

**MEMORANDUM**

**TO:** Susan Cottingham, Anne Yates, Sonja Hoeglund  
**FROM:** Joan Specking, Historian  
**RE:** Confidential DRAFT of chronological information on the CSKT  
**DATE:** October 25, 2001

Attached is a very rough draft of a chronological paper I am working on regarding information for CSKT negotiations.

Please note that the information is not complete and when bold type, etc., appears it means I need to do more research answering questions and finding material in certain areas. In addition, there are many gaps and a great deal of research left to be done on this, both in government documents and in looking at technical information available.

Thank you for your patience!!!

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## DRAFT FLATHEAD HISTORICAL CHRONOLOGY

The people who were originally settled on the Flathead Reservation consisted of tribes from the Interior Salish language group, including the Flathead, Pend Oreille, and Spokane. The Pend d'Oreille (Kalispel) use a dialect within the Salish language. The Salish accounted for about 75% of the population when the Reservation was created. Kootenai is a different language group than Salish. The Kootenai consist of three tribes: The Lower Kootenai, Upper Kootenai and the Kutona. Both groups were Plateau Indians and they lived very generally in an area stretching from the Canadian MacKenzie River basin south to the California/Oregon border and from the Cascade Range to the eastern slopes of the Rocky Mountains. (Lopach, James J., Margery Hunter Brown and Richmond L. Clow. Tribal Government Today, Politics on Montana Indian Reservations. Boulder: Westview Press, 1990, 154. This source relies heavily on John Fahey, The Flathead Indians, Norman, University of Oklahoma Press, 1974 and Teit and Boas, "The Flathead Group," from The Salish Tribes of the Western Plateaus, 45 BAE, Annual Report, 1927-1928.) For more details on the backgrounds of these tribes, see Appendix\_\_\_\_\_.

The following is a chronological history of the major events taking place for the Confederated Salish and Kootenai Tribes and on the Flathead Reservation.

- 1680-1720     The Salish probably obtained horses from the Shoshone during this time period.
- 1740-43       Explorer de la Verendyke probably saw the Flathead Indians east of the Rocky Mountains.
- 1805           The Lewis and Clark expedition passed through the Flathead area and resulted in the first written information regarding the area.
- 1809           David Thompson of the North West Company of Canada established Salish House trading post on the Clark Fort River near present-day Thompson Falls. (Horr, David Agee, Ed. American Indian Ethnohistory: Indians of the Northwest. Interior Salish and Eastern Washington Indians II, New York: Garland, 1974, 247)
- 1810           Hudson Bay Company port and trading post, Howe House, was built on the northern end of Flathead Lake.
- 1841           Father Jean DeSmet established the first Jesuit mission for the Flathead on the Bitter Root River – St. Mary's Mission. (Horr, David Agee, ed. American Indian Ethnohistory: Indians of the Northwest. Interior Salish and Eastern Washington Indians, III. New York: Garland Publishing, 1974, 55. This will be cited as Garland Report III.)
- 1846           Per the treaty of June 15<sup>th</sup>, 1846 (9 Stat. 869), the British/U.S. boundary was fixed at longitude 49 north where it remains today. Prior to that, the southern British boundary was along the Columbia River.

The Jesuit missionaries had considerable influence among the various tribes. Father William N. Bischoff, SJ, writing a history, described the St. Mary's village in the Bitterroot valley, "Two large rivers brought water for irrigating the fields, gardens and orchards. At the time of writing there were forty head of cattle, a fast-increasing herd of hogs, and a large flock of domestic fowl. Besides the mill, there were a dozen frame houses of similar construction. From this you can form some notion of the temporal blessings enjoyed by the Flatheads of St. Mary's village." (Garfield Report, III, 41, quoted from Bischoff's 1945 account of the Jesuits in old Oregon.)

- 1849 Fort Connah was established south of Flathead Lake. The Jesuits left St. Mary's mission village due to pressure from the Blackfeet.
- The federal Indian Bureau was transferred from the War Department to the newly formed Interior Department.
- 1850 Fort Owen, near present-day Stevensville in the Bitterroot Valley, was on the site of the original St. Mary's Mission, which had been purchased by Major John Owen when the Jesuits left. By 1858 it was an important trading post. In 1857 Owen became agent to the Flathead Tribe. (16 Ind. Cl. Comm., 8, Docket 61, Sept. 29, 1965; Fahey, 106-107)
- 1851 The Fort Laramie Treaty established a common hunting ground for tribes in the Rocky Mountain region, including the Blackfeet and "the Flathead Nation consisting of the Flathead, Pend d'Oreille and Kootenai tribes of Indians....", to last for 99 years. (October 17, 1851, 11 Stat. 749)
- 1853 Gov. Isaac Stevens of Washington Territory began exploration of lands, including the Flathead territory, to survey a transcontinental railroad route.
- 1854 The Jesuit Mission at St. Ignatius moved to Flathead Lake. The original St. Ignatius Mission was on the Pend d'Oreille River in eastern Washington. According to the Flathead Project history, **soon after the mission was built water was taken from Mission creek for irrigation and power** – which was probably the first such use of water on the Reservation. The Water Resources Survey for Lake County also notes that water taken from Mission Creek by the Jesuit Priests in 1854 **was the first record of irrigation on the Flathead Reservation.** (United States Reclamation Service. Flathead Project History. March 1, 1910, 7. We have a partial copy of this as received from the Flathead Joint Board of Control; Water Resources Survey. Lake County Montana, Pt. 1, Helena: State Engineer's Office, June 1963, 40)
- 1855 Dr. Richard H. Lansdale was ordered by Gov. Isaac Stevens to survey areas of the proposed Jocko and Bitterroot Reservations. "Considering that the Indians were to be made farmers, he inspected only arable land, finding that of the Bitterroot poor in quality and intersected by moraines." Jocko land, he reported, "affords the best pasturage in the valley and upon the encircling hills is twenty square miles of **arable land of good quality** and thirty square miles of grazing lands....this ronde

has the reputation of being the warmest valley in all of the higher ranges of the Rocky Mountains, and is a good locality for agency buildings **and desirable for pasturage, tillage, and beauty of landscape.**" Lansdale also suggested that three-fourths of the money to go to the Tribes the first year be spent on, among other things, **"farm equipment and seeds...payment of laborers on a communal farm, and prizes for the best farmers and homemakers as the Indians settled into agrarian life."** He reports on the **"superior soil, the whole produces the best grasses, is well watered,...sufficiently to supply all necessary purposes of a dense agricultural population."** Lansdale was appointed as agent to the Flathead Indians late in 1855. (Fahey, 99-100, 103; Garland Report, II, letter from Lansdale to Stevens, 1855, 212-215)

The 1855 Stevens Treaty at Hell Gate was negotiated between Stevens representing the United States government and the Flathead Tribes:

Cede tract within the following boundaries: Commencing on the main ridge of the Rocky mountains at the fourth-ninth parallel of latitude; thence westwardly on that parallel to the divide between the Flat bow of Kootenay river and Clarke's Fork; thence southerly and southeasterly along said divide to 115° longitude; thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and 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 Bitter Root river from the waters flowing into Salmon and Snake rivers to the main ridge of the Rocky mountains; thence northerly along said main ridge to the place of beginning.

Reserve tract commencing at the source of the main branch of Jocko river; thence along the divide separating the water flowing into 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 W. Flathead river to a point due W. from the point halfway in latitude between the northern and southern extremities of Flathead lake; thence on a due E. course to the divide whence the Crow; the Prune, the So-ni-el-em and Jocko rivers take their rise; thence southerly along said divide to the place of beginning.

Reserve in Bitter Root valley to be set apart for Flatheads if deemed desirable. (12 Stat. 975, July 16, 1855; **Royce, Indian Land Cessions in the United States, p. 809-810**)

Sources comparing Article VI of this treaty to Article VI of the 1854 treaty with the Omahas said that the article set up the authorization for allotment on the Reservation. (Fahey, 280)

That year, the report of the Secretary of War described the Flathead village at Fort Owen, **"They cultivate wheat, potatoes, and other vegetables, and depend upon**

the chase for meat. They reside chiefly at Fort Owen in comfortable log cabins. (Garfield Report, III, 43)

Regarding John Owen as Indian Agent at the Jocko Agency, Fahey writes that he supported the efforts of non-Indian settlers in the area, "Owen quietly advised immigrants to improve the land and build homes while he maintained his official posture of resisting encroachment on Indian territory." (Fahey, 115)

The Treaty of Fort Laramie attempted to establish a common hunting grounds which would provide, among other things, for the Flathead to hunt east of the Rocky Mountains without Blackfeet attack. (October 17, 1855, 11 Stat. 657)

1856 Estimates say the Flathead Indians had 4000 horses and 1000 cattle in the Bitterroot Valley. This was primarily due to their proximity to traders and the Fort Owen trading post in the valley. (Indian Claims Commission. 16 Ind. Cl. Com. 1, Docket 61, decided September 29, 1965, 7)

1858-60 Construction on the Mullan Road between Walla Walla and Fort Benton was proceeding. The road bypassed Fort Owen 35 miles away and contributed to the financial downfall of the fort.

1862 The Homestead Act was passed on May 20, 1862, 12 Stat. 392.

1863 The Northern Pacific Railroad was chartered and construction began in 1870. The same year, the Flathead Agency was transferred to the Idaho Superintendency. The Mullen Road was finished in 1863. (Fahey, John. The Flathead Indians. Norman: University of Oklahoma Press, 1974. 119)

1864 Montana Territory was established. The Flathead Agency was transferred back to Montana. (Fahey, 121) In 1865 and 1866, the Agency was again temporarily transferred to Idaho.

1870 Jasper A. Viall was appointed by the Grant administration as Montana superintendent of Indian Affairs in 1870, and thus had administrative control over the Reservation agents. At the time, the primary goal of the government was to move the Flathead Indians from the Bitterroot to the Jocko reservation. In letters to the Commissioner of Indian Affairs, Viall and Congressman William Clagett apparently referred to the Flathead Indians as holding "remnants," while the surveyor general of Montana wrote that there were only three good farms in the valley. Fahey states, "Calling the Flatheads remnants owning but three good farms were falsehoods intended to convince the Interior Department that it should act promptly to clear the way for settlers to patent their lands." (Fahey, 160)

1871 November 14, 1871, executive order from U.S. Grant stating that the Bitterroot Valley was not better adapted to the wants of the Flathead Tribe than the Jocko reserve, "it is therefore deemed unnecessary to set apart any portion of said Bitter Root (sic) Valley as a separate reservation for Indian referred to in said treaty. It is therefore ordered, and directed that all Indians residing in said Bitter Root Valley

be removed as soon as practicable to the reservation provided for in the second article of said treaty..." (Executive Order, November 14, 1871, Executive Orders Relating to Indian Reservations from May 14, 1855 to July 1, 1912, Vol. II, Washington: GPO, 1922, 89.)

1872 June 5 Act of Congress provided for removal of the Tribes from the Bitterroot Valley and Flathead establishment on Jocko reservation. The act also appropriated \$50,000 to pay the Indians for improvements they had made while living in the Bitterroot. (17 Stat. 226. Royce. Indian Land Cessions in the United States. p. 858.)

1874 A Congressional Act was passed which, among other things, extended the Homestead Act to settlers in the Bitterroot Valley. (Feb. 11, 1874, 18 Stat. 15)

1877 The Desert Land Act passed Congress. Non navigable water was made subject to state laws, i.e., those obtaining a patent for land had to go through state laws to get a water right. (March 3, 1877, 19 Stat. 377, 43 USC s. 321)

1880-84 Buffalo hunting ended in this era.

