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William F. Arnold  
*The University of Montana*

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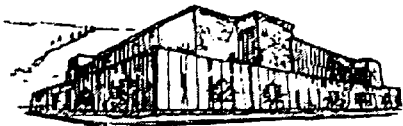
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# As Long As Water Falls:

**An Ethnohistorical Study in the Socioeconomic  
Underdevelopment and Cultural Identity  
of the Confederated Salish and Kootenai Tribes;  
Using the Events Leading up to and Surrounding the  
Construction and Future Control of the Kerr Dam.**

By

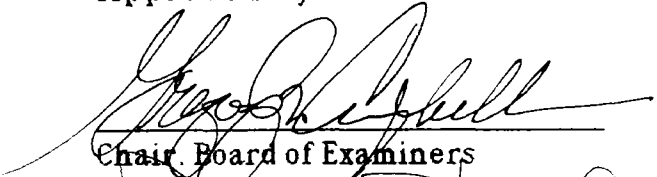
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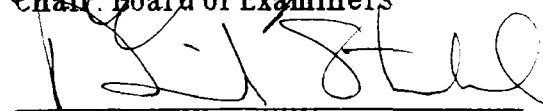
Presented in partial fulfillment of the requirements  
for the degree of  
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The University of Montana

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As Long As Water Falls: An Ethnohistorical Study in the Socioeconomic Underdevelopment and Cultural Identity of the Confederated Salish and Kootenai Tribes; Using the Events Leading up to and Surrounding the Construction and Future Control of the Kerr Dam.

Chairman: Gregory R. Campbell 

Other than the great timber stands of the Menominees and the Klamaths, and the rich oil fields of the Osages, the Place of the Falling Waters on the Flathead River just below Flathead Lake in western Montana, represented the most desirable and potentially profitable resource left to the American Indians by the white man, on tribal lands, after the establishment of the reservation system in the nineteenth century. The white man's desire to own, exploit, and profit from these falls, and their potential hydroelectric energy, the last of the lucrative resources left to his Indian brothers, created the perfect setting to play out one of the biggest and baddest chapters in the story of socioeconomic underdevelopment, and forced indigenous enculturation, through colonialism and capitalism, in our nation's history.

The stories of the domination of Indian peoples by Europeans certainly contains common themes which are not unfamiliar to those with even a modest awareness of history. This particular story is no exception in this regard. However, its script does contain rather unique characters and surprises in the plot. On the one hand, it epitomizes the imperialistic methods for conquering America's indigenous peoples. On the other hand, it represents a success story in the perseverance of collective cultural identity, socioeconomic independence, sovereignty, and self-determination.

The history of the Confederated Salish and Kootenai Tribes involves enculturation through missionaries, boarding schools, domestication, capitalist economics, the establishment of a reservation, the allotment of lands, the selling of surplus reservation lands, and later, white settlement of the reservation; all permitted by a paternalistic government, self-appointed as financial trustee and political guardian over its unwilling wards. Conversely, it has happened on a picturesque reservation, in an isolated region, rich in natural resources, the battle over which involved corrupt government officials, a transnational corporation, a power monopoly, locally solicited competition threatening that monopoly, support from national Indian lobbyists, dissent from local interest groups; and an Indian nation, vanquished, but growing in political awareness and sophistication. For its commonality, as well as its eccentricity, it is a story worthy of recognition.

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This is a portion of a speech given by Frank M. Kerr, president of the Rocky Mountain and Montana Power Companies, following his adoption into the Confederated Tribes, May 31, 1930, after the license to develop the Flathead power site was granted to the Rocky Mountain Power Company. The Tribes gave Mr. Kerr the Salish name A-Kult-Muc-Quait, meaning "Light" (White Man 1930; Kerr Adopted 1984).

It is a great pleasure for me to meet you and your people today here in your home land, at this place of falling water, where water has fallen idly for ages, the gift of the great Creator.

It is only yesterday, as time goes, that our progress has made it possible to put this falling water to work for your people and my people.

It has been my pleasure to represent my people at Washington, and I think more than some will admit, your people also.

It has been decided that my people make this great development of your property; make use of this idle water for you and all who may be able to use its power.

If it shall fall upon me to carry on this work, I ask that you send your young men to help, that you come and set up your tepees and visit us when you can, and watch the great work grow.

There have been differences of opinion as to who should do this work. I trust now all will join to make it a great success.

It has been said that others would bring industries to the site. I think that no one is better able than we, to do this desirable thing for all concerned.

I want to thank you and your people for all your kindness. I hope the work will be successful and bring to your people many comforts *as long as water falls* (Frank M. Kerr).

We thank Mr. Kerr for the work he has done for us and for the white people. We know he has worked hard for us. Today we thank Mr. Kerr and we shake hands with him. I am glad that Washington has approved. I am glad that so much work is to be done for my people. I give him many congratulations that he has won, and all his people I congratulate. I hope he makes a success of it for my people and for the whites, who are all my friends (Chief Charlo).

The Kootenai people want to shake hands with Mr. Kerr. We know him and we like him. We thank you Mr. Kerr for what you have done for our people and we want you to be one of us. We like you and want to adopt you into our tribe (Chief Koostatah)

The softest thing in the universe  
Overcomes the hardest thing in the universe.  
That without substance can enter where there is no room.  
Hence there is value to non-action.  
Teaching without words and working without doing  
Are understood by very few.

The highest good is like water.  
Water gives life to the ten thousand things and it does not strive.  
It flows in places men reject and so is like the Tao.

