cases entitled to fell timber for the express purpose of opening the land to cultivate is still not at liberty to use the dead wood on the land in addition to the estovers allowed him by law."

In 1893, four years after the passage of the Dead and Down Act, Peter Ronan passed away and Joseph T. Carter replaced him as Flathead Indian Agent until 1897 when William Henry Smead filled the position. Shortly after this, in 1904, Congress passed the Flathead Allotment Act. On March 8, 1906, the Secretary of the Interior appointed Colonel John K. Rankin to began surveying and allotting land to individual tribal members, a process that lasted until September 25, 1909. While Rankin worked, another commission was created in 1907 known as the "Salzman Commission" for F. X. Salzman, a Department of Interior Forestry Service employee who was chairman of it. According to the 1904 Flathead Allotment Act, the Salzman Commission was to classify the remaining reservation land as first or second class agricultural, timber (lands more valuable for timber than any other purpose), mineral, and grazing.

The Salzman Commission completed its task in November 1908, but Flathead Reservation officials spent the next several years dealing with problems arising from their appraisals of land. The trouble stemmed from Section 11 of the

29 ARCIA, 1890, cxiv.
30 ARCIA, 1906, 256.
31 33 Stat. 302.
1904 Flathead Allotment Act, which allowed for the sale of timber lands and stipulated that timber could not be sold separate from the land. This created problems in instances where land more valuable for agricultural purposes was classified as timber land because it was forested. Settlers were inclined to "illegally occup[y] lands classified as timber lands, claiming them to be more valuable for agricultural purposes. Others filed mineral entries on timber lands or complained that timber appraisals were far above market value."\(^{32}\)

Congress passed legislation in 1909 that helped to partially remedy the situation. The Act of March 3, 1909 amended Section 11 to enable timber to be sold apart from the lands valuable for agricultural purposes.\(^{33}\) Despite this amendment, all appraisals made by the Salzman Commission remained intact. In September 1912, the Secretary of the Interior appointed a commission to classify the remaining unclassified Flathead Reservation land in accordance with the Act of June 6, 1912.\(^{34}\) The commission also heard complaints and made adjustments when necessary. Flathead Superintendent Fred C. Morgan chaired the commission until December 1912 when Waldo G. Brown replaced him.\(^{35}\)

Finally, in 1916, Congress passed a bill that remedied most of the remaining problems with the Salzman Commission appraisals. The Act of May 18, 1916 states:

> That lands on the Flathead Indian Reservation in Montana valuable for agricultural or horticultural purposes, heretofore classified as timber lands, may, in the discretion of the Secretary of the Interior, be appraised and opened to homestead entry under regulations prescribed by him, upon

\(^{32}\) *Timber, Tribes, and Trust*, 55.
\(^{33}\) 35 Stat. 781.
\(^{34}\) 37 Stat. 125.
\(^{35}\) *Timber, Tribes, and Trust*, 57.
condition that homestead entrymen shall at the time of making their original homestead entries pay the full value of the timber found on the land at the time that the appraisement of the land itself is made, such payment to be in addition to the appraised price of the lands apart from the timber.36

1906 Windstorm and the Expansion of Reservation Logging

As the appraisal and classification process was taking place on Flathead, a terrible windstorm in March 1906 prompted the sale of green timber. The storm downed about 18 million board feet of timber that would drastically increase the fire hazard if not removed. Also, because most of the trees had been uprooted, there was little damage to the wood itself. Thus, the Indians stood to lose a valuable source of income “unless early steps [were] taken to dispose of [the trees].”37 Flathead Indian Agent Samuel Bellow submitted to the Department of the Interior a report concerning the downed timber and bids from local contractors interested in purchasing it. The bids ranged from $0.25 to $1.25 per thousand board feet, which the Department of the Interior considered too low, prompting them to request the Department of Agriculture’s Forest Service to inspect the timber and estimate the actual value.38

Gifford Pinchot, head of the U. S. Forest Service since 1898, assigned Inspector A. K. Chittenden to produce the Flathead Reservation’s first timber salvage sale report. President Roosevelt authorized the sale on August 4, 1906, after which the Interior Department instructed Agent Bellow to advertise the sale

36 39 Stat. 123.
37 ARCIA, 1906, 90.
38 Ibid.; Timber, Tribes, and Trust, 28.
for five weeks in local newspapers. Indians were to be employed in cutting and hauling the timber in accordance with the provisions of the Dead and Down Act and the rules and regulations governing timber operations on Flathead.

The "Pinchot-Ballinger Affair"

The successful cooperation between the Interior Department and the Department of Agriculture’s Forest Service in the 1906 blow down incident helped Pinchot, on January 22, 1908, secure a cooperative agreement between the Department of Agriculture and the Department of the Interior that "placed the Forest Service in charge of Indian reservation forests in accordance with Department of the Interior guidelines established for implementing an overall reservation policy." Major disputes soon emerged between the United States Forest Service and the Interior Department, one being their differing views of forestry goals. The Interior Department "based its reservation activities on the Government’s trust responsibility and Indian Service officials used timber as a means of employment for reservation people," while these aims were overlooked by the Forest Service. Another issue concerned multiple jurisdictions, specifically the grazing agreements on the Pine Ridge Indian Reservation in South Dakota that District Forester Smith Riley initiated. This was an act he had no authority to do.

39 AR CIA, 1906, 90.
41 Newell, Clow, and Ellis, 2.5.
42 Ibid., 2.6.
Yet another point of contention concerned the use of the $100,000 Congress appropriated in March 1909 for Indian Service forestry needs (of which, $10,000 was immediately available for use). Pinchot “insisted that it should cover reservation fire fighting and planning as well as other activities. . . . However, the Department of the Interior continued to ignore Pinchot’s demand for fire fighting funds and decided to spend those dollars within its own department.”43 The Department of the Interior determined to cancel the cooperative agreement and to use the funds to create their own branch of forestry in the Indian Service.

On July 17, 1909, Assistant Secretary of the Interior Frank Pierce, with the consent of Secretary Richard A. Ballinger, canceled the agreement with the Forest Service and Pinchot, who later lost his job in early 1910.44 Ballinger hired Jay P. Kinney, a law school graduate and forestry student from Cornell University, as forester.45

Fires of 1910

The increased workload in dealing with all the blown down timber in 1906 compelled Flathead Superintendent Fred C. Morgan to request a full-time forest supervisor for the reservation as well as seven temporary forest guards to help with the increased forestry activity; no one knew the 1910 fire season would be one of the worst in history. Little moisture and high winds made for extreme fire

43 Richmond L. Clow, unpublished manuscript, 3.15-16.
44 Ibid.
45 Newell, Clow, and Ellis, 2.16. Kinney would “hold the reigns under the titles of supervisor of forests (at least by 1914) and chief supervisor of forests (by 1918). Eventually, he became known as director of forestry (apparently not until after the Reclassification Act of 1924), and he continued to head Indian forestry until 1933—an effective and long career.” McQuillan, 86.
conditions and fires burned across the entire northwestern U. S., including the Flathead Reservation.  

On August 10, 1910, Superintendent Morgan telegraphed the Commissioner of Indian Affairs (CIA). He noted that there had been twenty-three fires on the Flathead Reservation since July 1 and requested two companies of troops to help fight them. The War Department immediately sent troops from Washington and North and South Dakota to the Flathead Reservation to fight the fires. On August 23, Morgan again requested the help of two additional companies of troops, however, this second request for troops was canceled when the fires were brought under control after a snowstorm on August 23.  

That summer “nearly 60,000 acres of grazing and timber land had been burned [on the reservation]. The greatest damage was to small timber which was almost completely destroyed in the [burned] areas. Only 7 percent of the mature timber was lost or seriously injured in those instances. Despite a considerable loss in merchantable timber, no human lives were lost, and no stock killed.” The reservation had survived the fire season in terms of human and livestock deaths, compared to other nearby regions that fared much worse.

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47 *Timber, Tribes, and Trust*, 43.
48 Ibid., 44.

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The sale of timber damaged by the fires did not require the President’s consent, as by this time Congress had passed the Act of June 25, 1910, allowing the Secretary of the Interior to authorize the sale independently. Section 7 of the Act of June 25, 1910 especially affected tribal sovereignty by allowing "individual allottees or tribes [to] sell standing, mature, green timber from their
lands for commercial purposes. Although the proceeds of the sale had to be used for the benefit of the Indians, tribes and individuals could obtain an income from their forests by opening the reservation timber lands to economic development.”

Section 7 states:

That the mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such a manner as he may direct: Provided, That this section shall not apply to the States of Minnesota and Wisconsin.

The June 25, 1910 Act also “mandated the fledgling Indian Forest Service to protect reservation timber from fire and trespass violations, as well as to manage the forest to produce an income for tribal members. In compliance with the law, Assistant Forester J. P. Kinney drafted the first Forestry Branch timber regulations in 1910.”

Kinney’s 1910 set of regulations were not approved, though the Secretary of the Interior did approve the second ones, which became effective in June 1911. The Indian Service also began a fire prevention plan and a pest control plan. On August 24, 1912, Congress appropriated $20,000, reimbursable from the sale of tribal land and timber, for the “purchase of a sawmill and logging equipment and the employment of suitable persons to manufacture and to lumber burned timber on the Flathead Indian Reservation, Montana, and to protect the remaining timber from fire and trespass.” The 1912 Act also appropriated

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50 Newell, Clow, and Ellis, 2.15.
51 36 Stat. 855.
52 Newell, Clow, and Ellis, 2.22.
53 Ibid., 2.25.
54 37 Stat. 518.

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$40,000 for purchasing land and erecting new buildings for Agency purposes and moving the Flathead Agency from its location in the Jocko valley to the new site near Dixon, Montana.55

In 1913, the Forest Service and the Indian Service entered into another cooperative agreement for the prevention and suppression of forest fires near common boundaries; this agreement differed from the 1908 cooperative agreement in that “all employees remained under their respective jurisdictions.”56

The logging sales for the 1910 fire-damaged timber were the last large-scale timber sales on Flathead, though the smaller sales on allotments continued for clearing land for agricultural purposes. As Flathead forestry officials finished dealing with the sales of fire-damaged timber, Congress passed a new Flathead allotment act that would keep forestry officials busy for several years.

Tribal Timber Lands and the New Allotment Act

All filing for homesteads on the Flathead Reservation ceased on September 25, 1919 as Congress prepared a new allotment act that was intended to provide allotments for children born after the 1904 Flathead Allotment Act, as well as for any others who did not receive an allotment the first time around. These allotments were to come from the remaining tribal lands on the reservation, most of which were classified as timber lands. The bill, passed on February 25, 1920, stipulated that the tribe could cut the merchantable timber on new

55 Ibid.
56 Richmond L. Clow, 4.5; Newell, Clow, and Ellis, 2.26-2.27.
allotments, after which the title would revert to the allottee.57 Trouble quickly arose concerning the definition of "merchantable timber." Assistant Commissioner of Indian Affairs E. B. Meritt determined that only the proceeds from merchantable saw timber belonged to the tribes and that after the saw timber was cut the allottee owned all remaining timber.58 Meritt also decided that all merchantable timber was to be removed from agricultural lands while timber lands would be left with enough trees to continue the forest’s productivity and once the contracts already in effect at the time of the bill’s passage were filled, the timber would belong to the allottee.59

Another issue immediately surfaced due to the fact that allotments held timber in various stages of growth and by the time the tribes had cut all merchantable timber from the allotment, additional timber could be considered of merchantable size and would thus belong to the tribes; this cycle could continue for years. On April 23, 1925, Assistant CIA Meritt wrote that “only one cutting for the benefit of the tribe should be made subsequent to allotment.”60 This issue was finally formally resolved with an amendment to the February 25, 1920 Act. The Act of June 16, 1950 specified that the tribes “shall be limited to the cutting of so much of the merchantable timber on such allotments as may be cut during the first cutting operations on such allotments, and when such cutting operations

57 41 Stat. 452.
58 Charles E. Coe, Flathead Superintendent, to CIA, June 8, 1921, 49308-1921-339, Central Classified Files [hereafter cited CCF], Flathead Reservation, RG 75, NA; E. B. Meritt, Assistant CIA, to Charles E. Coe, September 2, 1921; 49308-1921-339, CCF, Flathead Reservation, RG 75, NA.
59 E. B. Meritt to Charles E. Coe, March 30, 1922, 49308-1921-339, CCF, Flathead Reservation, RG 75, NA.
60 E. B. Meritt to Charles E. Coe, April 23, 1925, 49308-1921-339, CCF, Flathead Reservation, RG 75, NA.
have been completed, the title to the residual timber on such allotments shall thereupon pass to the respective allottees or their heirs or devisees.\textsuperscript{61}

Sawmill near St. Ignatius, Montana, ca. 1920

(Photograph courtesy of K. Ross Toole Archives)

\textit{Depression Era Forestry on Flathead}

Because the lumber market began to fall in the early 1920s—picking up again by 1923—there were only three large timber sales that decade. Other than the Valley Creek, Big Arm, and Revais Creek Units, the majority of timber sales were small. A minor issue during this period was Flathead Superintendent

\textsuperscript{61} 64 Stat. 229.
Charles E. Coe exceeding his contracting authority on several small sales, though this was quickly resolved.62 Timber trespass surfaced again to become another minor problem, which Coe handled with leniency, as it tended to occur where boundaries were ill defined.63 Yet another minor issue in the 1920s was convincing contractors to comply with the provisions for slash disposal.64 Overall, the administrators of the Flathead Reservation forests handled these issues quickly and well, prompting Superintendent Coe to add range management to the responsibilities of Flathead forestry officials in 1923.65

The challenges that reservation forestry officials faced in the early 1920s were insignificant compared to those they dealt with in the late 1920s and early 1930s when the stock market crashed and a severe economic depression began. The effects of the depression on Flathead Reservation logging are exemplified in the Camas Prairie Unit, which the Polleys Lumber Company (PLC) purchased on September 4, 1928.

Before logging could begin, PLC needed to construct a bridge over Flathead River near Perma that would enable the company to access the logging unit. Difficult economic times prevented PLC from making their initial cut and on January 21, 1933, the Interior Department extended the company's initial cut deadline from March 31, 1933 to March 31, 1934. On July 19, 1933, this

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62 Timber, Tribes, and Trust, 78.
63 Nels O. Nichalson, Lumberman, to CIA, Oct. 21, 1926, 49628-1916-339, CCF, Flathead Reservation, RG 75, NA.
64 Henry B. Steer, Forest Examiner, to CIA, May 11, 1920, 41897-1920-339, CCF, Flathead Reservation, RG 75, NA.
65 Kinney, 255.
deadline was again extended until March 31, 1935.66 Besides the deadline extensions, PLC also requested and received a reduction in the timber stumpage prices. Despite all of this, PLC was unable to cut any timber, prompting the First Assistant Secretary of the Interior to declare the contract forfeited on October 17, 1935.67

Suit against PLC, as well as the United States Fidelity and Guaranty Company on a bond guaranteeing performance of the contract, was brought before the U. S. District Court for Western Montana. The Court ruled in favor of the tribes, who, by this time, had reorganized under the Indian Reorganization Act and were renamed the Confederated Salish and Kootenai Tribes (CSKT/Tribes). The U. S. Ninth Circuit Court of Appeals upheld the verdict on November 23, 1940, but reduced the damage amount to $64,363.50 with interest at six percent from January 6, 1938 for PLC, also ruling against the United States Fidelity and Guaranty Company in the amount of $30,000 plus six percent interest beginning June 4, 1936.68 PLC declared bankruptcy and the Tribes received only $37,072.52, which PLC had paid in advance deposits and which the Indian Office declared as forfeit.69 On January 15, 1941, the United States Fidelity and

66 William Zimmerman, Jr., Assistant Commissioner of Indian Affairs, to Charles E. Coe, June 15, 1934, 9455-1928-339-Part A, CCF, Flathead Reservation, RG 75, NA.
67 Lee Muck, Assistant Director of Forestry, and Carthon R. Patrie, Forester, Appraisal of Damages: Camas Prairie Unit, Flathead Reservation, Montana, 9455-1928-339-Part A, CCF, Flathead Reservation, RG 75, NA.
69 Timber, Tribes, and Trust, 83.
Guaranty Company paid to the Indians $30,000 for the bonding fee, $8,304.52 in interest, and costs taxed in the amount of $188.30.\textsuperscript{70}

\textbf{Railroad logging with the use of McGiffert steam log loader, ca. 1910}

(Photograph courtesy of K. Ross Toole Archives)

The Polleys Lumber Company’s unit proved to be the last large logging unit sold, as well as the end of railroad logging as transporting timber by truck

\textsuperscript{70} Norman M. Littell, Assistant Attorney General, to Oscar L. Chapman, Assistant Secretary of the Interior, February 4, 1941, 9455-1928-339-Part II, CCF, Flathead Reservation, RG 75, NA.

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became more economical. Although J. P. Kinney declared logging operations on Flathead from 1932 to 1942 as "rather inconsequential," there were still problems with which reservation forestry officials had to deal, one of which was mineral claims on timber lands.\footnote{Kinney, 294.}

**Mineral Claims on Timber Lands**

The issue regarding mineral claims stemmed from discrepancies in Sections 8 and 10 of the 1904 Flathead Allotment Act. Section 10 states:

That only mineral entry may be made on such of said lands as said commission shall designate and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by said commission as mineral or otherwise, such classification by said commission being only prima facie evidence of the mineral or nonmineral character of the same: \textit{Provided}, That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian.\footnote{33 Stat. 302.}

Based on this, the General Land Office accepted filings for mineral entries on lands classified as timber lands, despite the fact that Section 8 of the same act states, "when said commission shall have completed the classification and appraisement of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the general provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands."\footnote{Ibid.}

In 1922, Superintendent Coe and Deputy Supervisor of Forests Charles D. Faunce asked the Department of the Interior's solicitor for clarification on the
issue. Solicitor E. Booth responded that timber lands were exempt from entry according to Section 8 of the 1904 allotment Act, specifying that Section 10 referred to lands other than those classified as timber lands. After Booth’s opinion was issued, Coe sent a copy to all mineral claimants on Flathead timber lands, though not one claimant removed. This prompted Coe to recommend in 1925 that the U. S. take the mineral claimants to court on behalf of the tribes in order to expel them as trespassers. Coe’s recommendation was not heeded, and in 1933, when Montana Senator Burton K. Wheeler, accompanied by other senators and representatives from the Indian Office, visited Montana as part of a Senatorial Subcommittee of the Committee on Indian Affairs, Coe suggested that Congress pass legislation to allow the tribes to receive royalties from mineral lands on their reservation.

Besides addressing education, health conditions, mining claims, alcoholism, irrigation, and the economic depression, the Subcommittee spent a significant amount of time discussing Flathead forestry, addressing their questions to Superintendent Coe and Supervisor Faunce. Senator Wheeler pointed out that none of the forestry employees were tribal members, arguing that Indians should have a part in the management of their resources; that they should at least be employed as scalers or forest rangers. Overall, Wheeler expressed his opinion that there were several areas in which the Office of Indian Affairs (OIA) could improve its administration of Indian affairs.

