

Noel and Ramona Jacobson
#10 Mountain Meadows Ln.
P.O. Box 1624
Thompson Falls, MT 59873

WC-0001-C-2021

December 6, 2023

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES -
MONTANA - UNITED STATES COMPACT PRELIMINARY DECREE**

**CASE NO. WC-0001-C-2021
OBJECTOR'S MOTION TO AMEND OBJECTION**

On February 7, 2023, the objectors, Noel and Ramona Jacobson timely filed an objection (Doc. #831) to the Confederated Salish and Kootenai Tribes - Montana-United States Compact Preliminary Decree.

On October 18, 2023 the Water Court issued case management order #3 allowing for the submission of Motions to Amend existing objections no later than December 8, 2023.

Objector now moves the Court to accept their amendments to her original objection.

The GROUNDS FOR THE AMENDMENTS ARE: to provide the court with clarification, elaborate upon, add claims, further research, definitions of words and provide new information and facts that were inadvertently omitted, to add and /or to correct errors in the original objection submitted to the Court.

The attached amended objection is being submitted to the court and we request the court to accept it as amending our original objection.

DATED this 6th day of December, 2023.

/s/ Noel Jacobson
Objector

/s/ Ramona Jacobson
Objector

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion to Amend along with the Amended Objection with Exhibits and Attachments was served on the following persons as noted below:

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Dated this 6th day of December, 2023

/s/ Noel Jacobson

/s/ Ramona Jacobson

Objectors:

Motion to Amend Objection – Page 2

**Noel and Ramona Jacobson
#10 Mountain Meadows Ln.
P.O. Box 1624
Thompson Falls, MT 59873**

**IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES
MONTANA-UNITED STATES COMPACT**

WC-0001-C-2021

**MOTION TO AMEND AND AMENDED OBJECTION
With Request for Hearing**

1. The objectors, Noel and Ramona Jacobson, live in Basin 76N which the Compact will affect.
2. Our address is #10 Mountain Meadows Ln, P.O. Box 1624, Thompson Falls, MT 59873.
3. We are specifically objecting in the public interest and to the application of Water Right # 76N 82404 000. Original Objection was filed on Feb. 7, 2023; Doc. # 831.

Introduction to Amendments (including New Information)

(1) The Objectors are filing an Amendment Objection to two objections filed by us. This Amended Objection is to be applied to both.

(2) The following Amendments will be specifically addressing the issue of fraud, collusion and overreaching by this Compact that was not mention in our original objection.

(3) There are several criteria the Water Court has listed for Judicial Review. There are also several assumptions. It is assumed since so many government officials have agreed or ratified this Compact, we must recognize the Compact went through strict scrutiny and therefore it must be valid. Another assumption is since the Compact is, in essence, a Consensual Agreement, the Agreement was necessary to avoid future costly litigation and expense of the possible 10,000 claims by the Tribes. Both of these assumptions have serious errors.

- a. Truth is not always measured by majority agreement or vote
- b. To suggest that strict scrutiny was applied by legislators and the Governor to a document which is almost 700 pages long is absurd. What actually happened is that legislators and other government officials took at face value what the Tribes said, what the Reserved Water Rights Commission said, and what the DNRC and others said as true.

(4) We currently live in a world where words don't actually mean what they appear to mean according to common understanding (A good example is the question actually debated today on defining what a "woman" is). An example in this Water Court case is the words "*water right*". This would seem to suggest the individual actually owns the water appurtenant to his/her land. Not so fast! In Montana you don't own the water or the source. In actuality, you possess the right to use it. Big difference! Tribal Water Rights, is that actual ownership or is the right to use it. Hard to tell! These kinds of slippery and specious words are use throughout the Compact. **Time Immemorial?** What is that? Well, it is used in the Compact but not defined. What is a water right? What is Time Immemorial?

(5) The Montana State Constitution provides clarity if courts do not obfuscate it. We read in Article I, the Enabling Act which states:

. . . including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

Sloppy language at best, at worst it is false. The delegates of 1972 should have been aware that after 1889, and in early 1900's individual Indian owners took land out of trust and were given a fee patent. They were individual property owners, not from Time Immemorial, but from the date they acquired individual ownership. Furthermore this removed them from the jurisdiction and control of the Congress. Finally, once they were removed and became citizens they acquired the inalienable right to pursue water on their individual property. They were not acquiring this by Tribal Right but by individual right.

(6) And in Article 2, section 3, we get the inalienable right to pursue water for "*life's necessities*".

All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities.

Normally, all would recognize what the word **inalienable** means (although we suspect even that normal definition will be challenged in the future). It means fundamental, not subject to denial. So what is more basic to "*life's necessities*" than WATER!! No court should determine the senior or junior status of this right – particularly water appurtenant to your land. One may, ask: Don't we have to regulate the use of water so we don't negate our neighbor's water? Well, yes, all rights have some minimum exceptions. For example freedom of speech is fundamental but

we don't allow threatening speech or speech that would cause a panic. However while we may limit some speech, we don't refer to freedom of speech as "*beneficial use of speech*", do we?

(7) We have the confusion of words or negating the normal understanding of words by the courts. For example in the Hellgate Treaty we have the words, "*in common with the citizens of the territory*". Seems simple enough to understand to the ordinary reader, right? Ah, but not so fast, slow down! Learned lawyers and courts would disagree with this common understanding. In *Washington vs Washington State Commercial Passenger Fishing Vessel Ass'n* (443 U.S. 658) we get a different take:

It is true that the words "*in common with*" may be read either as nothing more than a guarantee that individual Indians would have the same right as individual non-Indians or as securing an interest in the fish runs themselves. If we were to continue to construe these words by reference to 19th century property concepts, we might accept the former interpretation.

Ah, those pesky 19th century property concepts, they are troublesome!

(8) We are told that the Court's final decision is an "*amalgam of delicate balance, gross approximations, and rough justice*" (See **Chippewa-Cree Compact**). To be told that the Water Court's final decision is not based on fundamental principles and historical facts but rather on "*approximations*" and "*rough justice*" is offensive to the objectors.

(9) It is also interesting that the **Notice of Entry** given by the Court on June 9th concerning "*criteria*" does not mention any possible constitutional checks on the Compact. We assume, and hopefully, correctly, that the Water Court took an oath to uphold both the U.S. and State Constitution and therefore will scrutinize the Compact through constitutional lens.

(10) **Hermeneutical Principles and the Historical Method**

The objectors requests the Water Court use certain principles in apply their Amended Objection:

1. Primary Sources such as the Hellgate Treaty, the Dawes Act, the Flathead Allotment Act, both the State and U.S. Constitution
2. Secondary sources such as Affidavits by Teresa K. McCarrick and Art Wittich, and case law by both State and Federal Courts
3. Any Tertiary Source such as the Flathead Indian Reservation Timeline.
4. Objectors insist the Plain Language Doctrine be used.
5. Finally the Vagueness doctrine is to be applied to the Compact.

Amendment #1

1. The Notice of Entry of Preliminary Decree and Notice of Availability filed by the Court on June 9th, 2022 states as follows:

The Court's review of a compact is to allow the Court to "reach a reasoned judgment that the agreement is not the product of fraud or overreaching by or collusion between the negotiating parties" . . . that it is fair and reasonable to those parties and the public interest who were not represented in the negotiation, but have interests that could be materially injured by operation of the compact.

The objectors here assert their objection based on material injury to the constitutional rights of the non-Indians within the Reservation and the **public's interest** that the Compact is the product of fraud, collusion and overreaching.

1. a. The objectors object to the establishment of the Water Management Board as outlined on page 4 of the Water Right Summary connected to the Notice of Entry & Availability. The term "**exclusive**" is confusing, ambiguous and vague. Normally exclusive means no other authority has jurisdiction. Yet, we are told that judicial review is available from a Court of Competent Jurisdiction (which is also vague and confusing). So how can judicial review be offered if the Water Board has "exclusive authority" (See also Article IV. I. 4). In Article IV I. 1 we read that the Board has "**exclusive jurisdiction** to resolve any controversy over the **meaning and interpretation** of Compact on the Reservation." This obviously removes judicial review to the state courts by the non-Indian citizens within the Reservation.

1. b. The objectors also object to the language in the Summary on page 4 where it states "*for lands acquired by the Tribes within the Reservation, the Tribes have the right to any Water Right Arising under State Law acquired as an appurtenance to the land.*" In other words the water right established by the authority of the State is now transferred to the Tribes. This is a taking of the authority of the State to issue water rights to land within the State of Montana. The State of Montana under the State Constitution does not have the authority to do this. At best this is sloppy language. The counter argument is that the water right is still established but what has been changed is the administration of this Water Right. This is verbal gymnastics. The language does not explicitly state this.