Under heaven nothing is more soft and yielding than water.

Yet for attacking the solid and strong, nothing is better;  
It has no equal.

The weak can overcome the strong;  
The supple can overcome the stiff.

Under heaven everyone knows this,  
Yet no one puts it into practice.

Therefore the sage says:

He who takes upon himself the humiliation of the people  
Is fit to rule them.

He who takes upon himself the country's disasters  
Deserves to be king of the universe.

The truth often sounds paradoxical.

A man is born gentle and weak.

At his death he is hard and stiff.

Green plants are tender and filled with sap.

At their death they are withered and dry.

Therefore the stiff and unbending is the disciple of death.

The gentle and yielding is the disciple of life

Thus an army without flexibility never wins a battle.

A tree that is unbending is easily broken.

The hard and strong will fall.

The soft and weak will overcome.

**-The Tao Te Ching  
chapters 43, 8, 78, & 76**

# Chapter 1

## **The Theory of Underdevelopment, the Method of Ethnohistory, and Their Application in this Thesis**

*The Flathead Indians have been involved for several centuries in a process of political evolution. Change precipitated by outside forces has been a constant in their lives, from the time they governed themselves on the Plateaus of the Continental Divide to the last quarter of the twentieth century when they have struggled against the pressures of external governments and corporations. Native American life generally, of course has been a story of attempted recovery from savage assaults of various kinds, and in this respect the Indians of the Flathead reservation are typical. What is distinguishing in their lives is an openness to change -- a native disposition to borrow and adapt -- marked by progressive admixture and assimilation. As a result, the contemporary politics of the Flathead reservation are based upon values and expressed in words which are the common currency of any progressive American government. Fighting few rear guard actions against traditionalists from within, Flathead government has made significant progress toward achieving political sophistication and administrative competence (Lopach 1990).*

\* \* \* \* \*

### **Preliminary Theoretical Tenets**

Prior to the decision to pursue the specific issues pertaining to this project, two theoretical and methodological principles were first brought to the table. They were not specific to this topic. Rather, they served as cornerstones in the foundation of any approach that would have been employed, independent of the subject matter.

Because, as it is generally known, that history is written by the conquerors, and further, that any thorough study of a conquered people is

therefore incomplete without an accurate portrayal of their own view of themselves and their own history, or more specifically, their *cultural identity*; a degree of interpretive skill is required of the scholar in these post-modern times to properly tease or coax the "truth" out from behind its politically, economically, historically, socially, and culturally contextualized veils. As a result, social scientists have been trying to incorporate as many different ways of "knowing" into their research as did the people he or she is attempting to interpret; while the subjects of the inquiry were engaged in the perpetual process of identifying themselves.

In recent decades, most approaches to ethnographic portrayals of people have been opened to not only acknowledge, but also to employ, these culturally different ways of "knowing." grounded theory is an approach which has, in a sense, reversed the traditionally Western "hard" scientific approach of developing and testing a hypothesis, and thereby introducing a theory. In order to avoid a logical fallacy which sometimes occurs when a hypothesis renders *itself* testable, and causing, as a result, the scientist to find what he was looking for, grounded theory allows for, and encourages, "emergence and discovery." In other words, applying a grounded theory allows the data to influence, and subsequently alter, the original theory, as the data continues to be born out of the research (Strauss 1998).

Additionally, if the scholar's need to uncover information obscured

through the historical domination of one people by another, due to the fallacies of traditional scientific method, or through the loss of cultural identity from forced ethnocentric enculturation, then the researcher may feel the need to provide a voice for the people; whose plight may be obscured by the same cultural forces which created it. Consequently, those ethnographic portrayals which are both interpretive and advocative, or "hermeneutic and emancipatory," emphasizing persuasion, political purpose, and advocacy of agency, fall under the umbrella of what has come to be called "critical ethnography" (Thomas 1993).

So with these two basic theoretical and methodological tenets in mind, grounded theory and critical ethnography, I began to research the history and the identity of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation of Western Montana. I found that the domination and exploitation they endured was exemplified by, and encapsulated in, the construction of a mammoth dam and hydroelectric generating plant on their reservation; and the resulting reemergence of their cultural identity, through the practice of their traditional tribal ways reinterpreted through the modern political ways and means of their hegemonic aggressors, represented the cultural and political sophistication for which they were respected in the days prior to their domination.

What has transpired on the Flathead reservation has been unique in

some respects, as indicated in the opening quotation. These will be presented as the work progress. However, some of the aspects of the Flathead Indians' history is quite similar to, and has followed certain formulas of, the histories of many peoples who have been the victims of the sociopolitical, socioeconomic, and sociocultural domination, enculturation, and exploitation, which has followed the spread of colonialism for the past five hundred years. For this reason, the concepts surrounding economic development, and socioeconomic underdevelopment, will serve as the theoretical basis for this thesis.

### **Development and Underdevelopment**

Cultural anthropologists have been studying the results of the so-called "development" which accompanies much of the pursuits of the modern and post-modern, or colonialist and post-colonialist, industrialist, mercantilist, capitalist world; because much to do with the practice of subsuming or subjugating another people under the guise of freeing, liberating, or civilizing them, is "couched" within the language of economic development. That is to say, economic development is the supposed goal of those who promote it, and use it to explain why others are not developed, while simultaneously using both of these notions to justify the paternalism associated with forcing it onto others who do not have it, and may not want it or even need it.

The dictionary of anthropology will provide a clear definition of economic development to begin this discussion.