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74 Timber, Tribes, and Trust, 84-85
75 Congress, Senate, Subcommittee of the Committee on Indian Affairs, Survey of Conditions of the Indians in the United States: Hearings before a Subcommittee of the Committee on Indian Affairs, October 18-21, 1933, November 9, 1933, October 17, 1934, part 31: 16810.
76 Ibid., 16776, 16777, 16805.
The following year, Wheeler co-sponsored the 1934 Indian Reorganization Act (IRA), which sought to increase tribal autonomy, but also specifically addressed reservation forests; Section 6 of the IRA mandated that the forests be managed according to the principles of sustained yield. The mandatory implementation of the sustained yield policy infringed on tribal sovereignty by disallowing tribes to elect other timber management options. Additionally, it eliminated tribes' ability to alter timber harvests to reflect fluctuations in the timber market. On Flathead, the sustained yield policy led to numerous conflicts between the tribes and OIA Forestry officials, which will be addressed later in this chapter. Although there "was a delay in implementing the sustained yield policy . . . effective forest management was a central feature of another program that was beginning to operate on the Flathead and other reservations at this time."78

The New Deal and Reservation Forests

When New York Governor Franklin D. Roosevelt ran for President of the United States against incumbent President Herbert Hoover in 1932, he promised Americans a "new deal" to help pull the country out of the severe economic depression. After being elected, President Roosevelt immediately presented Congress with emergency relief legislation, which Congress passed into law on March 31, 1933. The Emergency Conservation Work Act, more commonly

77 48 Stat. 984. Section 3 of the IRA indirectly addressed mineral claims by authorizing the Secretary of the Interior to restore all remaining reservation land to tribal ownership.
78 Timber, Tribes, and Trust, 88.
known as the Civilian Conservation Corps (CCC), aimed to reduce unemployment and to preserve the nation's natural resources. In 1933, Roosevelt also appointed John Collier as the Commissioner of Indian Affairs. This appointment, as well as the creation of the CCC, would thoroughly affect reservation forests. John Collier, a "leading critic of the Indian Service" and J. P. Kinney, "the most influential Indian Service forester," butted heads from the beginning.\(^7\)

In his unpublished manuscript Richmond L. Clow writes, "Collier and Kinney not only disliked each other, but they had different philosophies regarding reservation forestry. Collier demanded change, [while] Kinney wanted to refine current practices."\(^8\) Later that same year, on July 5, 1933, Collier removed Kinney after twenty-three years of service in Indian forestry, and replaced him with Robert Marshall, who was "the antithesis of Kinney. Whereas Kinney was a practical forester, Marshall was a wilderness advocate."\(^9\) Kinney, however, was soon hired as the General Production Supervisor of the CCC.

The CCC employed jobless men "on conservation projects in the Nation's forests and grasslands. But, in its haste to pass the measure, Congress overlooked Indian forest lands. [This was remedied a month later when the Emergency Conservation Work] Advisory Council authorized the Indian Service to assume full administrative responsibility 'for all phases of the Emergency Conservation Program on Indian lands.'"\(^10\) This program operated under the name of Indian

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\(^7\) Richmond L. Clow, 5.10.
\(^8\) Ibid.
\(^9\) Ibid., 5.11.
\(^10\) Newell, Clow, and Ellis, 3.28.
Emergency Conservation Work until 1937 when the name was changed to the Civilian Conservation Corps-Indian Department (CCC-ID). Like the CCC, the CCC-ID lasted nine years, ending July 10, 1942. However, during that period:

85,200 Indians and 3,149 non-Indians obtained work. Annual expenditures averaged $8,000,000. Projects were started on 71 jurisdictions in 23 States. Indian people directly benefited from the CCC-ID employees, who built nearly 10,000 miles of truck and secondary roads; 3,200 miles of foot trails; 1,200 bridges; 7,500 miles of telephone lines; 95 fire lookouts; and over 600 dwellings. In addition, beetle infestations were brought under control, timber surveys completed, and major fire protection programs initiated. In the suppression of fires alone, over $1 million of merchantable timber was saved from destruction by wildfire.83

Nearly seven thousand men were employed in the Missoula, Montana district alone; about half of the men were from Montana and the rest were from urban areas on the east coast. Additionally, 1,100 Indians were put to work on reservations throughout Montana.84

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83 Ibid., 3.32.
84 Timber, Tribes, and Trust, 89.
Because the Flathead Reservation contained large forested areas, activities there were similar to those approved for off-reservation forested areas, such as the use of 200-man work units that were deemed impractical on other reservations that did not have extensive forests. The first such camp was the Jocko Camp, located in the southeast corner of the Flathead Reservation, where a 200-man unit worked to complete various projects up the Jocko Canyon as part of Project Number 1.

Project Number 1 included the construction of numerous truck trails and roads in order to provide fire protection in the Mission Mountains. The men also built bridges, horse trails, and the Jocko fire lookout, as well as telephone lines and roadside clearing. Project Number 2 consisted of a 100-man unit located at the Mill Creek Camp in the northwest corner of the reservation. Project Number 2 saw the construction of bridges, telephone lines, truck trails, and the improvement of already-existing roads. The Jocko Camp and the Mill Creek Camps were the only two camps of significant size on the reservation, though much work was also performed elsewhere.\(^8^5\)

Magpie Creek and Valley Creek were the next two sites of CCC-ID camps, where men continued to construct roads, telephone lines, and fire lookouts. One important road the CCC-ID built was the Valley Creek Truck Trail, which extended from the south fork of Valley Creek to Revais Creek. There were also “two additional outlets planned, one extending down into the north fork of Valley Creek, and one connecting with an old logging road south of Dixon. One can safely assume that while these roads built by the CCC-ID were

\(^8^5\) Ibid., 91-92.
valuable for fire protection, their main justification, they were also useful as timber access roads for future logging operations,” as the Conservation Working Plan for 1938-1939 mentions that there was a “very large amount of lumber for tribal use in the future” located in that area.86

During the final three years of CCC-ID work on the Flathead Reservation, crews built roads on Elmo Ridge and constructed the Irvine, Clear Creek, Mission Canyon, and Crow Creek Truck Trails. By the time the CCC-ID ended in 1942, it had contributed greatly to Flathead Reservation and its forests; crews built miles of horse trails, as well as other projects including “fencing, spring development, insect control, and rodent control . . . [w]ildlife preservation, campground development, range seed plots, and some landscaping.”87

The Indian New Deal

As President Roosevelt’s New Deal Emergency Conservation work got underway, Collier worked to create his own New Deal for Indians. Clow writes, “The Indian Reorganization Act of 1934 was the core of Collier’s Indian New Deal, but there were precedents for this administrative initiative intended to end allotment and enable tribesmen to reorganize their governments so that they would assume greater control over reservation resources. The past actions urging these ideas included the 1928 Meriam Report, the 1929 Klamath incorporation bill, Commissioner of Indian Affairs Charles Rhoades’ 1929 memoranda, and

86 Ibid., 92-93.
87 Ibid., 95.
Senator Lynn Frazier's 1932 tribal incorporation bill.\textsuperscript{88} As mentioned earlier, Section 6 of the IRA mandated that reservation forests be managed according to the principles of sustained yield. If tribes elected to reincorporate under the IRA in order to gain greater independence and decision making power, the sustained yield policy was automatically forced upon them regardless of their preference for timber management; ironically limiting tribal sovereignty by restricting tribal decision making power.

Former chief forester J. P. Kinney disapproved of the IRA for the reason that the "legislation's rigid rules eliminated the Secretary of the Interior's freedom to manage reservation forests on the basis of local social need."\textsuperscript{89} The new regulations, drafted by Marshall and Collier, also placed more severe restrictions on tribal logging. It seemed that neither Collier nor Marshall "fully grasped the reality that any reduction in reservation timber volume would aggravate tribal social needs and neither understood the depth of tribal support necessary to control reservation timber cutting."\textsuperscript{90} Additionally, many tribes with large forests wanted to control their timber harvests; they also wanted to have the option to sell significantly more timber than was allowed for in Collier's regulations.

In order to help tribes implement the new sustained yield policy, Congress asked the "nation's major timber owners to report on their holdings. This investigation sought to relate the various programs to a national plan for sustained yield management. The OIA responded to this appeal with a report prepared by Lee Muck, Assistant Director of Forestry, and Percy E. Melis, Assistant Forester,"

\textsuperscript{88} Richmond L. Clow, 5.12.
\textsuperscript{89} Ibid., 5.14.
\textsuperscript{90} Ibid., 5.11-5.12.
titled *The Status of Indian Forests in Relation to a National Program of Sustained Yield*. The so-called Muck-Melis Report of 1931 provided guidelines for reservation timber management, complete with annual harvest schedules.

Robert “Bob” Marshall, ca. 1931

(Photograph courtesy of K. Ross Toole Archives)

Despite the fact that many tribes wanted to harvest and sell more timber than Collier’s new regulations allowed for, Marshall continued—with Collier’s

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91 *Timber, Tribes and Trust*, 127-128.
92 Ibid., 128.
support—to restrict tribal logging operations even more "by promoting scenic and recreation policies that did not benefit unemployed tribesmen." \(^9^3\) By October 1937, Marshall had instigated the creation of twelve tribal roadless areas and four wilderness areas.\(^9^4\) Clow writes that the creation of roadless and wilderness areas did conserve reservation timber, but the "regulations governing roadless areas inhibited the owners from using tribal resources according to local Indian needs that ranged from grazing to logging." \(^9^5\) Flathead was one of several reservations Marshall had selected for the proposed roadless and wilderness areas.

**Roadless and Wilderness Area Designations**

On January 3, 1936, the CSKT tribal council passed Tribal Resolution No. 4 to designate a section of the west slope of the Mission Mountains as an "Indian-maintained and supervised public recreational area." \(^9^6\) The Secretary of the Interior did not approve the resolution, but somewhat ironically, one year later Marshall proposed to designate the same general area of the Missions as "roadless." Although this was the same area that "the Tribes proposed to preserve as a park . . . the separate origins of these two similar ideas made all the difference." \(^9^7\) In the tribal resolution the CSKT would maintain total control of the area; in the OIA-proposed designation, not only would the OIA have ultimate

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\(^9^3\) Richmond L. Clow, 5.7.
\(^9^5\) Richmond L. Clow, 5.20.
\(^9^6\) Confederated Salish and Kootenai Tribes [hereafter cited CSKT], Tribal Resolution No. 4 (3 January 1936), Records Office [hereafter cited RO], Tribal Business Complex, Pablo, MT [hereafter cited TBC].
control, but also there would be no logging and the Tribes wanted logging in order to generate revenue.

The no-logging stipulation was an issue for the Tribes, as tribal leaders quickly pointed out that “a large supply of merchantable timber is presently available within the existing ‘Roadless and Wild Area’ and . . . the Tribes are desirous of cutting and marketing this timber, now.”98 In March 1939, the Tribes passed Resolution No. 157 to formally protest the proposed designation.99 In July 1958, the Tribes passed Resolution No. 991, opposing all versions of the wilderness bill that included tribal lands without the express consent of the tribes affected.100 This opposition paid off and the proposed roadless designation was dropped. Once the fight was over, the Tribes and OIA forestry officials began making plans to log various units within the area.

The notion of creating wilderness areas in various sections of national forests and national parks as well as on certain Indian reservations resurfaced again in the 1950s when several bills were submitted to Congress. This ignited nation-wide tribal opposition and after Commissioner of Indian Affairs Glenn L. Emmons reported that he could find no evidence that the tribes had consented to the creation of roadless areas on the reservations in 1937, all references were struck from the proposed legislation. Additionally, some tribes requested that lands designated as roadless in 1937 have the designation rescinded. In the end, the 1964 Wilderness Act contained no references to wilderness areas on Indian

98 CSKT, Tribal Resolution No. 1003 (31 December 1958), RO, TBC.
99 CSKT, Tribal Resolution No. 157 (2 March 1939), RO, TBC.
100 CSKT, Tribal Resolution No. 991 (18 July 1958), RO, TBC.
Years later, in 1982, the CSKT would establish the first tribal wilderness area in the nation using the 1964 Wilderness Act as a model. This history will be addressed later in this chapter.

*Flathead Reservation's First Forest Management Plan*

During the economic depression the demand for timber decreased significantly. On Flathead this was apparent by the less than 5 million board feet\textsuperscript{102} of timber harvested annually between 1931 and 1941. The annual harvest increased by more than 15 million board feet from 1941 to 1945 due to the increased demand for timber products instigated by the United States' involvement in World War II, which involvement effectively ended the economic depression.\textsuperscript{103}

A significant timber sale occurred in 1941 when the Northern Pacific Railway Company needed to replace its railroad ties. Flathead Superintendent L. W. Shotwell promptly agreed to sell them the timber they needed. Another substantial sale during this period was the 1944 Morigeau Gulch sale of 10 million board feet.\textsuperscript{104} The increased activity on Flathead forests, coupled with the Tribes' 1936 incorporation under the IRA, prompted reservation officials to create, with Billings Regional Forester Thomas Carter, the first Flathead Reservation Forest Management Plan in 1945. This plan was the first in-depth analysis of Flathead Reservation forestry; it was also the first proposal for

\textsuperscript{101} Richmond L. Clow, 5.35-5.36.
\textsuperscript{102} See footnote 19 of this chapter for definition of board feet measurement.
\textsuperscript{103} *Timber, Tribes, and Trust*, 124.
\textsuperscript{104} Ibid., 125-126.
implementation of an annual allowable cut. This was because Carter, in his analysis, estimated that at the current rate of removal—24 million board feet annually—all accessible reservation timber would be cut by 1962. To counter this he “proposed dividing the Reservation’s commercial timber land into 48 logging units. He predicted that a 10 million board feet annual harvest would extend logging operations on the Reservation until 1988; residual stands would then produce enough timber to allow a continuation of the 10 million board feet annual cut.” Overall, the 1945 Management Plan reported that slash disposal was sound; the logging road system deficient; and suggested that the 1945 management plan be periodically updated and revised. The 1945 plan also offered the first attempt by the OIA to apply the sustained yield policy to Flathead forests. However, the 1945 plan’s recommendation of reducing the annual cut to 10 million board feet “evidenced a faith in [the authors’] ability to control the demand for timber.” The proposed depletion schedule placed the forestry staff in a difficult situation; the IRA required them to manage the forest on a sustained yield basis while the Tribes wished to cut and sell significantly more timber.

The timber harvest increased each year and by 1954, the annual cut was more than 20 million board feet, prompting forestry officials to plan to gradually reduce the annual allowable cut to 10 million board feet. However, instead of decreasing, the annual harvest continued to increase. The Tribes justified their

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107 Timber, Tribes, and Trust, 132.
desire to more aggressively develop the reservation’s forests on the claim that the forests held considerably more timber than was estimated by the 1936 Forest Service check cruises. Soon, the OIA foresters agreed that there was indeed more timber in the forests than was previously thought and they commissioned Greenacres Incorporated of Seattle, Washington to conduct a new inventory and analysis in 1962. With the help of aerial photographs, Greenacres was able to conclude that the reservation’s forests “contained 411,844 acres of commercial timberland, having a volume of [3.1 billion board feet]; this compared to the earlier estimate of 371,200 acres and [1.6 billion board feet].”\textsuperscript{108}

Armed with these statistics, the revised Flathead Forest Management Plan of 1962 allowed a substantial increase in the annual cut; 29,539,000 board feet would be cut in 1964; 48,522,000 board feet in 1966; and 75,874,000 board feet in 1968.\textsuperscript{109} Table 1 shows the total yearly volume and value of timber contracts on the Flathead Reservation between 1969 and 1973:

\begin{table}[h]
\centering
\begin{tabular}{lll}
\hline
Fiscal Year & Volume of Timber Sold & Gross Value of Contracts \\
\hline
1969 & 87,637,000 board feet & $3,992,000 \\
1970 & 50,451,000 board feet & $2,066,000 \\
1971 & 47,908,000 board feet & $1,439,000 \\
1972 & 72,596,000 board feet & $3,406,000 \\
1973 & 72,710,000 board feet & $5,179,000 \\
\hline
\end{tabular}
\end{table}

\textsuperscript{108} Ibid., 158.
\textsuperscript{109} Ibid., 171.
Tribal Member Opposition to Logging Practices

The increased logging of the 1960s and 1970s upset some tribal members who “began to voice their concern over the depletion of reservation timber and suggested curbing or even discontinuing the sale of timber to white commercial loggers.”\textsuperscript{111} Despite this concern, the Tribes and Bureau of Indian Affairs (BIA) forestry officials continued their aggressive logging practices, which soon included plans for logging portions of the west slope of the Mission Mountains. In 1969, the BIA sold the Yellow Bay Logging Unit to the Dupuis Brothers Lumber Company. The Yellow Bay Unit, in addition to a few others, was to be clearcut due to insect infestations.\textsuperscript{112} The fact that the clearcuts would be seen from the reservation valley ignited major protests from local residents and would help propel the area to the protected status of “wilderness.”\textsuperscript{113}

In 1970, Thurman Trosper presented the tribal council with the idea of designating much of the Mission Mountain range as a tribal wilderness area that would be “governed by tribal policies and as easily dissolved by tribal resolution as created.”\textsuperscript{114} Trosper was a CSKT tribal member and former U. S. Forest Service Ranger and Forest staff on the Clearwater National Forest in charge of Timber Management; Forest Supervisor of the Bitterroot National Forest; and Assistant Regional Forester for Personnel in the Eastern Region. He also worked

\textsuperscript{111} Krahe, “A Confluence of Sovereignty and Conformity: The Mission Mountains Tribal Wilderness,” 49.
\textsuperscript{112} Page 83 of the CSKT’s 2000 Forest Management Plan lists the locations clearcut due to beetle infestation as “large areas in the South Fork of the Jocko and along the tops of the northern Missions near Yellow Bay, Boulder, and Hellroaring Creeks.”
\textsuperscript{113} Timber, Tribes and Trust, 173.
for the Bureau of Outdoor Recreation, and had also been the Special Assistant to the Director of the National Park Service.\textsuperscript{115} Although the tribal council was unreceptive—believing that “any wilderness designation would mean surrendering some control to the federal government”—the idea would resurface a few years later.\textsuperscript{116} In the meantime the Tribes allowed the logging to continue on the Yellow Bay, Ducharme, and Boulder Units.

In 1972, the BIA sold the 75.12 million board feet Granjo Unit, to be cut over the next five years. A year later the Valley Unit was up for auction. This was a 36,326 acre unit containing 81.3 million board feet of timber. Besides these two large units, the “Flathead Agency BIA Forestry intend[ed] to sell 87 million board feet of timber around St. Mary’s Lake sometime within the next decade.”\textsuperscript{117} The Evans Products Company of Missoula, Montana received the Valley Unit with a high bid of $4,921,339.95 and would log the unit over the course of the next eight years.