Amendment # 2

2. The objectors did not provide any evidence in their original objection concerning fraud, collusion and overreaching. It is in the public's interest as to whether the State of Montana did acquiesce or ratify a Compact that is the product of fraud, collusion and overreaching. The

objectors will be brief in their assertions of fraud, collusion and overreaching with attached Exhibits to provide prima facie evidence of these assertions. So the question is: **Is the Compact the product of fraud, collusion and overreaching as stated in the Court's Notice to Objectors?**

2. a. **Fraud** can be purposeful or done unwittingly or in ignorance (see MCA 28-2-406 (1)). The First WHEREAS in Article I of the Compact is fraudulent. The Tribes did not reserve the Reservation, technically there do not even own the Reservation, the United States owns the land for the Tribes in Trust. It is fraudulent to claim the purpose of the Flathead Reservation was to create a permanent homeland. In fact according to the Hellgate Treaty, Article VI and Article VI of the Omaha treaty (**Exhibit 1**) the purpose was permanent homes on lots. Its ultimate purpose was assimilation (see maps from 1910 to 1935, **Exhibit 2**). The language of the treaty does not directly mention water. In fact any such mention indirectly is couched in the language of "*citizens in common with the territory*". Courts have tried to change the meaning of these common words to mean something differently in the 20th century.

The objectors claim the following terms are specious, vague and/or fraudulent: **Time Immemorial, Tribal Water Right, Flathead Indian Reservation, Court of Competent Jurisdiction**. *Time Immemorial* is used constantly in the Compact. How are we to understand these two terms? Should we use the Tribes definition of Time Immemorial? Concerning these two words look at the Tribes definition of Time Immemorial in the Flathead Indian Reservation Timeline (**Exhibit 3**). Objector will file a brief concerning these terms in the summer of 2024.

2. c. **Collusion** has been commonly defined as *two or more person working together to deprive a person of his/her rights by the form or authority of the law*. That there were individuals who colluded early on prior to 2015 (Legislative Session which approved the Compact) and during the Legislative session is indicated by the following two Affidavits: Affidavit of Teresa K. McCarrick (**Exhibit 4**) and Affidavit of Art Wittich (**Exhibit 5**).

2. d. **Overreaching** has been defined as *conduct that exceed established limits in order to gain a purposeful or unconscious advantage over others through ignorance or deceptive and unfair means*. The powers and duties of the Water Management Board (Article IV. I. 5.) is an example of overreaching by the Montana Legislature in denying the state courts to the non-Indian citizens of the Reservation and with its vague due process procedures. Finally overreaching is shown by giving off-Reservation rights to the Tribes. Off Reservation Water Rights is simply negated by Article 1 of the Treaty (see attachments already referred too), where the Tribes ceded "**all right**

and interest” to any ceded lands. Under the Plain Language Doctrine ALL right to land, water, etc. were given up. The State of Montana has authority concerning water rights over these ceded lands.

Amendment # 3

The objectors add new information to their original objection where they referred to the right to “supply additional arguments and amendment” as additional information becomes available. The objectors object to the application of Water Right # 76N 30063808 in Abstract 27 of the Compact with a priority date of Time Immemorial based on the following:

3. a. The Hellgate Treaty (Exhibit 1, **Ibid**) states in Article I, that the Tribes ceded all **right and interest** to ceded lands. We suspect the Compacting Parties will play verbal gymnastics with this issue. Therefore any claim to off-reservation water rights was negated by the language of Hellgate Treaty.

3. b. We are concerned about call rights of the Tribes for this off- Reservation water right. They can make a call on irrigators in Basin 76N and Basin 76M. The enforceable level is 5,000 cfs and if the level get below than they are authorized to make a call. It is also interesting that the abstract states the Tribal Chairman as the “**Beneficial Owner**” not the “beneficial user” even though the US is the official owner. This jurisdictional call is unconstitutional; could affect the aquifer of those wells (Our well is in Basin 76N 82404 00) that are near the main stem of the Clark Fork; and there is no enforceable authority to demand junior users to desist. What court will the Tribes go to enforce this call? Very Vague!

Amendment #4

New information was also provided to the objector that was not available when they filed their original objection on February 7, 2023.

4. In June of 2023, the U.S. Supreme Court decided the *Arizona v Navajo Nation* (599 U.S. 2023) case. In this decision the Court finally used the Plain Language Doctrine in interpreting the Treaty of Basque Redondo. The Navajo Nation had argued that the U.S. Government must take affirmative steps to secure water for the Nation. The 9th Circuit agreed but the Supreme Court reversed. It stated the Court “*will not apply common-law trust principles*” to infer duties not found in the text of a treaty, statute or regulation. . . Here nothing in the 1868 treaty

establishes a conventional trust relationship with respect to water.” Similarly nothing in the Hellgate Treaty establishes a trust relationship with the Tribes to secure water for them. This Compact is an attempt to do exactly that and nothing in the Treaty authorizes the securing of water for the Tribes both on and off the Reservation.

DATED this 6th day of December, 2023

/s/ Noel and Ramona Jacobson

Objectors, Noel and Ramona Jacobson

Treaty of Hell Gate, 1855

Articles of agreement and convention made and concluded at the treatyground 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'Oreilles Indians, on behalf of the acting for said confederated tribes, 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 tribe, 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, recognise 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 degrees,) 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 tribe, 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 therefor in money, or improvements of an equal value be made for said Indian 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 bordering 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 to 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, five thousand dollars each year; for the next 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 stationery, 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 flouring-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'Oreilles 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 agreed 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 will 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 will they make war on any other tribe except in self-defence, 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 commit any depredations on any other Indians within the jurisdiction of the United States, the same rule shall prevail as that prescribed 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 hereinbefore written.

Isaac I. Stevens, (L.S.)
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.)
Paul See, his x mark. (L.S.)
Moses, his x mark. (L.S.)

James Doty, secretary.
R. H. Lansdale, Indian Agent.
W. H. Tappan, sub Indian Agent.
Henry R. Crosire,
Gustavus Sohon, Flathead Interpreter.
A. J. Hoecken, sp. mis.

William Craig.

Ratified Mar. 8, 1859.

Proclaimed Apr. 18, 1859.

TREATY WITH THE OMAHA, 1854.

Articles of agreement and convention made and concluded at the city of Washington this sixteenth day of March, one thousand eight hundred and fifty-four, by George W. Manypenny, as commissioner on the part of the United States, and the following-named chiefs of the Omaha tribe of Indians, viz: Shon-ga-ska, or Logan Fontenelle; E-stu-mah-za, or Joseph Le Flesche; Gra-tah-nah-je, or Standing Hawk; Gah-he-ga-gin-gah, or Little Chief; Ta-wah-gah-ha, or Village Maker; Wah-no-ke-ga, or Noise; So-da-nah-ze, or Yellow Smoke; they being thereto duly authorized by said tribe.

March 16, 1854.
10 Stat., 1043.
Ratified Apr. 17, 1854.
Proclaimed June 21, 1854.

ARTICLE 1. The Omaha Indians cede to the United States all their lands west of the Missouri River, and south of a line drawn due west from a point in the centre of the main channel of said Missouri River due east of where the Ayoway River disembogues out of the bluffs, to the western boundary of the Omaha country, and forever relinquish all right and title to the country south of said line: *Provided, however,* That if the country north of said due west line, which is reserved by the Omahas for their future home, should not on exploration prove to be a satisfactory and suitable location for said Indians, the President may, with the consent of said Indians, set apart and assign to them, within or outside of the ceded country, a residence suited for and acceptable to them. And for the purpose of determining at once and definitely, it is agreed that a delegation of said Indians, in company with their agent, shall, immediately after the ratification of this instrument, proceed to examine the country hereby reserved, and if it please the delegation, and the Indians in counsel express themselves satisfied, then it shall be deemed and taken for their future home; but if otherwise, on the fact being reported to the President, he is authorized to cause a new location, of suitable extent, to be made for the future home of said Indians, and which shall not be more in extent than three hundred thousand acres, and then and in that case, all of the country belonging to the said Indians north of said due west line, shall be and is hereby ceded to the United States by the said Indians, they to receive the same rate per acre for it, less the number of acres assigned in lieu of it for a home, as now paid for the land south of said line.

Cession of lands to the United States.

Reserve for the Indians.