1882 The Flathead ceded a 200 by 53 mile-long area for the Northern Pacific railroad right-of-way across the Jocko reservation, September 2, 1882. This agreement was ratified in 1884 (July 4, 1884, U.S. Statutes at Large 23 [1884] 89; Fahey, 229)

1883 The Northern Pacific Railroad extended across SW corner of Lake County.

1885 The Flathead Reservation court was established with three judges and reservation police. (Fahey, 243)

1886 The Northwest Indian Commission, authorized by Congress, added several Kalispel bands and some Spokane Indians to the Flathead Reservation. (Lopach, 156)

1887 The Dawes Act, otherwise known as the Allotment Act, passed Congress, allowing the President to take action when he felt a Reservation was ready to be allotted to individual Indians for agricultural or grazing purposes. Following a trust period of 25 years, the allottees were to receive a patent in fee to the land. Later allotments were made by Congressional acts and the trust period was removed. (Feb. 8, 1887, U.S. Statutes at Large 24 [1887] 388)

In April 1887, the Northwest Indian Commission met with the Lower Kalispel at Sand Point, Idaho in an attempt to move them to the Jocko Reservation. Part of the Kalispel moved to the Jocko and the others remained in Washington. Congress never ratified the 1887 treaty. (Garland Report, III, 200-203)

- 1889 Montana became the 41<sup>st</sup> state. The same year, the Bitterroot Flathead Indians were authorized by Congress to sell some of their patented lands. (March 2, 1889, U.S. Statutes at Large 25 [1889] 871)
- 1891 The Salish Indians had remained in the Bitterroot, but were moved to the Flathead Reservation in 1891. The same year, a Congressional act granted the Missoula and Northern Railroad Company the right of way through the Flathead Indian Reservation. (March 3, 1891, U.S. Statutes at Large 26 [1891]1091)
- 1892 The U.S. Indian office moved Kootenai Indians from northern Idaho to the Flathead Reservation. (Fahey, 261)
- Also in 1892, Peter Ronan, Flathead Indian Agent since 1897, "requested and was given permission to enlarge one canal and dig a new one for \$5,870, using Indian labor, to **divert irrigation water from Finley Creek and the Jocko River**. In 1895, an Indian inspector...estimated the cost of various potential irrigation sites, and the following year, Joseph Carter reported, **'twenty or twenty-five families have settled and made for themselves comfortable homes and secured abundant crops' on the Jocko because 'during the year...I laid out two ditches for Indians...and individual Indians dug them without further aid from any source.'**" (Fahey, 304, quoting from records of the Commissioner of Indian Affairs in 1896.)
- 1895 The Montana Legislature asked Congress to open the Flathead Reservation to settlers.
- 1896 The Secretary of the Interior was authorized to appoint a three-member commission to negotiate with the Crow and Flathead for cessions of portions of their reservations. (June 10, 1896, U.S. Statutes at Large 29 [1896] 321, 341)
- 1899 The Flathead allowed leases of grazing land to be made to non-Indians.
- 1902 The Reclamation Act passed Congress. The 1902 Act gave the Secretary of the Interior the authority to withdraw from public entry lands required for irrigation works and to determine whether a project was "practicable and advisable," and if so, to let contracts for construction. Those who utilized the new projects were to repay the costs by making interest-free payments to the reclamation fund. (U.S. Statutes at Large 32 [1902] 388, 399)
- 1903 A U.S. Supreme Court case ruled that Congress had plenary power over tribal relations and thus, treaties with Tribes could be abrogated. (*Lone Wolf v. Hitchcock*, 187 U.S. 566, 1903)
- 1904 The **Flathead Allotment Act** passed Congress. The Act specified, among other things, that following the classification and appraisal of lands remaining after allotment to tribal members, the remainder of the land "shall be disposed of under the general provisions of the homestead, mineral, and town-site laws of the United States...." Section 14 of the Act stated that the proceeds from agricultural and



grazing lands "remaining undisposed of at the expiration of five years from the taking effect of this act...." Would be paid as follows: "one-half shall be expended from time to time by the Secretary of the Interior as he may deem advisable **for the benefit of the said Indians and such person having tribal rights on the reservation, including the Lower Pend d'Oreille or Kalispel thereon at the time that this act shall take effect, in the construction of irrigation ditches, the purchase of stick cattle, farming implements, or other necessary articles to aid the Indians in farming and stock raising....**"

Apparently, there is a disagreement between the Tribes and the CSKT as to whether this Act, or the amendment of May 29, 1908, authorized the Flathead Irrigation Project. (U.S. Statute at Large 33 [April 23, 1904] 302)

1905 Congress amended the 1904 allotment act regarding reservation of lands for the Catholic Church and for a biological station and agency land. (U.S. Statute at Large 33 [1905] 1048, 1080)

1906 The Burke Act removed the trust period during which allotments could not be sold and authorized the Secretary of the Interior "whenever he shall be satisfied that any Indian allottee is competent...." to issue a patent in fee and removed restrictions as to sale of the land. (U.S. Statutes at Large 34 [1906] 182-83, May 8, 1906).

Amendment to 1904 Allotment Act. Section 19 of the Act states that "**nothing in this Act shall be construed to deprive any of said Indians, or said persons or corporations to whom the use of land is granted by the Act, of the use of water appropriated and use by them for the necessary irrigation of their lands** or for domestic use or any ditches, dams, flumes, reservoirs constructed and use by them in the appropriation and use of said water." (U.S. Statute at Large 34 [June 21, 1906] 354)

1907 **The Reclamation Service sent an engineer to the Flathead Reservation to make a reconnaissance survey to show what lands would be irrigable and the water available for an irrigation project.** R.S. Stockton's report was published on November 12, 1907. **It indicated that 78,000 acres could be irrigated by gravity and 57,000 by pump irrigation. (cite for engineers report,- R.S. Stockton, Project Engineer)** The BOR and the BIA arranged to work together on the construction of the irrigation works. The Project History states that the BIA was in charge of appropriations and the BOR was in charge of the works. Reclamation was to investigate the land and water supply to see what was required for "an adequate irrigation system for those lands allotted Indians and other lands that might be opened to settlement." Work started at Ravalli, showing "at least 135,000 acres that were worth irrigating." (This info came from *United States v. Alexander*, U.S. District Court, District of Montana, Missoula, No. 1529, Findings of Fact, Conclusions of Law and Order, July 31, 1941, and U.S. Reclamation Service, Flathead Project History, March 1, 1910, 13-15.)

1908 A Congressional act appropriated \$50,000 for surveys and beginning construction work for an irrigation project: "**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, ... 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.”** (April 30, 1908, U.S. Statutes at Large 35 [1908] 83)

A May 29<sup>th</sup> Act of Congress amended the Flathead Allotment Act. Section 9 of the Act stated that: “When the payments required by this act have been made for the major part of the unallotted lands irrigable under any system and subject to charges for such construction thereof, **the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such rules and regulations as may be acceptable to the Secretary of the Interior.**” Section 9 also stated: “The land irrigable under the systems herein provided, which has been allotted to Indians in severalty, **shall be deemed to have a right to so much water as may be required to irrigate such lands without cost to the Indians for construction of such irrigation systems. The purchaser of any Indian Allotment, purchased prior to the expiration of the trust period thereon, shall be exempt from any and all charge for construction of the irrigation system incurred up to the time of such purchase.** All lands allotted to Indians shall bear their pro rata share of the cost of the operation and maintenance of the system under which they lie.” Section 14 of the Act specified that proceeds from the sale of Indian lands opened to entry should be expended or paid as follows: “**So much thereof as the Secretary of the Interior may deem advisable in the construction of irrigation systems, for the irrigation of irrigable lands embraced within the limits of said reservation....**” The Act states that one half of the money remaining after the construction of the said irrigation systems was to go to benefit Indians in **the purchase of livestock, farm implements**, etc. to aid Indians in farming and stock raising. (May 29, 1908, U.S. Statutes at Large 35 [1908] 444, 448-50)

A Congressional Act reserved land (approximately 18,500 acres) for a permanent national bison range for the herd of bison to be presented by the American Bison Society. There are conflicting stories regarding where the bison came from. (May 23, 1908, U.S. Statutes at Large 35 [1908] Stat. 267)

1909

President Taft signed a proclamation formally opening ““nonmineral, unreserved lands classified as agricultural lands of the first class, agricultural lands of the second class and grazing lands within the Flathead Indian Reservation....” (May 22, 1909, Presidential Proclamation)

Allotments to Indians were closed on September 25, 1909. (Fahey, 300) An appropriations bill included funds “**For construction of irrigation 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....” Section 22 of this act allowed the Secretary of the Interior to reserve power and reservoir sites. (March 3, 1909, U.S. Statutes at Large 35 [1909] 795, 796.)

1910

Dated March 1, 1910, the Reclamation Service Flathead Project History states that **“to assist the Indians in their new home the Government constructed canals from the Jocko River and Finley Creek in Jocko Valley and these have for many years insured crops on a considerable acreage of fertile soil.”** It goes on to report that a number of small ditches were built from various streams but that a small part of the natural water supply was used “while the opportunities to extend irrigation by storing water will permit a great expansion of the irrigable area.”

Regarding water appropriations the report states, “Filings were made on water that had been used for years by the Indians in the Jocko valley with a view to getting on record the use of same to protect the allottee....The water appropriations were made in the name of H.N. Savage, authorized by the Secretary of the Interior for the benefit of the Flathead Reservation.” (U.S. Reclamation Service. Flathead Project History, March 1, 1910, 9, 10, 38-39.)

**See Appendix One for more details from the first Flathead Project History, March 1, 1910. The project history appears to be in the National Archives in Seattle.**

Section 24 of a Congressional act amending the 1904 allotment act allowed Indians with allotments on the Flathead Reservation “which are or may be irrigable lands,” to sell up to 60 acres of their individual allotments. (April 12, 1910, U.S. Statutes at Large 36 [1910] 296, 297.)

A June 23, 1910 act allowed those with homestead entries within reclamation projects, after satisfying certain requirements, to assign their entries to others who could then receive patents on the land. (June 23, 1910, U.S. Statutes at Large 36 [1910] 592)

The drawing for settlers to choose the order of selection of Indian lands on the Flathead Reservation was held at Coeur d’Alene, Idaho on August 10, 1910. (Fahey, 302)

1911

Congress appropriated \$400,000 “For the construction of irrigation systems to irrigate the allotted lands of the Indians of the Flathead Reservation...and the unallotted irrigable lands to be disposed of under authority of law, including the necessary surveys, plans and estimates....” The act, among other things, also provided government easement on the shores of Flathead Lake for water power purposes. (March 3, 1911, U.S. Statutes at Large 36 [1911] 1066)

1912

Allowed for homesteaders on reclamation projects to receive patents after fulfilling certain requirements, and to receive final water right certificates upon proof of cultivation and reclamation of their land, after all sums due the United States were paid. The law stated that every patent and water right certificate issued under the Act reserved to the federal government a prior lien on the land patented or for which the water right was certified, with all water rights

appurtenant or belonging, for the payment of sums due. (August 9, 1912, 37 Stat. 265)

1914

A congressional act applied the June 23, 1910 act regarding reclamation homestead entries to land within the Flathead Irrigation Project. (U.S. Statute at Large 35[July 17, 1914]510)