Development refers to a process of change through which an increasing proportion of a nation's citizens are able to enjoy a higher material standard of living, healthier and longer lives, more education, and greater control and choice over how they live. Development is generally believed to rest on rising levels of labor productivity, which can be achieved through the application of science, technology, and more efficient forms of economic and managerial organization. Virtually all government leaders profess commitment to promoting development understood in this way. Leaders, policy makers, and academics disagree, however, about the relative importance of technical, economic, and political barriers to development and hence about priorities in achieving it. (Hoben 1997)

This serves as an adequate definition except for the last sentence which is somewhat incomplete. Academics not only disagree with the priorities in achieving economic development, they also question how it is created, as well as the methods through which it is sustained. This is based on the simple fact that, according to their own criteria, the proponents of economic development's plans and practices ought to be improving the lives of those who come in contact with it, when in reality their lives are deteriorating. In other words, while policy makers, and the industrialists who back them up, are promoting the benefits of development, academics have been pondering why there is so much socioeconomic inequality in the world; Why it is increasing; and why we have not been able to completely or even partially reverse or redirect this phenomenon (Hobart 1993).

To begin answering these questions it is critical for the reader to

realize that economic development, and its by-product socioeconomic underdevelopment, as well as any promotion, explanation, or justification of it, have traditionally stemmed from a fundamentally biased, eurocentric cultural perspective; and therefore, are inextricably intertwined with capitalism and colonialism. In other words, if the same people who voluntarily left their home lands to "colonize" others, that is, to impose, with brute force if necessary, their politics, economics, and religion onto others, are also the same people who created the ways and means of the socioeconomic inequality which now exists in these colonized societies, and are furthermore the same people who have been explaining and justifying all of this to the world, then it is clearly necessary for academics to study and to voice the pre-contact histories of these non-european colonized people. For if the same system which put them down, has also, willingly or unwillingly, kept them down, then by definition, their voice would not reach beyond the social and political boundaries and parameters established by their colonial conquerors; nor would such information be volunteered by these imperialistic aggressors.

As a result, scholars began, in the 1960's, to develop various theories as to why and how this socioeconomic inequality is created and perpetuated. Theories such as core-periphery, metropole-satellite, dependent development, and uneven development began to emerge. At first, some of



the results, however, were rather short sighted. In their first attempts to uncover the interrelatedness between development and underdevelopment, scholars did not think entirely globally or holistically. They did not initially realize how the colonialism of the past as well as the present contributes to underdevelopment. Moreover, they viewed underdeveloped peoples in the same social, cultural, historical, economic and political context as developed peoples (Chew 1996). This was, as I have said, short sighted. However, while it may have been somewhat less valid, it was no less critical to the process of discovery.

Underdevelopment, or at the very least, non-development, was not disputed. Inequality does after all, exist, and is increasing. However, the debate at the time, and one whose echoes can still be heard today, was between those who believed that post-colonial economic development, through the mechanisms of industrial capitalism, was in fact the direct cause of underdevelopment, and those who felt that underdevelopment was merely a by-product of honest and progressive development efforts. It became apparent, though, that arguments for the latter had to be presented in culturally evolutionary contexts. In other words, for the argument that underdevelopment was simply something which coexisted with development, not the direct result of development, to carry any weight, it had to be considered given that cultures progress in the same way, and

according to the same formulas. Therefore, underdeveloped people were not there *because* of developed people, they were simply behind or retarded in their progress; and this not only explained but justified the paternalistic role in which the colonizers invariably found themselves.

However, if the process of colonialization not only subsumed the politics and economics, but the culture and history of the colonized peoples as well, then it would be inaccurate to automatically assume that their past, or more accurately, their view of their past, would by necessity have to reflect that of their colonizers. Moreover, if the proponents of this view were from colonizing nations themselves, and they had not examined the past or the present from the perspective of those colonized, then they would have no way of determining its validity. This is why it was critical for these scholars to make the mistake of assuming that the past histories of the colonizers and the colonized were operating according to the same formulas. Otherwise we would not know that the process of colonization itself seems to promote this by its very nature.

Scholars had another issue to contend with as well. Einstein was famous for positing the notion that one cannot employ or incorporate the cause of a problem in any attempt to find a cure for the problem. However, the attempts at finding a cure for underdevelopment, were in fact employing more and more developmental strategy; yet underdevelopment persisted.

And those who decided what or who was developed or underdeveloped in the first place, also came from the developers. As a result, again, scholars were led to the conclusion that so-called development itself just might be the cause, and not the cure, of underdevelopment (Hobart 1993).

One early proponent of this theory, Andre Gunder Frank, was suggesting precisely this in the 1960's when he stated:

Since the historical experience of the colonial and underdeveloped countries has demonstrably been quite different, available theory therefore fails to reflect the past of the underdeveloped part of the world entirely, and reflects the past of the world as a whole only in part. More important, our ignorance of the underdeveloped countries' history leads us to assume that their past and indeed their present resembles earlier stages of the history of the now developed countries. Consequently, most of our theory fails to explain the structure and development of the capitalist system as a whole and to account for its simultaneous generation of underdevelopment in some of its parts and of economic development in others.

It is generally held that economic development occurs in a succession of capitalist stages and that today's underdeveloped countries are still in a stage, sometimes depicted as an original stage, of history through which the now developed countries passed long ago. Yet even a modest acquaintance with history shows that underdevelopment is not original or traditional and that neither the past nor the present of the underdeveloped countries resembles in any important respect the past of the now developed countries. The now developed countries were never *underdeveloped*, though they may have been *undeveloped* (Frank 1966).