ARTICLE 2. The Omahas agree, that so soon after the United States shall make the necessary provision for fulfilling the stipulations of this instrument, as they can conveniently arrange their affairs, and not to exceed one year from its ratification, they will vacate the ceded country, and remove to the lands reserved herein by them, or to the other lands provided for in lieu thereof, in the preceding article, as the case may be.

Removal of the Indians.

ARTICLE 3. The Omahas relinquish to the United States all claims, for money or other thing, under former treaties, and likewise all claim

Relinquishment of former claims.

which they may have heretofore, at any time, set up, to any land on the east side of the Missouri River: *Provided*, The Omahas shall still be entitled to and receive from the Government, the unpaid balance of the twenty-five thousand dollars appropriated for their use, by the act of thirtieth of August, 1851.

Payment to the Indians.

ARTICLE 4. In consideration of and payment for the country herein ceded, and the relinquishments herein made, the United States agree to pay to the Omaha Indians the several sums of money following, to wit;

1st. Forty thousand dollars, per annum, for the term of three years, commencing on the first day of January, eighteen hundred and fifty-five.

2d. Thirty thousand dollars per annum, for the term of ten years, next succeeding the three years.

3d. Twenty thousand dollars per annum, for the term of fifteen years, next succeeding the ten years.

4th. Ten thousand dollars per annum, for the term of twelve years, next succeeding the fifteen years.

How made.

All which several sums of money shall be paid to the Omahas, or expended for their use and benefit, under the direction of the President of the United States, who may from time to time determine at his discretion, what proportion of the annual payments, in this article provided for, if any, shall be paid to them in money, and what proportion shall be applied to and expended, for their moral improvement and education; for such beneficial objects as in his judgment will be calculated to advance them in civilization; for buildings, opening farms, fencing, breaking land, providing stock, agricultural implements, seeds, &c.; for clothing, provisions, and merchandise; for iron, steel, arms, and ammunition; for mechanics, and tools; and for medical purposes.

Further payment.

ARTICLE 5. In order to enable the said Indians to settle their affairs and to remove and subsist themselves for one year at their new home, and which they agree to do without further expense to the United States, and also to pay the expenses of the delegation who may be appointed to make the exploration provided for in article first, and to fence and break up two hundred acres of land at their new home, they shall receive from the United States, the further sum of forty-one thousand dollars, to be paid out and expended under the direction of the President, and in such manner as he shall approve.

Disposition of the lands reserved.

ARTICLE 6. 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 as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed,

and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. 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. No State legislature shall remove the restrictions herein provided for, without the consent of Congress.

ARTICLE 7. Should the Omahas determine to make their permanent home north of the due west line named in the first article, the United States agree to protect them from the Sioux and all other hostile tribes, as long as the President may deem such protection necessary; and if other lands be assigned them, the same protection is guaranteed.

Protection from hostile tribes.

ARTICLE 8. The United States agree to erect for the Omahas, at their new home, a grist and saw mill, and keep the same in repair, and provide a miller for ten years; also to erect a good blacksmith shop, supply the same with tools, and keep it in repair for ten years; and provide a good blacksmith for a like period; and to employ an experienced farmer for the term of ten years, to instruct the Indians in agriculture.

Grist and sawmill.

Blacksmith.

ARTICLE 9. The annuities of the Indians shall not be taken to pay the debts of individuals.

Annuities not to be taken for debts.

ARTICLE 10. The Omahas acknowledge their dependence on the Government of the United States, and promise to be friendly with all the citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proven 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 their annuities. Nor will they make war on any other tribe, except in self-defence, 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 Omahas commit any depredations on any other Indians, the same rule shall prevail as that prescribed in this article in cases of depredations against citizens.

Conduct of the Indians.

Depredations.

ARTICLE 11. The Omahas acknowledge themselves indebted to Lewis Sounsosee, (a half-breed,) for services, the sum of one thousand dollars, which debt they have not been able to pay, and the United States agree to pay the same.

Payment to Lewis Sounsosee.

ARTICLE 12. The Omahas are desirous to exclude from their country the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Omaha who is guilty of bringing liquor into their country, 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.

Provision against introduction of ardent spirits.

ARTICLE 13. The board of foreign missions of the Presbyterian Church have on the lands of the Omahas a manual-labor boarding-school, for the education of the Omaha, Otoe, and other Indian youth, which is now in successful operation, and as it will be some time before

Grant to the missions of the Presbyterian Church.

the necessary buildings can be erected on the reservation, and [it is] desirable that the school should not be suspended, it is agreed that the said board shall have four adjoining quarter sections of land, so as to include as near as may be all the improvements heretofore made by them; and the President is authorized to issue to the proper authority of said board, a patent in fee-simple for such quarter sections.

Construction of
roads.

ARTICLE 14. The Omahas agree that all the necessary roads, highways, and railroads, which may be constructed as the country improves, and the lines of which may run through such tract as may be reserved for their permanent home, shall have a right of way through the reservation, a just compensation being paid therefor in money.

ARTICLE 15. This treaty shall be obligatory on 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 George W. Manypenny, commissioner as aforesaid, and the undersigned chiefs, of the Omaha tribe of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

George W. Manypenny, Commissioner.

Shon-ga-ska, or Logan Fontenelle, his x mark.

E-sta-mah-za, or Joseph Le Flesche, his x mark.

Gra-tah-mah-je, or Standing Hawk, his x mark.

Gah-he-ga-gin-gah, or Little Chief, his x mark.

Tah-wah-gah-ha, or Village Maker, his x mark.

Wah-no-ke-ga, or Noise, his x mark.

So-da-nah-ze, or Yellow Smoke, his x mark.

[L. S.]

Executed in the presence of us:

James M. Gatewood, Indian agent.

James Goszler.

Charles Calvert.

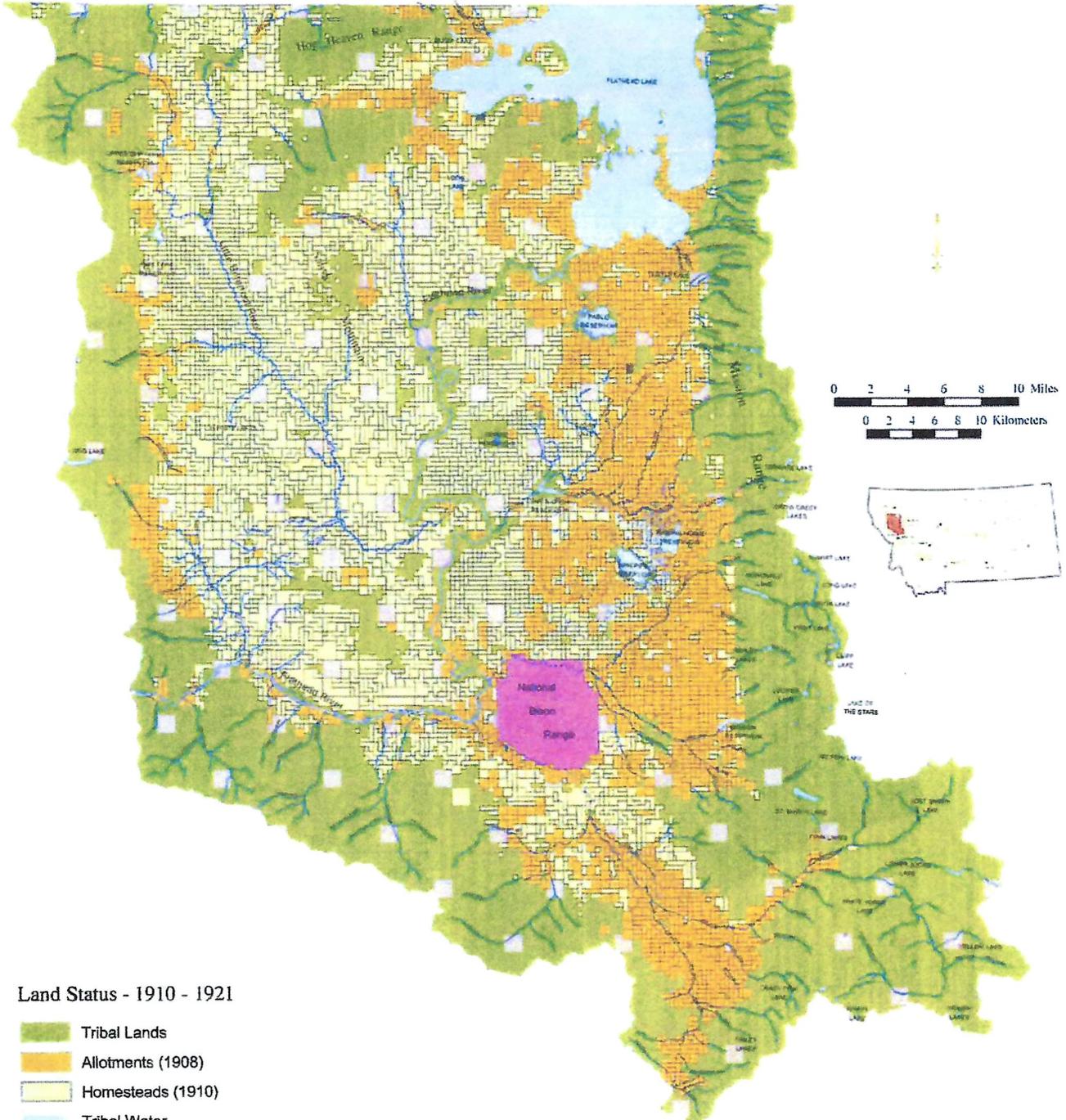
James D. Kerr.