Acting Reservation BIA Forestry Manager Fred Malroy wrote an editorial in the \textit{CharKoosta News} titled, “Big Timber Sales Expanded,” explaining the reasoning behind the large timber sales. Malroy stated that it was the objective of the forestry program “primarily to produce maximum income for the Tribes through our timber sales. We must operate within the limits of our allowable cut,

\textsuperscript{117} “81.3 Million Board Feet To Be Sold Friday: Valley Unit On Auction Block,” \textit{CharKoosta News}, 15 January 1973, 1. (Note: “What Has Become of the Granjo,” \textit{CharKoosta News}, 15 June 1974, 7, lists the sale as 77.1 million board feet and sold in 1971.)
with manpower resources available to us and without intolerably disturbing the environment.” He continued:

By having two or three large sales operating, each producing 10 to 15 million board feet of timber annually, we have made a good step in producing our allowable cut, hence dollars and jobs. In most respects it takes about the same amount of time to prepare (cruise, appraise, and document) both large and small sales. We simply don’t have the manpower to eliminate large sales and maintain any semblance of desired production levels. Also, large sales generally attract purchasers who are more financially stable, can pay for their logs without coercion and have supervisors on the job who are better trained to plan and control an operation.118

Additionally, Malroy wrote that a large sale was more efficient than several smaller sales as Forestry has only one purchaser and one contract to attend to; if the same unit was sold to five different people it would increase Forestry’s workload by five times.119

The ongoing logging, as well as the proposed sales, on the face of the Missions “swiftly [became] a political hot potato on the reservation. The tribal council election in December 1973 focused largely on logging, especially logging in the Missions, with many candidates favoring the exclusion of the Mission Mountains from the forestry schedule and the reform of these timber practices criticized as too intense.”120

In the April 15, 1973 issue of the CharKoosta News Malroy addressed the concerns that “Forestry activities do or may cause damage to natural water supplies and stream banks, decimate big game herds [by decreasing ground

119 Ibid.
Malroy explained that the U. S. Forest Service's annual inventory in 1972 found evidence of Spruce Budworm infestation on 184,000 acres on the reservation, a number that would increase in coming years. To stop the spread of the Budworm, and to garner the most revenue for the timber, BIA forestry officials planned to clearcut—as opposed to alternative methods of logging—several areas on the Mission Mountains that showed signs of Budworm infestation; this included the Ashley, Mud, and St. Mary's Units, each unit ranging from 20 to 80 million board feet. Malroy also expressed in the article that he "would like to negotiate a contract with a knowledgeable professional at the University in Missoula to organize a team and conduct a study this summer. I want him, in fact, to prepare an environmental impact statement for us to review." After the December 1973 tribal council election, the new council hired the University of Montana's School of Forestry to conduct an environmental assessment of reservation timber operations.

In March 1974, the BIA placed a moratorium on all Mission logging until the reservation's forest studies were completed and all forestry staff positions were filled. The moratorium was also the result of "considerable concern by the council and their constituents that [the BIA is] over cutting the timber supply on the reservation." During this time, Trosper convinced the Tribes to hire the University of Montana's Forestry School to also conduct an analysis of the

122 Ibid., 6-7.
reservation's timber growth and annual harvest, which would enable the Tribes to "set their own, more sustainable quotas and guidelines for the BIA managers to follow."\textsuperscript{124}

The \textit{CharKoosta News} calls what happened next a tug-of-war over the Mission Mountains, as the tribal council began to assert control over decisions affecting tribal timber. The Ashley Unit was first proposed for sale on March 21, 1974. Shortly thereafter, the tribal council voted to have the Economic Development Committee (EDC) review logging plans and make recommendations; looking specifically into a proposal for "clean logging" including horse skidding and roads only in draws.\textsuperscript{125} The EDC reported that the Ashley Unit was too prominent and too large a unit on which to conduct the clean logging experiment. On the recommendation of the EDC, the tribal council voted on April 12, 1974, to delay "the scheduled start of several Mission Mountain foothill logging projects for at least one year" while they asked Fred Malroy to conduct a clean logging pilot program on a one million board feet sale somewhere north of the Ashley Unit, logging it as "carefully and economically as you can, then we [the tribal council] will take a look at it and decide whether or not it is good enough for the rest of the Missions."\textsuperscript{126}

The Ashley Unit would have been the first of eight units along the Mission foothills between Ronan and St. Ignatius to be logged over the next six years in

\textsuperscript{125} "Tug-Of-War Over Ashley Log Unit: Many Want Ashley, Ervine Units Preserved In Wilderness," \textit{CharKoosta News}, 15 August 1974, 3.
\textsuperscript{126} "Mission Unit Logging Will Be Delayed," \textit{CharKoosta News}, 1 May 1974, 2.
accordance with Forestry's timber harvest schedule. The total volume of the eight scheduled sales was 223,000,000 board feet.\textsuperscript{127} 

A month later, the University of Montana's environmental assessment of reservation forestry practices was complete, naming "logging roads as the most drastic form of environmental impact on the reservation's forests."\textsuperscript{128} Dr. Leo Cummins and the study team, composed of eight forestry experts, presented their findings to the Tribes on April 30, 1974. University of Montana silviculturist Dr. Arthur L. Roe noted that there were currently 21,405 miles of roads on 252,500 acres of land on the reservation; nearly enough roads to circle the earth.\textsuperscript{129} The study team found that this many roads could affect the generation of new trees; contribute to the erosion of surface soils; affect air quality by creating dust; decrease aesthetic value; contribute to declining game populations from lack of protective cover; increase the fire hazard from slash piles; disrupt tribal culture by exposing hunting and gathering grounds, and jeopardize tribal historical sites.\textsuperscript{130} 

In keeping with the decisions and the growing concern over the harvest schedule, the tribal council, on June 13, 1974, "refused to approve a cruise report on the Ervine Unit . . . because of a previous resolution not to take any action on forestry projects until Acting Forestry Manager Fred Malroy is replaced by the Bureau of Indian Affairs," and also because, as Elmo council representative Pat

\textsuperscript{127} Ibid., 1-2. 
\textsuperscript{128} "Forest Study Team Zeros in on Roads: Enough Reservation Roads to Circle the Globe, almost," \textit{CharKoosta News}, 1 May, 1974, 1. 
\textsuperscript{130} Forest Study Team Zeros in on Roads: Enough Reservation Roads to Circle the Globe, almost," 1-2.
Lefthand stated, the people of his district “want to keep that (the Ervine Unit) in a
general wild condition to support larger game populations.” Councilman Vic
Stinger of Pablo also noted, “They are just now cleaning up the Deep Unit, which
is just on the other side of the hill from the Ervine. It seems to me they are not
considering the game in the area. [Our] forestry department does not seem to
consider things like that when they schedule these logging sales and our game is
important enough so that I think we should insist that they do plan for game
management.”

On July 23, 1974, to everyone’s surprise, “the Economic Development
Committee reversed itself and recommended that the Ashley Unit, the Ervine
Unit, and the Hot Springs Unit be prepared for sale.” The EDC claimed their
decision reversal stemmed from pressure from several tribal members and the fact
that Dr. Leo Cummins’ study found that, despite severe criticism in the areas of
roads, watershed protection, and wildlife management, the BIA forestry practices
“as a whole were generally good.” Given the EDC’s recommendation, the
tribal council voted to lift the logging ban and to sell the Ashley and Ervine Units,
though this decision lasted only about a week as upset tribal members—including
several elders—spoke out against the council’s decision. At the August 2 tribal
council meeting, tribal member Germaine White stated that opposition to the sale
was “violent” and that petitions to stop all Mission logging, which were started
the last winter but abandoned when the council voted to defer the sales, were

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132 Ibid.
133 “Tug-Of-War Over Ashley Log Unit: Many Want Ashley, Ervine Units Preserved In
Wilderness,” 3.
134 Ibid.

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being recirculated. Likewise, tribal member Tom McDonald added that “most people were ‘really mad’ when it became known the sale had been approved.”

After the August 2 meeting, the tribal council voted to restore the clean logging pilot project and postpone the Ashley sale, also voting later to postpone the Ervine sale due to resistance from the Kootenai community in Elmo and Dayton; councilman Pat Lefthand said the “Kootenai people want a place they can go to hunt and fish and pick berries ‘where they do not have to look at a mess all the time.’”

As the Hot Springs and Welcome Springs Units came up for sale in the timber harvest schedule, tribal member Johnny Arlee asked the council at the 1975 Quarterly Meeting on April 4, “to begin looking at the forest as ‘more than just dollars.’” Diana Pete agreed and asked whether “the forest belongs to the Tribes or the BIA.” Councilman Stinger agreed but stated that “tribal government and programs were becoming increasingly expensive and asked ‘how are we going to pay for these things without an income from our forests?’” Councilman Tom “Bearhead” Swaney of St. Ignatius “said he felt forestry was essential to the Tribes but added that other uses of the forest were equally important. He said the

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135 Ibid., 1.
136 Ibid., 3. Additionally, the same issue of the CharKoosta News contains an article stating: “Even though the Irvine sale was postponed, it would come up again a year later in the timber harvest schedule . . . and the Tribal Council would again postpone the sale. In April 1974, the Tribal Council also voted to delay the approval of the Fringe sale in order “to allow the council its review of the tribal forestry program. Among other things, the council is miffed at the restoration of Fred Malroy as BIA Agency Forestry Manager. Last summer the council resolved to discontinue acting on forestry proposals until Malroy was replaced.” “Fringe Sale Doubles Appraised Value,” CharKoosta News, 15 August 1974, 1-2.
Council, with the help of the people of the Tribes, must develop a management plan which would reconcile all uses of the forest.\textsuperscript{137}

1975 and 1982 Forest Management Plans

The University's findings and the protests from members of the reservation community brought about significant changes in the Flathead Reservation Forest Management Plan in 1975. The BIA began working on the new Flathead Reservation forest management plan in 1971 and it was ready for review in 1975; primary author and Forestry Officer, Bob Miller, presented the proposal to the tribal council on May 23, 1975. The plan was some 400 pages in length and developed several alternative schemes from which the tribal council could select for managing the Tribes' 434,314 acres of land with forests, from 1971 to 1982.\textsuperscript{138}

The 1975 Forest Management Plan that the Tribes approved focused on intensive forest management and made "non-timber considerations such as game management and water shed protection."\textsuperscript{139} Aside from reducing the annual allowable cut, the plan stipulated that in "the 37.7 percent of the Mission Mountains deemed commercial forest land (the 62.3 was classified as inaccessible, non-commercial forest or non-forested), the annual cut of 9 million

\textsuperscript{137} "Forestry and Culture at Quarterly," \textit{CharKoosta News}, 15 April 1975, 15.
board feet would be extracted while carefully regulat[ing] road spacing and logging methods to reduce and minimize visual impacts of logging.”

In the 1982-1992 management plan, the tribal council “elected to harvest 38.4 million board feet of sawlogs per year.” The council also allowed for tribal members to harvest 452,000 posts annually, also setting aside “approximately 15,000 acres of lodgepole for continuous post and pole production.”

The Mission Mountain Tribal Wilderness

The January 1, 1975 issue of the CharKoosta News announced that Congress had passed a “ten-year old bill to include a large section of the Mission Mountain highlands east of the [Flathead] reservation into the National Wilderness system,” noting that the tribal council “has been considering an Indian wilderness in the Missions for the past three years. A proposal made by tribal member Thurman Trosper, [of] Ronan, would reserve most of the reservation Mission high country for wilderness uses. Although the reservation portion of the Mission wilderness would not fall under federal wilderness system, Trosper suggested that management conform generally to federal guidelines. . . . Trosper’s plan would not only restrict development of the Mission high country, but would also call for a special timber management for the foothills.”

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142 Ibid.
In 1977, Tropser convinced the tribal council to hire the University of Montana’s Wilderness Institute to study the west slope of the Mission Mountains. As the Wilderness Institute began their study, the “Save the Mission Mountains Committee” began circulating a petition calling for the tribal council to create a tribal primitive area of the entire Mission range, to be “managed strictly for the Cultural, Recreational, and Aesthetic use of the Confederated Salish and Kootenai Tribes.” The petition failed to produce a tribal referendum to establish the area. However, in 1978, the Institute presented the council with plans for creating the Mission Mountain Tribal Wilderness and “upon receipt of the institute’s extensive study, the council chose to proceed with plans to establish the nation’s first Indian wilderness;” which would be accessible to tribal and to non-tribal members with the purchase of a tribal recreational permit.

In 1979, the Tribes set aside the 59,000-acre South Fork Primitive Area and the 35,000-acre Lozeau, or Mill Creek, Primitive Area for use by tribal members only. Also in 1979, the tribal council passed a resolution that established the boundaries and halted all logging within them. Before the wilderness area could be achieved, a management plan had to be devised. The “bulk of this task fell to David Rockwell [who would later become] the first director of the new Wildland Recreation Program.” On June 15, 1982, 91,786-
acre Mission Mountain Tribal Wilderness Area became a reality.\textsuperscript{149} Five years later, the Tribes established a 23,000-acre buffer zone along the western, low-elevation boundary of the wilderness area, creating "a transitional management zone, one to three miles wide [to cushion the wilderness] from outside influences."\textsuperscript{150}

The tribal council prohibited any additional commercial logging "within the boundaries of Tribal recreation sites, the Tribal Wilderness Area, the Buffer Zone, the South Fork Primitive Area, and Chief Cliff Management Area, and the Lower Flathead River Corridor."\textsuperscript{151} The tribal council also prohibited the construction of any permanent or temporary roads as well as the use of motor vehicles, motorized equipment or motorboats. Additionally, no landing of aircraft or other form of mechanical transport is allowed within the area.\textsuperscript{152}

\textsuperscript{149} Confederated Salish and Kootenai Tribes [hereafter cited CSKT], Tribal Council Minutes, 15 June 1982, Records Office [hereafter cited RO], Tribal Business Complex, Pablo, MT [hereafter cited TBC].
\textsuperscript{151} 2000 Forest Management Plan, 136.
\textsuperscript{152} CSKT, Tribal Council Minutes, 15 June 1982, RO, TBC.
The Tribal Wilderness Area and Buffer Zone run along the eastern boundary of the reservation (see map key for distinctions). The South Fork Primitive Area is located in the southeast corner of the reservation and the Lozeau, or Mill Creek, Primitive Area is located in the northwest corner. (Map courtesy of the CSKT GIS Program)
Self-Governance

In 1995, due to their self-governance status, the CSKT were able to enter into a management compact with the BIA for departments such as Natural Resources, Tribal Health, Division of Lands, and parts of Fire Management. As reviewed in Chapter 4 of this dissertation, the CSKT were one of the ten tribes nationwide selected to participate in the Self-Governance Demonstration Project in 1988. Five years later, the Tribes received full self-governance rights due to the success of their Demonstration Project. Self-governance status has enabled the Tribes to take the idea of Public Law 93-638 contracting a step further.

Public Law 93-638, the Indian Self-determination and Education Assistance Act of 1975, encourages tribes to assume greater administrative control for federally funded programs on their reservations. When tribes are able to enter into a so-called “638 contract” the money allocated by the BIA for that program must continue to be used for that program; it must be administered as it was before the contract. With self-governance, tribes receive funds equal to the amount they would have been eligible for under Public Law 93-638, but they have the option to redesign programs, activities, functions, or services and reallocate funds for these efforts.

With the freedom of contracting and compacting often comes new financial strains and stresses on a tribe’s ability to provide ongoing services. The creation of additional employment positions or salary increases for existing positions must be covered by funds allocated for that program, or from other tribal

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resources, which creates a drain on the budget that did not previously exist. This need for additional revenue is precisely the point at which assuming management responsibility can be hurtful to tribes, as the inevitable result is either that program services decrease or tribes find other ways to supplement program budgets. The downside of this reality is exemplified by the current situation concerning Tribal Forestry, where the need for additional revenue to support the tribal government outweighs ensuring the economic welfare of individual tribal member loggers.

Interpreting the Purpose of the Forest Resource

The CSKT's 1995 management compact with the BIA included the Tribal Forestry Department. Despite the fact that the compact allowed for greater tribal control over the reservation's forest resource, there is a disparity in how the tribal government and portions of the tribal membership view the forest resource should be utilized; whether it should primarily provide an income to the tribal government or provide an income to tribal member loggers. The authors of the Flathead Indian Reservation Forest Management Plan for 2000 note that the tribal council considered public participation crucial to the development of the plan. This led to the creation of an ad hoc group of thirteen tribal members who met several times with the resource professionals during the drafting of the plan.

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In addition to the ad hoc group, "the Tribes held five scoping meetings around the Reservation and one public hearing in Pablo to gather public input for the Forest Management Plan [Environmental Impact Statement]. The [Interdisciplinary] Team also made presentations on the [Environmental Impact Statement] and Forest Plan to the Cultural Committees and Tribal Council and asked for their input throughout the process." The ad hoc group’s recommendation regarding tribal member forest-related employment opportunities expresses the overwhelming issue: "Improve the opportunities for Tribal members to contract larger timber sales; Increase the number of Tribal members employed in the woods; Increase small business loans to enhance Tribal member business opportunities; Keep more timber dollars in the Tribal community."

Regardless of these recommendations, the forest-wide socio-economic objectives listed in the Forest Management Plan do not specifically reflect these tribal member concerns. The first goal listed is: "Provide income to the Tribal government from an estimated annual harvest of 700 thousand board feet of ponderosa pine and 17.4 million board feet of other species for the first thirty-year period."

The other three goals are:

- Provide employment to between 85 and 105 Tribal government employees; Provide employment to about 200 other wood products workers based on an annual harvest of approximately 18.1 million board feet generating about $6.3 million in wages annually; Provide information

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155 Ibid., 46.
156 Ibid.
157 The rest of the first goal is: "At the current stumpage rate these volumes will generate approximately $4,300,000. This includes two to three million board feet set-aside for Indian loggers in small sales and paid permits. (The stumpage values used for Indian loggers are 36 percent of the contract stumpage. This is the average value of Indian stumpage versus non-Indian stumpage for the period 1988 through 1997.)" 2000 Forest Management Plan, 161.
on site specific resources to Tribal members’ developing business plans for forest-related concessions or outfitting enterprises.\textsuperscript{158}

The differing views of the tribal member community and the Tribal Forestry Department, especially concerning logging permits and timber sales to non-Indian logging companies, has created contention within the Tribes.

Recently, the Tribal Forestry Department initiated an Education Outreach Program that included a research project Roian Matt conducted as its first step. Throughout the course of her research, Matt met with various groups in order to determine the tribal community’s main concerns regarding forestry activities on the reservation. Among those she met with was a group of tribal member loggers who “expressed that they are not content with current decision-making. [The loggers] believe that they are not receiving adequate quantity and quality of work from the Confederated Salish and Kootenai Tribes.”\textsuperscript{159} Matt also found that although the reservation’s timber industry is the second leading revenue producing business for the tribal government—producing approximately $3.5

\textsuperscript{158} 2000 Forest Management Plan, 161.