The "modest acquaintance with history" to which Frank was referring, also demonstrated to him that, as we have seen, it is the developed countries which determine what, and who, is, could, or should be developed or underdeveloped. And it was in and through these determinations that developed nations thought of themselves as developed; and furthermore, that developed nations were, by definition, advanced and progressive.

However, the above passage ought to indicate the logical fallacy, circular thinking, or even historical impossibility of such an assertion. Moreover, thinking in terms of such self-appointed paternalism creates thought patterns, and thereby, cultural contexts, wherein developed countries think that underdeveloped countries can only be understood in terms of the developed countries' "characteristics or structures. Yet history demonstrates that underdeveloped countries are as much, if not more so, the products of the social, cultural, historical, political, and economic "characteristics and structures" of developed countries. Consequently, these underdeveloped countries are an integral, if not necessary, part the development of the developed, or developing, countries.

In other words, the efforts, and the methods, of developed countries sustain their development for themselves, inasmuch as they create underdevelopment for others. Those who are underdeveloped, conversely, both create the development of the developers, and sustain their own underdevelopment by incorporating the histories and customs of their imperialist aggressors. The reality that development and underdevelopment can, and do create a sort of mutual, self-creating, self-perpetuating, feed-back loop between themselves, even though one is benifitting at the expense of the other, caused Frank to make the distinction in his later writings between what he called the "development of underdevelopment,

and the "underdevelopment of development" (Frank 1990).

For the purposes of this thesis I will use the term *socioeconomic underdevelopment* to describe the reality of, and the process by which, developed peoples, willingly or unwillingly, but by definition, create underdeveloped peoples, to establish the ways of the developers as standard, by, and through, defining the ways of those underdeveloped as sub-standard; and I add the prefix "socio-" to indicate the mutual dependence of economics and politics with culture and cultural identity as a necessary condition of this process.

### **Socioeconomic Underdevelopment in the Americas**

Most Westerners, especially Americans, through terms like second and third world, have come to think of backward or underdeveloped peoples as automatically residing in some foreign or exotic land, on the other side of the globe. However, the fact has been inescapable that even in the United States, the most powerful industrial nation in the world, where 6 percent of the world's people consume over 40 percent of the world's resources, an exponentially increasing number of its own citizens are, and have been socioeconomically underdeveloped and underprivileged. Traditionally, these people have always been, and continue to be, the American Indians. It is through studying the results of development plans that American

anthropologists, with the help of the efforts of thinkers like Frank, and through the theoretical tenets of dependency theory, evolution, and Marxist anthropology, "began to argue that capitalism and western development initiatives were the cause, and not the cure, of underdevelopment" (Hoben 1997). Underdevelopment is therefore seen as the way in which already marginalized portions of our indigenous population are systematically kept in a state of perpetual colonialism.

Those who are underdeveloped in the Americas are made subordinate in a system not of their choosing by a method not too difficult to trace. Usually the seat of power is located somewhere else, if not almost completely inaccessible and obscured from view, or even contact. Initially, it almost invariably involves the imposition of Christianity, in the form of missionaries, who require regular church attendance. Thus, ushering in the end of nomadic lifestyles and the beginning of sedentary ones, sustainable through agriculture and the domestication of animals. Later, through the mechanisms of capitalism, those underdeveloped are forced from a relatively egalitarian system onto a cash economy, promoting isolated and individual success, and subsequently denied the means to earn the necessary cash, or even an infrastructure within which to spend it (Cernea 1991; Horowitz & Painter 1986).

At this point in the "civilization of the savages" through these Western

development initiatives, it can safely be said that they have been underdeveloped. As Hobart states:

What is singularly absent in most public discussion of development are the ways in which the knowledges of the peoples being developed are ignored or treated as mere obstacles to rational progress. In order for them to be able to progress, these peoples have to be constituted as 'underdeveloped' and ignorant. Conversely, without such underdevelopment and ignorance, the West could not represent itself as developed and possessing knowledge.

At various times the peoples of much of the world have been portrayed as savage, decadent or merely pagan and unenlightened. So they require law and order, effective government or Christianity and civilization. Whatever the rationale, non-western societies have been widely represented as static, passive and incapable of the progress based on rational government and economic activity which the West alone could provide (Hobart 1993)

Here is illustrated the the method of ethnocentric enculturation through the mechanisms of capitalistic growth and development, which result in the inevitable socioeconomic inequality where non-western peoples are systematically rendered subordinate and subservient, while their hegemonic historical, political, and economic aggressors remain, through the same system, dominant and chiefly. Consequently, it becomes necessary in scholarly endeavors to incorporate the histories, politics, and economics of underdeveloped peoples, as independently as possible from the culturally contextualized perspectives of their self-appointed paternalistic guardians, with the possibility of advocacy and emancipation emerging and being discovered. These methods fall generally under the heading of "Ethnohistory."

## **Introduction to Ethnohistory**

Ethnohistory is a twentieth century offspring of American cultural anthropology, history, archaeology, and to some extent, British social anthropology. It was designed to better reconstruct the histories of North American aboriginal peoples before European contact using documentary as well as oral histories, archaeological data, and the insights born of the conceptual frameworks of cultural and social anthropology. Past attempts at reconstruction privileged, if not consisted exclusively of "naive and biased" written accounts of second and third hand outside observers. "Ethnohistorians [on the other hand] combine their 'historical' sources with ethnographic field work among the presentday members of the societies whose past they aim to reconstruct" (Cohn 1980).