Henry Beard.

Alfred Chapman.

Lewis Saunsoci, interpreter.

THE CONFEDERATED SALISH & KOOTENAI TRIBES OF THE FLATHEAD NATION



Land Status - 1910 - 1921

- Tribal Lands
- Allotments (1908)
- Homesteads (1910)
- Tribal Water
- State
- National Bison Range
- Townsite

CS&K TRIBES NATURAL RESOURCES DEPARTMENT GIS PROGRAM

This map is intended for demonstrative purposes only and does not reflect current land status. This map is a representation of the physical features, infrastructure and land ownership boundaries. This map should not be relied upon to establish legal title, boundary lines or locations of improvements.

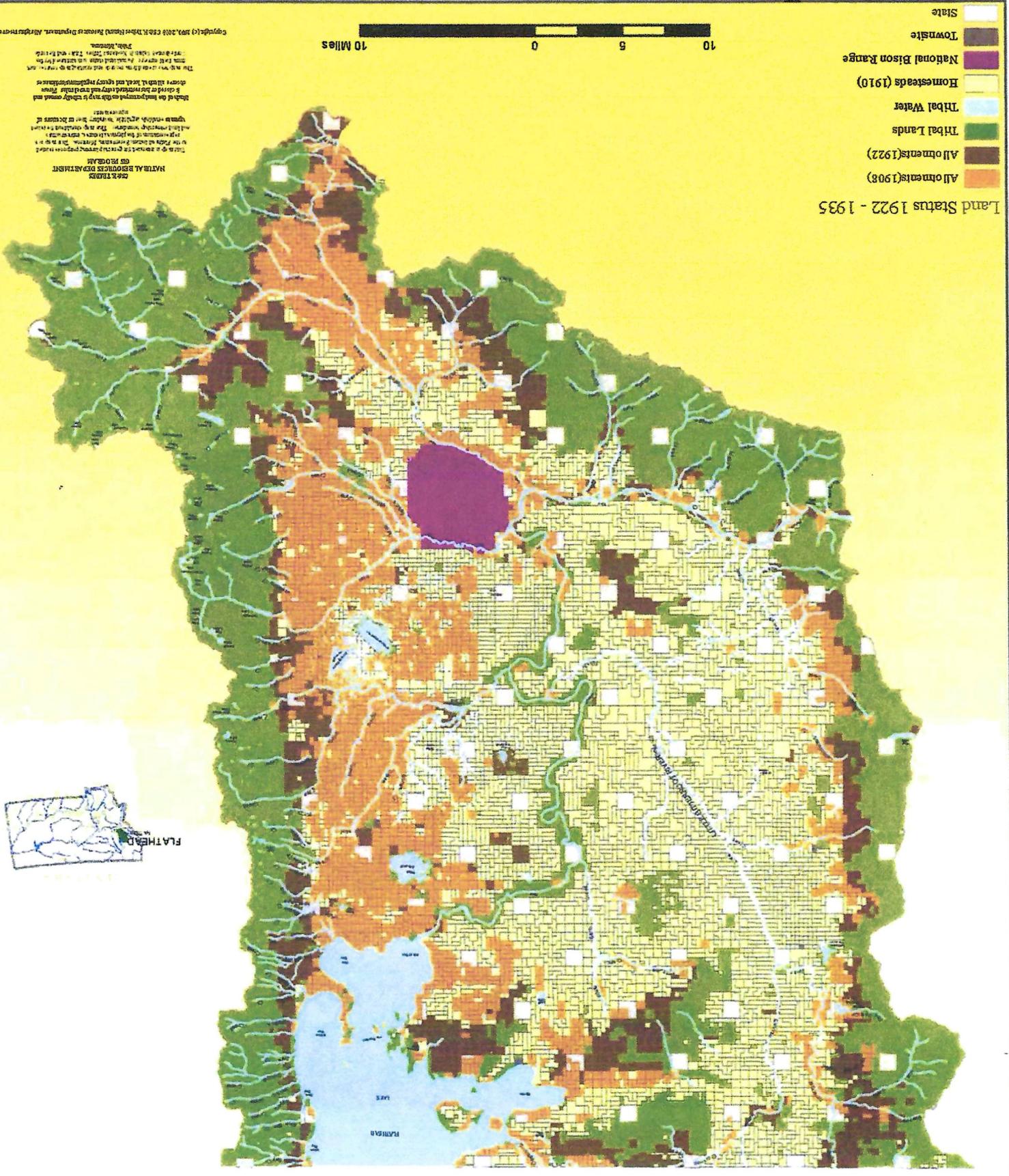
Please observe all tribal, local and agency regulations. This map was created from records and existing maps sources, not from field surveys. Actual land status is maintained by the Confederated Salish & Kootenai Tribes, Files and Records Public Meetings.

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DDG # 831
Exhibit a



THE CONFEDERATED SALISH & KOOTENAI TRIBES OF THE FLATHEAD NATION



Land Status 1922 - 1935

- State
- Townsite
- National Bison Range
- Homesteads (1910)
- Tribal Water
- Tribal Lands
- All omments (1922)
- All omments (1908)

10 Miles

GOVERNMENT
NATIONAL BUREAU OF LAND MANAGEMENT
ON PROCLAIM

The following is a summary of the general land status of the Flathead National Forest as of January 1, 1935. The land is divided into several categories, including: State land, Townsite, National Bison Range, Homesteads (1910), Tribal Water, Tribal Lands, All omments (1922), and All omments (1908). The land is also divided into several sections, including: Section 1, Section 2, Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 10, Section 11, Section 12, Section 13, Section 14, Section 15, Section 16, Section 17, Section 18, Section 19, Section 20, Section 21, Section 22, Section 23, Section 24, Section 25, Section 26, Section 27, Section 28, Section 29, Section 30, Section 31, Section 32, Section 33, Section 34, Section 35, Section 36, Section 37, Section 38, Section 39, Section 40, Section 41, Section 42, Section 43, Section 44, Section 45, Section 46, Section 47, Section 48, Section 49, Section 50, Section 51, Section 52, Section 53, Section 54, Section 55, Section 56, Section 57, Section 58, Section 59, Section 60, Section 61, Section 62, Section 63, Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 72, Section 73, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79, Section 80, Section 81, Section 82, Section 83, Section 84, Section 85, Section 86, Section 87, Section 88, Section 89, Section 90, Section 91, Section 92, Section 93, Section 94, Section 95, Section 96, Section 97, Section 98, Section 99, Section 100.

Flathead Reservation Timeline

Confederated Salish and Kootenai Tribes

2017

The Montana Tribal Histories Reservation Timelines are collections of significant events as referenced by tribal representatives, in existing texts, and in the Montana tribal colleges' history projects. While not all-encompassing, they serve as instructional tools that accompany the text of both the history projects and the *Montana Tribal Histories: Educators Resource Guide*. The largest and oldest histories of Montana Tribes are still very much oral histories and remain in the collective memories of individuals. Some of that history has been lost, but much remains vibrant within community stories and narratives that have yet to be documented.

Time Immemorial – The Creation and time of the animal people. Coyote and Fox traveled the earth preparing the world for human beings.

Traditional Life – The Salish, Pend d'Oreille, and Kootenai flourished in their aboriginal territory that included most of Montana and portions of Wyoming, Idaho, Washington, and Canada. The Salish Tribe grew, becoming so large that the people had to divide into smaller bands.

Pre-1700 – A Salish prophet, Xalıqs, Shining Shirt foresaw the coming of the “Black Robes” (Catholic Jesuits).

1650 – 1700 – The Salish and Pend d'Oreille acquired horses from the Shoshone.