\textsuperscript{159} Matt, ii. The other two groups Matt met with were tribal elders and Tribal Forestry staff. This chapter’s focus on the Indian loggers is not meant to discount in any way the concerns of the other groups. In regard to the elders, Matt found that they “did not see the forest as having retail value, but rather, as traditional value. They valued the forest for the foods, medicines, and tools that it offers. In working with the elders, the project established that there were cultural and language gaps between the Tribal Forestry Department and the elders group. In order to alleviate these differences, parts of the Flathead Indian Reservation Forest Management Plan were translated in the Salish and Kootenai languages” (81). Concerning the Forestry staff, Matt reports: “The Tribal Forestry staff also expressed concerns with the NEPA and the Lynx Conservation and Assessment Strategy. Their argument was that because they are managing Indian-owned lands, and not public lands, that they should have more say in how the land is managed. By the U.S. Government imposing federal laws on the Reservation, this was an infringement on tribal sovereignty and inhibited the landowners['] right to manage the land for forest health. They also identified other forest health issues, such as insect infestations and disease caused by overstocking. They recognized ecosystem management as significantly based on fire, and without any or just limited use of fire, their ability to implement the Forest Management Plan and protect forest health will be impeded” (82).
million annually, according to head of Tribal Forestry James Durglo—the small-operation Indian loggers are struggling economically to make ends meet.\textsuperscript{160}

When the Tribal Forestry Department designs timber sales,
“approximately 25-30 percent of the total volume of the harvest is reserved for tribal member loggers. The other 70 to 75 percent is auctioned to larger non-Indian owned contractors.”\textsuperscript{161} Despite this reservation, Matt found that the “small-operation Indian loggers all feel that they, as Tribal members, should see more support from the Tribes and the Tribal Forestry Department. They realize that under the federal regulations that the resources are limited, but they feel they deserve a source for economic viability. They also feel that they should be given greater opportunities to compete with the larger non-Indian operations.”\textsuperscript{162}

There are several reasons why tribal member loggers cannot compete with the larger non-Indian operations; a fundamental reason is the logging companies’ financial backing by lumber mills. This backing often enables them to secure large sales by outbidding Indian loggers. Lumber mills are also frequently willing to subsidize their bids with their own wood in order to secure the sale due to the high quality of timber on the Flathead Reservation; it is one of the few remaining locations where vertical grain fir and large yellow pine are still found. Additionally, mills outbid tribal member loggers by virtue of their ability to turn a profit on timber too small to appeal to Indian loggers. Cutting and limbing small timber would require an Indian logger to devote an amount of time

\textsuperscript{160} James Durglo, interview by author, personal interview, Ronan, MT, 26 October 2004; Matt, 61. Matt defines “small-operation” as less than 500,000 board feet (61).
\textsuperscript{161} Matt, 61-62.
\textsuperscript{162} Ibid., 64.
disproportionate to the dollar value of the wood. On the other hand, mills often employ the use of mechanical clippers that quickly cut and limb timber, enabling them to log timber down to a two-inch in diameter top, which they later use to produce pulp-related products such as particleboard, pressed board, wafer wood, and paper.

Tribal Forestry has established a system to ensure that Indian loggers receive some timber sales. The Flathead Indian Reservation Forest Management Plan of 2000 stipulates that any timber sale less than 500,000 board feet must go to a tribal member. Sales between 500,001 to 1,000,000 board feet are subject to the Indian Preference stipulation, meaning that “if a non-Indian bids on a contract and secures the highest bid, a Tribal member has the option to match that bid, [in order to] receive the contract.” If the sale is over 1,000,000 board feet, there is no preference and the highest bidder receives the contract.163

Therefore, in instances where an Indian logger wishes to bid on a sale of 500,001 or more board feet, which is a more common sale size than 500,000 or less,164 they have the opportunity to match the highest bid but then encounter a dilemma when trying to secure adequate amounts of money to cover the advanced stumpage and performance bonds that Tribal Forestry requires, which together cannot exceed more than fifty percent of the total sale value and must be paid to the Tribes within thirty days. Because most Indian loggers lack adequate

163 Matt, 61.
164 For perspective, Francis C. Cahoon explains, “One logging truck can haul about 4,000-9,000 board feet at a time, depending upon the type of wood. So, a 600,000 board feet sale would mean about 66-150 loads; if logging companies can haul roughly 10 loads a day, it would take them only seven to fifteen days to complete that job.” Francis C. Cahoon, interview by author, personal interview, St. Ignatius, MT, 8 November 2004.
financial resources, they are effectively excluded from the competition on larger sales.

Although Indian loggers have the option to band together to bid sales, they would still likely face substantial difficulties in producing enough money to post bonds and stumpage. For example, if a timber sale was valued at $500,000, each of five tribal loggers would need to produce up to $50,000 (or ten loggers would need up to $25,000 each, and so on).

In response to the tribal membership’s concern that “inadequate numbers of Tribal members were benefitting from the timber harvest” and that “more sales [needed to go] to Indian loggers,” the Flathead Indian Reservation Forest Management Plan: Final Environmental Impact Statement (FEIS) reported that Tribal Forestry records comparing the values received and values harvested by Indian loggers and non-Indian loggers shows that “stumpage from Indian logger sales has historically been less than non-Indian sales. For the past ten years, stumpage payments by Indian loggers has averaged only 36% of non-Indian.”

The FEIS continues, stating:

As a matter of policy the Tribes have made efforts to insure that Indian loggers receive sales. However, this effort has cost the Tribes income. In effect, the Tribes have been subsidizing the Indian loggers. It may or may not be correct to say that an increase in Indian logger sales would result in an increased subsidy and concomitant loss of income to the Tribes. Perhaps more sales to Indian loggers would increase the numbers of Indian loggers bidding on sales and increase the stumpage bids to those that would be offered by non-Indian loggers. The Tribes may, as a matter of policy, prefer that the difference in stumpage go to the Indian loggers rather than the to [sic] Tribal coffers.

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165 Final Environmental Impact Statement, 345.
166 Ibid.
167 Ibid., 345-346.
Contrarily, tribal member logger Francis C. Cahoon disagrees with this claim, arguing that Indian loggers pay less stumpage for their timber because, as a general rule, they are not logging the same quality of timber as the mills—hence the grievance reported by Roian Matt that Indian loggers are disappointed with both the quality and quantity of timber the Tribes offer them. Cahoon continues, stating that the sales Forestry offers to tribal loggers consist of lower quality wood, for which they pay a lower stumpage price.168

Cahoon also points out that the Code of Federal Regulations governing tribal timber policies mandates that tribes are not to focus primarily on deriving money from the sale of tribal timber, but that the development of Indian forest land must also aim to “promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding.”169 Cahoon lists benefits such as a healthy self-esteem derived from working hard and being able to pay your bills and meet the needs of yourself and your family.

168 Francis C. Cahoon, interview by author, telephone interview, 23 March 2005.
169 25 Code of Federal Regulations 163.3 (Emphasis mine.) This is number 4 of seven objectives. The others are: “(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices; (2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives; (3) The regulation of Indian forests in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business; (4) [listed above in text]; (5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of land; (6) The management and protection of forest resources to retain the beneficial effects to Indian forest land of regulating water run-off and minimizing the soil erosion; and (7) The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.”
Besides this issue, Cahoon addresses the fact that he is able to take out of the woods only one load of logs per day “on a good day, while mills commonly take out about ten loads per day. This means the Tribes are receiving ten times more stumpage money and they are receiving it more immediately when they sell to mills. But, if the Tribes hired twelve tribal members who could each get out one load per day, they would be still be making the same dollar amount from stumpage while employing tribal members in the woods.”

Also, by allowing mills to remove numerous loads of timber per day, Forestry is, in effect, “taking money from Indian loggers, their kids, and even their grandchildren. The white guys are working [tribal member loggers] out of a job by depleting a tribal resource that tribal members could utilize for several years down the road.”

Additionally, Cahoon comments that if more tribal member loggers were able to secure bids it would positively affect the local economy as the Indian loggers would spend their paychecks on the reservation; conversely several of the mills logging on the reservation employ a majority of non-Indians who do not reside on the reservation and thus spend their money elsewhere. Furthermore, Cahoon claims that many Indian loggers would be willing to purchase large-scale logging equipment if Tribal Forestry would guarantee them timber sales, which Forestry will not do. Because of this, it is a financial risk for tribal members to purchase skidders, logging trucks, etc.—going into extensive debt—for an unsecured future in logging and the possibility of bankruptcy.

170 Francis C. Cahoon, interview by author, personal interview, St. Ignatius, MT, 8 November 2004.
171 Ibid.
172 Ibid.
Tribal Forestry and Tribal Sovereignty

The present situation is one that does not make sense to many tribal member loggers and is a situation with which they are continually frustrated. By managing the forest resource in this manner, the Tribes are hindering the economic success of their own tribal member loggers who point to the Code of Federal Regulations (CFR) stipulation that stumpage value is not to be Tribal Forestry’s primary goal for the reservation’s timber. The Indian loggers interpret this stipulation to mean that they should have at least equal footing when it comes to bidding on timber sales.

Conflictingly, the head of Flathead Tribal Forestry, James Durglo, states that he does not interpret this CFR regulation to limit the utilization of the forest to tribal member loggers and that Tribal Forestry uses the forest land to primarily gain revenue to help offset the costs of administration; to employ individuals in the Forestry Department; as well as to employ tribal members directly in the woods. Although Indian loggers are able to find some direct employment in the woods, Cahoon states that Indian loggers want to work and are willing to pay the Tribes a fair market value for the wood they cut; that Indian loggers only desire the same opportunities to log as the logging companies.

Tribal sovereignty can be a double-edged sword as this situation on the Flathead Reservation reveals. Compacting Tribal Forestry from the BIA in 1995 did enable “the Tribes to play the leading role in forestry decisions on their

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174 Francis C. Cahoon, interview by author, personal interview, St. Ignatius, MT, 8 November 2004.
land, however this new found freedom has had devastating economic and financial repercussions on tribal member loggers.

The pressure on tribes to strive for and achieve self-governance status, and the resultant praise from federal agencies, can sometimes distort the reality that plays out on the most local level. Self-governance policies, while advantageous for tribal governments and tribal sovereignty, can at times be injurious for tribal people. As resources and dollars become limited, tribes are forced to reduce either program services or the number of people eligible to receive those services; or occasionally both. These budgetary constraints are one reason the CSKT have altered their requirements for tribal enrollment to reflect a non-traditional, exclusive standard based on blood quantum. Another reason for limiting the tribal member population is the need for the CSKT to remain intact as a distinct people, entitled to their treaty rights, reservation land and resources. Flathead tribal enrollment will be the focus of the following chapter.

\[175\] Matt, 26.
CHAPTER 6

FLATHEAD TRIBAL SOVEREIGNTY AND ENROLLMENT

The courts have consistently recognized that in the absence of express legislation by Congress to the contrary, an Indian tribe has complete authority to determine all questions of its own membership. . . . The power of an Indian tribe to determine questions of its own membership arises necessarily from the character of an Indian tribe as a distinct political entity.

Nathan R. Margold, “Powers of Indian Tribes,” Solicitor’s Opinion, October 25, 1934

In 1934, solicitor for the Department of the Interior Nathan Margold issued his opinion that among the rights of Indian tribes was the right to “define the conditions of membership within the tribe, to prescribe rules for adoption, to classify the members of the tribe and to grant or withhold the right of tribal suffrage, and to make all other necessary rules and regulations governing the membership with the tribe so far as may be consistent with existing acts of Congress governing the enrollment and property rights of members.” Thus, every Indian tribe has the inherent right to determine the criteria for defining membership in that tribe. Enrollment criteria are not the same across Indian country and tribal governments enlist a variety of methods to establish tribal membership, including blood quantum requirements, descendency, residency, or tribal customs of recognition that trace kinship through the blood of either the male or female parent.

Although it was during the allotment period that the federal government period instigated the creation and maintenance of tribal membership lists, the Flathead tribes worked with the federal government to develop the initial lists and as a result they reflected traditional tribal standards for determining membership. However, as allotment continued, a criterion based solely on race developed for determining who was Indian. The Burke Act of May 8, 1906 amended the 1887 General Allotment Act, allowing the Secretary of the Interior to automatically issue fee patents to Indians who demonstrated “civic competency,” regardless of whether or not the twenty-five year trust period was over. The federal government used this policy to issue fee patents to most mixed bloods based on a racial reasoning that held whites as inherently more competent than Indians. Thus, if Indians were of mixed descent, the Indian Office considered them immediately deserving of American citizenship and the right to own land and pay taxes.

In 1921, the federal government ceased its policy of issuing fee patents to Indians based on racial criteria alone. However, the idea of a blood quantum standard for defining “Indian” carried over to the next phase of federal Indian policy. The Indian Reorganization Act of 1934 provided tribes with the option to reorganize and adopt tribal constitutions and bylaws. The Office of Indian Affairs (OIA) also developed “a boilerplate constitution that was distributed to all the tribes... Provisions for tribal enrollment were part of the boilerplate constitutions... A reading of a number of tribal constitutions today will show

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2 34 Stat. 182.
3 48 Stat. 984.
that most have not been significantly changed since the 1930s. Enrollment provisions can usually be found under Article II or Article III and most are identical.4

In her article, “Understanding the history of tribal enrollment,” Nora Livesay writes, “Enrollment as laid out under the IRA constitutions, starts with a base roll for defining membership. The base roll is usually a U. S. Census roll, an allotment roll or another [OIA or Bureau of Indian Affairs]-compiled roll. . . . From the base rolls, most constitutions include as members anyone who at the time of the adoption of the constitution could prove descendancy from someone on the rolls. After adoption of the constitution, future generations often have to meet a number of criteria usually relating to descendancy from the rolls, their own residency or that of their parents when they were [born], blood quantum or membership of one or both parents.”5

Many tribal people nationwide oppose this random, even illogical, way of defining “Indianness.” However, these modern-day criteria for determining tribal membership often exist to help ensure the continued political existence of the tribe. Patricia Nelson Limerick discusses the inevitable results of using blood quantum to define “Indian.” She states, “Set the blood quantum at one-quarter, hold to it as a rigid definition of Indianness, let intermarriage proceed as it had for

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5 Ibid.
centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will be freed of its persistent "Indian problem."\(^6\)

Losing attributes that distinguished them from non-Indians made tribes susceptible to attempts by the federal government to attempt to terminate the trust relationship on the grounds that the tribes no longer constituted distinct peoples. The Confederated Salish and Kootenai Tribes were among the first tribes with whom the federal government would attempt to terminate its trust relationship in the 1950s. The threat of termination of the reservation, treaty rights, and entitlements to services tied to the reservation’s existence has been a primary motivating factor behind the Confederated Salish and Kootenai Tribes’ adoption and maintenance of a racial criterion for determining tribal membership. A second reason is the economic need to limit the number of tribal members in order to adequately provide services and distribute tribal resources among the current membership. This history will be addressed following a review of the evolution of tribal enrollment standards on the Flathead Reservation.

*Flathead’s Changing Standards for Enrollment*

Prior to their signing of the 1855 Hellgate Treaty, Salish, Kootenai, and Pend d’Oreille tribal membership was based on kinship, marrying into the tribe, or adoption—this included non-Indians as well as Indians from other tribes. Historically, “family relationships, common language, and tribal customs

determined who belonged to the tribe.7 Before the Flathead Reservation was created, the Salish and Pend d’Oreille tribes and the Kootenais formed loose federations of bands that were governed by chiefs, subchiefs, and traditional social, economic, and political standards. Adults “accepted membership in a band either through birth, through marriage to a member already there, or through movement of a whole family from one band to another. By his membership he agreed to follow the rules set down by the band and enforced by the chiefs and elders.”8

Woman digging bitterroot

(Photograph courtesy of K. Ross Toole Archives)

In pre-reservation times, tribal membership was flexible; it was inclusive and based on traditional definitions of what it meant to be a member of that particular group, including following specific cultural practices and abiding by the rules that governed that tribe. After the creation of the Flathead Reservation in 1855, the reservation's boundaries also served as a sort of marker of who was Indian. Article 2 of the Hellgate Treaty stipulated that only Indians (and non-Indians "in the employment of the Indian department") were allowed to reside on the reservation. However, after Congress passed the 1904 Flathead Allotment Act, the geographical boundary of the reservation could no longer serve as an ethnic boundary as whites would soon cross the line to claim homesteads.

It was also during this period that the first formal definition of "Flathead Indian" appeared, as the allotment process necessitated the creation of a tribal membership roll in order to track Indians eligible to receive allotments, land allotment selections, allotments received, etc. The federal government's creation of formal tribal enrollment lists would negatively affect tribal sovereignty, as after these rolls were completed "tribal leaders lost control over the definition of membership; officers of the Indian Service kept track of allottees and their descendents."

The Enrollment Process

As part of federal control over allotment, in 1903, Special Agent Charles P. McNichols compiled a census roll of the Indians on the Flathead Reservation

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10 Trosper, 265.
that neither the Secretary of the Interior nor the tribes approved "because some applicants lacked sufficient evidence to support their claims for enrollment."\textsuperscript{11} The Indian Office instructed Flathead Indian Agent Samuel Bellew to hold a council to address the fact "that there are some people here who claim rights with the tribes of this reservation, and that they have at some time been adopted by these tribes, but we have no record to show that this is true, and Washington [D. C.] wants them, if they desire to adopt these people, to do so now, and we will put it in writing, so it will be kept forever."\textsuperscript{12} This council was held on September 1, 1904, at the Jocko Agency. A second council was held for the same purpose on October 19, 1904.

Finally, on January 12, 1905, the federal government instructed Special Agent Thomas Downs to conduct an investigation concerning the McNichols roll and the numerous new applications for tribal enrollment. After his investigation, Downs was instructed to draft an entirely new tribal membership roll. Downs, as the Secretary of the Interior ordered, automatically enrolled all full-bloods on the reservation, "but scrutinized carefully the claims of all other persons."\textsuperscript{13} Those being investigated had to present their claim in writing and testify that it was true.

A month later, Downs completed his investigation and received from Washington, D. C. the blanks necessary to prepare the new roll and the

\textsuperscript{11} "Selected Records of the Bureau of Indian Affairs relating to the Enrollment of Indians on the Flathead Reservation, 1903-1908," National Archives Microfilm M1350, Roll 1, part 2, frames 130-411.
\textsuperscript{13} "Selected Records of the Bureau of Indian Affairs relating to the Enrollment of Indians on the Flathead Reservation, 1903-1908," National Archives Microfilm M1350, Roll 1, part 2, frames 130-411.
instructions to “make a new roll including thereon the names of all Indians who are entitled to rights as members of the Flathead tribe.”

The letter ended by stating:

The rights of these Indians should now be permanently established in order that no wrong or injustice may be done them when the lands are opened for settlement and the Indians are allotted. Much of the dissatisfaction and trouble occurring in the Indian Service has arisen from the fact that a proper enrollment of the various tribes has not been made at critical times. A change is impending in the relations of these Indians to the Government and it is very important that the preliminary step taken shall be done so that no trouble or complaint can arise hereafter.

In order to compile the most accurate roll, Downs presented the name of every applicant to the tribal leaders for their approval.

In addition to visiting “every portion of the reservation” to discuss matters with the leaders “of the Flathead reservation living in bands on various portions thereof,” Downs also issued a call to “all of the Chiefs, Judges and Headmen of the Five Confederated Tribes of the Flathead reservation, notifying them that a General Council of all the Indians of the Flathead reservation was to be convened at the Agency, on said reservation, at nine o’clock in the morning of April 18, 1905.”

More than two hundred Indians representing all of the tribes attended what the Daily Missoulian called “the largest Council ever held by these tribes.”

This meeting enabled tribal leaders to hear each case and to determine for themselves which people should be enrolled. The April 22, 1905 issue of the Daily Missoulian reported that “quite a large number of applications for

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14 Ibid., frame 0211.
15 Ibid.
16 Ibid., frame 0213a.
17 “Flathead Council Comes to End: Many Claimants to Enrollment are Rejected and Others Accepted,” Daily Missoulian, 22 April 1905, 1.
enrollment were rejected and others which were doubtful were confirmed in the
council. There was quite a large number of people who, presuming on the fact
that they have some little trace of Indian blood in their veins, have asked to be
enrolled, but many of these were rejected." Many of these people simply
wanted to claim a share of tribal land and resources.