An Indian appropriations act in 1914 called for the Interior Department to look into the status of water rights for the Flathead, Blackfeet and Fort Peck reclamation projects and to submit a report to Congress. (38 Stat. 582) A commission was appointed made up of the three reservation superintendents and the superintendent of irrigation in the three northern districts. The Secretary of the Interior, in transmitting the report to Congress, expressed concern over the language in the May 29, 1909 Congressional act which stated that when payments had been made for the major part of the unallotted lands irrigable that the management and operation would pass to the owners of the land irrigated. **The Secretary stated, "It is believed that the best interests of the Indians require that this part of the laws be repealed in order that the irrigation systems may not pass beyond control of the department until the Indians are able to look after their own interests...."** He went on to note that "a very extensive acreage of land to be used by white people," would also be irrigated by the systems and that having Indian tribal funds used to repay the congressional appropriations, after which, he said "the white landowner will pay in not to exceed 15 annual installments the proportionate charge for irrigation of his land. This arrangement is wholly unfair, and operates to retard the Indian in every way." The commission recommended that the cost of the system be attached to the irrigated tracts, and that the units to furnish water to the Indian allotments be completed to protect the Indian water rights. They reported, **"We find that these Indians are beginning to see that, owing to the change of conditions by the opening of their reservation to white settlement, the raising of stock is no longer a profitable industry, but that they must depend upon their farming operations for a livelihood, and we believe the time is here when they should be encouraged and assisted, both by furnishing them water as soon as possible and by devising some means whereby they can be supplied with proper equipment for farming."**

The commission spent five days looking at the Flathead irrigation diversions. At the time, the Reclamation Service classified 152,000 acres as irrigable, with 97,000 acres allotted Indian lands, 48,000 acres allotted to homesteaders and 5,000 acres of state land. During 1914, 6,505 acres were irrigated from completed canals. The report also discussed power development on the Flathead River and states, "It is important that sufficient development be carried on and the rights of the Indians to this power protected by construction work, or in some other manner." There was concern that "outside parties," might acquire land and develop power to the detriment of the Indians. (United States. "Report of Commission to Investigate Irrigation Projects on Indian Lands," House Doc. 1215, 63<sup>rd</sup> Cong., 3d sess., December 8, 1914, 33-40)

Also in 1914, the Office of Indian Affairs appointed a three-person committee to report on the water rights of the Jocko Drainage basin. (Letter from U.S. Indian Service, Flathead Agency to Commissioner of Indian Affairs, December 10, 1919 [In our files])

1916 Homestead entries on timber lands were authorized. (39 Stat. 123, 139-142, May 18, 1916)

1919 A committee formed in 1917 consisting of the Superintendent of the Flathead Reservation, the Reclamation Service Project Manger, and a Flathead Tribal member reported on the status of water rights on Garden Creek on the Reservation. The committee met in St. Ignatius so people could submit their claims to their use of water on the Flathead Reservation. The committee was required to determine the status of all the water rights claims conflicting with the United States. (Letter from Office of Indian Affairs to the Secretary of the Interior, August 11, 1919 [In our files]; Letter from U.S. Indian Service, Flathead Agency to Commissioner of Indian Affairs, December 10, 1919 [In our files])

1921 The report of the 1919 committee was approved by the Secretary of the Interior on November 25, 1921 The conclusion of the report stated: "Filings are continually being made in Sanders, Missoula and Flathead counties claiming use to the rights of the water of the streams of the Flathead Reservation. **These waters are determined by the committee to be a tribal asset of the Indians allotted on the Flathead Reservation and to be appurtenant to the allotted lands and the unallotted irrigable lands as approved by the Secretary of the Interior, and settlers on ceded lands are subordinate in right to the needs and uses of the Indian allotments and farm units.**" (*United States v. Alexander*, 131 F2d 359, 1942, 30; Letter to the Secretary of the Interior from Chas. H. Burke, Commissioner of Indian Affairs, May 24, 1921 [In our files])

1922 Apparently, the findings of the 1921 committee were not acceptable to all parties because in 1922 another committee was form and its findings slightly modified those of the previous committee. (Letter from the Office of Indian Affairs to the Secretary of the Interior, April 16, 1923, [In our files])

1924 An Act of Congress conferred jurisdiction on the U.S. Court of Claims to hear claims of tribes in Montana, Idaho and Washington. (U.S. Statutes at Large 43 [March 13, 1924]21)

1925 **Prior to this year, the Reclamation Service did work on the Flathead irrigation project.** Appropriation acts for 1925 and later specified that the Indian Service do the work. (Schmeckebier, 241)

Yet another commission was authorized by the Office of Indian Affairs on August 7, 1925 to investigate disputed water rights on the Flathead Reservation. This commission also consisted of the Superintendent of the Reservation, the Project Engineer of the Flathead irrigation Project and a Flathead Tribal member. In 1927 a report was submitted to the Secretary of the Interior regarding

investigations of 19 cases. (Letter to the Secretary of the Interior from C.B Meritt, Assistant Commissioner, Office of Indian Affairs, June 2, 1927. [In our files.]

- 1926 Regarding appropriations for irrigation systems as well as a requirement for repayment contracts on the Reservation project, a federal act provided, "that no part of this appropriation, except the \$15,000 herein made immediately available, shall be expended on construction work **until an appropriate repayment contract, in form approved by the Secretary of the Interior, shall have been properly executed by a district or districts organized under State law embracing the lands irrigable under the project, except trust patent Indian lands**, which contract, among other things, shall require repayment of all construction costs heretofore or hereafter incurred on behalf of such lands...." The Act also states that the funds are "For continuing construction, maintenance and operation of the irrigation systems on the Flathead Indian Reservation in Montana, by and under the direction of the Commissioner of Indian Affairs...." In addition, it called for the disposal of holdings over 160 acres, not including trust patent lands. (May 10, 1926, U.S. Statutes at Large 44 [1926] 453)
- 1927 Congress appropriated funds for the building of South Side Jocko Canal, Pablo Feed Canal, Hubbart Feed Canal and the Camas A Canal. (Jan. 12, 1927, U.S. Statutes at Large 44 [1927] 934, 945)
- 1928 In March, the Federal Power Commission and the Secretary of the Interior were authorized to issue licenses for the development of power sites on the Reservation. (March 1, 1928, U.S. Statutes at Large 45 [1928] 200, 212)
- The United States and the Flathead Irrigation District signed a repayment contract for construction of the irrigation project, November 24, 1928.
- 1929 Construction began on Kerr Dam by Rocky Mountain Power Company, a subsidiary of Montana Power Company. A federal repayment commission was appointed by the Secretary of the Interior to classify lands on the Flathead Irrigation Project to help determine the ability of the lands to assume the costs of the Project.
- 1931 The United States and the Mission Irrigation District signed a repayment contract for construction of the irrigation project, April 21, 1931.
- 1932 On July 1, Congress passed the Leavitt Act, which deferred irrigation costs for all Indian tribes, including the Flathead Indian Reservation. Language in the Act stated:
- "...That the Secretary of the Interior is hereby authorized and directed to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: Provided, That the**

**collection of all construction costs against any Indian owned lands within any Government irrigation project is hereby deferred, and no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished, and any construction assessments heretofore levied against such lands in accordance with the provisions of the Act of February 14, 1920 (U.S. Statutes at Large 41 [1920] 409.), and uncollected, are hereby canceled...." (U.S. Statutes at Large 47 [1932] 564.)**

- 1934 The United States and the Jocko Irrigation District Repayment signed a contract for construction of the irrigation project, November 13, 1934. The Indian Reorganization Act of June 18, 1934, 48 Stat. 984, was passed. (See Appendix III for dates of contracts and statutes relating to appropriations for the Project and regarding the irrigation districts)
- 1935 The Flathead Tribes voted to accept the IRA, and the Secretary of the Interior approved their constitution and bylaws on October 28, 1935. They were the first tribes to adopt a constitution and corporate charter.
- 1938 Kerr Dam was completed by Montana Power Company and began operation. The leasing of lands for agricultural and grazing on the irrigation projects was approved with the consent of IRA organized tribes. (April 4, 1938, U.S. Statutes at Large 52 [1938] 193)
- 1944 Tribal leaders on the Flathead Reservation requested that they be granted tribal control of tribal resources. The Tribal Council asked that the Office of Indian Affairs be removed from the Reservation for a five-year trial. This was not approved by the Dept. of the Interior. (Lopach, 158)
- 1946 The Indian Claims Commission Act passed Congress. This gave the Court of Claims jurisdiction to hear the CSK&T claims. (U.S. Statute at Large 60 [July 30, 1946] 715) Also in 1946 Congress passed an act providing that tribal funds belonging to the CSK&T would be available per the designation of the tribal council and as approved by the Secretary of the Interior. (U.S. Statute at Large 60 [June 24, 1946] 302)
- \*1946 **The Walker Report was published as an extensive federal study of the Flathead Indian Irrigation and Power Project.**
- 1948 Repayment contracts with United States and the Jocko, Mission and Flathead Irrigation Districts were modified. This was an act to provide for adjustment of irrigation charges on the Flathead Indian Reservation. Section 2 stated, "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." Power revenues were to pay the construction debt and then the

irrigators operation and maintenance fees per the May 10, 1926 Act and this 1948 act. (U.S. Statute at Large 62[May 25, 1948] 269)

**1953** **Concurrent Resolution 108 in Congress, 67 Stat. B132, August 1, 1953. What is the congressional history of this?? Apparently it would have abolished federal supervision over certain tribes and the Flathead Tribe was listed.**

**1959** **The Indian Claims Commission ordered the case between the Confederated Salish and Kootenai Tribes and the United States to proceed to a determination of the acreage of lands ceded by the Flathead, Kootenai and Upper Pend d'Oreille Tribes of Indians. Cite?**

**1963** The Water Resources Survey for Lake County was published giving statistics for the Flathead Irrigation Project. At the time there was an estimated 1,300 miles of canals and lateral ditches. The survey gives the capacity of the canals and reservoirs and maps specifically where irrigated lands were located. Water rights data is included. (State Engineer's Office. Water Resources Survey. Lake County, Montana. Parts I and II. Helena, June 1963)

**1965** Agreement gave the State of Montana the right to prosecute Indians on the Flathead Reservation for some criminal acts and some civil law violations.

**1975** Indian Self Determination and Education Assistance Act. The act provided that tribal governments could contract to run education and health programs themselves, and have more control over education of Indian children. (P.L. 93-638, January 4, 1975; U.S. Statutes at Large 88[1975] 2203; 25 U.S.C. 450)

**1976** Salish Kootenai College was established and is run by the Tribes.

**1977** CSKT Tribal Ordinance 64A enacted a "Shoreline Protection Ordinance" on the south half of Flathead Lake. The Secretary of the Interior approved this. (Lopach, 170.) It was later challenged in federal district court, which ruled against the Tribes. The case was appealed to the 9<sup>th</sup> Circuit Court, which ruled in favor of the Tribes. (*Confederated Salish and Kootenai Tribe of the Flathead Reservation v. James M. Namen, City of Polson, and State of Montana*, 665 F. 2d. 951 [1982]). The U.S. Supreme Court denied a petition for review.

**1981** CS&KT formed their own Department of Natural Resources. The same year they created an 89,000-acre wilderness area on the west side of the Mission Mountains. (Lopach, 169.)

September 26, 1981, a contract was signed between the Flathead, Mission and Jocko Irrigation Districts creating the Flathead Joint Board of Control under Montana Code 85-7-1601. In our files.



1982 The Flathead Tribal government changed its Bureau of Indian Affairs Area Office affiliation from Billings to Portland. (Lopach, 162) Also in 1982, the Tribes adopted Class 1 (the highest in the nation) air standards for the Reservation. (Bruggers, James. "The Salish and Kootenai Comeback," Sierra. July/August 1987, 22-26)

1985 The Tribes enacted the Aquatic Lands Conservation Ordinance 87-A (ALCO), leading to lawsuits over enforcement on private, non-Tribal Flathead Reservation property.

The Tribes also passed a Tribal Fisheries Policy, Resolution 85-192, to protect and manage fisheries resources on the Reservation.