Ethnohistory has seen its theories, methods, and goals evolve over the course of the last century, in much the same way that its broader field of cultural anthropology has. To summarize the chronology of the theoretical and methodological history of American cultural anthropology (referred to hence forth as, simply, anthropology), one writer, Stanley R. Barrett, has described these stages in the development of anthropology as follows. First, there was the initial construction of the scientific foundations of the discipline from about the turn of the last century to the early 1950's, marked by the post-war climate and collapse of colonialism. Then, in the



1960's, new theories emerged to "patch the cracks" in the foundation stemming from doubts about scientific approaches to human culture. Finally, from the 1970's to today, the academic community has witnessed a "demolition and reconstruction" of the foundation, with its postmodern underpinnings and feminist overtones, which sought to question the very cornerstones of the discipline (Barrett 1996:xii).

The development of ethnohistory has mirrored this overall pattern of evolution in anthropology, albeit microcosmically, as anthropology did so by reflecting the emerging trends in Western academia, as well as in the social, political, and historical Western world in general. In the following section, I wish to trace this path as it emerged in the practice of ethnohistory, present some of the current trends in ethnohistoric approaches, and illustrate the ethnohistorical method I wish to employ in my work.

### **The Founding of the Discipline of Ethnohistory**

Clark Wissler may have been the first to use the term ethnohistory. He wrote that when reconstructing cultures of prehistoric peoples, "all have followed the same general method of reconstructing the prehistoric culture by welding together the available ethno historical and archaeological data, a method justified by the failure to find neither local evidences of great antiquity nor indications of successive or contemporaneous culture types"

(Wissler 1909:3-62). Implicit in this statement is that these data of prehistoric nonliterate societies were exclusively documented by non-natives. And the notion of native peoples' oral traditions as unnecessary or unworthy for analytical consideration (as any written tradition was simply unavailable), represented the European mindset, which was, to a large extent, the academic order of the day. Alfred Kroeber stated that, pertaining to the study of "poor dateless primitives we do not possess even one document written before our day" (Kroeber [1901] 1952). This view might best be illustrated in the words of Robert Lowie.

The important thing to keep in mind is that the question before us is not a metaphysical one, but a question of method. We are not concerned with the abstract possibility of tradition preserving a knowledge of events; we want to know what historical conclusions may safely be drawn from given oral traditions in ethnological practice. And as regards this purely methodological question I can only say, that I cannot attach to oral traditions any historical value whatsoever under any conditions whatsoever. We cannot know them to be true except on the basis of extraneous evidence, and in that case they are superfluous since the linguistic, ethnological, or archaeological data suffice to establish the conclusion in question (Lowie 1915:598)

The historical particularism and diffusionism, stemming from the cross-disciplinary efforts of Franz Boas, has been argued by scholars to be opposed to the distributionism of Wissler, Kroeber, and Lowie. Whether they argued for evolutionism and independent invention to defeat diffusionism, to incorporate it, or to demonstrate the "psychic unity of mankind" is debatable. Nevertheless, their points of view epitomized the overall trend in ethnohistory for decades. Emphasis was placed on documentation and

ethnohistorians were generally unsympathetic toward oral tradition as a reliable source of factual data. And with ethnohistory being a North American practice, the information gathered primarily pertained to the indigenous peoples thereof, and the data "documented" was gathered and analyzed by Europeans according to European traditions. Lowie even went so far as to utterly deny "that primitive man is endowed with historical sense or perspective." Furthermore that the anthropologist's "historical problems can be solved only by the objective methods of comparative ethnology, archaeology, linguistics, and physical anthropology (Lowie [1917] 1960).

This theory prevailed even into the 1960's with H. H. Trevor-Roper. He argued that "the only history worthwhile was the history of Europeans in Africa" (Krech 1991:345). He further argued that "the rest [of history] is largely darkness, like the history of pre-European, pre-Columbian America. And darkness is not a subject for history. We should not amuse ourselves with the unrewarding gyrations of barbarous tribes in picturesque but irrelevant corners of the globe" (Trevor-Roper 1965:304).

### **Patching the Cracks in the Practice of Ethnohistory**

Although the majority of these theoretical and methodological approaches in early twentieth century academia reflected this emphasis on

comparative, objective, culturally hierarchical, and traditionally scientific tenets, there were, even as far back as 1922, those who attempted to employ a direct historical approach in reconstructing the past histories of aboriginal peoples. The most notable of which was the work of John R. Swanton on the Indians of the American Southeast (Swanton 1922). In it, he used an extensive array of documentary materials, and supplemented these with a great deal of fieldwork among the tribes themselves. Consequently, in 1940, the Smithsonian Institution published an in-depth and systematic ethnohistorical work and dedicated it to Swanton (Smithsonian Institution 1940). This was the first work which "indicated the ethnohistoric approach that was to become formalized in the 1950's" (Cohn 1980).

William Fenton used seventeenth-century and eighteenth-century documents to trace location and movement of Iroquois bands (1940); William Duncan Strong demonstrated that documentary materials could be used with archaeological data to provide a continuous record from present into the past of particular sites (1940); Julian Steward's study of Great Basin societies combines ecology, history, archeology, and ethnography and yielded insight into structural and cultural processes (1940).