The council was in session for two full days. When it ended, the chiefs in
attendance signed a certificate signifying their approval of every name on the
tribal rolls. Those who signed were: Charlot (Salish); Michel (Pend d' Oreille);
Koostahtah (Kootenai); Big Louie (Lower Pend d' Oreille); and Michael Revais
(official interpreter). The certificate was signed in front of Downs, his financial
clerk, and three interpreters. The chiefs signed their names by touching the pen as
financial clerk John L. Sloane signed their names. The certificate read:

We the undersigned, the Chiefs of the respective tribes of Indians of the
Flathead Indian Reservation, Montana, appearing below our names, do
hereby certify and declare that all of the persons whose names appear in
the foregoing "Roll of members of the Five Confederated Tribes of the
Flathead Indian Reservation" and which roll consists of 61 pages, each
number inclusive, are members either in their own Blood right or by
adoption, of the respective tribes set opposite their names as appear on
said Roll or List of Members of the Flathead Indian Reservation and are
entitled to be enrolled thereon. Done in open Council held at the Flathead
Agency, Jocko, Montana, on said Flathead Indian Reservation this
eighteenth day of April 1905.20

On May 22, 1905, the Daily Missoulian reported that Downs had completed the
Flathead tribal enrollment process, that most enrollees had already signed the roll,

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18 Ibid., 1.
19 "Selected Records of the Bureau of Indian Affairs relating to the Enrollment of Indians on the
Flathead Reservation, 1903-1908," National Archives Microfilm M1350, Roll 1, part 2, frames
130-411, frame 0218.
20 Quoted in Eugene Mark Felsman, "Brief history of the enrollment process on the Flathead
and that the reservation would be opened for white homesteading as soon as the land surveys and appraisals were completed. On September 25, 1905, the Commissioner of Indian Affairs transmitted the Downs census roll to the Secretary of the Interior, who gave his approval on October 25, 1905.

Although allotment was part of the federal government’s assimilation policy, the federal government confiscated tribal lands and property without tribal consent during all of the periods of federal Indian policy. The Flathead Reservation tribes learned that to “successfully defeat confiscation attempts by Congress, they had to adopt their conqueror’s idea of what an ‘Indian’ is.”

The federal government’s assimilation policies guiding Flathead allotment and the opening of the reservation to whites placed great pressure on individual Indians “to not appear Indian.” However, Flathead tribal leaders “recognized that insisting on their Indianness was a good way to protect what remaining lands there were.” Consequently, when the tribes reorganized and adopted a constitution under the 1934 Indian Reorganization Act their official policy for determining tribal membership changed.

Thus between 1904 and 1935, the means for determining enrollment were based on descent. The federal government maintained the allotment rolls and all descendents of original enrollees were subsequently enrolled. However, after the tribes reorganized in October 1935, they adopted a tribal constitution, of which

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21 “Enrollment Ended on Flathead: Special Commissioner Captain Downs has Completed Department Work,” *Daily Missoulian*, 22 May 1905, 3.
22 “Selected Records of the Bureau of Indian Affairs relating to the Enrollment of Indians on the Flathead Reservation, 1903-1908,” National Archives Microfilm M1350, Roll 1, part 2, frames 130-411, 2. In 1908, the names of children born after the 1905 roll was compiled were added to the official tribal enrollment record.
23 Trosper, 258.
24 Trosper, 267.
Article 2, Section 3 stipulated that anyone born on the reservation to an enrolled tribal member became part of the tribe. This was an enrollment idea that "originated in the Indian Bureau under [John] Collier; it was an attempt to define a defensive tribal boundary. The definition of the boundary was not well liked by Indians because even fullbloods born off the reservation could not be enrolled. There ensued a series of changes in the method of enrollment; although extensive, they were guided by the needs of the entrenchment policy."  

The sharp change in enrollment standards in 1935 occurred for two reasons:

First, it had become clear that should the Confederated Salish and Kootenai Tribes appear to be assimilated, the existence of the tribal government and its land base would be threatened. A low degree of Indian blood makes a tribe appear assimilated. The Bureau of Indian Affairs' quarter blood rule to define Indian reflects the non-Indian racial definition. Second, the land base shrinkage increased the incentive to exclude: A shortage of land causes a larger tribal enrollment to mean a smaller share in tribal income for those already enrolled.

The Confederated Salish and Kootenai Tribes' (CSKT/Tribes) appearance of an advanced degree of assimilation provided justification for the federal government to terminate its trust relationship with the Tribes in the 1950s. Termination would have meant dissolution of the reservation and many of the services and entitlements to land and resources tied to its existence. The Tribes' experience with termination will be addressed after reviewing the necessity of the evolution of tribal enrollment standards.

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25 Ibid.
26 Ibid., 268.
Shifting Tribal Enrollment Standards

The theory of ethnogenesis can be applied to the changes in the Confederated Salish and Kootenai Tribes' enrollment standards to understand their struggle to secure an ongoing identity as a people. William Sturtevant first introduced the idea of ethnogenesis to American anthropology in the early 1970s with his essay "Creek into Seminole." Patricia Albers writes, "Although Sturtevant defined Ethnogenesis in this work simply as 'the establishment of group distinctiveness,' his study actually touched upon broad transformational processes in ethnic group identification. These involve the long-term movements by which the ethnic identities of human communities get changed, and as such they are historical and evolutionary in scope." Therefore, a general definition of ethnogenesis is the "historical emergence of a people who define themselves in relation to a sociocultural and linguistic heritage. . . . [Furthermore, it is a] concept encompassing peoples' simultaneous cultural and political struggles to create enduring identities in general contexts of radical change and discontinuity." 3

In terms of American Indian identity, ethnogenesis is the story of "how tribal nations are formed, how they change once they are brought into existence, and how tribal nations must alter themselves periodically if they are going to

continue through time as a distinct people." A main impetus for contemporary tribal ethnogenesis is tribal enrollment. To survive as distinct nations, tribes must adopt new ways to define themselves.

As the CSKT have altered their standards for tribal enrollment they have been able to remain intact as a distinct people, entitled to their treaty rights, reservation land, and resources. Although the current criteria for enrollment are drastically different from traditional standards for defining membership, it has ensured tribal sovereignty and enabled the Tribes to persist as a nation.

The Threat of Termination

In his article, "We didn't care for it": The Salish and Kootenai Battle against Termination Policy, 1946-1954," Jaakko Puisto writes that federal termination policy arose from the 1946 elections that gave conservative Republicans and Southern Democrats a majority in Congress. He states:

Many of these Cold War demagogues disliked the Indian New Deal, and they eyed Indian reservations with suspicion. To cold [war] warriors, the tribal traditions of communal land use and ownership patterns constituted Socialism. By trimming federal expenses, congressional conservatives also hoped to pay off debts the country had incurred while fighting the Great Depression and World War II. But even more than party politics, termination policy was regional politics. Westerners dominated congressional Indian affairs since the West contained a large majority of Indian reservations, and what western states and congressmen disliked most was the trust status of Indian lands that put reservations beyond the reach of state taxations and resource development.

Supporters of termination considered the policy liberating to Indians by freeing them from federal control. Termination also meant saving the federal government money by ending the trust relationship, which would allow a decrease in the number of people needed to run the OIA as well as an overall decrease in federal assistance to tribes.

On February 8, 1947, Acting Commissioner of Indian Affairs William Zimmerman testified before the Senate Committee on Civil Service that the OIA could save money by reducing the costs of federal services provided to tribes and by reducing the number of tribes eligible for those services. Zimmerman provided criteria for determining a tribe's preparedness for termination of federal services. These criteria included degree of acculturation; economic stability; the willingness of the tribe to dispense with federal aid; and the willingness and ability of the state government to assume responsibility for supplying basic assistance to the tribe.

Zimmerman also devised three separate lists of tribes ready for termination of federal services and supervision (1) immediately; (2) within a period of ten years; (3) after a period of more than ten years. The Flathead tribes were listed among the first group ready for immediate termination due to the substantial revenues they derived from the Kerr Dam lease and the reservation's abundant timber resources. Zimmerman estimated that "with

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32 William Zimmerman, Jr., testimony, February 8, 1947, in Congress, House, Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs, 82nd Cong., 2nd sess., 1952, Rept. 2503, 162.
33 Ibid., 163.
minimal state assistance the tribes would be capable of financing their own services.”

Although several federal policy makers favored termination, many elders and others favoring traditional membership requirements from the Flathead Reservation strongly opposed it. Puisto explains that while the traditionalists were unsatisfied with federal paternalism, they considered it a better option that losing trust status on tribal lands. The fact that many elders opposed termination helped influence the tribal council to also oppose it.

**Tribal Member Opposition to Termination**

At several tribal council meetings and the Congressional hearings, the CSKT thoroughly discussed the possibility of termination and the effects it would have on the Tribes. At a tribal council meeting held in August 1952, Salish full-blood Eneas Conko voiced his opinion that if liquidation of the reservation came to pass, the federal government would have to form a new commission to take care of the Indians “because they would be broke a very short time after they got paid off.” Conko also stated that termination would pose a problem “between the breeds and the full-bloods.” He postulated that the “breeds and the educated Indians,” such as the wealthy cattlemen and tribal officials, would not be too adversely affected by ending federal protection and services “because they are

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35 Puisto, 55.
36 Ibid., 56.
mostly white anyway." However, older full-bloods like Conko would struggle because they would be unable to work. Others, such as Kootenai elder Sahkale Lefthand, felt similarly. Lefthand stated through his interpreter Jerome Hewankorn, "They are going to turn me loose, and I know when I am turned loose, I got nothing coming because I got to pay first. We make our living by tanning deer hides and making mocasins [sic], etc., to sell. If we are supposed to pay taxes, we would never upkeep our taxes with this whatever little work we got for sale."  

Additionally, Noel Pichette, a Salish elder living off the reservation, was also against termination. He stated, "I was thinking about it very strongly because I wasn't getting anything from the tribe . . . Big pile of money attracted, but many did not realize they would lose relationship with the government [which would erode tribal identity]." Pichette's position, however, was uncommon among tribal members residing off-reservation, many of whom "saw little personal advantage to the continuation of the reservation since they could not vote in tribal elections or take advantage of the health care and other services furnished [only on the reservation]. For many tribal members living off the reservation, liquidation of tribal assets made sense."  

The fact that many tribal elders opposed termination was one of several reasons the tribal council also opposed it. Other reasons included the potential for  

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37 Confederated Salish and Kootenai Tribes [hereafter cited CSKT], Tribal Council Minutes, 16 August 1952, Records Office [hereafter cited RO], Tribal Business Complex, Pablo, MT [hereafter cited TBC], 5-6.  
38 CSKT, Tribal Council Minutes, 14 November 1953, RO, TBC, 4.  
39 Puisto, 56.  
40 Ibid.
termination to end the tribal irrigation program, and the threat posed to reservation water rights if state regulations and jurisdiction were imposed.\textsuperscript{41} Additionally, throughout their negotiations with Commissioner of Indian Affairs Dillon S. Myer and the Bureau of Indian Affairs (BIA), the tribal council maintained that they wanted to keep tribal assets under trust status, as “eventually the land will go out of Indian ownership because [the Indians] will not be able to pay taxes and will lose or sell it.”\textsuperscript{42} At the August 16, 1952 tribal council meeting, Myer assured the Tribes that the federal government was “not interested in breaking any treaties or agreements” with the Tribes. He explained that through termination, the federal government wished to reduce the size and costs associated with the BIA by transferring various responsibilities to tribal, county, or state agencies. Myer stated that no action would be taken without the Tribes’ knowledge and consent, however, he also seemed to threaten that if the BIA and the Tribes were unable to come up with their own plans for transferring responsibility and reducing the costs associated with providing federal services to Indians, “someone else is going to find some answers the Tribe is not going to like.”\textsuperscript{43}

After Myer’s visit to Flathead, the Tribes began an aggressive letter-writing campaign to gain the aid of Montana Senators Mike Mansfield and James Murray, whose support they desperately needed after Lake County officials expressed their approval of termination of reservation. Because most of the

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\textsuperscript{41} CSKT, Tribal Council Minutes, 16 August 1952, RO, TBC 4; CSKT, Tribal Council Minutes, 4 November 1953, RO, TBC, 1.
\textsuperscript{42} CSKT, Tribal Council Minutes, 27 January 1954, RO, TBC, 3.
\textsuperscript{43} CSKT, Tribal Council Minutes, 16 August 1952, RO, TBC, 1, 6.
Flathead Reservation lies within the boundaries of Lake County, the county commissioners maintained that "tribal government competed with local government, tribal trust lands limited the county’s tax base, and discriminatory practices in providing water for irrigation suffocated local agricultural expansion."^{44} Additionally, chairman of the Board of Lake County Commissioners, Oliver R. Brown, claimed that "the revenues to be derived from taxation of Indian lands which are not nontaxable, would greatly exceed the loss of the contribution from the Indian Bureau."^{45}

Senator Mike Mansfield

Senator James E. Murray

(Photographs courtesy of K. Ross Toole Archives)

^{44} Puisto, 58. Puisto cites Board of County Commissioners, Lake County, Montana, to Senator James Murray, December 8, 1947, folder 8, box 275, Murray Papers; Ethel T. Terry to Lee Metcalf, April 16, 1955, folder 7, box 240, Manuscript Collection 172, Lee Metcalfe Papers, Montana Historical Society Archives, Helena.

Although several non-Indians in Montana, specifically those in Lake County, supported termination, there were also many who opposed it. In addition to securing the support of Mansfield and Murray, the Tribes’ letter-writing campaign also garnered the support of numerous Montana civic groups that were concerned about the Tribes’ claim that termination would cause the expenses for Indian health, welfare, and education to shift from the federal government to local and state governments.46

In August 1953, Congress passed House Concurrent Resolution 108, legislation seeking to officially end the federal trust relationship with all Indian tribes. Shortly thereafter, in October 1953, Senate Bill 2750 and House Resolution 7319 were submitted to Congress, calling for the “termination of Federal supervision over the property of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and the individual members thereof, and for other purposes.”47 Several CSKT tribal members and the tribal council vigorously opposed the bills because they made no mention of the Hellgate Treaty, as well as the fact that Article 9 of House Concurrent Resolution 108 suggested the Tribes pay for the cost of their own termination.48

In February 1954, the U. S. House and Senate Subcommittees of the Committees on Interior and Insular Affairs held joint hearings to discuss the termination bills that would affect twelve tribal groups, including the Flathead

46 Puisto, 59.
48 CSKT, Tribal Council Minutes, 7 October 1953, RO, TBC, 5-7.
Reservation tribes. At the Flathead hearing, Montana Governor J. Hugo Aronson, via a telegram, commended “the ultimate aim of granting full citizenship rights and privileges to Indians,” however he also suggested implementing “adequate safeguards to protect the elderly full blood Indians.” Also during the hearings, Senator Murray expressed his fear that if termination occurred the Tribes would be divested of their title and ownership in lands, timber lands, and water rights. Moreover, Murray stated that the Indians “ought to be able to determine for themselves whether or not they want this legislation, whether it would be in their interests to have it, and therefore they have a right to vote and determine that.”

Despite the Montana Welfare Department’s earlier assertion that increased costs for welfare would be offset by the taxation of tribal land, Governor Aronson disagreed at the hearings, stating that termination would be possible only after a period of transition, during which the federal government would participate in easing “the financial impact on State and county government due to increase[s] in welfare, public roads, education, employment, health, law enforcement, housing, and other services.” Additionally, Mary M. Condon, Superintendent of Public Education for Montana, wrote, “It is our contention that the termination-of-supervision bill, as now drafted, is ill-advised and poorly planned and will result

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50 Ibid., 829.
in impacts which cannot be met on the State or local level."52 Other opponents of termination, such as CSKT tribal member D'Arcy McNickel, testified that the bills represented "hasty and ill-advised thinking."53

Also protesting termination at the hearings were CSKT tribal council chairman Walter McDonald; vice chairman Walter Morigeau; tribal councilman Jerome Hewankorn; tribal attorney George Tunison; tribal members Stephen C. DeMers and Paul Charlot; and tribal land clerk Russell Gardipe. On behalf of the tribal council, Stephen C. DeMers stated, "After thorough consideration of such a complex problem I am convinced that my reservation and its people are not ready for the proposals contained in [Senate Bill] 2750 and [House Resolution] 7319 and the impact resulting therefrom."54 Other tribal representatives testified that termination would have negative impacts on tribal assets, retention of tribal water rights,55 and on the welfare of the elderly full bloods.56

Throughout the hearings, the Tribes strongly maintained that termination of federal services would violate various provisions of the 1855 Hellgate Treaty wherein the federal government promised to provide basic educational, medical, and economic assistance to Flathead Reservation Indians.57 Interestingly, the tribal delegates also stated that they were not entirely opposed to termination if

53 Ibid., 907.
54 Ibid., 962.
55 Ibid., testimony of Russell Gardipe, 948, 950
56 Ibid., statement of Walter Morigeau, 959.
57 Ibid., testimony of George M. Tunison, 924-940; testimony of Stephen DeMers, 953-954; statement of Walter McDonald, 957-958.
tribal land were not put on the tax roll. They insisted, however, that the on-
reservation tribal population should have the decisive say about the matter.58

In the end, Senate Bill 2750 and House Resolution 7319 did not make it
out of the joint committees due to the opposition of CSKT tribal leaders and
several Montana state officials. Although the Flathead termination bills died in
the 83rd Congress, termination would remain a potential threat for the Tribes,
prompting them to take a strong stance on tribal enrollment to ensure the
existence of their reservation.

After the termination dealings were over, the Tribes amended their
constitution to require for the first time, a set degree of Indian blood for tribal
enrollment. The Tribes adopted a racial criterion for tribal membership to insure
themselves against future threats of termination; one reason the Tribes were
selected for termination in the 1950s was their overwhelming similarity to
“typical non-Indian communities throughout the country. Only about 25 percent
of the [CSKT population in 1952 were] full-blood Indians, and this group [was]
diminishing. Another 25 percent of the population [was] of one-eighth or less
Indian blood. This latter group and perhaps many of the other mixed bloods
form[ed] a part of the white population of the reservation except for being
designated as Indian by the government.”59

The Tribes’ May 1960 constitutional amendment to allow for the
enrollment of people born with one-fourth CSKT blood or more, regardless of

58 Ibid., 937-938.
59 House, Report with Respect to the House Resolution Authorizing the Committee on Interior and
Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs, 82nd Cong., 2nd sess.,
1952, Rept. 2503, 562.
their parents' residence—a policy which is still in effect today—created a situation where children of less than one-quarter blood born after 1960, are not enrolled although their older family members (born before the 1960 amendment) are enrolled. This “split-family” situation created by the 1960 constitutional amendment has caused much friction within the Tribes.

_Tribal Enrollment and the Split-Family Issue_

In the late 1990s, Regina Perot, spokesperson for the Split Family Support Group (SFSG), approached the CSKT tribal council to request that an amendment be made to the tribal constitution regarding the split-family situation created by the May 1960 enrollment requirement change. While the tribal council did not address the situation, Perot and others on the Constitutional Review Committee discussed it but decided “it was too sensitive an issue for the review committee to handle alone.”

In March 2000, Perot and the SFSG began circulating a petition that called for a constitutional amendment that would unify the split-families by enrolling only those immediate family members born after May 1960. The BIA did not validate this petition, disqualifying several of the signatures on it. Two months later, the SFSG began circulating a second petition. At some point during the yearlong course of gathering signatures, the language on the petition was altered to call for the enrollment of all lineal descendants and split family members.