In 1985, a dry year, the CSK&T filed a suit against the Flathead Irrigation and Power Project. The Joint Board of Control and the State of Montana intervened. The suit was dismissed when all of the parties stipulated to minimum water flows and reservoir levels for the 1985 irrigation season. This was not the end of the issue, however. (*CSKT v. Flathead Irrigation and Power Project*, et al, 616 F. Supp. 1292 (D. Mont. 1985))

**1985 Comprehensive Report regarding irrigation district turnover provision in the 1908 Congressional Act??? WHAT AND WHERE?**

1986 The BIA established their 1986 Interim Instream Flow and Reservoir Pool Agreement – which was never agreed to by the CSKT or the JBC but was the “strategy by which the BIA operated the Flathead Irrigation Project during the 1986 irrigation season.” (*JBC v. U.S. and CSKT*, 832 F. 2d 1127, 9<sup>th</sup> cir. 1987. See attached agreement, **Appendix Ia**) In 1986 the Joint Board of Control filed suit against the Tribes in U.S. District Court seeking injunctive and declaratory relief against the BIA’s management of the Project to include instream flows. The District Court enjoined the BIA instream regime but that decision was reversed in an appeal to the 9<sup>th</sup> Circuit. (*JBC v. U.S. and CSKT*, 832 F. 2d 1127, 9<sup>th</sup> cir. Mont, November 17, 1987)

The 9<sup>th</sup> Circuit Court, in explaining their decision, explained:

The action of the BIA in establishing stream flow and pool levels necessary to protect tribal fisheries is not unreviewable. In making its determination, however, the BIA is acting as trustee for the Tribes. Because any aboriginal fishing rights secured by treaty are superior 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 the 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 *remaining* waters among irrigators of equal priority.

(Id at 1132, emphasis in original)

1987 A second case was filed by the JBC while the 1986 suit was pending before the 9<sup>th</sup> Circuit Court of Appeals. That suit was also dismissed by the 9<sup>th</sup> Circuit Court "Because the Joint Board failed to exhaust its administrative remedies before seeking judicial review of the BIA's initial quantification of the Tribes fishing water rights, or the BIA's distribution of the remaining water among irrigators...." (*JBC v. U.S. and CSKT*, 832 F. 2d 195, 9<sup>th</sup> cir. 1988, 196,197, 201)

The Tribes took over the management contract for the BIA for the utility called the Mission Valley Power, the power division of the Flathead Irrigation Project. There was much disagreement as to whether this should be run by the Tribes or formed into a rural electric contract. (Ronan Pioneer. August 7, 1986)

Also in 1986, the Tribes enacted Ordinance 44D, asserting exclusive civil jurisdiction over all hunting, fishing and trapping on the Reservation. The ordinance was approved by the Secretary of the Interior and enacted in 1987. The Tribes and the State then entered into negotiations in order to develop an agreement facilitating the regulation of hunting and fishing on the Reservation by non-Tribal members. An agreement was signed in 1988, and enabling legislation was signed into law. The Tribes did not enforce Ordinance 44D completely until 1990. The court case, *Confederated Salish and Kootenai tribes of the Flathead Indian Reservation v. State of Montana*, 750 F. Supp. 446, (see Appendix 1) resulted as the State wished to enforce State fishing regulations against non-Tribal members on the south half of Flathead Lake.

1988 The Tribes and the State Department of Fish, Wildlife and Parks came to an agreement and signed a cooperative agreement allowing temporary tribal jurisdiction over bird-hunting and fisheries management rules on the reservation. (Great Falls Tribune, October 20, 1987)

During the legislative session a House Bill was introduced and table that would have provided by law for a representative from the Flathead Joint Board of Control to be party to Compact Commission meetings. The Compact Commission agreed to allow a JBC representative to attend Commission meetings. (Ronan Pioneer, March 4, 1987)

A Wildlife compact between the State and the CS&KT passed the state legislature as SB 446. (Great Falls Tribune, March 2, 1990)

1988 The Tribes became one of 10 tribes nation-wide to participate in a Self-Governance Demonstration Project. That year they contracted management from the BIA for Tribal Wildlife Management Program (Confederated Salish & Kootenai Tribes. Comprehensive Resources Plan. Vol. 1, "Existing Conditions." Draft (1994) 3-15, 11-7)

1989 Disputes continued over the proposed tribal-state management of fish and game of the Flathead Reservation.

The Tribes contracted with the BIA to take over the Reservation's Safety of Dams Program, authorized by P.L. 93-638. The agreement was to check Flathead Agency Irrigation Division dams over a 10-15 year period and to contract with the BOR to assist in the design and construction phase of the Program. (Confederated Salish & Kootenai Tribes. Comprehensive Resources Plan. Vol. 1, "Existing Conditions." Draft (1994) 9-10.)

1990

In April or May, the Tribes filed suite against the State of Montana in U.S. District Court to keep the latter from enforcing its hunting and fishing regulations within the exterior boundaries of the Reservation. In November 1990, a State-Tribal fish and bird management agreement was signed and provided for a single-licensing system. (Great Falls Tribune, November 15, 1990)

The Tribes contracted the Realty and Agricultural Programs from the BIA. They now manage range and weed management programs and a soil conservation program. (Confederated Salish & Kootenai Tribes. Comprehensive Resources Plan. Vol. 1, "Existing Conditions." Draft (1994) 14-7)

**The BIA issued their 1990 Flathead Agency operating procedures for irrigation and fisheries. (U.S. Department of the Interior. Bureau of Indian Affairs. 1990 "Flathead Agency Operating Procedures for Irrigation and Fisheries." Pablo, Mont.: BIA Flathead Agency, 1991)**

1992

In March, the Great Falls Tribune reported on ongoing disagreements regarding the management of the Flathead Irrigation Project. Secretary of the Interior, Manual Lujan Jr. was asked by a Montana Congressman to start formal talks to turn the Project over to "a consortium of water users." In a February directive, Lujan ordered the talks to be completed by September, 1992. The Tribes objected to Interior's directive. (Great Falls Tribune, March 3, 1992)

The Tribes resolved to ask the BIA for "638" grant funds to establish a Tribal Technical Negotiations Support Team to evaluate information for negotiations with the Montana Reserved Water Rights Compact Commission. (CSKT Resolution 92-196, Char Koostra News, August 7, 1992)

1993

The Tribes filed suit against the State of Montana in U.S. District Court alleging that state officials were guilty of bad faith negotiating in dealing with gambling issues on the Flathead Reservation. (Indian Country Today, November 10, 1993)

1994

The Tribes and the federal government agreed that the CS&KT would oversee health care programs on the Reservation.

The Tribes and the State of Montana signed an agreement to give the Tribes jurisdiction over misdemeanor crimes committed by Indians on the Reservation. Tribal officers were given the right to ticket non-Indian traffic offenders into justice court. Lake County and the city of Polson would not sign the agreement. Ronan and Flathead and Missoula counties signed it. The agreement had the support of the governor of Montana. (Char-Koostra News. September 30, 1994)

The Flathead Reservation Comprehensive Resources plan was published. Volume I dealt with existing conditions of natural resources and Volume II with policies. The report contains information on the physical setting of the reservation, history and culture, economics, natural resources, agriculture and much more. (Confederated Salish and Kootenai tribes of the Flathead Reservation, Comprehensive Resources Plan, Vol. 1 "Existing Conditions," and Vol. II "Policies," Draft, June 1994) In our files.

1995

The Tribes ordered the Yellowstone Pipeline Company to remove their facilities from tribal land and to pay trespass fees. (Helena Independent Record, November 5, 1995)

The BIA began the process of **reclassifying irrigated lands** under the Flathead Irrigation Project. Formal reclassification had last taken place in 1963. (Char-Koostra News, October 6, 1995)

That year Senator Conrad Burns sponsored an amendment to Senate Bill 1186 to turn the management of the Flathead Irrigation Project over to non-Indian irrigators on the Reservation. The bill failed.

1997

A lawsuit filed against the Federal Energy Regulatory Commission (FERC) by Montana Power Company was dismissed at the request of the parties involved, including the CS&KT. The settlement reached gave the Tribes almost \$35 million to fund fish and wildlife mitigation for the Reservation. A goal for the Tribes is to restore wildlife habitat to pre-dam conditions. The settlement was also helpful in terms of the co-management agreement the Tribes have with the State of Montana to restore native fish populations. Annual lease payments to the Tribes from the operation of the dam remain at \$14.4 million per year. (Char-Koostra News online, March 9, 2001)

**November 21, 1997. Report of the Redesignation Committee, commissioned by the Agency Superintendent, Flathead Irrigation Project. We have the Preface to the report and the letter from the committee to the Agency Superintendent, Mr. Moran. (as copied to us from the JBC, in our CSKT files).**

Senator Burns introduced Senate Bill 1425 in the 105<sup>th</sup> Congress, 1<sup>st</sup> session. "To provide for the preservation and sustainability of the family farm through the transfer of responsibility for operation and maintenance of the Flathead Indian Irrigation Project, Montana." This bill to transfer the Project from the BIA to the irrigation districts for operation and management was referred to the Committee on Indian Affairs. The bill died.

**The BIA proposed to change assessment rates for operation and management of the Flathead Indian Irrigation Project for 1998 and subsequent years from \$18.45 per acre to \$19.95 per acre. (62 FR 43743, August 15, 1997)**

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- 1999 March 16, 1999, Senators Burns and Baucus introduced Senate Bill 630 to the 106<sup>th</sup> Congress, 1<sup>st</sup> session, "To provide for the preservation and sustainability of the family farm through the transfer of responsibility for operation and maintenance of the Flathead Irrigation Project, Montana." This bill to transfer the Project from the BIA to the irrigation districts for operation and management was referred to the Committee on Energy and Natural Resources. The bill died. An identical bill introduced to the House by Rep. Rick Hill at the same time also died.
- 2001 Tribal attorneys filed a lawsuit in Lewis and Clark Federal District court on April 23<sup>rd</sup> to prohibit the Department of Natural Resources and Conservation from issuing new water use permits or approving change-in-use for existing uses on the Reservation. (Char-Koostra News, May 24, 2001, vol. 32, No. 34, 1)

## APPENDIX I

### Court Cases

#### 2000s

*Nevada et al v. Hicks et al*, No. 99-1994, 535 U.S. \_\_\_\_\_. (June 25, 2001) "The case presents the question whether a tribal court may assert jurisdiction over civil claims against state officials who entered tribal land to execute a search warrant against a tribe member suspected of having violated state law outside the reservation. The case is listed here because it is a ruling on tribal jurisdiction. In our files.

*Confederated Salish and Kootenai v. Clinch et al*, No. BDV-2001-253 (Mont. First Judicial District). The Tribes filed on April 23<sup>rd</sup>, 2001, to enjoin DNRC permit proceedings and permit issuance of change-of-use appropriation for Stan and Katherine Axe. The Tribes petitioned for a "Writ of Supervisory Control, Injunction, for Declaratory Relief or for other Appropriate Relief". One of the permits in question was issued by DNRC to Reginald Lang for a new appropriation of ground water. (Char-Koostra News, May 24, 2001, vol. 32, No. 34, 1) A Preliminary Injunction was issued in the Tribes favor on July 12, 2001.

#### 1990s

*Minnesota et al v. Mille Lacs Band of Chippewa Indians et al*, 526 U.S. 172 (1999), 124 F. 3d 904. "In 1990, the Mille Lacs Band of Chippewa Indians and several of its members filed suit in the Federal District court for the District of Minnesota against the State of Minnesota...seeking...a declaratory judgment that they retained their usufructuary rights under the 1837 Treaty and an injunction to prevent the State's interference with those rights." The Supreme Court held that the Chippewa retain those rights. In our files.