The accumulation of ethnographic data made it clear that early assumptions about the stability of cultures and societies before European contact were false. Anthropologists began to realize that instead of a precontact situation of stagnation in aboriginal societies, [significant] changes had occurred. In each case the culture and society that anthropologists assumed were static and stable and from which one could measure and describe change were in themselves changing because of outside influences (Cohn 1980).

The realization put forth by the work of those employed by the Smithsonian Institution in 1940, that the benchmarks and plumbines traditionally used to measure the spread of, the change in, and thereby

determine the significance of, cultures and cultural events, (for the purposes of describing, delineating, classifying and categorizing cultures and cultural identity through comparative analyses of cultural evolution), are rendered insubstantial when they themselves are seen to also be changing, was not only instrumental in flushing out earlier dogmatic perspectives in academic mindsets, it also set the stage for the return of cultural relativism in the post-structuralist times yet to come. For if this seemingly separate and stable perspective, which traditional positivistic and scientific observation requires, and which the academic paradigms of the time were steeped in, is realized, instead, to be interconnected and dynamic, then it simply cannot arrest or fixate, by observation, that which it is observing. It would, however take four more decades to begin to become politically correct to admit that this realization does not make an analysis of the present, or a reconstruction of the past, any less true. For the notion that conclusions must be the result of arrested observations and analyses from a fixed perspective in order to be taken seriously, is itself, a social, political, historical, and cultural construct; and therefore, is relative, in itself.

The second event which accelerated the formalization of ethnohistory was the passing of the Indian Claims Act by Congress in 1946. The provisions of this act allowed tribes to seek restitution from the U.S. government by filing law suits in the name of countless treaty violations

which occurred nationwide from the close of the Indian Wars of the mid to late nineteenth century, through the early twentieth century. Thus the Indian Claims Commission was established to attempt to settle these disputes which arose as Indian land had continued to be taken away from the tribes after the treaties were signed. Ethnographic specialists were therefore required as arbitrators, and anthropologists were then called upon to substantiate both governmental and tribal claims. In short, the work of the Indian Claims Commission forced anthropologists to become historians as archival research was needed "to establish location, extent, and nature of aboriginal control over various territories and the exact nature of [federal] treaty obligations (Cohn 1980).

The third factor in the formalization of ethnohistory occurred when its practice became academically institutionalized from 1954 with the introduction of the Journal of Ethnohistory, through 1966 with the establishment of the American Society for Ethnohistory. Ethnohistory, which was founded "partly to provide an outlet for materials and interest developed by the Indian claims cases," first defined their approach as one which "focused on the documentary history of the culture and movements of primitive peoples, with special emphasis on the American Indian" (Krech 1997:160). The information generated by such method was subsequently employed by The Indian Claims Commission, whose agenda it served in

many land claims cases brought before the commission in the 1950's, who privileged documented truth claims over oral ones.

In 1961, the editors of Ethnohistory held a symposium "On The Concept of Ethnohistory" At the symposium a re-examination of the purpose of ethnohistory was discussed. One scholar argued that ethnohistory was conceived to provide "a documented history of the concealed and officially inarticulate groups in American history." Because "negro history and immigration history are still written largely from the point of view, and source materials, of the dominant White majority" (Dorson 1961:17). Another acknowledged that we certainly owed much to the traditional historical accounts, but held that, in practice, ethnohistory ought to be more inclusive, for traditional methods for gathering information were beginning to be called into question. And therefore the prefix "ethno-" itself suggests the need for "trained, impartial and purposeful observers voiced in the early days of the scientific study of culture, [which] reflected dissatisfaction with the need to rely on the casual and fortuitous cultural data available in accounts of travelers, missionaries, and the like" (Lurie 1961:82). Here we see indications of the growing trend to incorporate the anthropological with the historical, and to examine more "eclectic" uses of data from a wide range of sources, such as archives, museums, and especially fieldwork.

The essence of ethnohistorical approaches could also now be seen as a

combination of documentary evidence and broad speculative cultural implications provided by, say, archaeological method as well (Baeris 1961). Historical as well as anthropological theory and method were said to be married in the ethnohistorian, who thus produced a more balanced, and "rounded" account, and thereby a truer one (Axtell 1981, Ewers 1961) For in their original Greek, history was the study of one's own nation, and ethnology was the study of the Other. And thus the ethnohistorical method can vary from the traditional ethnological and historical approaches (Washburn 1961). It can thus be combined with the methodological framework of field anthropology, which had, up until that point, specialized in cultural studies of the Other.

A simple yet enduring definition of this sort was espoused by William C. Sturtevant when he stated that ethnohistory is "the study of the history of peoples normally studied by anthropologists." Furthermore, Sturtevant suggests that in studying, the ethnohistorian ought to be concerned with primarily three issues:

... concentration on the past or the present; the use of written or nonwritten 'documents'; [and] a diachronic or a synchronic emphasis. Among additional dimensions are: concern with history as we understand it, or with the characterization of other, 'folk' views of history; whether the society studied is a Western or Oriental civilization or a more exotic one; the value placed on typologizing cultural or social phenomena and their changes, that is, on generalizing or abstracting principles or theories from concrete data as opposed to emphasis on the uniqueness of events, on the study of a specific period or sequence for its own sake rather than as an example of general processes (Sturtevant 1966:6-7).