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Pierre, Pend d'Oreille tribal elder and spiritual leader, stated that this second petition "should never have gotten out of the tribal complex. It should have died in [Flathead Superintendent Ernest] Bud Moran's office because of discrepancies and language changes in the petition. This should never have made it to [Bureau of Indian Affairs, Portland Area Office Northwest Regional Director, Stanley] Speak's desk."\(^{62}\) Regardless of these discrepancies, the SFSG gathered the required number of signatures and the BIA validated the petition on September 23, 2002, authorizing a January 18, 2003 election.\(^{63}\)

This petition and the eventual authorization of a secretarial election divided the Tribes. Seven tribal council members (chairman Fred Matt, Jami Hamel, Ron Trahan, Sonny Morigeau, Mary Lefthand, Carol Lankford, and Lloyd Irvine) opposed the petition and the proposed amendment. Three council members (Maggie Goode, Denny Orr, and Joel Clairmont) supported the amendment.\(^{64}\)

In April 2002, the Advocates for Tribal Integrity (ATI) organized a public meeting held outside the Tribal Business Complex in Pablo. ATI favored opening enrollment "to include blood quantum from any federally recognized tribe, but to maintain the strict one-quarter-degree rule now in effect. [ATI maintained that this] 'middle ground' would protect the tribal confederacies, indigenous languages, cultural practices and traditional values."\(^{65}\) ATI member Joshua Brown stated, "The issue is not mixed bloods versus full bloods. The real issue is..."\(^{62}\) Ibid.\(^{63}\) Ibid., A2.\(^{64}\) Ibid.\(^{65}\) "Blood Ties: Salish traditionalists seek to restrict tribal enrollment," Missoulian, 24 April 2002, B2.
tribal people versus nontribal people." Others in attendance felt similarly, expressing their fear that lowering the enrollment requirements so drastically would ultimately result in termination of the reservation—either by devastating tribal resources or by appearing so much like the rest of America that the Tribes would no longer constitute a unique community. This could potentially subject the Tribes to renewed efforts for termination of the reservation, as tribal members were by far the minority population on the reservation. Table 2 reports the population demographics on the Flathead Reservation in 2000.

Table 2. Flathead Reservation population demographics in 2000

<table>
<thead>
<tr>
<th>Population Group</th>
<th>Population count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flathead Reservation residents</td>
<td>26,172</td>
</tr>
<tr>
<td>Enrolled CSKT tribal members</td>
<td>7,012</td>
</tr>
<tr>
<td>CSKT tribal members living on the Flathead Reservation</td>
<td>4,545</td>
</tr>
<tr>
<td>CSKT tribal members under the age of 18 years</td>
<td>1,551</td>
</tr>
<tr>
<td>Female CSKT tribal members</td>
<td>3,623</td>
</tr>
<tr>
<td>Male CSKT tribal members</td>
<td>3,389</td>
</tr>
</tbody>
</table>

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66 Ibid.
The CSKT hired the Walker Research Group to research the increase in population and the resulting affects on tribal resources if the proposed amendment passed. The Walker Research Group found that the number of people enrolled would immediately double and could reach 24,000 people by 2025.68 Ultimately, the Group reported that a population increase of that size would devastate the Tribes economically.

After hearing from the “professional demographer and projections from tribal departments on how a two-fold increase could affect their budgets and services,”69 the tribal council “took official action to officially oppose supporting the lineal descendancy amendment to the Tribal Constitution.”70 (Maggie Goode, Denny Orr, and Joel Clairmont did not oppose the amendment.) Council member Jami Hamel stated that if the amendment passed, “services are going to be cut, unless there’s more money. There’s no more money. It’s not in the best interest of our tribe . . . it’s a question of survival of the tribes and keeping our unique identity.”71 Tribal council chairman, Fred Matt, expressed much the same sentiment in an interview with the Lake County Leader. He stated:

The main reason [the tribal council is] against it is that we are barely treading water now with the population we have now and the resources we have available for them. That is the main reason. It’s not that we don’t want to claim lineal descendents. . . . The tribal member population will immediately double if this passes. . . . Obviously, when the population doubles the impacts on the resources will double. We’ll be scratching our heads trying to figure out how to carry on as usual under unusual

70 Ibid.
71 Ibid.
circumstances. . . . This is the most important thing I have faced in my life.\textsuperscript{72}

In the same article, elder Pat Pierre stated that the SFSG was "pushing this for personal gain. By doing that they are going to destroy this reservation. They are playing right into the federal government’s hands. They look for ways to destroy Indian people any way they can. That’s what will happen here if this thing goes through."\textsuperscript{73} Pierre ended by stating, "This reservation is all we have left. We want to preserve it for those yet to come, not for our immediate personal gain. We look ahead for seven generations. The people for lineal descendency only look out for themselves for today."\textsuperscript{74}

The secretarial election was held on Saturday, January 18, 2003. The votes were tallied at the polls and then transferred to Pablo, where an Election Board comprised of Flathead Superintendent, Ernest “Bud” Moran, and tribal council members Jami Hamel and Maggie Goode counted them again. There were 2,032 votes against amending the CSKT tribal constitution to allow for the enrollment of all lineal descendents, while only 450 people voted for the amendment.\textsuperscript{75}

After the election results were made public, Chairman Fred Matt stated that "changing tribal enrollment criteria is a complex, emotionally-charged issue throughout Indian Country, and we were no exception." He continued:

This election definitely strained the fabric of our tribal community. . . . The membership has spoken loud and clear. It is now time for us to unite as a Tribe. Our strength as a Tribal Nation comes from our culture, shared

\textsuperscript{72} “Tribes to vote on enrollment criteria,” \textit{Lake County Leader}, 16 January 2003, A2.
\textsuperscript{73} Ibid.
\textsuperscript{74} Ibid.
\textsuperscript{75} “Tribal members vote to keep enrollment the same,” \textit{CharKoosta News}, 23 January 2003, 1.
purpose and vision. This is what our ancestors have taught us, and what
our elders tell us today. Now more than ever, we need to set-aside our
differences, shake hands, and work together. . . . Lastly, I ask the creator
to heal the hearts that were affected over the past year and a half. I will
continue to pray that we all work towards unity and that we have a blessed
New Year.76

Ensuring Tribal Sovereignty

Flathead Reservation tribal enrollment evolved from inclusive—people
born or married into the tribe or adopted by the tribe were considered tribal
members—to membership based on lineal descent and a one-fourth blood
quantum minimum. These sharply contrasting membership criteria were
established in the “imagery of self-preservation for Native Americans. In the
rhetoric of the United States political system, if everyone is ‘the same’ then no
one has particularly special rights. To submit to the argument that everyone is
‘the same’ leads to the loss of rights guaranteed by treaty. . . . To protect their
position in this argument, it proves necessary to adopt a racial definition of Indian
rather than the previous community definition which had been operating in the
19th century.”77 Losing aspects that make the CSKT unique, or distinct as a
people, is inviting the potential for termination of the reservation and many of the
things tied to its existence. Thus, maintaining a racial criterion for tribal
membership, however distanced from traditional standards, ensures the political
status of the CSKT.

76 Ibid.
77 Trosper, 273.
Furthermore, tribal elders and spiritual and cultural leaders hold that being Indian has nothing to do with blood quantum, that being Séliš, Ksanka, or Qlispé is a state of mind; it is participating in cultural activities, learning and/or speaking the language, it is knowledge of tribal ways. As Michael Louis Durglo of the Salish-Pend d’ Oreille Culture Committee states, “If you’re Indian, you’re Indian. Enrollment is just a number.”

However, there is a difference in being legally enrolled in the CSKT and in living and acting Indian. A tribal enrollment number entitles individuals to additional services and rights. For example, tribal membership means owning a share of tribal resources and the right to receive a per capita payment. Membership determines whether or not a person can hunt within an extended hunting season, or vote in tribal elections or run for tribal office. Membership in the Tribes also determines eligibility for home site leases and eligibility for home, business, or personal loans through the Tribal Credit Department.

Tribal member Curtis L. Roullier argues that these are rights to which all lineal descendents should be entitled. He comments, “Don’t you think that our ancestors who signed the 1855 Hellgate Treaty intended for all their descendents to benefit from the agreements they stipulated in the treaty in exchange for millions of acres of land?” While Roullier’s contention is highly plausible, it is unlikely that the tribal leaders who signed the Hellgate Treaty could foresee the modern-day pressures to exclude descendents of less than one-quarter blood.

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79 Curtis L. Roullier, interview by author, personal interview, Missoula, MT, 2 February 2005. (Emphasis in original.)
Ultimately, the tribal enrollment issue on the Flathead Reservation comes down to a question of tribal sovereignty. Every Indian tribe has the power to determine the criteria for group membership and a vast majority of tribal members on the Flathead Reservation decided against enrolling all lineal descendents in order to ensure the existence of the Flathead Reservation and a future with sovereignty for generations to come.
CHAPTER 7

CONCLUSION

Historically, the Salish, Kootenai, and Pend d' Oreille tribes enjoyed full powers of sovereignty, both external and internal. Their status as sovereign nations enabled them to enter into the 1855 Treaty of Hell Gate with the federal government. However, by the end of the nineteenth century, Indian tribes were considered domestic, dependent wards of the federal government confined to Indian reservations. The passage of the 1887 General Allotment Act and the 1904 Flathead Allotment Act further limited Salish, Kootenai, and Pend d' Oreille tribal sovereignty; as the Flathead Reservation was allotted and opened to non-Indian homesteading the tribal government lost control over reservation land allotted to individual Indians as well as the “surplus” lands offered to non-Indians. However, land allotted to tribal members remained in trust status and was still considered tribal land. This changed in 1915 when Indian Office Inspector Major James McLaughlin issued fee patents to “competent” Indian allottees, after which these individual allotments were no longer held in trust and became subject to property tax assessments. Often times fee patented allotments ended up in the hands of non-Indians due to the common inability of allottees to make their property tax payments. Thus, the issuance of fee patents allowed for the transfer of additional tribal lands to non-Indians. Before long, much of the Flathead Reservation land was owned by non-Indians and was beyond the control of the tribal government.
The implementation of the allotment policy also created disputes between local non-Indian residents and tribal members regarding control of the Flathead Reservation's natural resources; especially water. The power struggle over water began with the construction of the Flathead Indian Irrigation Project, whose immense debt of construction led to the Montana Power Company's involvement and the building of Kerr Dam in the 1930s. The situation stemming from Irrigation Project repayment contracts resulted in decades of heated arguments concerning whether the Confederated Salish and Kootenai Tribes (CSKT/Tribes) or the irrigation districts' Joint Board of Control had the right to regulate reservation water. This resulted in several court cases—some of which were heard before the United States Supreme Court—wherein the Tribes' right to regulate and manage reservation water has been consistently recognized.

The Tribes' management of water has not drawn significant protests from the overall tribal membership due mostly to the fact that the number of tribal member farmers and ranchers is quite low. Although reservation water policy affects Indian irrigators the same as it does non-Indians, the Tribes' are attempting to make management decisions based upon the best interest of the greatest number of their people while also striving to preserve the resource for future generations. This ideal fades when examining tribal policies for managing the reservation's timber. These policies reflect the Tribes' need for supplemental income due to funding limitations stemming from their management contracts and compacts with the federal government. Although the Tribes are working to ensure their general tribal membership various benefits derived from the sale of
tribal timber, they are making it difficult for individual tribal member loggers to compete with the larger non-Indian commercial logging companies that purchase the majority of the reservation's timber sales.

For better or for worse, the CSKT have used the self-determination and self-governance policies to contract and compact management responsibility for as many federal programs as possible. The Tribes' decision to do so, however, does not conclude the discussion of tribal sovereignty. Rather, it leads to new developments revealing tribal member discontent and even injury due to various management decisions made by the tribal government.

Although contracts and compacts have enabled the Tribes to more fully participate in their own affairs, they have also substantially increased the financial pressure on the tribal government. Additionally, by permitting the federal government to withdraw partially from fulfilling various treaty obligations, the Tribes have simultaneously allowed for a sort of "backdoor" termination of the trust relationship. National policy makers and scholars tend to view this as better for tribal sovereignty by lessening tribal dependence on the federal government and thereby decreasing federal paternalism, however, they are not the people who feel the direct effects of these policies. As reviewed in Chapter 5 of this dissertation, on a local level, for tribal member loggers, these policies mean struggling economically to make ends meet despite the reservation's abundant timber resource. If this situation is indicative of the results of increased tribal sovereignty, then for obvious reasons tribal members are sometimes unsupportive of their tribal government's efforts to act on their sovereignty.
The pressure on Indian tribes to strive for and achieve self-governance status, and the resultant praise from federal agencies, can sometimes distort the reality that plays out on the most local levels. Self-government policies, while good for tribal governments and tribal sovereignty, can at times be injurious to tribal people. As the situation on the Flathead Reservation reveals, tribal sovereignty can be a double-edged sword. As resources and dollars become limited, tribes are forced to reduce either program services or the number of people eligible to receive those services; or sometimes both. These budgetary constraints are one reason the CSKT have altered their requirements for tribal enrollment to reflect a non-traditional, exclusive standard based on blood quantum. Another reason for limiting the tribal member population is the need for the CSKT to remain intact as a distinct people, entitled to their treaty rights, reservation land, and resources.

Although the tribal enrollment issue comes down to a question of tribal sovereignty, as every Indian tribe has the right to determine the criteria for group membership, the tribal vote against enrolling all lineal descendants was partly influenced by the Tribes' knowledge that they would be unable to provide services to an increased population, as the Tribes are "barely treading water now with the population we have now and the resources we have available for them." The fact that the CSKT are struggling to provide ongoing services illustrates a result of contracting and compacting that is so common that Former Assistant Secretary of the Interior for Indians Affairs Ross Swimmer "proposed dividing...

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1 CSKT tribal council chairman Fred Matt in "Tribes to vote on enrollment criteria," Lake County Leader, 16 January 2003, A2.
the Bureau of Indian Affairs budget into a category for carrying out trust responsibilities and a second ‘all other’ category, for self-determination [and self-governance] funds,” in order to meet the needs of tribal people. However, this suggestion brought about the question of “the definition of functions associated with the bureau’s trust responsibility. If the trust responsibility is construed broadly, there may be very little in the budget to allocate as self-determination [and self-governance] funds.”

Although honoring the trust responsibility requires paternalism, and paternalism means a loss of tribal sovereignty, tribal members who feel the harmful effects of contracting and compacting do not consider the trust relationship between tribes and the federal government to be negative. Instead, they view it as an obligation the federal government should honor; an obligation to provide adequate services, increase contract or compact award amounts, or to work with tribes to construct sound management infrastructures to increase the potential for optimal administration of programs. CSKT tribal member Francis C. Cahoon expressed a common tribal member perception of the self-determination and self-governance policies: “These policies allow the federal government to back out of their treaty responsibilities to tribes under the pretense of federal support for tribal sovereignty. And then, if tribes struggle or fail to successfully administer programs, the federal government can point the finger back at tribes. The federal government is giving Indian tribes just enough rope to hang

3 Ibid. Because self-governance compacting is an increase in self-determination contracting abilities, Swimmer’s statement can apply to both policies.
themselves and tribes are doing it. And by doing this—by allowing tribal
governments to fail tribal members—the federal government is failing tribal
people.\footnote{Francis C. Cahoon, interview by author, personal interview, St. Ignatius, MT, 8 November, 2004.}

As is evident on the Flathead Reservation, tribal members are not
predisposed to embrace federal policies to increase tribal sovereignty by allowing
a decrease in federal oversight if the policies also instigate service shortages or
cause other injuries to tribal members. The situation on Flathead also illuminates
the disparity between local and national perceptions of tribal sovereignty,
perceptions that vary according to how intimately a person is affected by the
modern-day policies through which tribal sovereignty finds expression.

In the end, the history of Flathead Indian Reservation governance and
sovereignty is complex and reflects the rapid evolution of tribal governing
structures and federal Indian policies. From the appointment of the Flathead
Business Committee in 1910 to the Tribes’ political reorganization in 1935, and
subsequent federal legislation allowing tribal management contracts and
compacts, one thing is certain: the Salish, Kootenai, and Pend d’Oreille tribes are
a community still debating and discussing the form tribal self-governance should
take.
APPENDIX A

1855 TREATY OF HELL GATE
Articles of agreement and convention made and concluded at the treaty-ground at Hell Gate, in the Bitter Root Valley, this sixteenth day of July, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and Superintendent of Indian Affairs for the Territory of Washington, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the confederated tribes of the Flathead, Kootenay, and Upper Pend d’ Oregille Indians, and being duly authorized thereto by them. It being understood and agreed that the said confederated tribes do hereby constitute a nation, under the name of the Flathead Nation, with Victor, the head chief of the Flathead tribes, as the head chief of the said nation, and that the several chiefs, head-men, and delegates, whose names are signed to this treaty, do hereby, in behalf of their respective tribes, recognize Victor as said head chief.

ARTICLE 1. The said confederated tribe of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit:

Commencing on the main ridge of the Rocky Mountains at the forty-ninth (49th) parallel of latitude, thence westwardly on that parallel to the divide between the Flat-bow or Kootenay River and Clarke’s Fork, thence southerly and southeasterly along said divide to the one hundred and fifteenth degree of longitude, (115) thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and the Coeur d’ Alene Rivers, thence southeasterly and southerly along the main ridge of the Bitter Root Mountains to the divide between the head-waters of the Koos-Koos-kee River and of the southwestern fork of the Bitter Root River, thence easterly along the divide separating the waters of the several tributaries of the Bitter Root River from the waters flowing into the Salmon and Snake Rivers to the main ridge of the Rocky Mountains, and thence northerly along said main ridge to the place of beginning.

ARTICLE 2. There is, however, reserved from the lands above ceded, for the use and occupation of the said confederated tribes, and as a general Indian reservation, upon which may be placed other friendly tribes and bands of Indians of the Territory of Washington who may agree to be consolidated with the tribes parties to this treaty, under the common designation of the Flathead Nation, with
Victor, head chief of the Flathead tribes, as the head chief of the nation, the tract of land included within the following boundaries to wit:

Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke’s Fork between the Camash and Horse Prairies; thence northerly to, and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of the Flathead Lake; thence on a due east course to the divide whence the Crow, the Prune, the So-ni-el-em and the Jocko Rivers take their rise, and thence southerly along said divide to the place of beginning.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and the superintendent and agent. And the said confederated tribes agree to remove to and settle upon the same within one year after the ratification of this treaty. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner or claimant.

Guaranteeing however the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named. And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President of the United States and payment made therefore in money or improvements of an equal value be made for said Indians upon the reservation; and no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money or improvements of an equal value shall be furnished him as aforesaid.

ARTICLE 3. And provided, That if necessary for the public convenience roads may be run through the said reservation, and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways.

The exclusive right of taking fish in all the streams running through or ordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the
privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

ARTICLE 4. In consideration of the above cession, the United States agree to pay the said confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty the sum of one hundred and twenty thousand dollars, in the following manner—that is to say: For the first year after the ratification hereof, thirty-six thousand dollars, to be expended under the direction of the President, in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, and for such other objects as he may deem necessary. For the next four years, six thousand dollars each year; for the next five years, four thousand dollars each year; and for the five years, four thousand dollars each year; and for the next five years, three thousand dollars each year.