*In re Gila River Adjudication*, 989 P.2d 739 (AZ Supreme Court, 1999), cert denied, 530 U.S. 1250 (2000). This is a massive case dealing with the relationship between surface and ground water in the Arizona adjudication. The section in our files deals with two questions: (1) Do federal reserved water rights extend to groundwater that is not subject to prior appropriations under Arizona law (2) Are federal reserved rights holders entitled to greater protection from groundwater pumping than are water users who hold only state law rights? The court holds that the federal reserved water rights doctrine applies not only to surface water but to groundwater to the extent groundwater is necessary to accomplish the purpose of a reservation. Holders of federal reserved rights enjoy greater protection from groundwater pumping than do holders of state law rights to the extent that a greater protection maybe necessary to maintain sufficient water to accomplish the purpose of a reservation.

*Montana v. ARCO*. No. 83-317-HLN-PGH (D. Mont). In 1983 the State of Montana filed suit against ARCO for damages to natural resources in the Clark Fork river basin. The suit went to trial in March 1997 after being divided into different phases by the District Court judge. Court-ordered settlement talks resulted in a consent decree. The CSK&T filed a motion to intervene in 1994. In 1997 the court denied the Tribes' application for intervention as a matter of right but granted the Tribes permissive intervention for the limited purpose of prosecuting any natural resource damage claims they have against ARCO. The Tribes and ARCO filed motions for

reconsideration of the court's order regarding intervention. The state opposed the motions. As of the date of the consent decree the motions remained pending. Consent decree in our files.

*James v. Krause et al v. Dan Neuman*, 284 Mont. 399, 943 P.2d 1328, No. 97-092, (Montana Supreme Court, 1997) This case involved a enrolled member of the Confederated Salish and Kootenai Tribes (Neuman) putting up for sale two tracts of Indian allotment land on the Flathead Reservation. The Krauses wished to purchase the land in fee. The dispute was whether the Krauses were made aware that the federal government would have to approve the sale in fee and issue a patent before the land could be transferred. The question was whether under federal statutory law is jurisdiction to adjudicate interests in Indian trust lands vested in federal courts to the exclusion of state courts. The District Court and the Montana Supreme Court determined that "federal statutory law preempts state subject matter jurisdiction over actions involving title to an allotment." In our files.

*State of Montana v. U.S. Environmental Protection Agency*. 525 U.S. 921 (1998) (No. 9635505 - 03/03/98). This is the case in the 9<sup>th</sup> Circuit Court of Appeals regarding the CSKT status to be "treated as a state" (TAS) by the EPA in setting the water quality standards on the Reservation. The district court ruled in favor of the Tribes (see case below), the case was appealed and the 9<sup>th</sup> Circuit upheld the district court ruling. In our files

*State of Montana v. U.S. Environmental Protection Agency*, CV 95-56-M-CCL, Decided Mar. 27, 1996, in the United States district court for the District of Montana Missoula division. In our files.

*Confederated Salish and Kootenai Tribes v. Clinch*, 279 Mont. 448, 992 P.2d 244 (1999) (Ciotti II) Ruled that DNRC cannot issue water use permits on the Reservation. In our files.

*In the matter of the Application for Beneficial Water Use Permit No. 66459-76-L*, Ciotti. 278 Mont. 50, 923 P.2d 1073 (1996) (Ciotti I) In our files.

*Confederated Salish v. Simonich* , 29 F.3d 1398, 1401 (9th Cir. 1994) (Pope). In our files.

1993 – In December, the Tribes and several individuals filed suit in Missoula U.S. District Court against the JBC charging them with civil rights and racketeering violations. (Missoulian, December 23, 1993)

*The Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts, the Flathead Irrigation District, The Mission Irrigation District and the Jocko Valley Irrigation District, Plaintiffs, v. The United States, Defendant*. No. 92-567L. U.S. Court of Federal Claims, 30 Fed. Cl. 287, 1993, U.S. Claims AND *affirmed without opinion*, 59 F. 3d 180 U.S. Court of Appeals for the Federal Circuit No. 94-5122 (Fed. Cir. 1995). The case came before the U.S. Court of Federal Claims on defendants motion to dismiss. Plaintiffs (JBC) sought award of damages based upon defendants (U.S.) alleged breach of statutory, contractual and constitutional obligations relating to the Flathead Federal Irrigation and Power Project. The Federal Claims Court dismissed counts I, III, IV, VII, VIII, XI and XII. ( The federal court denied the JBC had any right to operate the project and thus no basis on which to assert a financial claim. It stated that the 1908 Congressional Act did not promise to turn over project

management to the irrigators) Parties were to file a joint status report advising the court how they wished to proceed on counts II, V and VI. The appeals court affirmed. In our files.

*Middlemist v. USA*, CV 91-155 M-CLL, U.S. District Court, decided Feb. 11, 1993. A complaint was filed in federal court in 1991 by citizens claiming that the Tribes had no regulatory authority over them to require permits, and that the Tribal Aquatic Lands Conservation Ordinance 87-A (ALCO) should be declared invalid. The JBC joined the suit as a plaintiff. In 1993, District Judge Charles Lovell ruled that the lawsuit must go through Tribal court before federal jurisdiction could be exercised, based on the U.S. Supreme Court's ruling that tribal remedies must be exhausted when disputes are "reservation affairs." (Char-Koostera News, February 19, 1993. Case is in our files.) *Middlemist v. Babbitt*, 824 F.Supp. 940 (D.Mont.1993), aff'd. 19 F.3d 1318 (9th Cir. 1994), cert. den. 115 U.S. 420 (1995).

*Joint Board of Control for the Flathead, Mission and Jocko Irrigation Districts v. Acting Portland Area Director, BIA*, Interior Board of Indian Appeals, 22 IBIA 22, IBIA No. 91-34-A, 1992. JBC seeks review of a 1990 decision of the Portland BIA Area Director concerning the 1990 Flathead Agency operating procedures for irrigation and Fisheries. CS&KT oppose the appeal and the IBIA affirms that decision. In our files.

*Joint Board of Control for the Flathead, Mission and Jocko Valley Irrigation Districts v. Portland Area Director, BIA*, 20 IBIA 223, No. IBIA 91-127-A, Order Docketing and Dismissing Appeal, August 27, 1991. This was in regards to an appeal by the JBC challenging the final notice of operation and maintenance rates for the Flathead Indian Irrigation Project for 1992. In our files.

*Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation v. State of Mont.*, 750 F.Supp. 446 (D. Mont., May 11, 1990) (No. CV 90-49-M-CCL) The CS&KT filed this suit "seeking declaratory judgment that the State of Montana (State) has no authority to regulate hunting and fishing on the Flathead Indian Reservation.... The issue...is whether the State has concurrent jurisdiction to enforce its fishing regulations against nonmembers within the Reservation." The State was asked to revise its regulations so that they would be as restrictive as the Tribal regulations and the court said the State had no right or power to assert its fishing regulations on the south half of Flathead Lake (the area in question). In our files.

*Joint Board of Control for the Flathead, Mission and Jocko Irrigation Districts v. Portland Area Director, Bureau of Indian Affairs*. 19 IBIA 32, IBIA No. 90-40-A, October 23, 1990. This was an appeal from a decision concerning the 1989 Flathead Agency Operating Procedures for Irrigation and Fisheries. It was further disagreement regarding the BIA setting of minimum instream flows for fisheries and the BIA water management plan. In our files.

These are the cases involving the Yakama Tribes' water rights – this litigation extended over 20 years:

*Sunnyside Valley Irrigation District v. Ecology*, 100 Wn.2d 651, 674 P.2d 160. Otherwise known as Acquavella 1.

*Ecology v. Yakima Reservation Irrig. Dist.*, 121 Wn.2d 257, 850 P.2d 1306 (1993). Otherwise known as Acquavella 2.



*Department of Ecology v. Acquavella, 131 Wn.2d 746, 935 P.2d 595 (1997).* Otherwise known as Acquavella 3.

### 1980s

*Joint Board of Control for the Flathead, Mission and Jocko Irrigation Districts v. Area Director, Portland Area Office, Bureau of Indian Affairs, 17 IBIA 65, IBIA No. 88-41-A, February 15, 1989.* Appeal from a decision of the Portland Area director, BIA, concerning the 1988 operation and maintenance rate for the Flathead Irrigation District. Dismissed and remanded. In our files.

*Joint Board of Control of the Flathead, Mission & Jocko Irrigation Districts v. United States and the Confederated Salish and Kootenai Tribes of the Flathead Reservation.* 862 F.2d 195, No. 87-4106, 9<sup>th</sup> Cir. Court of Appeals, Opinion. (District Court No. 87-107-M-CCL) Filed November 29, 1988, while the 1987 case was still under appeal. In this case the Court of Appeals affirmed a district court order dismissing an action for injunctive relief from operating procedures adopted by the BIA. This suit is one in a series concerning a continuing dispute over water supplies controlled by the Flathead Irrigation and Power Project, a BIA agency. A 1985 action regarding instream flow was dismissed after agreement between the parties. The district court granted injunctive relief to the JBC involving the 1986 irrigation season to enjoin the BIA from implementing an unequal water distribution plan. The appeals court reversed that decision (832 F.2d 1127, 9<sup>th</sup> Cir. 1987, below). Before that reversal, the JBC filed this new complaint for injunctive relief. In our files.

*Joint Bd. Of Control of the Flathead, Mission & Jocko Irrigation District v. United States,* 832 F. 2d 1127 (9<sup>th</sup> Cir.[Mont.] November 17, 1987, No. 86-4317), *cert. denied*, 486 U.S. 1007 (1988) Re treaty fishing water rights and tribal instream flow. The Appeals Court reversed 1986 district court decision enjoining the BIA's operating plan. See below. In our files.

*Joint Bd. of Control of Flathead, Mission and Jocko Irrigation. District. v. U.S.,* 646 F.Supp. 410 (D.Mont., October 16, 1986) (No. CV86-156-M-CCL) Suit brought by JBC seeking declaratory and injunctive relief against tribal instream flows for fisheries. District court enjoined BIA instream flow regime. Reversed by 9<sup>th</sup> Cir. Court of Appeals, above. In our files.

*Confederated Salish and Kootenai Tribes of the Flathead Reservation v. State of Montana.* CV 81-149-M, Order and Opinion, U.S. District Court, Missoula Division, September 6, 1985. This action was instituted by the Tribes in 1981, seeking to adjoin the application or enforcement of the Montana Water Use Act of 1973 on the Flathead Reservation. Plaintiffs and defendants stipulated to dismiss this case in 1986. In our files.

*Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana v. Flathead Irr. and Power Project,* 616 F.Supp. 1292 (D.C.Mont., August 20, 1985), No. CV 85-150-M. CSKT filed for injunctive relief to enjoin Flathead Irrigation and Power Project and JBC from endangering tribal fishing and water rights. District court denied motion and dismissed the case. This began a string of litigation on this issue. In our files.

*State ex rel Greely v. Confederated Salish and Kootenai Tribes of the Flathead Reservation,* 219 Mont. 76; 712 P.2d 754 (1985) The CSKT were joined in this by the other Montana tribes. The question was whether or not the state Water Use Act was adequate to adjudicate federal and

Indian reserved rights, the Montana Supreme Court ruled that it was, among other issues. In our files.

*United States v. Washington*, 759 F.2d 1353 (9<sup>th</sup> cir. ,1985) The 1980 District Court case below was appealed and was affirmed in part and vacated in part. In our files.

*Colville Confederated Tribes v. Boyd Walton* 752 F. 2d 397 (9<sup>th</sup> Cir. 1985) In our files.

*Confederated Salish and Kootenai Tribes of Flathead Reservation, Mont. v. James M. Namen, City of Poulson, Montana and State of Montana*, 665 F.2d 951, 955 (9th Cir. 1982), cert. denied, 459 U.S. 977 (1982). This case was filed by property owners on the Reservation and the State of Montana, arguing against the Tribes Shoreline Protection Ordinance. The 9<sup>th</sup> Cir. Court ruled in favor of the Tribes. In our files.