William Fenton concured and offered that "ethnohistory seems to be an approach, not a discipline," but one emerging as a "hybrid field, that scholars who use this approach are never really both. and that we had best not forget our disciplinary origin.' He goes on to state.

that it is the ethnographer's business to apprehend culture; and likewise, it is the ethnologist's business to dilineate patterns, forms, and processes of culture history. But such attempts at descriptive integration, to use the anthropologist Alfred L. Kroeber's phrase, are also characteristic of the work of the historian. What really divides us is whether we take small or large segments of time, whether we ignore time altogether, or whether we take the whole world as our province, or whether we essay the history of a [single] tribe. The ethnohistorian has little use for the concepts of micro-dynamics or macro-dynamics, which appear so useful to cultural evolutionists in their concern for the whole broad span of human history and prehistory. The latter are in the traditions of the comparative method and of the idea of progress, and they are not really interested in history at all but in "science" in the broadest terms (Fenton 1962:2-3).

Therefore, in redefining their field during the 1960's, ethnohistorians strived to combine the skills of the historian with that of the anthropologist as they saw them. This mainly involved the use of documentary as well as oral sources, and archival research, as well as information from museums, and fieldwork. "It was assumed that history contributed a concern for accuracy, [and] anthropology an interest in generalization and culture theory" (Krech 1997). This is not to imply that the borders which define disciplines were dissolving and rendering their contents soluble in such a precise and definable way as that which traditionally separated them. But there was a growing realization that history, social history, cultural history, ethnohistory, ethnology, social anthropology, and cultural anthropology, were

much less dissimilar in their approaches and purposes than previously acknowledged. Furthermore, that these approaches were becoming more dissimilar than the traditional, evolutionary, hierarchical, and comparative approaches, as they were more interested "in 'science' in the broadest terms," was becoming quite apparent as well.

### **Reconstructing the Approach of Ethnohistory**

Since the 1980's the traditional definitions of anthropology and history have continued to bleed into one another. Historians are now speaking more frequently about non-Western beliefs, customs, ideas, and events, as well are anthropologists speaking of rather non-exotic Western peoples, right in their own back yard. Krech is quick to remind us, though, that while many new names have been introduced to describe these scholarly pursuits, most of the traditional notions which the new vocabulary is designed to move beyond, have remained. This has effected the practice of ethnohistory in two ways, presented here as both detrimental and beneficial.

The detrimental aspect of the methodology of the 1960's carrying over to the present, albeit an arguable one, is exemplified in the etymology of the word itself. *Ethnos* from the Greek word for "nation," was applied connotatively in that language mainly to describe the Other, as it is also applied today. However, at that time the "other" it referred to was primarily

seen as tribal, primitive, unrefined, and barbaric. And no matter how much combination we have witnessed in the theory and method of history and anthropology, of exotic and non-exotic peoples, Oriental and Occidental, Krech points out that the concept of the Other has not lost all of its ancient Greek connotations: "Today, it [ethnohistory] has not shaken its tribal or pagan referent: tribal groups have ethnohistory, "minority" groups may have it, but rarely do majority groups. In practice ethnohistory has been exclusionary (Krech 1997:161).

While ethnohistory can be seen as exclusive in their choice of subjects, the second way that anthropology and history have co-mingled has been rather inclusive. If historians are studying the Other people they are normally not accustomed to dealing with, and anthropologists are studying those people with whom they traditionally held a "vested interest, then this is indicative of a growing reflexivity between these two fields. Which, if ethnohistory is acknowledging that something has been lost by privileging data toward literate, academic, and imperialistic entities, and thus, attempting to redefine itself to be more inclusive of the Other, be it by the use of museum records, archival data, oral traditions, or narrative descriptions, would it not be a necessary condition for becoming more inclusive of the Other, to be also more inclusive of each other? Krech states that this is the case, and this is precisely what has been happening.

Furthermore if the problem is with the "ethno-" part of the word, then maybe scholars ought to be calling it something else. Krech suggests "anthropological history." To take a spin off of Sturtevant, ethnohistory could now also be described as the study by anthropologists in the methodology normally used by historians. This would be in keeping with the postmodernity in recent attempts to turn the focus of our lense back upon ourselves. There would also be an element of dynamics and interconnectedness in Krech's anthropological history in that it would change with current trends in academics. After all, history is not only done, it is also *being done*.

Krech summarizes the history of ethnohistory from the patchwork through its demolition and reconstruction thusly:

Ethnohistorians once helped bridge anthropology and history at a time when anthropology largely ignored history and history paid no attention to small-scale, indigeneous societies. Although the label 'ethnohistory' may today be suspect, its methodology is not. Renamed 'anthropological history,' the methodology involves, as it always has, the combination of method and theory current in history and anthropology, and the focus on history or historiography in or of some ethnic group. The degree to which anthropological historians engage theory and structure history as narrative remains a matter of diciplinary preference - anthropologists tend to remain comparative, explicit and analytic, historians tend to consign theory to endnotes and still privilege narrarive - but each year there are new exeptions. There is no reason to think that ethnohistory, as anthropological history, will not continue to flourish (Krech 1997:162).

## Current Trends in Anthropological History

Scholars today have been interested more and more about "culturally specific way of knowing or making history," that is, how the Other sees itself, or even, how the Other sees the way it is *being* seen (Clifford 1986a; Geertz 1973, 1974, 1984, 1988; Rabinow 1986; Tausig 1992). They have also attempted to tease out the native voice in colonial texts, which shed light on the way Western history has been produced, or even manufactured into an "invented tradition." In other words, they are examining the ways in which we see the Other as well (Axtell 1988; Bruner 1986; Denning 1988; Hobsbawm & Ranger 1983; Sahlins 1985).