All which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them, and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

ARTICLE 5. The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, an agricultural and industrial school, erecting the necessary buildings, keeping the same in repair, and providing it with furniture, books, and stationary, to be located at the agency, and to be free to the children of the said tribes, and to employ a suitable instructor or instructors. To furnish one blacksmith shop, to which shall be attached a tin and gun shop; one carpenter's shop; one wagon and ploughmaker's shop; and to keep the same in repair, and furnished with the necessary tools. To employ two farmers, one blacksmith, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades, and to assist them in the same. To erect one saw-mill and one flour-mill, keeping the same in repair and furnished with the necessary tools and fixtures, and to employ two millers. To erect a hospital, keeping the same in repair, and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provide the necessary furniture the buildings required for the accommodation of said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

And in view of the fact that the head chiefs of the said confederated tribes of Indians are expected and will be called upon to perform many services of a public character, occupying much of their time, the United States further agree to pay to each of the Flathead, Kootenay, and Upper Pend d' Oreille tribes five hundred dollars per year, for the term of twenty years after the ratification hereof,
as a salary for such persons as the said confederated tribes may select to be their head chiefs, and to build for them at suitable points on the reservation a comfortable house, and properly furnish the same, and to plough and fence for each of them ten acres of land. The salary to be paid to, and the said houses to be occupied by, such head chiefs so long as they may be elected to that position by their tribes, and no longer.

And all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agrees to be paid to said tribes. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

ARTICLE 6. The President may from time to time, at his discretion, cause the whole, or such portion of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes as are willing to avail themselves of the privilege, and locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

ARTICLE 7. The annuities of the aforesaid confederated tribes of Indians shall not be taken to pay the debts of individuals.

ARTICLE 8. The aforesaid confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or, in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities. Nor shall they make war on any other tribes except in self-defense, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians within the jurisdiction of the United States, the same rule shall prevail as that prescribes in this article, in case of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE 9. The said confederated tribes desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same; and therefore it is provided that any Indian belonging to said confederated tribes of Indians who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.
ARTICLE 10. The United States further agree to guaranty the exclusive use of the reservation provided for in this treaty, as against any claims which may be urged by the Hudson Bay Company under the provisions of the treaty between the United States and Great Britain of the fifteenth of June, eighteen hundred and forty-six, in consequence of the occupation of a trading-post on the Pru-in River by the servants of that company.

ARTICLE 11. It is, moreover, provided that the Bitter Root Valley, above the Loo-lo Fork, shall be carefully surveyed and examined, and if it shall prove, in the judgment of the President, to be better adapted to the wants of the Flathead tribe than the general reservation provided for in this treaty, then such portions of it as may be necessary shall be set apart as a separate reservation for the said tribe. No portion of the Bitter Root Valley, above the Loo-lo Fork, shall be opened to settlement until such examination is had and the decision of the President made known.

ARTICLE 12. This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chiefs, chiefs and principal men of the Flathead, Kootenay, and Upper Pend d’Oreilles tribes of Indians, have hereunto set their hands and seals, at the place and on the day and year herein-before written.

ISAAC I. STEVENS, Governor and Superintendent Indian Affairs W. T.
VICTOR, Head chief of the Flathead Nation, his x mark. (L. S.)
ALEXANDER, Chief of the Upper Pend d’Oreilles, his x mark. (L. S.)
MICHELLE, Chief of the Kootenays, his x mark. (L. S.)
AMBROSE, his x mark. (L. S.)
PAH-SOH, his x mark. (L. S.)
BEAR TRACK, his x mark. (L. S.)
ADOLPHE, his x mark. (L. S.)
THUNDER, his x mark. (L. S.)
BIG CANOE, his x mark. (L. S.)
KOOTEL CHAH, his x mark. (L. S.)
PAUL, his x mark. (L. S.)
ANDREW, his x mark. (L. S.)
MICHELLE, his x mark. (L. S.)
BATTISTE, his x mark. (L. S.)

KOOTENAYS

GUN FLINT, his x mark. (L. S.)
LITTLE MICHELLE, his x mark. (L. S.)
And, whereas, the said treaty having been submitted to the Senate of the United States for their constitutional action thereon, the Senate did, on the eight day of March, eighteen hundred and fifty-nine, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

*In Executive Session,*

*Senate of the United States, March 18, 1859.

*Resolved, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of treaty between the United States and Chiefs, Headmen and Delegates of the confederated tribes of the Flathead, Kootenay, and Upper Pend d'Oreille Indians, who are constituted a nation under the name of the Flathead Nation, signed 16th day of July, 1855.*

*Attest:*  
*ASBURY DICKINS, Secretary.*

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of eighth of March, one thousand eight hundred and fifty-nine, accept, ratify and confirm the said treaty.

In testimony whereof, I have hereunto caused the seal of the United States to be affixed, and have signed the same with my hand.

Done at the city of Washington, this eighteenth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States, the eighty-third.

JAMES BUCHANAN.

By the President:
LEWIS CASS, Secretary of State.
APPENDIX B

ACT OF APRIL 30, 1908 (35 STAT. 83)
Secretary of the Interior, in the manner required by said Act (reimburseable), ninety thousand dollars.

To enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to carry out an Act entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January fourteenth, eighteen hundred and eighty-nine, namely, the purchase of material and employment of labor for the erection of houses for Indians; for the purchase of agricultural implements, stock and seeds, breaking and fencing land; for payment of expenses of delegations of Chippewa Indians to visit the White Earth Reservation; for the erection and maintenance of day and industrial schools; for subsistence and for pay of employees; for pay of commissioners and their expenses, and for removal of Indians and for their allotments, to be reimbursed to the United States out of the proceeds of sale of their lands, one hundred and fifty thousand dollars.

That section three of the Act approved February twentieth, nineteen hundred and four (Thirty-third Statutes at Large, page fifty), modifying and amending the agreement with the Indians of the Red Lake Reservation in Minnesota, is hereby so far modified as to permit the payment of the annual installments provided for in said section during the month of April each year, instead of October.

MONTANA.

For pay of Indian agents in Montana, at the following-named agencies at the rates respectively indicated, namely:

At the Blackfeet Agency, Montana, one thousand eight hundred dollars.

At the Crow Agency, Montana, one thousand eight hundred dollars.

At the Flathead Agency, Montana, one thousand eight hundred dollars.

For support and civilization of the Indians at Fort Belknap Agency, Montana, including pay of employees, twenty thousand dollars.

For support and civilization of the Crow Indians in Montana, including pay of employees, eight thousand dollars.

For support and civilization of Indians at Flathead Agency, Montana, including pay of employees, nine thousand dollars.

For the rebuilding of the flour, saw, and shingle mill at the Flathead Indian Reservation subagency, Montana, at Ronan, ten thousand dollars, the same to be immediately available from any balance now in the Treasury, to be reimbursed from the proceeds of sales of surplus land after allotment.

For support and civilization of the Indians at Fort Peck Agency, Montana, including pay of employees, fifty thousand dollars.

For completion and extension of the Milk River Irrigation System on the Fort Belknap Reservation in Montana, twenty-five thousand dollars.

That for the purchase of machinery, tools, implements, other equipment, and animals for the Indians on the Fort Belknap Indian Reservation, in the State of Montana, to enable said Indians to engage in the raising of sugar beets and other crops, the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be immediately available, the same to be expended under the direction of the Secretary of the Interior: Provided, That said expenditures shall be made under such conditions as said Secretary may prescribe for the repayment by said Indians to the United States of the sum so expended.

For preliminary surveys, plans, and estimates of irrigating systems to irrigate the allotted lands of the Indians of the Flathead Reservation in Montana and the unallotted irrigable lands to be disposed of immediately available.

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under the Act of April twenty-third, nineteen hundred and four, entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment," and to begin the construction of the same, fifty thousand dollars, the cost of said entire work to be reimbursed from the proceeds of the sale of the lands within said reservation.

For general incidental expenses of the Indian Service in Montana, including traveling expenses of agents, two thousand five hundred dollars;

To enable the Secretary of the Interior to complete the survey, allotment, classification, and appraisement of the lands in the Flathead Indian Reservation, Montana, fifteen thousand dollars: Provided, That this sum shall be reimbursed to the United States from the proceeds of the sale of the surplus lands after the allotments are made.

CROWS. (TREATY.)

For pay of physician, as per tenth article of the treaty of May seventh, eighteen hundred and sixty-eight, one thousand two hundred dollars;

For pay of carpenter, miller, engineer, farmer, and blacksmith, as per tenth article of same treaty, three thousand six hundred dollars;

For pay of second blacksmith, as per eighth article of same treaty, one thousand two hundred dollars;

In all, six thousand dollars.

NORTHERN CHEYENNES AND APAPAHOES. (TREATY.)

For subsistence and civilization, as per agreement with the Sioux Indians approved February twenty-eighth, eighteen hundred and seventy-seven, including subsistence and civilization of Northern Cheyennes removed from Pine Ridge Agency to Tongue River, Montana, ninety thousand dollars;

For pay of physician, two teachers, two carpenters, one miller, two farmers, a blacksmith, and engineer, per seventh article of the treaty of May tenth, eighteen hundred and sixty-eight, nine thousand dollars;

In all, ninety-nine thousand dollars.

That the Secretary of the Interior be, and he is hereby, authorized to expend not to exceed thirty thousand dollars for the purpose of settling Chief Rocky Boy's band of Chippewa Indians, now residing in Montana, upon public lands, if available, in the judgment of the Secretary of the Interior, or upon some suitable existing Indian reservation in said State, and to this end he is authorized to negotiate and conclude an agreement with any Indian tribe in said State, or, in his discretion, to purchase suitable tracts of lands, water and water rights, in said State of Montana and to construct suitable buildings upon said lands and to purchase for them such necessary live stock and implements of agriculture as he may deem proper. And there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of thirty thousand dollars, or so much thereof as may be necessary, for the purpose of carrying out the provisions of this section.

NEBRASKA.

GENOA SCHOOL.

For support and education of three hundred Indian pupils at the Indian School, Genoa, Nebraska, and for pay of superintendent, fifty-one thousand eight hundred dollars.

For general repairs and improvements, three thousand dollars;

In all, fifty-four thousand eight hundred dollars.
APPENDIX C

ACT OF MAY 25, 1948 (62 STAT. 269)
AN ACT

To provide for adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the repayment to the United States of all reimbursable costs heretofore or hereafter incurred for the construction of the irrigation and power systems of the Flathead Indian irrigation project in Montana (hereinafter called the project), including such operation and maintenance costs as have been covered into construction costs under the Act of March 7, 1928 (46 Stat. 200, 212-213), and supplemental Acts, and including the unpaid operation and maintenance costs for the irrigation seasons of 1926 and 1927 which are hereby covered into construction costs, shall be accomplished as prescribed by this Act, notwithstanding any provision of law to the contrary.

SEC. 2. (a) All costs heretofore or hereafter incurred for the construction of the irrigation system shall be allocated to the Mission Valley, Camas, and Jocko divisions of the project in proportion to the amount of such costs incurred for the respective benefit of each of these divisions.

(b) The net revenues heretofore and hereafter accumulated from the power system shall be determined by deducting from the gross revenues the expenses of operating and maintaining the power system, and the funds necessary to provide for the creation and maintenance of appropriate reserves in accordance with section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725a-3).

(c) The deferred obligation established by the Act of May 10, 1926 (44 Stat. 453, 494-466), for repayment of the per acre costs of the Camas division in excess of the per acre costs of the Mission Valley division shall be determined on the basis of the costs heretofore incurred for the construction of those divisions, and shall be liquidated from the net revenues heretofore accumulated from the power system.

(d) The remainder of the net revenues heretofore accumulated from the power system shall be applied to reduce the reimbursable costs heretofore incurred for the construction of the power system, and the reimbursable costs heretofore incurred for the construction of the irrigation system (exclusive of the deferred obligation for the excess costs of the Camas division) as allocated among the several divisions.

SEC. 3. The Secretary of the Interior is also authorized in his discretion to utilize any of the said lands for the rehabilitation of needy Indians, and to exchange any of such lands for other lands in or near Rapid City more suitable for this purpose.

Approved, May 20, 1948.
pursuant to subsection (a) of this section, in proportion to the respective amounts of each of the foregoing categories of costs.

(c) The reimbursable costs heretofore incurred for the construction of the irrigation system of each division of the project and not repaid through the credits provided for in subsections (c) and (d) of this subsection shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period of fifty years from January 1, 1950. The reimbursable costs hereafter incurred for the construction of the irrigation system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be distributed over all irrigable lands within the division on an equal per acre basis, and the costs so charged against any parcel of lands within the division shall constitute a first lien thereon under the Act of May 10, 1926 (44 Stat. 453, 464-466). Upon the maturity or prepayment of any annual installment, the amount of the installment shall be reduced by deducting any sums included therein which are chargeable to lands on which the collection of construction costs is then deferred under the Act of July 1, 1932 (47 Stat. 584; 25 U.S.C., sec. 386a), or which are chargeable to other lands and have been already repaid to the United States.

(f) The reimbursable costs heretofore incurred for the construction of the power system and not repaid through the credits provided for in subsections (c) and (d) of this subsection, or through other credits from the revenues of the power system, shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period not exceeding the remaining useful life of the power system as a whole, or not exceeding fifty years from January 1, 1950, whichever period is the lesser. The reimbursable costs hereafter incurred for the construction of the power system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be repaid to the United States solely out of the revenues from the power system.

(g) Electric energy available for sale through the power system shall be sold at the lowest rates which, in the judgment of the Secretary of the Interior, will produce net revenues sufficient to liquidate the annual installments of the power system construction costs established pursuant to subsection (f) of this section, and (for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project) to yield a reasonable return on the unliquidated portion of the power system construction costs, and (for the same purpose) to yield such additional sums as will cover the amount by which the wholesale value of the electric energy sold exceeds the cost thereof where such excess is the result of the electric energy having been obtained on a special basis in return for water rights or other grants.

(h) All net revenues hereafter accumulated from the power system...
shall be applied annually to the following purposes, in the following order of priority:

1. To liquidate all matured installments of the schedule of repayments for construction costs of the power system;
2. To liquidate all matured installments of the schedule of repayments for construction costs of the irrigation system of each division, on an equal per acre basis for all irrigable lands within the division;
3. To liquidate unmatured installments of the schedule of repayments for construction costs of the power system which will mature at a date not later than the maturity of any unmatured installment of irrigation system construction costs;
4. To liquidate unmatured installments of the schedule of repayments for construction costs of the irrigation system of each division which will mature at a date prior to the maturity of any unmatured installment of power system construction costs, on an equal per acre basis for all irrigable lands within the division;
5. To liquidate construction costs chargeable against Indian-owned lands the collection of which is deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a); and
6. To liquidate the annual operation and maintenance costs of the irrigation system.

(i) In applying net revenues from the power system to the annual installments of irrigation system construction costs for any division of the project under the preceding subsection, allowance shall be made for any construction costs deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a), or already repaid to the United States which have been deducted from such installments under subsection (e) of this section, by distributing the net revenues available for such application over all irrigable lands within the division on an equal per acre basis, and by applying the net revenues distributed to the lands chargeable with the construction costs that have been so deferred or repaid, in amounts proportionate to the deductions made on account of such costs, to any then unpaid or subsequently assessed costs of operating and maintaining the irrigation system which are chargeable against the same lands.

(ii) Any matured installment of irrigation system construction costs, or portion thereof, which is not liquidated at or before its maturity through the application thereto of net revenues from the power system under subsection (h) of this section shall be repaid to the United States by an assessment against the lands chargeable with the construction costs included in the installment. Such repayment shall be deferred for any period of time that may be requisite to provide for the assessment and collection of such costs in conformity with the laws of the State of Montana, but shall be completed within two years after the maturity of the installment concerned.

SEC. 3. The repayment adjustments provided for in sections 1 and 2 of this Act shall not become effective unless, within two years after the approval of this Act, the irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into contracts satisfactory to the Secretary of the Interior, whereby such districts (1) obligate themselves for the repayment of the construction costs chargeable against all irrigable lands embraced within the districts contracting (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of this Act; (2) consent to such revisions in the limits of cost for the project, or any division thereof, as the Secretary and the districts contracting may mutually agree upon in order to facilitate the making of needed improvements and extensions to the irrigation and power systems; (3) provide for redetermination by the Secretary of the irrigable area of the project, or any division thereof, and for the exclusion of lands from
the project, with the consent of the holder of any water rights that would be canceled by such exclusion; and (4) make such other changes in the existing repayment contracts as the Secretary and the districts contracting may mutually agree upon for accomplishment of the purposes of this Act. In order to facilitate the commencement of repayment at the earliest practicable time, such contracts may provide for adjusting the maturity dates or amounts of the annual installments in a manner which will ultimately place the repayment schedules on substantially the same basis as though such contracts had been entered into prior to their actual execution, but not earlier than January 1, 1949.

SEC. 4. Unpaid charges for operation and maintenance of the irrigation system which were assessed prior to May 10, 1926, against any lands within the project, amounting to a sum not exceeding $40,549.89, and unpaid charges due from consumers for electric energy sold through the power system between July 1, 1931, and June 30, 1942, amounting to a sum not exceeding $2,195.16, are hereby canceled. The cancellation of the operation and maintenance charges shall be reported in the reimbursable accounts rendered to the Comptroller General of the United States, pursuant to the Act of April 14, 1910 (36 Stat. 269, 270; 25 U.S.C., sec. 145), as deductions from the total indebtedness of the project without regard to the fiscal years in which, or the appropriations from which, the expenditures were made.

SEC. 5. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following sums, for the following purposes, to be reimbursed to the United States as hereinafter provided:

(a) The sum of $64,161.18, with interest thereon at the rate of 4 per centum per annum from May 18, 1916, and the sum of $409.38, with interest thereon at the same rate from December 1, 1925, to be used to repay the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana the balance remaining due them under the Act of May 18, 1916 (39 Stat. 123, 141). The aggregate principal amount of $64,570.56 so repaid shall be added to the construction costs of the project and shall be reimbursable.

(b) The sum of $400,000 to be deposited in the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; of which sum one-half shall be in full settlement of all claims of said tribes on account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project, or for wildlife refuges; and the other one-half shall be in full payment to said tribes for a permanent easement to the United States, its grantees and assigns, for the continuation of any and all of the foregoing uses, whether heretofore or hereafter initiated, upon the tribal lands now used or reserved for the foregoing purposes. The said tribes shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement. The amount deposited in the Treasury pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(c) The sum of $1,000,000 to continue the construction of the irrigation and power systems of the project. Amounts expended pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(d) No expenditure shall be made from any appropriation granted under the authorizations contained in this section until the repayment of all reimbursable construction costs incurred through such expenditure has been secured by contracts conforming to the requirements of section 3 of this Act.

SEC. 6. In each fiscal year commencing after the approval of this Act...
for which an appropriation of the power revenues from the project is made in an indefinite amount pursuant to section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3), the power revenues so appropriated shall be available, to the extent of not to exceed $75,000, for the purpose, in addition to those other purposes now required or permitted by law, of making such improvements and extensions to the power system as the Secretary of the Interior may deem requisite for the provision of electric service to persons whose applications for such service could not otherwise be complied with in due course of business. Amounts so expended shall be added to the unmatured portion of the reimbursable construction costs of the power system in accordance with subsection 2 (f) of this Act, so as not to reduce the net power revenues available for application under subsection 2 (h) of this Act.