*The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Montana, et. al. Vs The State of Montana, et. al.* No. 81-149-M. U.S. District Court, Missoula Division, October 21, 1981. The Tribes sought injunctive and declaratory relief against the application or enforcement of the Montana Water Use Act...on the Flathead Reservation and with respect to all waters within or appurtenant to the Reservation. In our files.

*Colville Tribes v. Walton*. 647 F.2d 42, 9<sup>th</sup> Cir. 1981 (Walton II) cert denied 454 US 1092 (1981) In our files.

*Montana v. United States*. 450 U.S. 544 (1981). Landmark case, In our files.

*United States v. Washington*, 506 F. Supp. 187 (1980). The United States on its own behalf and as trustee for Indian tribes brought suit against the State of Washington and others seeking declaratory and injunctive relief concerning off-reservation treaty right fishing. In our files.

## 1970s

*United States v. Abell*, CV 79-33-M, April 5, 1979. U.S. District Court. This was filed for the CSKT to obtain adjudication of water rights within the Flathead River basin. In our files.

*State of Montana v. Lasso Stasso*, 172 Mont. 242, 563 P. 2d 562 (1977). A member of the CS&KT was convicted in Justice Court in Thompson Falls of killing a deer out of season. The conviction was set aside in District Court. "On appeal by the State, the Supreme Court held that the defendant had a right to hunt, free from the regulation of Montana Game laws, on 'open and unclaimed lands' by virtue of the Treaty of Hell Gate." (242) In our files.

*Howlett v. Salish and Kootenai Tribes of the Flathead Reservation*, 529 F.2d 233, 240 (9th Cir. 1976). Kevin Howlett and Bernard Clairmont, members of the CSKT Tribes, appealed from the U.S. District Court of Montana, Missoula Division, and contended that the refusal of the Tribes to declare them eligible candidates for tribal council membership deprived them of their right to travel and their right to run for office in violation of the Indian Civil Rights Act. (25 USC 1302(8), 1968). In our files.

*Moe V. Salish & Kootenai Tribes*, 425 U.S. 463 (1976). U.S. Supreme Court. CSKT instituted two actions in U.S. District Court attacking Montana's imposition of certain state taxes on reservation Indians. In our files.

*United States v. Cappaert*, 426 U.S. 129 (1976) Nos. 74-1107, 74-1304. "The United States brought action for declaration of rights as to so much of underground waters appurtenant to Devil's Hole, Death Valley National Monument, as might be necessary to maintain a pool and the endangered species of fish therein. The Supreme Court, Mr. Chief Justice Burger, held that when the United States reserved Devil's Hole, it acquired by reservation water rights in unappropriated appurtenant water sufficient to maintain the level of the underground pool to preserve its scientific value...." In our files.

*Confederated Salish and Kootenai Tribes v. Montana*, 392 F. Supp. 1325, 1328-1329 (Mont. 1975) CSKT suing on behalf of themselves and all other members of the Tribes seeking injunction restraining the enforcement of assessment of personal property taxes and taxes on motor vehicles. In our files.

1973 U.S. District court reaffirmed the CS&KT exclusive right to fish and wildlife and upheld a Tribal ordinance requiring non-members to purchase and carry recreation permits on Tribal lands.

→ *Confederated Salish & Kootenai Tribes v. United States*, 437 F.2d 458 (1971). United States Court of Claims awarded the CSKT \$6,066,668.78 based on the fair market value of lands lost under the 1904 allotment act.

#### 1960s

*Tweedy v. Texas Company, aka Texaco, Inc.*, 286 F. Supp. 383 (D. Mont. 1968). This was a diversity action by owners of surface of land within Indian reservation against holder of oil and gas lease to recover damages for all underground water drawn by defendant from wells upon plaintiffs' land (on the Blackfeet Reservation).

→ *The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana v. The United States*, 17 Ind. Cl. Comm. 297, Docket 61, decided August 1, 1966. This case determined the value of lands ceded by the CSKT and reimbursed the Tribes under the Indian Claims Commission Act for the 1859 value of the lands in 1967 dollars. The Tribe received over \$4 million after offsets and attorney's fees. Charles Kappler was one of the attorneys for this case, which started in 1941. In our files.

*CSKT v. United States*. U.S. Court of Claims. Docket No. 50233, vol. II. Finding of fact No. 26, January 25, 1962. Regarding Kerr Dam and adjustment for rental.

*Montana Power Co. v. F.P.C.*, 112 U.S. App. DC 7, 8 298 F2d 335 (1962) Kerr Dam case.

#### Other Court Cases

Federal Power Commission case. 22 F.P.C. 502 (1959). Awarded tribes an additional \$50,000 annually for Kerr Dam rent. September 18, 1959.

*The Lower Pend d'Oreile or Kalispel Tribe of Indians v. The United States.* Indian Claims Commission, docket 94. Decided June 9, 1958. Claim was for compensation for an area of land in Washington, Idaho and Western Montana.

*United States v. 5,677.94 Acres of Land*, 162 F. Supp. 108 (D. Mont. 1958) Among other things documents ownership of southeast half of land under Flathead Lake.

*The Big Four, Inc. v. Bisson*, 132 Mont. 87; 314 P.2d 563 (1957) This case was an appeal from an order and decree for the plaintiff permanently enjoining the defendant from interfering with waters in Bousquet Ditch. The controversy arises over the plaintiff alleging that the defendant, Camille Bisson, diverted water from Bisson Creek into Bousquet Ditch and wasted the water. (In our files)

*State v. McClure*, 127 Mont. 534, 268 P. 2d 629 (1954). Montana Supreme Court acknowledged the exclusive right of the Tribes to hunt and fish within the exterior boundaries of the Reservation.

*United States v. Alexander*, 131 F2d 359, 1942. This was a suit brought by the United States, in 1936, against B.W. Alexander and others to enjoin defendants from diverting water through their privately constructed ditches in excess of amounts allotted by the Secretary of the Interior in 1921. The Flathead Irrigation District intervened. The district court ruled (*United States v. B.W. Alexander*, District of Montana, Missoula District, No. 1529, 1941) and the 9<sup>th</sup> circuit court affirmed against the United States. (In our files)

*United States et. al. v. McIntire*, 131 F.2d 650, (9<sup>th</sup> Cir. 1939). This suite was filed by Agnes McIntire against the U.S., the Flathead Irrigation District and others, in District Court, to attempt to establish water rights and enjoin defendants from interfering with McIntire's alleged rights. The case was appealed from the District Court (22 F. Supp. 316) by defendants and reversed and remanded by the 9<sup>th</sup> Circuit Court. The plaintiff's water rights were in Mud Creek on the Flathead Reservation. (In our files)

*Scheer v. Moody* 48 F.2d 327, Nos. 527, 795-800, 804, 902, 903. (D. Mont. 1931)

*Winters v. United States* 207 U.S. 564 (1908)

## APPENDIX II

### U.S. Reclamation Service, Annual Report, Flathead Project History, July 1, 1909

I'm not certain the citations on these documents is accurate as I had photocopied documents to work from that were give to us by the JBC, not originals.

Excerpts from the report included the following information:

The average elevation of irrigable area was 2,800 feet above sea level. Tribal plans were to develop 150,000 acres of this land. (p. 1-2)

Recommendations were regarding potential withdrawal of lands that might be used for reservoirs if they were needed to supply irrigation water. (p. 12-13)

In the fall of 1908 project headquarters were established at St. Ignatius and division headquarters were established at Jocko. In 1909 Division Headquarters were established ½ mile from Polson. (p. 13)

### U.S. Reclamation Service, Flathead Project History, March 1, 1910

"Of the better agricultural lands of the reservation there have been allotted to Indians and others with tribal rights something over 220,000 acres.

"The remaining lands, agricultural and grazing mayb e homesteaded under a drawing held last fall, where out of 86,000 registrations 6,000 names were drawn from the box." (p.19)

The report states that the total irrigable area open to white settlement is about 74,000 acres or about half the total irrigable area estimated. (p. 19)

"Notices of appropriation of water have been posted on 75 streams or points on streams. All but two of these are on the reservation and are shown on map No. 18. The remaining two are on the Little Bitter Root River north of the reservation." (p. 38)

#### Chapter 5, Construction - Jocko Unit

Regarding a canal from the Jocko River to irrigate lands north of the stream the report stated: "Many years ago the Indian Service had constructed here a canal for about six miles. This was done for the benefit of the Flatheads moved over from the Bitter Root Valley." The new canal would apparently irrigate about 6,000 acres. (p. 40)

March 3, 1909, 35 Stat. 795, \$250,000 was set aside for this construction. The language in the statute states: "For construction of irrigation 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..." This Act also amended the 1904 allotment act in other ways, stating that even "Indian allottees, whether under the care of an Indian agent or not..." were subject to U.S. laws regarding reservation of power sites and sale of timber from classified timber lands. (p. 40)

## Chapter 6 – Construction – Mission Unit

First work is a canal taken out of Mission Creek with the junction of Dry Creek and running northerly about 12 miles into Post Creek. It would serve about 5,000 acres. Construction started in May, 1909. (p. 45)

## Chapter 7 – Construction – Polson Unit

A canal system was to cover lands on the shores of Flathead Lake near Polson. The work started in June, 1909 as did studies on a power and pumping plant. (p. 48)

## U.S. Reclamation Service, 1910 Flathead Project History, May 19, 1911

Vol. 4 of 5

### Chapter 9 – Legislation

This chapter outlines a few acts that allowed for right-of-way and reservation of land necessary to the Project in 1910.

April 12, 1910 (PL 130)

June 25, 1910 (PL 313)

April 4, 1910 (PL 114) appropriated \$250,000 (p. 8)

### Water Appropriations:

There were 93 U.S. water filings of 72 streams. (Appendix A of the Report)

Other filings within the reservation were listed to be in conflict with the U.S. filings. (Appendix B) (p. 14)

## Chapter 22 – Settlement and Townsites

The reservation was opened to settlement under homestead laws on May 2, 1910. Only those who had numbers from a drawing held in the fall of 1909 were able to file until October 31. (p. 65)

A field inspection in December (1910?) showed 424 settlers on farm units having substantial improvements and 48 others with less to no improvements. "A general land hunger has caused many attempted filings on land not officially open, including forestlands, reservoir lands, etc." (p. 67)

An August 31, 1910 letter from E.F. Tabor, Project Engineer at St. Ignatius to assistant Engineers and Ditch Riders: "**You will under no conditions deliver water to any lands, except allotted Indian lands, nor should you allow water to be taken to other lands for irrigation purposes.**" No homesteader has any rights to irrigation water until proper contracts have been made with the Government for delivery of water to them. (p. C-8, Appendix)

## U.S. Reclamation Service, Flathead Project, Vol. 6 of 7, December 31, 1911

The copy of the Project History we received from the JBC was not copied past page 24 of the "Construction Dialogue". There is an appendix A of water rights possible in conflict with those

of the United States on the Reservation: 1895, 1898, 1907, 1909, 1910, 1911, 1912. The majority were recorded in 1911.

#### Chapter 25 – Status of Lands

At the time of the opening of the Reservation there were about a 225,000 acres of land allotted to Indians and others having tribal rights (as of December, 1911) (p. 7)

#### Chapter 27 – Canals, Dams & Distributing Systems

A survey was started in June 7, 1910 by G.L. Sperry, Jr. Engineer, to locate all old canals and areas irrigated from them. A set of township plots was compiled from these surveys showing areas irrigated from private canals in 1910. Older areas of irrigated land may have been overlooked. (p. 22)

There are also maps (also showing measurements and estimates of probably flows) of a survey done by engineers checked by the Catholic Societies at St. Ignatius to show the old irrigation works and irrigated lands. (In vol. 8 of 1911 history)

**APPENDIX III****Irrigation Districts****Flathead Irrigation District**

November 24, 1928. Flathead Irrigation Project contract with Flathead Irrigation District.