1775 – Blackfeet gained continued access to firearms through Hudson's Bay Company in Canada, leading to an uneven power struggle with area tribes over a rapidly decreasing land base.

1780s – A smallpox outbreak reached a group of Salish camped in the Missoula area. The camp divided – families with smallpox and those without. One group went to the Bitterroot Valley while the other moved to the Drummond area. Only one boy in the Bitterroot camp survived the epidemic. By 1782, small pox had killed an estimated one-half to three-quarters of the Salish and Pend d' Oreille bands. The combination of the introduction of disease, firearms, and horses led to massive changes in intertribal territories. Blackfeet expansion caused eastern bands of the Salish and Pend d' Oreille to move their winter camps west of the continental divide. The Salishian people called the Tuńáxn, who occupied the Rocky Mountain front, were decimated. The survivors scattered to the west and merged with other tribes, bringing about the near extinction of a native people.

1790s – The first French and British fur traders appeared in what is now western Montana and the Flathead Indian Reservation.

1803 – In the Louisiana Purchase the United States purchased from France the *right* to be the only purchaser of tribal lands when and if Indians ever chose to sell any land, and



the sovereign and commercial rights to be the only government to trade and engage in diplomatic relationships with the tribal nations in the Louisiana Territory.

1805 – The Salish allowed Lewis and Clark to enter Salish territory in the Bitterroot Valley near Darby, opening the door to fur trade in Salish territory. Kʷtít Púpłm - Salish place name meaning “Great Clearing” was located at Ross’s Hole.

1809 – The Salish gained regular access to firearms through the establishment of fur trade in western Montana by David Thompson. Saleesh House, at Sqeyt kʷm - Salish placename in reference to “the Sound of Falling Water” located at Thompson Falls along with Kullyspell House at Lake Pend Oreille in present day North Idaho established fur posts in Salish and Pend’ Oreille aboriginal territory.

1811 – 1830 – The peak years of the Fur Trade in the Northwest which had far-reaching impacts on the ecology, economy, and culture of the people of this region. The Iroquois people arrived among the Salish people.

1811 – Kullyspell House having been built off the main travel ways was abandoned.

1831, 1835, 1837, 1839 – Years the Salish sent delegations to St. Louis to bring back the “Black Robes,” the Catholic Jesuit Priests.

1841 – Father De Smet and the first Jesuit missionaries arrived in Montana, establishing St. Mary’s, a mission near present day Stevensville in the Bitterroot. The Salish placename for St. Mary’s is Łqét młš meaning wide cottonwoods.

1846 – The Oregon Treaty between the United States and Great Britain divided aboriginal territory along the current Canadian border on the 49th parallel. Millions of acres of aboriginal lands in current Canada were lost. Kootenai bands along with tribes in the Salish language family were now placed in separate jurisdictions.

1848 – The United States organized Oregon Territory, exerting jurisdiction over tribal aboriginal lands west of the continental divide.

1851 – The Fort Laramie Treaty impacted aboriginal territory east of the Rocky Mountains. The treaty failed to recognize use of Salish, Pend d’Oreille, and Kootenai aboriginal lands east of the Continental Divide.

1853 – Isaac Stevens surveyed a route for Northern Pacific Railroad.

1855 – Tribal leaders and US officials signed the Treaty of Hell Gate. Under terms of the treaty, tribal leaders ceded to the United States “title” to the vast majority of their lands west of the continental divide. Tribal leaders reserved 1.25 million acres for the Flathead Reservation, along with the “Conditional Bitterroot Reservation” for what the treaty said was to be for the tribes “exclusive use and benefit.” In the treaty, the tribes also reserved rights on their ceded lands, including the right to hunt, fish, gather plants, and pasture livestock on “open and unclaimed lands.” Tribal understanding of the boundaries of the Flathead Reservation was considerably different from what was actually written in the treaty, particularly the east, west, and northern boundaries.

1855 – Lame Bull/Judith River Treaty with the “Blackfoot Nation” (Piegan, Blood, Blackfoot, and Gros Ventre), the “Flathead Nation” (Flathead – Salish, Upper Pend d’Oreille, Kootenai), and Nez Perce. In an effort to establish peace among warring tribes, the US government convened treaty negotiations to establish a “Common Hunting Ground” that would be acknowledged and honored by all of the tribes. At these negotiations, Pend d’Oreille Chief Alexander told all the other Indian leaders present that the Sweetgrass Hills country “was an old road for our people. A long time ago our people belonged to this land.” Alexander’s statement documented tribal homelands east of the Rocky Mountains – as other tribes moved into Montana, the Salish, Pend d’Oreille, and Kootenai were forced to concentrate their populations on the west side of the mountains.

1859 – Hell Gate Treaty of 1855 was ratified by US Senate and signed by the President.

1864 – First major gold rush in Montana Territory brought thousands of non-Indian people with it.

1870 – *ǂw'eł xłcin* - Many Horses, Chief Victor, died out in buffalo country. His son, *Sł m̄xe Q̄woxqeys* – Claws of the Small Grizzly, or Chief Charlo, succeeded him as head chief of the Bitterroot Salish.

1870s – Six buffalo calves survived a journey west to the Flathead Reservation. *łatałi*, - Little Falcon Robe, brought the calves to the reservation. These calves eventually became the Pablo-Allard herd. Remnants of this herd sold to Canada made their way back to the reservation when the National Bison Range was formed.

1871 – President Grant signed an Executive Order, requiring the Salish to leave the Bitterroot Valley and go the “Jocko” reservation. The president’s action was not based on any survey or examination of the Bitterroot for a suitable place (reservation) for the Salish, as required by the 1855 Treaty of Hell Gate. Representative James Garfield was appointed by President Grant to secure the Salish removal to the Jocko Reservation.

1872 – Representative Garfield met with the Salish near present-day Stevensville to secure their approval and signature on an agreement for their removal to the Jocko Reservation. Chief Charlo refused to sign. Under the terms of the agreement, the Salish were to move from the Bitterroot Valley to the Jocko Reservation (Flathead Reservation) in exchange for \$55,000, new log houses, a side of beef for every family, and plots of land designated specifically for the Salish. Salish sub-chiefs Arlee and Adolph signed the contract, but head chief Charlo, son of Victor, refused to sign, therefore making the contract invalid. When the agreement was officially presented upon Garfield’s return, a signature mark, which was a forgery, appeared on the contract by Chief Charlo’s typed name. Chief Charlo was enraged when he found out about this deception. The senate approved the agreement for ratification.

1873 – Chief Arlee and a few families moved to the reservation and settle near the Jocko Agency.

1875 – By fall of this year, 123 Salish had moved from the Bitterroot Valley to the reservation. The North American bison population had dwindled to about one million, due to a deliberate campaign to exterminate them. “The elders say that in the second to last year of the traditional Pend d’Oreille buffalo hunts, the hunters were able to kill only 27. The following year they killed only seven.” “Going to buffalo” was becoming only a memory.

1877 – Fort Missoula established in the Bitterroot in large part due to the Nez Perce war. The non-Indians in Montana Territory feared all Indians were going to rebel against the federal government and demanded protection.

1882 – Tribal leaders were pressured into signing an agreement to allow a railroad right-of-way through the reservation, relinquishing 1,430 acres of reservation lands.

1883 – Railroad tracks were laid across the Flathead Reservation. Tribal leaders expressed their anger and resentment at the continuing loss of tribal homelands. “The country we gave the government is very valuable. Lots of white men made independent fortunes in my country ... We don’t want the railroad to go through the reservation ... When we heard that you were coming, we made up our minds what to say to you. You seem to like your money, and we like our country; it is like our parents.” Kootenai leader Eneas said, “I would like to get the Flathead Lake country back. There are things that the government promised me in that treaty that I have never seen ... We had a big country, and under those conditions we signed the treaty. Seven years after that we learned that the line of the reservation ran across the middle of Flathead Lake.... I do not wish the road to pass through the reservation. This reservation is a small country and yet you want five depots upon it ... My country was like a flower and I gave you its best part....”

1884 – Sisters of Providence boarding school was built in St. Ignatius.

1887 – The Dawes General Allotment Act was passed, mandating the breaking up of communal tribal homelands and setting a course for catastrophic land loss on reservations.

1888 – Boys boarding school was completed in St. Ignatius.

1890 – The Ursuline nuns arrived in St. Ignatius and began a kindergarten, which eventually expanded into a grade school and high school that operated until 1972.

1891 – Chief Charlo and the Salish were forcibly removed to the Jocko Reservation after 36 years of resisting removal, in the conviction that the 1855 Treaty of Hell Gate had guaranteed the Bitterroot Valley for their reservation.