SEC. 7. Consistent with the terms of the repayment contracts heretofore or hereafter executed, the Secretary of the Interior is hereby authorized to issue such public notices fixing construction costs and apportioning construction charges, to enter into such contracts, to make such determinations, to effect such adjustments in project accounts, to prescribe such regulations, and to do such other acts and things as may be necessary or appropriate to accomplish the purposes of this Act.

SEC. 8. All Acts or parts thereof inconsistent with the provisions of this Act are hereby repealed.

Approved, May 25, 1948.

[CHAPTER 400] AN ACT

Making appropriations for the Departments of State, Justice, Commerce, and the Judiciary, for the fiscal year ending June 30, 1949, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of State, Justice, Commerce, and the Judiciary, for the fiscal year ending June 30, 1949, namely:

TITLE I—DEPARTMENT OF STATE

INTERNATIONAL ACTIVITIES

United States participation in international organizations: For expenses necessary for United States participation in international organizations, including payment of the annual contributions, quotas, and assessments, and costs of permanent United States representation to such organizations, in not to exceed the respective amounts as follows:

Inter-American Indian Institute (56 Stat. 1303), $1,800;

In all, $24,541,262, together with such additional sums due to increase in rates of exchange as the Secretary of State may determine and certify to the Secretary of the Treasury to be necessary to pay, in foreign currencies, the quotas and contributions required by the several treaties, conventions, or laws establishing the amount of the obligation:

Approved, June 3, 1948.

[CHAPTER 518] AN ACT

To restore certain lands to the town site of Wadsworth, Nevada.
PREAMBLE

We, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to establish a more responsible organization, promote our general welfare, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, do ordain and establish this Constitution for the Confederated Tribes of the Flathead Reservation.

ARTICLE I - TERRITORY

The jurisdiction of the Confederated Salish and Kootenai Tribes of Indians shall extend to the territory within the original confines of the Flathead Reservation as defined in the Treaty of July 16, 1855, and to such other lands without such boundaries, as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Confederated Tribes of the Flathead Reservation shall consist as follows:

a) All persons of Indian blood whose names appear on the official census rolls of the Confederated Tribes as of January 1, 1935.

b) All children born to any member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation who is a resident of the reservation at the time of the birth of said children.

SECTION 2. The Council shall have the power to propose ordinances, subject to review by the Secretary of the Interior, governing future membership and the adoption of members by the Confederated Tribes.

SECTION 3. No property rights shall be acquired or lost through membership in this organization, except as provided herein.

ARTICLE III - THE TRIBAL COUNCIL

SECTION 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.
SECTION 2. The Council shall consist of ten councilmen to be elected from the districts as set forth hereafter, and Chiefs Martin Charlo and Eneas Paul Koostahtah.

SECTION 3. Representation from the districts hereby designated shall be as follows: Jocko Valley and Mission Districts, two councilmen each; Ronan, Pablo, Polson, Elmo-Dayton, Hot Springs-Camas Prairie, and Dixon, one councilman each.

SECTION 4. The Tribal Council shall have the power to change the districts and the representation from each district, based on community organization or otherwise, as deemed advisable, such change to be made by ordinance, but the total number of delegates shall not be changed as provided for in Section 2 of Article III of this Constitution.

SECTION 5. The Tribal Council so organized shall elect from within its own number a chairman, and a vice chairman, and from within or without its own membership, a secretary, treasurer; sergeant-at-arms, and such other officers and committees as may be deemed necessary.

SECTION 6. No person shall be a candidate for membership in the Tribal Council unless be shall be a member of the Confederated Tribes of the Flathead Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election.

SECTION 7. The Tribal Council of the Confederated Tribes of the Flathead Reservation shall be the sole judge of the qualifications of its members.

ARTIVLE IV – NOMINATIONS AND ELECTIONS

SECTION 1. The first election of a Tribal Council under this Constitution shall be called and supervised by the present Tribal Council within 30 days after the ratification and approval of this Constitution, and thereafter elections shall be held every two years on the third Saturday prior to the expiration of the terms of office of the members of the Tribal Council. At the first election, five councilmen shall be elected for a period of two years and five for a period of four years. The term of office of a councilman shall be for a period of four years unless otherwise provided herein.

SECTION 2. The Tribal Council or an election board appointed by the Council shall determine rules and regulations governing all elections.

SECTION 3. Any qualified member of the Confederated Tribes may announce his candidacy for the Council, within the district of his residence, notifying the Secretary of the Tribal Council in writing of his candidacy at least 15 days prior to the election. It shall be the duty of the Secretary of the Tribal Council to post in
each district at least 10 days before the election, the names of all candidates for the Council who have met these requirements.

SECTION 4. The Tribal Council, or a board appointed by the Council, shall certify to the election of the members of the Council within 5 days after the election returns.

SECTION 5. Any member of the Confederated Tribes of the Flathead Reservation who is 21 years of age or over and who has maintained a legal residence for at least one year on the Flathead Reservation shall be entitled to vote.

SECTION 6. The Tribal Council, or a board appointed by the Tribal Council, shall designate the polling places and appoint all election officials.

ARTICLE V - VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. If a councilman or official shall die, resign, permanently leave the reservation, or be removed from office, the Council shall declare the position vacant and appoint a successor to fill the unexpired term, provided that the person chosen to fill such vacancy shall be from the district in which such vacancy occurs.

SECTION 2. Any councilman who is proven guilty of improper conduct or gross neglect of duty may be expelled from the Council by a two-thirds vote of the membership of the Council voting in favor of such expulsion, and provided further, that the accused member shall be given full and fair opportunity to reply to any and all charges at a designated Council meeting. It is further stipulated that any such member shall be given a written statement of the charges against him at least five days before the meeting at which he is to appear.

ARTICLE VI - POWER AND DUTIES OF THE TRIBAL COUNCIL

SECTION 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaw;

a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture, to administer charity; to protect the health, security, and general welfare of the Confederated Tribes.

b) To employ legal counsel for the protection and advancement of the rights of the Flathead Confederated Tribes and their members, the choice
of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

c) To negotiate with the Federal, State and local governments on behalf of the Confederated Tribes, and to advise and consult with the representatives of the Departments of the Government of the United States on all matters affecting the affairs of the Confederated Tribes.

d) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands and tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other agency of the Government, provided that no tribal lands shall be sold or encumbered or leased for a period in excess of five years, except for Governmental purposes.

e) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Confederated Tribes, prior to the submission of such estimates to the Congress.

f) To manage all economic affairs and enterprises of the Confederated Tribes in accordance with the terms of a charter to be issued by the Secretary of the Interior.

g) To make assignment of tribal lands to members of the Confederated Tribes in conformity with Article VIII of this Constitution.

h) To appropriate for tribal use of the reservation any available applicable tribal funds, provided that any such appropriation may be subject to review by the Secretary of the Interior, and provided, further, that any appropriation in excess of $5,000 in anyone fiscal year shall be of no effect until approved in a popular referendum.

i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon, nonmembers doing business within the reservation, or obtaining special rights or privileges, and the same may also be applied to members of the Confederated Tribes, provided such ordinances have been approved by a referendum of the Confederated Tribes.

j) To exclude from the restricted lands of the reservation persons not legally entitled to reside thereon, under ordinances, which may be subject to review by the Secretary of the Interior.

k) To enact resolutions or ordinances not inconsistent with Article II of this Constitution governing adoptions and abandonment of membership.
l) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and defining its powers and duties.

m) To purchase land of members of the Confederated Tribes for public purposes under condemnation proceedings in courts of competent jurisdiction.

n) To promulgate and enforce ordinances, which are intended to safeguard and promote the peace, safety, morals, and general welfare of the Confederated Tribes by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting nonmembers shall be subject to review by the Secretary of the Interior.

o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution.

p) To regulate the inheritance of real and personal property, other than allotted lands, within the Flathead Reservation, subject to review by the Secretary of the Interior.

q) To regulate the domestic relations of members of the Confederated Tribes.

r) To recommend and provide for the appointment of guardians for orphans, minor members of the Confederated Tribes, and incompetents subject to the approval of the Secretary of the Interior, and to administer tribal and other funds or property which may be transferred or entrusted to the Confederated Tribes or Tribal Council for this purpose.

s) To create and maintain a tribal fund by accepting grants or donations from any person, State, or the United States.

t) To delegate to subordinate boards or to cooperative associations, which are open to all members of the Confederated Tribes, any of the following powers, reserving the right to review any action taken by virtue of such delegated power.

u) To adopt resolutions or ordinances to effectuate any of the foregoing powers.
SECTION 2. Any resolution or ordinance which by the terms of this constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation who shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within 90 days from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the Council of such action: Provided. That if the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the Council of his reasons therefore; and the Council, if such reasons appear to be insufficient, may refer it to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within 90 days from its enactment.

SECTION 3. The council of the Confederated Tribes may exercise such further powers as may in the future be delegated to it by the Federal Government, either through order of the Secretary of the Interior or by Congress, or by the State Government or by members of the Confederated Tribes.

SECTION 4. Any rights and powers heretofore vested in the Confederated Tribes but not expressly referred to in this Constitution shall not be abridged by this Article, but may be exercised by the members of the Confederated Tribes through the adoption of appropriate bylaws and constitutional amendments.

ARTICLE VII – BILL OF RIGHTS

SECTION 1. All members of the Confederated Tribes over the age of 21 years shall have the right to vote in all tribal elections, subject to any restrictions as to residence as set forth in Article IV.

SECTION 2. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

SECTION 3. All members of the Confederated Tribes may enjoy without hindrance freedom of worship, speech, press, and assembly.

SECTION 4. Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested, by any member accused of any offense punishable by more than 30 days' imprisonment, and excessive bail or cruel or unusual punishment shall not be imposed.
ARTICLE VIII – LANDS

SECTION 1. Allotted Lands. Allotted lands, including heirship lands, within the Flathead Reservation, shall continue to be held as heretofore by their present owners. The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Confederated Tribes either in exchange for a money payment or in exchange for an assignment covering the same land or other land, as I hereinafter provided. The Tribal Council shall have the right to exchange tribal lands for individual allotments when necessary for consolidation of tribal holdings and subject to approval of the Secretary of the Interior. Such exchanges shall be based on the appraised value of the lands so exchanged, and the individual Indian shall hold the land so exchanged in the same manner as the original allotment.
APPENDIX E

CONFEDERATED SALISH AND KOOTENAI TRIBES

CORPORATE CHARTER
CORPORATE CHARTER
of the
CONFEDERATED SALISH AND KOOTENAI TRIBES
of the
FLATHEAD RESERVATION, MONTANA
A Federal Corporation Chartered Under the
Act of June 18, 1934

WHEREAS, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana constitute a recognized Indian tribe organized under a Constitution and Bylaws ratified by the Tribe on October 4, 1935, and approved by the Secretary of the Interior on October 28, 1935 pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378); and

WHEREAS, more than one-third of the adult members of the Tribe have petitioned that a charter of incorporation be granted to such Tribe, subject to ratification by a vote of the adult Indians living on the reservation;

NOW, THEREFORE, I, Harold L. Ickes, Secretary of the Interior, by virtue of the authority conferred upon me by the said Act of June 18, 1934 (48 Stat. 984), do hereby issue and submit this charter of incorporation to the Confederated Salish and Kootenai Tribes of the Flathead Reservation to be effective from and after such time as it may be ratified by a majority vote of the adult Indians living on the reservation.

CORPORATE
EXISTENCE
AND
PURPOSES

1. In order to further the economic development of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana by conferring upon the said Tribe certain corporate rights, powers, privileges and Immunities; to secure for the members of the Tribe an assured economic independence; and to provide for the proper exercise by the Tribe of various functions heretofore performed by the Department of the Interior, the aforesaid Tribe is hereby chartered as a body politic and corporate of the United States of America, under the corporate name "The Confederated Salish and Kootenai Tribes of the Flathead Reservation."

PERPETUAL
SUCCESSION

2. The Confederated Salish and Kootenai Tribes shall, as a Federal Corporation, have perpetual succession.
MEMBERSHIP
3. The Confederated Salish and Kootenai Tribes shall be a membership corporation. Its members shall consist of all persons now or hereafter members of the Tribe, as provided by its duly ratified and approved Constitution and Bylaws.

MANAGEMENT
4. The tribal council of the Confederated Tribes established in accordance with the said Constitution and Bylaws of the Tribe, shall exercise all the corporate powers hereinafter enumerated.

CORPORATE POWERS
5. The Tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and Bylaws of the said Tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the Tribal Constitution and Bylaws:

(a) To adopt, use, and alter at its pleasure a corporate seal.
(b) To purchase, take by gift, bequest, or otherwise own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations:

1. No sale or mortgage may be made by the Tribe of any land or interests in land, including water power sites, water rights, oil, gas, and other mineral rights now or hereafter held by the Tribe within the boundaries of the Flathead Reservation.

2. No mortgage may be made by the Tribe of any standing timber on any land now or hereafter held by the Tribe within the boundaries of the Flathead Reservation.

3. No leases, permits (which terms shall not include land assignments to members of the Tribe), or timber-sale contracts covering any land or interests in land now or hereafter held by the Tribe within the boundaries of the Flathead Reservation shall be made by the Tribe for a longer term than 10 years, and all such leases, permits or contracts must be approved by the Secretary of the Interior or by his duly authorized representative; but oil and gas leases, water power leases, or any leases requiring substantial improvements of the land may be made for longer periods when authorized by law.

4. No action shall be taken by or in behalf of the Tribe which conflicts with regulations authorized by
Section 6 of the Act of June 18, 1934, or in any way operates to destroy or injure the tribal grazing lands, timber, or other natural resources of the Flathead Reservation.

(5) No distribution of corporate property to members shall be made except out of net income.

(c) To issue interests in corporate property in exchange for restricted Indian lands.

(d) To borrow money from the Indian Credit Fund in accordance with the terms of Section 10 of the Act of June 18, 1934 (48 Stat. 984), or from any other governmental agency, or from any member or association of members of the Tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the Tribe: PROVIDED, That the amount of indebtedness to which the Tribe may subject itself shall not exceed $100,000, except with the express approval of the Secretary of the Interior.

(e) To engage in any business that will further the economic well-being of the members of the Tribe or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of this charter.

(f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Montana, including agreements with the State of Montana for the rendition of public services and including contracts with the United States or the State of Montana or any agency of either for the development of water-power sites within the reservation: PROVIDED, That all contracts involving payment of money by the corporation in excess of $5,000 in any one fiscal year, or involving the development of water-power sites within the reservation, shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(g) To pledge or assign chattels or future tribal income due or to become due to the Tribe under any notes, leases, or other contracts, whether or not such notes, leases or contracts are in existence at the time: PROVIDED, That
such agreements of pledge or assignment shall not extend more than 10 years from the date of execution and shall not cover more than one-half the net tribal income in any one year. AND PROVIDED FURTHER, That any such agreement shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(h) To deposit corporate funds, from whatever source derived, in any National or State bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the postal savings bank or with a bonded disbursing officer of the United States to the credit of the Tribe.

(i) To sue and to be sued in courts of competent jurisdiction within the United States; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said Tribe, or by the United States to the levy of any judgment, lien or attachment upon the property of the Tribe other than income or chattels specially pledged or assigned.

(j) To exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business.

6. At any time after 10 years from the effective date of this charter, upon the request of the tribal council of the Confederated Tribes the termination of any supervisory power reserved to the Secretary of the Interior under Sections 5(b)(3), 5(d), 5(f), 5(g), 5(h), and Section 8 of this charter, the Secretary of the Interior, if he deems it wise and expedient so to do, shall thereupon submit the question of such termination or grant for ratification by the Tribe. If the Secretary of the Interior shall approve such termination, it shall be effective upon ratification by a majority vote of the adult members of the Tribe residing on the reservation, at an election in which at least thirty per cent of the eligible voters vote. If the Secretary shall disapprove such termination, or fail to approve or disapprove it within 90 days after its receipt, it may then be submitted by the Secretary or by the tribal council to popular referendum of the adult members of the Tribe actually living within the reservation and
If approved by two-thirds of the eligible voters shall be effective.

7. No property rights of the Confederated Salish and Kootenai Tribes, as heretofore constituted, shall be in any way impaired by anything contained in this charter, and the tribal ownership of unallotted lands, whether or not assigned to the use of any particular individuals, is hereby expressly recognized. The individually owned property of members of the Tribe shall not be subject to any corporate debts or liabilities, without such owners' consent. Any existing lawful debts of the Tribe shall continue in force, except as such debts may be satisfied or canceled pursuant to law.

6. The Tribe may issue to each of its members a non-transferable certificate of membership evidencing the equal share of each member in the assets of the Tribe and may distribute per capita, among the recognized members of the Tribe, all profits of corporate enterprises or income over and above sums necessary to defray corporate obligations to members of the Tribe or to other persons and over and above all sums which may be devoted to the establishment of a reserve fund, the construction of public works, the costs of public enterprises, the expenses of tribal government, the needs of charity, or other corporate purpose. Any such distribution of profits or income in any one year amounting to a per capita payment of $100 or more, or amounting to a distribution of more than one-half of the accrued surplus, shall not be made without the approval of the Secretary of the Interior.

8. The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the Tribe to the Commissioner of Indian Affairs. The treasurer of the Tribe shall be the custodian of all moneys which come under the jurisdiction or control of the tribal council. He shall pay out money in accordance with the orders and resolutions of the council, and no disbursements shall be made without the signature or approval of the treasurer. He shall keep accounts of all receipts and disbursements and shall make written reports of same to the tribal council at each
regular and special meeting. He shall be bonded in such an amount as the council by resolution shall provide, such bond to be approved by the Commissioner of Indian Affairs. The books of the treasurer shall be audited at the direction of the council or of the Commissioner of Indian Affairs, and shall be open to inspection by members of the Tribe or duly authorized representatives of the Government at all reasonable times.

AMENDMENTS

10. This charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolutions of the council which, if approved by the Secretary of the Interior, to be effective shall be ratified by a majority vote of the adult members living on the reservation at a popular referendum in which at least thirty per cent of the eligible voters vote.

RATIFICATION

11. This charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Confederated Salish and Kootenai Tribes living on the Flathead Reservation, provided at least thirty per cent of the eligible voters shall vote, such ratification to be formally certified by the superintendent of the Flathead Agency and the chairman of the tribal council of the Confederated Tribes.

SUBMITTED BY the Secretary of the Interior for ratification by the Confederated Salish and Kootenai Tribes of the Flathead Reservation in a popular referendum to be held on July 25, 1936.

HAROLD L. ICKES,
Secretary of the Interior
[seal]

WASHINGTON, D.C., April 21, 1936
CERTIFICATION

Pursuant to Section 17 of the Act of June 18, 1834 (48 Stat. 984), this charter, issued on April 21, 1836, by the Secretary of the Interior to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, was duly submitted for ratification to the adult Indians living on the reservation and was on April 25, 1836, duly ratified by a vote of 425 for and 129 against, in an election in which over thirty per cent of those entitled to vote cast their ballots.

EDWIN DUPUIS,
Chairman of the Tribal Council

L.W. SHOTWELL,
Superintendent, Flathead Agency
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