Pursuant to the following Congressional Acts:

April 23, 1904 (33 Stat. 302) Allotment

May 10, 1926 (44 Stat. 453,464) Irrigation Charges

Jan. 12, 1927 (44 Stat. 934, 945) Irrigation Charges

February 27, 1929. Supplemental Contract.

March 28, 1934. Second Supplemental Contract by and between the United States of America and the Flathead Irrigation District, Montana.

July 13, 1936. Third Supplemental Contract by and between the United States of America and the Flathead Irrigation District, Montana.

April 4, 1950. Amendatory Repayment Contract. Flathead Irrigation District, Flathead Indian Irrigation Project.

**Mission Irrigation District**

April 21, 1931. Original Contract, pursuant to the following Congressional Acts:

April 23, 1904 (33 Stat. 302) Allotment

May 10, 1926 (44 Stat. 453,464) Irrigation Charges

Jan. 12, 1927 (44 Stat. 934, 945) Irrigation Charges

March 7, 1928 (45 Stat. 200, 212) FPC licenses authorized

March 4, 1929 (45 Stat. 1574, 1639-40) Appropriations

**June 2, 1934.** First Supplemental Contract by and between the United States of America and the Mission Irrigation District of Montana

June 6, 1936. Second Supplemental Contract by and between the United States of America and the Mission Irrigation District of Montana

May 16, 1951. Amendatory Repayment Contract. Mission Irrigation District, Flathead Irrigation Project.

**Jocko Irrigation District**



November 13, 1934. Original contract signed, pursuant to the following Congressional Acts as listed in the contract:

- April 23, 1904 (33 Stat. 302) Allotment
- May 10, 1926 (44 Stat. 453,464) Irrigation Charges
- Jan. 12, 1927 (44 Stat. 934, 945) Irrigation Charges
- March 7, 1928 (45 Stat. 200, 212) FPC licenses authorized
- March 4, 1929 (45 Stat. 1574, 1639-40) Appropriations
- May 14, 1930 (46 Stat. 291) Appropriations
- February 14, 1931 (47 stat. 1127) Appropriations
- April 12, 1932 (47 Stat. 101) Appropriations
- February 17, 1933 (47 Stat. 830, 831) Appropriations

Clause No. (32): "Title to all works and rights in connection with said project now existing in the United States shall so remain unless and until otherwise provided by law."

June 5, 1936. Supplemental Contract by and between the United States of America and the Jocko Irrigation District, Montana.

June 4, 1940. Supplemental Contract by and between the United States of America and the Jocko Valley Irrigation District, Montana. Second Supplemental Contract.

April 18, 1950. Amendatory Contract.

August 24, 1967. Amendatory Repayment Contract between the United States of America and the Jocko Valley Irrigation District.

#### Statutory Appropriations for Flathead Irrigation Project

April 30, 1908, 35 Stat. 83. Appropriated \$50,000 for surveys, plans and estimates for irrigating systems.

March 3, 1909, 35 Stat. 795. Funds were appropriated "For construction of irrigation 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...."

April 4, 1910, 36 Stat. 277. Appropriation for construction of irrigation systems on the Flathead reservation.

March 3, 1911, 36 Stat. 1066. Appropriation for construction of irrigation systems.

August 24, 1912, 37 Stat. 526. Appropriation for continuing construction of irrigation systems.

June 30, 1913, PL 4. Appropriation for continuing construction of irrigation systems.

August 1, 1914, 38 Stat. 582, PL 160. Appropriation for construction of irrigation systems, and called for a report to Congress showing the status of water rights for the Flathead, Blackfeet and Fort Peck irrigation projects. See chronology test for more detail on report.

May 18, 1916, 39 Stat. 123. Appropriations for continuing construction of the irrigation systems on the Flathead Reservation. The work to be done with the funds would be done by the Reclamation Service on plans and estimates approved by the Commissioner of Indian Affairs. **“Provided further that the rights of the United States heretofore acquired, to water for Indian lands...shall be in full force and effect until the Indian title to such land is extinguished.”** The act also amended section 9 and added the repayment system for the irrigation project, authorizing the Secretary of the Interior to announce the charge for construction “which shall be made against each acre of land irrigable by the systems” on the Flathead Reservation. The charges were to be made “in the proportion of the total construction cost which each acre of such land bears to the whole area of irrigable land thereunder.” Those with allotted lands were not exempt from making payments.

May 10, 1926, 44 Stat. 453,464. Funds were appropriated for the Flathead Project and Pablo Feed Canal enlargement, Moiese Canal enlargement, the South Side Jocko Canal, the Hubbart Feed Canal and the Camas A Canal. This act called for a **repayment contract**, “in form approved by the Secretary of the Interior, **shall have been properly executed by a district or districts organized under state law embracing the lands irrigable under the project**, except trust patent Indian lands, which contract, among other things, shall require payment of all construction costs hereto fore or hereafter incurred on behalf of construction costs heretofore or hereafter incurred on behalf of such lands....”

January 12, 1927, 44 Stat. 934, 945. Funds were appropriated for the South Side Jocko Canal, Pablo Feed Canal enlargement, Moiese Canal enlargement, Hubbart Feed Canal and the Camas A Canal.

March 7, 1928, 45 Stat. 200, 212. O & M funds were appropriated for construction of laterals near Ronan.

March 4, 1929. 45 Stat. 1623, 1639 and 45 Stat. 1562. Money was added for completion of the Dry Creek Canal, lateral extensions and replacement of wooden structures in the Mission Valley, part enlargement of Taber Reservoir and part construction of Kickinghorse Reservoir.

May 14, 1930, 46 Stat. 279, 291. Continuation of the betterment of Camas A, complete the construction on Kickinghorse Reservoir, Nine Pipe Feed Canal structure, completion of Nine Pipe Reservoir, Twin Reservoir, lateral systems and surveys.

February 14, 1931, 46 Stat. 1115, 1127. Continuation of the betterment of Camas A, beginning construction of Lower Crow Reservoir, beginning Pablo Reservoir enlargement, lateral systems, miscellaneous surveys. The date set for collecting construction charges was 1935.

March 4, 1931, 46 Stat. 1552. Additional amount for construction or purchase of a power distribution system for use of the Flathead Irrigation Project.

April 22, 1932, 47 Stat. 91, 101. Continuation of betterment of Camas, completing construction of Lower Crow Reservoir, continuing Pablo Reservoir enlargement and lateral system betterment.

**February 17, 1933.** Appropriations for O&M of Flathead Irrigation System.

May 9, 1935. 49 Stat. 176. Appropriations for O&M of irrigation systems on Flathead Indian Reservation plus requirements regarding repayment contracts. This changed the date for collection of construction charges to 1938.

May 25, 1948, 62 Stat. 269. Adjustment of irrigation charges. The Tribes were paid "on account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project...and for a permanent easement to the United States...for continuation of any and all of the foregoing uses...upon the tribal lands now used or reserved for the foregoing purposes."

**CHECK: August 1, 1953, 67 Stat. B132 Concurrent Resolution. Declaring that some tribes, including the Flathead, "should be freed from Federal supervision and control" and BIA offices abolished. LEGISLATIVE history? Who did this – was it by request of the Tribes?**

## APPENDIX IV

### Aboriginal Areas/Fishing Areas/Settlements and Cultivated Areas

If we were going to examine aboriginal territory in detail, we would have to go directly to many of the primary sources used in the following reports, however for our purposes, the Garland report is adequate as a secondary source. This collection of reports was compiled from the Indian Claims Commission, Docket No. 61. The report includes very detailed research of respected anthropologists and historians regarding the aboriginal territories of the Kalispel and other Flathead tribes. (Horr, David Agee, Ed. "Interior Salish and Eastern Washington Indians III." Garland American Indian Ethnohistory, Indians of the Northwest Series. New York: Garland Publishing, Inc., 1974)

The book contains some clarifying definitions of early common landmarks. Hell Gate River is now called the Clark Fork of the Columbia. It has been known as Hell Gate River down to the mouth of the Big Blackfoot River, the Missoula down to the mouth of the Flathead, and then the Clark fork. Along the Clark Fork were Horse Plains, Camas Plains/Prairie and the Jocko Valley. The Tobacco Plains area is often referred to and is a valley following the Kootenai River. The Bitter Root (it was commonly spelled this way at the time) River and Valley was known as the St. Marys River and Valley. Hell Gate Canyon is east of Missoula and Hell Gate Pass is on the Continental Divide at the head of the Little Blackfoot River. (30-34)

Those party to the July 16, 1855 Hell Gate Treaty included the Flatheads of Bitter Root Valley, the Upper Pend d'Oreille (or upper Kalispel) in Horse Plains, Camas Prairie and near the lower end of Flathead Lake, and the Kootenais at the northern end of Flathead lake and to the northwest.

#### Kalispel/Upper and Lower Pend d'Oreille

One of the respected anthropological sources used in the Garland Report is H.H. Turney-High. Quoting Turney-High in "The Flathead Indians of Montana," American Anthropological Association, No. 48, 1937, 11-12, the Garland Report states that the first of the tribes to occupy the area was the **Upper Pend d'Oreille (Kalispel)** "which tribe was in the Bitter Root (sic) Valley when the Flathead first migrated to this area from the west." Although the report does not specify when, Turney-High explains that **the Upper Pend d'Oreille allowed the Flathead to come into the Bitter Root country and that the Bitter Root Valley "became the traditional home in the minds of many Flatheads....the Pend d'Oreille and Flathead lived peacefully together for centuries."** (Garland Report , 43-44) Whether the Flathead tribes accept this analysis is not known.)

There were three divisions of the **Kalispel** tribe, according to Teit, James A. "The Salishan Tribes of the Western Plateaus," Fourteenth Annual Report of the Bureau of American Ethnology, Washington, 1930, 295-396. One, the Lower Kalispel, was west of the Pend d'Oreille River in Idaho. The Chewelah were in the upper part of the Colville Valley in Washington, and the **Upper Kalispel were in Idaho and in Montana as far as Plains.** (Garland Report, III, 174-175)

The Jesuit missionary, Father DeSmet, came in contact with the **Kalispel along the Clark Fork River in Montana and Idaho** in 1841 and in 1842 he noted that they were living 30-40 miles above the mouth of the Clark or Flathead River. (Garland Report, III, 182)

As will be seen when discussing the fishing and farming areas of the Flathead, frequent reference is made to their occupation of the Bitterroot Valley. There is a great deal more anthropological information and early written documentation regarding the whereabouts of the different tribes during the early days of white exploration. That information would require a separate report.

### Fishing Areas

Washington Governor and Superintendent of Indian Affairs, Isaac Stevens negotiated a number of treaties in Washington state, a treaty with the Yakama Tribe, and treaties with the Flathead Nation and the Blackfoot Nation among others. Stevens acted as a representative of the federal Indian Affairs office, with the goal of settling the Indians and of clearing a path for a transcontinental railroad. Known generally as the "Stevens' treaties," much of the treaty language has been interpreted in a variety of court cases challenging fishing, hunting and other aboriginal rights across Oregon, Washington, Idaho and Montana. The treaties also included language indicating the tribes would be assisted in developing agriculture on the reservations.

The July 16, 1855 **treaty with the Flathead Indians** was recorded in an Official Proceedings document, which includes some of the intent Governor Stevens had in his dealings with the Tribes. In talking to the Flathead group about relocating to the Jocko Reservation, Governor Stevens reiterated more than once to the delegation, "You have the right however to pasture your animals at other places if those places are not occupied by the whites. You have in like manner the right to gather roots and berries, to take fish and kill game." (Governor Isaac Stevens, Official Proceedings at the Council held with the Flathead, Kootenay and Upper Pend d'Oreille Indians, July 7<sup>th</sup>-July 16<sup>th</sup>, 1855, p. 5, 8, 35, emphasis mine.)