1893 – Flathead Reservation Indian Agent Peter Ronan died. Indian agents that succeeded Ronan were proponents of allotment and homesteading the Flathead Indian reservation.

1895 – Congress appointed “Crow, Flathead Commission” to negotiate cession of reservation lands. Tribal leaders refused to cede any lands at any price.

1898 – The first Arlee July celebration was held in spite of the protests from the priests and Indian Agents. William Smead was appointed as the US Indian Agent for the Flathead Indian Reservation. Smead, as a state representative, had previously advocated for opening up the reservation to white settlement.

1901 – A small delegation of representatives of the US Government, led by Commissioner of Indian Affairs Charles Hoyt, met with tribal leaders on the reservation to discuss an offer to buy part of the northern end of the reservation. Tribal leaders refused to sell. Chief Charlo stated, “I will not sell a foot (of land).” Kootenai Chief Isaac responded, “My body is full of your people’s lies. You told me I was poor and needed money, but I am not poor. What is valuable to a person is land, the earth, water, trees ... and all these belong to us ... We haven’t any more land than we need, so you had better buy from somebody else.”

1901 – 1904 – Agricultural production statistics of 1902 recorded there were 25,000 cultivated acres with 120,000 bushels of grain, 25,000 tons of hay, and 20,900 bushels of vegetables produced by tribal members. There were 25,000 horses, 27,000 cattle, and 600 bison owned by tribal members.

1901 – Last documented small pox outbreak among the Salish. A quarantine camp was set up near Mission Creek.

1903 – Montana Congressman Joseph Dixon introduced a bill to Congress to impose the Allotment Act on the Indians of the Flathead Indian Reservation.

1904 – Congress passed the Flathead Allotment Act, setting the course for the loss of over 60% of the reservation land base. Heads of household were assigned 160 acres, while single adults received 80 acres. Two rounds of allotments were held. An enrollment and census were done to assign allotments. At this time, many names were altered, as the census workers insisted on each individual having two names. Upon completion of the census, 2,390 tribal members were eligible to receive allotments. Of the 1,245,000 acres, only 245,000 were secured by allotments. The remaining grazing and agricultural lands were opened up to homesteading. Amendments to the act seized additional lands for town sites, the Indian agency, churches, reservoirs, and power sites, along with 61,000 acres for Montana school lands. The 16th and 36th section of each township were set aside for school support. Immediately following allotment, Indian owned cattle dropped to 5,000 head and the horse herd was reduced to 4,000.

1905 – Chief Charlo traveled to Washington, D.C., to try to persuade the President to halt the allotment process on the Flathead Reservation.

1906 – Chief Charlo sent tribal leaders Antoine Moiese and Alicot to Washington, D.C., to make another allotment protest to the President, Congress, or anyone who would listen. Indian Agent Smead forced Michel Pablo to sell buffalo. Between 1906 and 1913, buffalo were gradually rounded up and shipped to Canada, the sole purchaser.

1906 – Congress passed the Burke Act that allowed Indian allotments to be taken out of federal trust if the allottee was deemed “competent.”

1908 – The first round of allotment of lands to tribal members was completed. After 2,400 allotments were issued, covering 228,434 acres, the remaining land was declared “surplus.” The Salish, Pend d’Oreille, and Kootenai Tribes suffered another loss of reservation lands as a Congressional Act passed in 1908 took 16,000+ acres for a National Bison Range. The Flathead Irrigation Project bill passed, justified as aiding Indians in transition to agriculture. The project actually benefited non-Indian farmers and ranchers and harmed many native subsistence operations. Many Indians lacked the money to pay the irrigation charges, which led to allotments being seized for settlement of debts. A state game warden killed four members of a Pend d’Oreille family hunting party in Swan Valley. The game warden was killed by one of the tribal women who acted in self-defense.

1910 – Chief Charlo died on January 10. In April the Flathead Reservation was officially opened up to non- Indian settlement. “Surplus” reservation lands were sold to homesteaders.

1911 – Public schools began to open to serve the non-Indian homesteaders.

1911 – 1934 – By 1930, most of the Indian allotments were now in non-Indian ownership.

1917 – 1919 – The United States participation in World War I included many American Indian soldiers, among them members of the Confederated Salish and Kootenai Tribes.

1920 – A second round of allotments transferred 124,795 acres from communal Tribal ownership to individual tribal member ownership.

1924 – Congress granted citizenship to American Indians.

1927 – After learning of plans to construct a massive hydroelectric power plant and dam on the lower Flathead River, a coalition of non-Indian reservation residents, the Rocky Mountain Power Company, the Bureau of Indian Affairs, and other profiteers attempted to take ownership of the proposed dam site.

1928 – Congress affirmed the Confederated Salish and Kootenai Tribes’ ownership of the proposed dam site.

1930 – Rocky Mountain Power Company secured a license from the FPC to build the hydroelectric power plant on the proposed reservation site.

1933 – Sixty percent of the original tribal allotments were lost. This land became fee land owned by non-Indians.

1933 – 1942 – The Civilian Conservation Corps was funded during these years employing tribal members building trails and roads on the reservation.

1934 – Congress passed the Indian Reorganization Act. This Act repealed the Dawes Act and enabled tribes to voluntarily organize and adopt federally approved constitutions and by-laws.

1935 – The Confederated Salish and Kootenai Tribes organized under the 1934 Indian Reorganization Act, ratified a tribal constitution and created an elected government of ten tribal council representatives and the last two federally recognized head chiefs, Chiefs Charlo and Koostahtah. The first Tribal Council meeting was held at the Flathead Agency in Dixon. The Council representatives were Edwin Dupuis, Alexander Clairmont, Louis Tellier, Eneas Conko, Nicolai Lassaw, Duncan (Charlie) McDonald, William Gingras, Louis Adams Sr., Louis Couture, and Joseph Blodgett. Chief Martin Charlo and Chief Koostahtah were life members and active members of all committees. The first committees established were Land, Finance, Law and Order, Health, Labor, and Education. The council made a recommendation to designate an area of the Mission Mountains for management similar to the National Parks, keeping it undeveloped and allowing only foot and horse trails.

1936 – The Confederated Salish and Kootenai Tribes (CSKT) adopted a corporate charter. A first order of business was to address issues with Montana Power Company and their license at Kerr Dam. This included appropriate rental fees, preference hiring of tribal members in the construction work. The original annual rental fee was \$140,000.

1936-1938 – Kerr Dam was built.

1941 – 1945 – Years of World War II, during which 25,000 American Indians served in the military, including many Confederated Salish and Kootenai tribal members. Indian people also worked in defense-related industries. According to late tribal elder Margaret Finley, life changed very rapidly for Indian people, “...when we got in the war with the Japanese, Pearl Harbor, right after that. Everything changed very fast, very, very fast ... how we do things together, happiness, all that. It all changed.” American Indian people left their home communities – many for the first time – to serve in the war or work in defense projects. People who still held the collective memory of an old tribal world were exposed to a global world that would forever change the country their world was now situated in.

1951 – 1953 – Tribal members again enlisted in the military and served during the Korean War.

1953 – House Concurrent Resolution 108, the Termination Act, targeted the Confederated Salish and Kootenai Tribes. Termination ended a tribe’s sovereign status and relationship with the federal government as a political entity. The Confederated Salish and Kootenai Tribes were at the top of the list of tribes to be terminated. Termination was considered “voluntary” and required tribal member consent, although pressure and coercion were not uncommon.

1954 – The Confederated Salish and Kootenai Tribes successfully resisted the US government’s attempt to terminate their tribes and reservation.

1960 – The Tribal Constitution was amended to change the blood quantum requirement for membership to one-quarter degree Salish or Kootenai or both combined. The change was not retroactive, and only applied to people born after the amendment was approved.

1961 – The tribes entered into a Public Law 83-280 agreement with the state of Montana. This law allowed the state to assume criminal and civil jurisdiction on the reservation. Five states were mandated to this jurisdiction change and Alaska became the sixth mandatory state in 1958. Montana was not one of the mandatory states; however, the remaining 44 states, including Montana, had the option to assume jurisdiction in Indian Country. PL83-280 was amended between 1953 and 1968, allowing states to assume jurisdiction unilaterally. In response, after tribal opposition, Congress amended PL 83-280 to include a requirement for tribal consent for the jurisdiction change, and also to allow acceptance of “retrocession” of the state’s assumption of jurisdiction. In 1963 the state of Montana passed legislation to allow the state to assume jurisdiction on reservations. However, by this time the law had been amended to require tribal consent. The Confederated Salish and Kootenai Tribes were the only tribe in the state to agree to PL 83-280.

1965 – The Confederated Salish and Kootenai Tribes passed a Tribal Ordinance defining the terms under which they would come under PL 83-280.

1965 – The Indian Claims Commission determined that Confederated Salish and Kootenai Tribes had not been compensated for the lands ceded in the 1855 Treaty of Hell Gate. “...the Tribes had surrendered 12, 005,000 acres to the government which were worth \$5,300,000. The total payment to the tribes, however, had only been \$593,377.82.” After fees were taken out, the tribes received \$4,016,293.29 in 1967. The compensation was determined in 1855 land values. No interest was paid for the 112 years the Tribes had been deprived of the money.

1971 – The US Court of Claims found that the Flathead Allotment Act was a breach of the 1855 Treaty of Hell Gate. Compensation to the Tribes was determined in 1912 land values, totaling \$7,410,000, of which only \$1,783,549 had been paid. The balance of \$5,626,451 was paid a few years later.

1974 – Tribal elders Christine Woodcock, Louise McDonald, and Annie Pierre protested the Ashley timber sale in the Mission Mountains, successfully stopping it.

1975 – Two Eagle River School was founded, serving high school students with a dominant focus on cultural studies.

1975 – The Culture Committee was formed and then divided into the Salish-Pend d’Oreille Culture Committee and the Kootenai Culture Committee. The Indian Self-Determination and Education Act passed, which recognized the right of Indian tribes to self-government “as domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory.”

1976 – Salish Kootenai College was founded. Prior to 1976, only 41 tribal members had college degrees, compared to 423 from 1976 to 1995.

1978 – The Supreme Court ruled that Tribal Courts do not have criminal jurisdiction over non-Indians, and that tribal courts DO have jurisdiction over non-Indians in matters such as permits, licensing, and environmental protection.

1981 – The Confederated Salish and Kootenai Tribes’ Natural Resources Department was established.

1982 – The Confederated Salish and Kootenai Tribal Council approved Tribal Ordinance 79A, setting aside approximately 91,778 acres of the Mission Range as the Mission Mountain Wilderness.

1984 – The Tribes negotiated re-licensing of Kerr Dam, which secured the option to take control of the dam in 2015, and raised the fee from \$2.6 million to \$9 million annually, along with annual adjustments for inflation.

1985 – The Tribes secured minimum stream flows to protect fisheries.

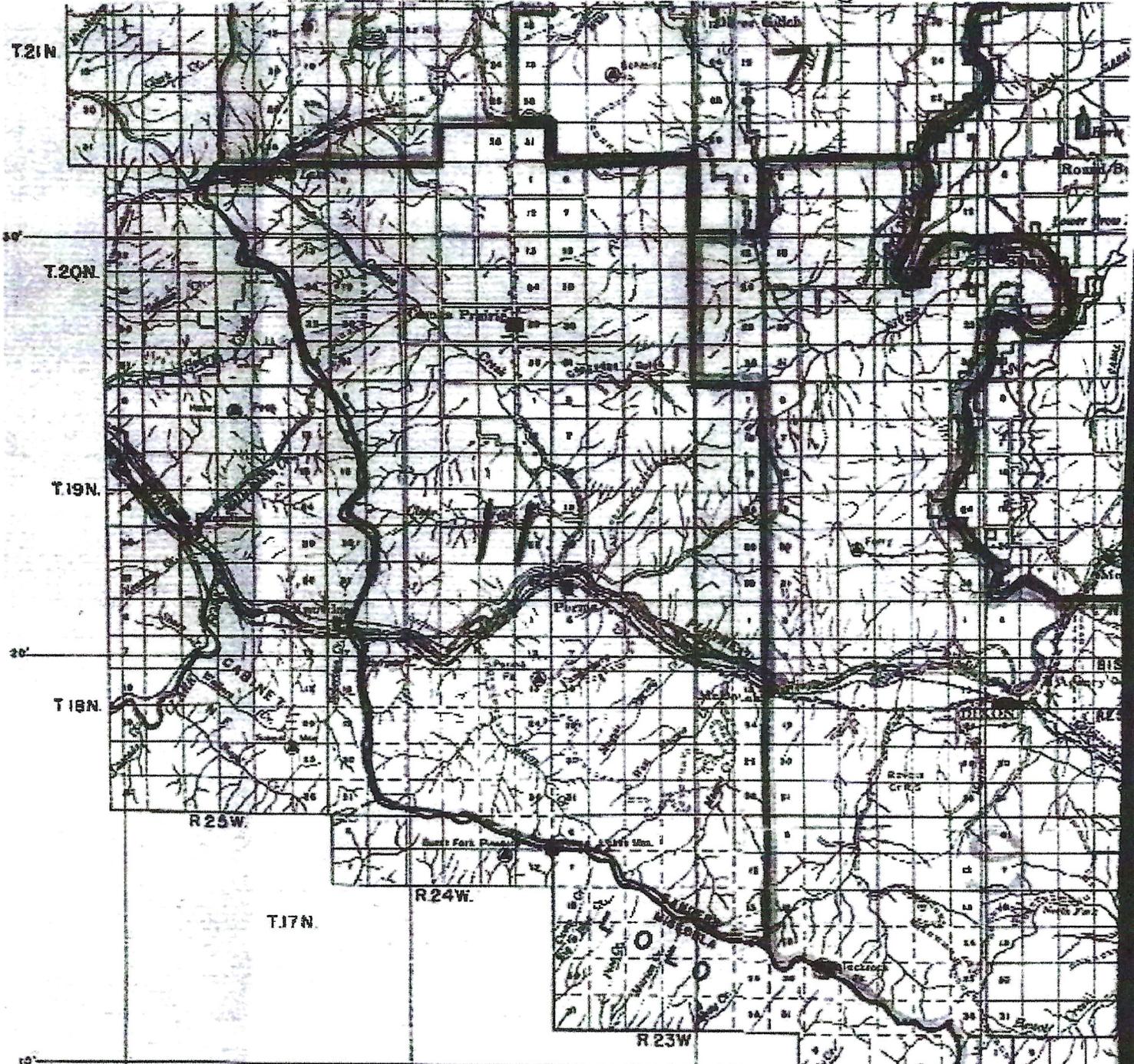
1997 – The National Trust for Historic Preservation named “the Flathead Indian Reservation one of 11 Most Endangered Places in the United States” due to the proposed radical expansion of US Highway 93.

1998 – The Atlantic Richfield Company (ARCO) agreed as part of a legal settlement to pay the Confederated Salish and Kootenai Tribes \$18.3 million to restore, replace, and/or acquire the equivalent of Tribal treaty- protected resources that were injured by the release of hazardous substances in the Clark Fork River through mining and smelting in Butte and Anaconda.

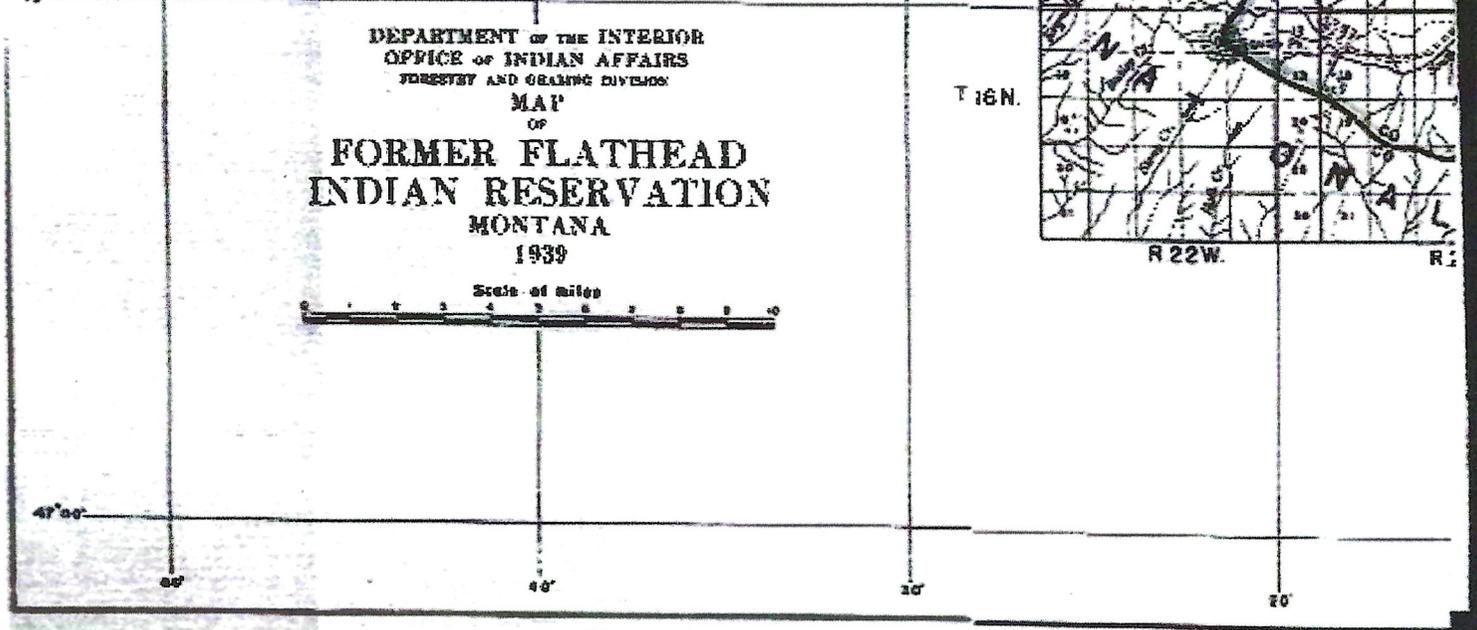
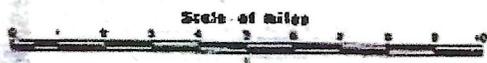
1999 – The “Squaw” word bill passed Montana State Legislation. The Salish and Pend d’ Oreille Culture Committee begin work to rename over 20 “S” word sites with Salish place names. By 2009, 19 proposed Salish place names were approved by the US Board of Geographic Names to replace “S” word sites across Montana.