The treaty itself includes language relevant to the aboriginal fishing rights of the tribes. Article III of the states, "**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 III also provided that "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.....**" Article V provided that the United States would build an **agricultural and industrial school** on the reservation. (July 16, 1855, 12 Stat. 975, 976)

The Yakima Treaty of Camp Stevens, negotiated the month prior to the Flathead Treaty in 1855, includes the same language in Article III: "**The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.**" The Yakima treaty has the

same provisions as the Flathead Treaty regarding funding for farming, and for an agricultural/industrial school. (June 9, 1955, 12 Stat. 951)

The Yakama Nation has been involved in controversial litigation regarding the adjudication of water in the water short Yakima Basin, impacting the federal irrigation project, and tribal instream flows. The 1855 Yakama Treaty has played an important role in this string of litigation. The Acquavella water rights case began in 1977 and continued for 24 years in the Yakima Superior Court system. (See Appendix 1 for case citations) Parties to the case included the Yakima Basin irrigation districts, the State of Washington Department of Ecology, the federal government and the Yakama Nation. As part of the case, in June 2001 an agreement was reached between the Kennewick district and the other parties that would recognize the district's water right permits. As part of the agreement, the Kennewick district will give up about 6,600 acre feet of water which will stay in the Yakima River to fulfill Yakama Nation treaty rights and for the federal irrigation program. (Tri-City Herald, June 6, 2001) We have these cases in our files.

Another example of the similarity of language used by Stevens, is in Article V of the **Treaty of Point Elliott**, negotiated in Washington Territory with the Duwamish, Suquamish, and many other Indians living in the Puget Sound region. **"The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands.** Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens." (January 22, 1855, 12 Stat. 927) The ramifications of the Steven's treaty language were powerful, when in the 1970s and 1980s the courts ruled that the Tribes should have the right to one-half the harvestable fish. The district court established the locations of the Tribes' "usual and accustomed" fishing grounds and ruled that the Tribes' treaty rights entitled them to take up to 50% of the harvestable fish from those grounds. (*United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) (Washington I), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976)) The district court's ruling met substantial resistance from the State and spawned numerous other lawsuits that ultimately reached the U.S. Supreme Court, where the district court's interpretation of the Treaties was affirmed.

Although fishing may not have provided the same food supply for the Flathead as it did for the Yakama and the Puget Sound tribes, it is frequently mentioned in early anthropological sources as a supplement to their diets. This collection from 1854 notes: "From the time of their traditional migration from the west until their final settlement on the Flathead Reservation in 1891, the true home of the Flathead tribe was the Bitterroot Valley....**Fish were plentiful in the streams....By hunting, fishing, and collecting the primitive Flathead gained ample subsistence in their valley home in pre-horse days....In spring and summer the Flathead resided in the Bitterroot Valley, subsisting primarily on roots...berries, small game, and fish.**" It is estimated that the Flathead Indians first saw horses somewhere between 1600 and 1750, probably in possession of Shoshones. (Ewers, John C. *Gustavus Sohon's Portraits of Flathead and Pend d'Oreille Indians, 1854*, Washington: Smithsonian Misc. Collections, Vol. 110, No. 7, 1948, 13-14; and Garland Report II, 44)

Elsewhere in the Garland report it is stated that fishing, although providing a supplemental diet for the Flathead in early times, **“was limited to an emergency source of food in times of scarcity.”** (Garland Report II, Chalfant, Stuart A., Aboriginal Territories, 1974, 79)

A quote from Hugh Biggar expresses a different view and also points out a possible difference between the Flathead Tribes and the Plains Tribes, **“Unlike the Plains tribes, the Indians of Lower Flathead Valley depended to a considerable extent upon fish for food.** Trout, whitefish, squaw-fish, suckers, and several unidentified species were caught in most of the local streams. Salmon were probably the most important food fish but as only a few of these ran in the streams draining westward out of Flathead Lake, the Indians were forced to travel across the Cabinet Mountains for their supply of these fish.” (Biggar, Hugh J. “The Development of the Lower Flathead Valley,” Thesis Master of Arts, Montana State University, 1951, 33)

In discussion of the Flathead community, John Fahey writes that early life was mobile **“due to its seasonal migrations to hunt, gather, dig, and fish.”** He mentions the Tribe fishing for salmon with the Nez Perces, Colvilles, or Spokanes and the Nez Perce and Pend d’Oreilles visiting in areas near Potomac, Darby, Lake Como and Rock Creek to dig camus roots. (Fahey, John. The Flathead Indians. Norman: University of Oklahoma Press, 1974, 12)

Carling Malouf in his study “Economy and Land Use by the Indians of Western Montana,” discusses early Flathead movements, noting that the center of their social and economic life was in the Bitterroot Valley. **He mentions locations where fishing took place, such as Missoula, which was known as Isai (Bull Trout) and Bonnor. Fishing near Silver Bow west of Butte was done with bows and arrows. Up near present day Glacier Park, Arlee was a hunting and fishing center before it was part of the Reservation.** (Garland Report II, Malouf, Carling, Economy and Land Use by the Indians of Western Montana, 1974, 154-157)

An 1849 report of U.S. Indian Agent Joseph Lane for Oregon Territory (which at the time included Stevens treaty lands), is quoted as stating, **“The Calespelin (sic) Indians are in two bands, and occupy a large portion of country, commencing below the Salish tribe and extending to near Fort Colville and northeast among the lakes... One of these bands have small spots of good land, where they raise peas, potatoes, etc., and live on fish, game, roots, etc.”** (Garland Report, III, 70)

Quoted from George Suckley, surgeon and member of the Stevens 1855 expedition, a **description of a fish weir used by the Kalispel Indians on the Clark Fork** near its mouth on Lake Pend d’Oreille. **“This was a major fishing site,”** he wrote. **“At that time the Kalispel were still using the old method of cooking fish in watertight baskets, using heated stones to boil the water. Fishing was the principle means of subsistence during the summer months. Fish were taken by weirs and fish traps, hook and line, and by spearing.”** (Garland Report, III, 187)

And more on **Kalispel fishing, “Fishing seems to have been of greater importance to Kalispel subsistence economy in pre-horse times,** but it persisted as a supplementary activity up through the last century. The Kalispel were canoe people, and made extensive use of bark canoes for travel, transporting trade goods and for fishing.” (Garland Report, III, 223) The report does note that no salmon could get past Kettle Falls on the Columbia River and that some groups went to fish at Kettle Falls. (Id., 218)

Another source points out, "**Fishing was of much less importance to the Flathead tribes than hunting**, with the exception possibly of the Spokane. Several kinds of small fish were plentiful in the rivers, creeks, and lakes. No doubt in early times, when the people were more sedentary, fishing was engaged in to a considerable extent by certain bands of the Kalispel and Pend d'Oreilles, especially by the people living around Flathead Lake." The authors state, "No salmon were found in the countries of the Pend d'Oreilles, Semte'use, and Flathead, and in only one small piece of the territory of the Kalispel." (Teit, James and Franz Boas. Coeur D'Alene, Flathead and Okanogan Indians. Fairfield, Washington: Ye Galleon Press, 1927, 312, 313)

Paul C. Phillips in his portion of the Garland Report, "History of the CSKT of the Flathead Reservation, Montana, in the Garfield Report, III, pointed out that Lewis and Clark mentioned the **Flathead** depending on game such as deer, beaver and small animals and **fish**. (Garland Report, III, 252)

Later, Phillips states, "**It was not until after the great Flathead Irrigation Project was started that the right of the Pend d'Oreilles to hunt and fish in the streams of their ancient heritage was seriously disputed.**" He does not elaborate on this statement. (Garland Report, III, 301. Phillips was a history professor at University of Montana, Missoula.)

#### Early Settlements/Cultivation

Turney-High in Ethnography of the Kutenai. American Anthropological Association. No. 56, 1941, describes the **Flathead houses** as being "long-mat covered communal" lodges and states that Lewis and Clark found this type of dwelling. He also states that, "This obviously was the house form of a somewhat **settled Plateau people largely dependent on local plant and animal food**, whose migratory nature increased with the coming of the horse...." (Garland Report, III, 97-98) The Kootenai were also said to have large long houses that could house 40-50 people. (Id., 38)

The Garland Reports states, "Frequent references to the houses of the **Pend d'Oreille Indians**, and to their **cultivated crops and livestock** are found in the official and historical publications." (Garland Report , 38)

A reference to farming comes from a description of St. Mary's village by Father William N. Bischoff, SJ, an Jesuit priest writing of Father DeSmet and the tribes in 1846. "**Two large rivers brought water for irrigating the fields, gardens and orchards**. At the time of writing there were forty head of cattle, a fast-increasing herd of hogs, and a large flock of domestic fowl. Besides the mill, there were a dozen frame houses of similar construction. From this you can form some notion of the temporal blessings enjoyed by the Flatheads of St. Mary's village." (Garland Report, III, 42)

The 1855 report of the Secretary of War noted of the **Flathead village at Fort Owen** (near present-day Stevensville): "**They cultivate wheat, potatoes, and other vegetables**, and depend upon the chase for meat. They reside chiefly at Fort Owen in comfortable log cabins." (Garland Report, III, 43)



Peter Ronan, *History of the Flathead Indians, Their Wars and Hunts, 1813-1890* (1890, Minneapolis: Ross & Haines, 1965).

William Bryan, Jr., *Montana's Indians* (2nd ed., Helena, Montana: American and World Geographic Publishing, 1996).

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**APPENDIX V**  
**Kerr Dam**

- 1926 Federal funds were appropriated for the construction of Kerr Dam. (44 Stat. 464, May 10, 1926)
- 1928 Federal Energy Regulatory Commission (FERC) licenses were authorized. (45 Stat. 200, 212, March 7, 1928)
- 1929 Construction began on Kerr Dam by Rocky Mountain Power.
- 1936 The original agreement between the Federal Power Commission and the CS&KT was amended to call for installation of two generating units.
- 1938 Kerr Dam was completed by Montana Power Company and began operation.
- 1951 The MPC applied to develop a third generating unit. The Tribes objected unless additional compensation was made to them. In 1958 the FPC ordered a hearing and in 1959 the Tribes were awarded an additional \$50,000 annually. (22 FPC 502, September 18, 1959)
- 1960 A Department of the Interior committee recommended higher additional rental for the dam than that recommended by the Federal Power Commission (FPC). The FPC adopted the approach of the Interior committee and in January 1962, the U.S. Court of Appeals for the District of Columbia affirmed the FPC actions. (MPC v. FPC, 298 F2d 335(1962)) In 1965, the FPC ordered a hearing on the readjustment of rentals for the Kerr Dam site. In 1967, the FPC issued an opinion and order regarding the adjustment of annual charges. They determined that the Tribes contributed 42.13% of the resources involved in the development of the dam. (FPC Fact Finding, No. 26, October 4, 1967) The Tribes were credited with owning the land under ½ the Flathead Lake, but not the water in the lake. (Id.)
- 1980s Kerr Dam was operated on an annually renewed license until in the mid 1980s, a new contract was agreed on which awarded the Tribes \$9 million annually for rental.
- 1999 In 1999, Kerr Dam was purchased from Montana Power Company by Pennsylvania Power and Light. The dam license will still be turned over the CSK&T in 2015. The dam controls the top 10 feet of Flathead Lake per a 1965 agreement that includes a schedule for raising and lowering the lake. (Daily Inter Lake, Kalispell, 12/28/99 and 11/13/98)
- What is this recent lawsuit for environmental damage caused by the dam – supposedly a settlement was reached by the Tribes, MPC, PPI Montana, Trout Unlimited and the U.S. Dept. of the Interior.
- 2015 The CS&KT will assume ownership and management of the Kerr Dam license.