2002 – Nkwusm, the Salish Language Immersion School, opened in Arlee.

2015 – Kerr Dam administration reverted to the Confederated Salish and Kootenai Tribes and was renamed Salish Kootenai Dam.



DEPARTMENT OF THE INTERIOR
 OFFICE OF INDIAN AFFAIRS
 FORESTRY AND GRADING DIVISION
 MAP
 OF
**FORMER FLATHEAD
 INDIAN RESERVATION**
 MONTANA
 1939



General Affidavit

STATE OF: Alabama
COUNTY OF: Cullman

Personally came and appeared before me, the undersigned Notary, Teresa K. McCarrick, who is a resident of Cullman County, State of Alabama, and makes this her statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

Statement:

On 08/02/2012, I attended a meeting of the Montana Reserved Water Rights Compact Commission (MRWRCC) in Helena Montana. At the time of the meeting, I was a resident of Lake County Montana, living in St. Ignatius.

At this meeting, Jay Weiner, attorney for the Montana Reserved Water Rights Compact Commission stated:

"One of the complaints frankly that I expect that we are likely to hear from the tribes in the not too distant future, is that the state has asked too much of them. We've asked for too many compromises, too many protections, we've asked them to put too many constraints on their exercise of their water rights. And I think in many ways our response to that ought to be that we have been looking to work with the proposal that they made to us, the Unitary Administration, and many of the consequences flow from a unitary administration, where a joint state / tribal management board will administer all of the water use on the reservation both the existing rights and permitting of future rights requires us to look at some things we've done in prior compacts a little differently. One of the major things that it requires is the third major component of the settlement documents which in a shorthanded mode is known as the Ordinance. The ordinance is basically intended to be the water use act for the reservation."

In response to Jay Weiner's comments, Chris Tweeten, chairman of the MRWRCC stated:

Jay talked about pushback from the tribe at some point about what they're being asked to give, and I think, that in addition to the point that Jay made, the response is to remind the tribes about the Grand Bargain, and the fact that we agreed to do this extraordinary thing, frankly, with respect to agreeing to subject or to remove non-Indian rights on the reservation from the jurisdiction and control of the state, and place that somewhere else at the tribe's request.

These comments were made in the context of discussing the Unitary Management Ordinance provisions in the Flathead Compact. There is an official state recording of the entire meeting.

Signature of Affiant: Teresa K McCarrick

Print Name: Teresa K. McCarrick

Sworn and subscribed before me this 8th day of November 2023 A.D.

Notary Public: Tiffany Pierce

Print Name: Tiffany Pierce

My Commission expires: Oct. 8, 2024



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IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES – MONTANA – UNITED
STATES COMPACT

CASE NO. WC-0001-C-2021

AFFIDAVIT

I, Art Wittich, do swear and say:

1. I was the elected in 2014 as Representative for House District 68, and served during the 2015 Montana Legislative Session when the Flathead Reservation Water Compact (“Compact”) came up for ratification.
2. I served on the House Rules Committee during the 2015 Legislative Session.
3. During this session, SB 262 was introduced, and entitled “*An act ratifying water rights compact entered into by the confederated Salish and Kootenai tribes of the Flathead reservation, the State of Montana, and the United States of America; creating a unitary administration and management ordinance to govern water rights on the Flathead Reservation*”.
4. The minority party, which whole heartily supported the Compact, was well aware that they would have to overcome opposition to the Compact even before the Session started, because during the 2013 Session a similar bill ratifying the Compact failed in Committee.
5. As such, at the beginning of the 2015 Session the House minority party, and just enough cross over members of the majority party, demanded a quid pro quo for the election of Speaker Knutson, namely a temporary amendment to the Rules for just the 2015 Session.

6. Their Rule amendment, later codified as new 40-90 (2), allowed a simple majority to request to withdraw six tabled bills from a committee on to the House Floor for 2nd reading, instead of the traditional 3/5 majority under Rule 40-90 (which was subsequently codified as sub section (1)), as shown below:

H40-90. Legislation withdrawn from committee. (1) Except as provided in subsection (2), legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting. (2) For the 2015 Session, the majority party leadership and the minority party leadership may each make up to six separate requests to withdraw a bill from a House committee, and these requests require only a simple majority of those present and voting to withdraw a bill from a House committee.

7. The stated intent and all discussion on the temporary change to allow withdrawal by a simple majority concerned “tabled” bills, which traditionally precluded further action by the Floor. The new rule advocates termed their 6 bills “silver bullets.”
8. Notably, the codification of the temporary rule change was to Rule 40-90, not Rule 40-100.
9. After SB 262 passed the Senate, the House Judiciary Committee then heard the bill.
10. In Executive Session, House Judiciary Committee issued a “not concurred as amended” decision on SB 262. This is commonly referred to as an “adverse committee report.” This differs from tabling a bill.
11. An Adverse Committee Report is specifically addressed in the House Rule 40-100, which states in paragraph (2):

A recommendation of “do not pass” or “be not concurred in” must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

12. On April 13th, Minority Leader Representative Chuck Hunter, rose to address the chairman/speaker to request to place SB 262 as one of their six “silver bullet” bills as per House Rule 40-90 (2), arguing it should be excepted from the traditional 60-vote requirement. As such, Hunter was asking the House to reject the adverse committee report without obtaining the required 60 votes.

13. Speaker Knudsen referred to House Rule 70-50 which gave him the authority to interpret the rule. He stated House Rule 40-90 (2) did not supersede House Rule 40-100 (2).
14. Rep. Hunter then “appealed” the Speaker’s ruling, to effectively rewrite the Rules as approved by the House before the Session, and applying a simple majority for an “appeal” to effectively change the super majority rules. Utilizing such a simple majority “appeal” process absurdly negates any existing rule that requires a super majority vote, which mocks and violates the Rules.
15. House Rule 40-100 (2) still was in effect when Rep. Hunter requested SB 262 to be withdrawn for 2nd reading on the 76th Legislative Day under the grand pre session compromise. Overcoming the “adverse committee report” still required 60 votes.
16. Notably, Rep. Hunter’s appeal of the Speaker’s ruling to withdraw the bill only received 52 votes. The subsequent 2nd reading concurrence on April 15th only received 53 votes. The bill never received the requisite super majority of 60 votes to overcome the committee action, and so its substantive consideration by the Floor, “approval” on the Floor, and passage into law, violated the traditional, and even as amended, House Rules.

Further Affiant Sayeth Not:

_____  11/14/23

Art Wittich

Date

STATE OF Florida)

: ss.

County of Monroe)

This instrument was acknowledged before me on the 14 day of November, 2023 by Arthur Wittich as the name of party on behalf of whom instrument was executed, known to me to be the person whose name is subscribed to the within instrument. Proof of MT DL
 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

(NOTARIAL SEAL)



Signed: Christina M. Geide
 Printed Name: Christina M. Geide
 Notary Public for the State of Florida
 Residing at Rancho Key, Florida
 My Commission expires: 4/19/2027