As a result of this unveiling of Eurocentricity in historical and anthropological writing, many other styles and approaches are emerging as well. Narrative "downstream" specific histories still rely more heavily on documentation, but attempt to "release" chronological descriptions of native culture from the archives. Other narratives choose to employ more historiography and describe the native perspective. Some give more or less inclusion to theory in their narratives. Other non-narrative forms of specific history explore ecology, demography, economy, politics, globalism, mercantilism, commoditization, modes of production, and world-systems using historical method to expose the overall interconnectedness of societies over time (Cronon 1983; White 1983; Wolf 1999;). Finally, some are

interested in how the power of globalism supercedes that of agency, as well as how agency overrides globalism. So indigenous peoples can now be seen as willing or unwilling participants in the writing of the colonial histories of their Western imperialist aggressors as well (Sahlins 1995).

## **Methods**

With all of this in mind, I will present, using the skills of the cultural anthropologist and the methods of the ethnohistorian, the history of the socioeconomic underdevelopment of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation in western Montana. Beginning in 1804 with their first recorded contact with the white man, but concentrating on the post-reservation years, after 1855, I will use a variety of sources in a diachronic narrative of the ethnocentric enculturation and systematic socioeconomic underdevelopment of the Tribes. This phase was ushered in with the signing of the Hell Gate Treaty of 1855, then escalated, and peaked in the 1930's with the completion of the Kerr dam near Polson, Montana.

The information was gathered from books, journals, magazines, newspapers, films, bulletins, pamphlets, archival documents, Senate reports and hearings, House reports and bills, the United States Congressional Record, The United States Statutes at Large, other government documents, and several brief interviews among local tribal members, tribal government, and

power company officials. They will demonstrate how the Indians became the unwilling wards of the state; and how the Great White Father, the United States government, the self-appointed paternalistic guardian to these wards, did not live up to its promises or its obligations.

The Indians' supposed protectors forced them onto lands they did not want, outlawed their language, religion, and customs, and systematically all but destroyed their tribalism by imposing a socioeconomic system which rewarded individual success and discouraged, if not punished, collective success. The United States government forced the Indians onto a cash economy, and took away their ability to earn or spend that cash. They broke nearly every promise made in the Hell Gate Treaty designed to promote and provide an independent economy for the Indians, while claiming that they were doing this for the Indians' own good, and for the purpose of teaching them to be farmers.

Furthermore, it was the government's attempts to make sedentary farming citizens out of this free and nomadic interrelated band of hunter-gatherers, through the self-proclaimed "trustee" authority the government had over all of the resources possessed by its Indian children, that justified the illegal confiscation and reassignment, or allotment, of their tribal lands, the selling off of the surplus lands, and the opening of the reservation to white settlement. Consequently, the government was able to

the construct an unwanted, massive irrigation system that was incomplete, shoddy, and dysfunctional, and which contributed to the socioeconomic underdevelopment of the Confederated Tribes, as it made the irrigation project reimbursable by those who built it, the federal government itself.

Therefore, because the Indians had to pay for the irrigation system, out of their own funds, which they could not control or even see, their trees were cut and their lands were sold; and when the Indians could not pay for the system through inaccessible markets with the crops that the system supposedly would provide, but did not, their allotments were foreclosed upon, and they lost more land. Consequently, all of this laid the political and economic ground-work for the construction of the Kerr dam, where the Indians' protectors and providers would open the gates of the reservation even wider to allow big business, in the form of a transnational corporation, onto Indian lands to attempt further confiscation of Indian lands to clear the debt which the government had amassed and passed on to the Indians.

Through it all, though, the political sophistication of the Confederated Tribes continued to erode the corrupt ways of their imperialistic aggressors through to the present day; much like the sacred water they so admired and identified with, which was arrested and harnessed by the white man; who further used it to subjugate and underdevelop the Indian people. Because, for better or worse, all of these socioeconomic and sociopolitical events had



become a source of cultural identity for the Confederated Salish and Kootenai Tribes; arguably as much as the events in their pre-contact history.

## Chapter 2

### Pre-reservation History, and Underdevelopment In the Early Reservation Years: 1855-1926

*The Flatheads, or Salish, were one of the few Indian tribes to welcome the coming of the white man, remain his friends, and refrain from joining in the battle against him. For this, they were dispossessed of their lands by the federal government and consigned to oblivion by historians who have treated them only episodically and impressionistically (Fahey 1974).*

\* \* \* \* \*

It has been said that "the story of Kerr Dam is the story of conflict and exchange over deeply opposing ways of life" (Bigcrane 1991). The Salish and Kootenai way of life can be described in four stages: 1) the period from time immemorial to their first contact with the european horse trade c.1680; 2) the period since the Indian's aquisition of the horse and other european trade goods to the first contact with whites from the Lewis and Clark expedition in 1804; 3) the period of initial white settlement and cultural conflict from 1804 to 1855 with the signing of the Hellgate Treaty; and 4) the post-reservation years, since 1855. For the purposes of this study I will consentrate on the fourth time period. But first I will establish some goeographic, linguistic, political, and historical background information from the second and third of these time periods.

## The Pre-reservation Histories of the Confederated Tribes

Prior to the Stevens Treaty, or Hell Gate Treaty, of 1855 which officially recognized those present at the signing at Council Grove, outside of present-day Missoula, which were to be moved to a single reservation under the single designation of the Confederated Salish and Kootenai Tribes, the Flathead, Kootenai (pronounced: *koo-ten-ey* ), and Upper Pend d'Oreille (pronounced: *pond-er-ey* ) peoples, primarily occupied a region which anthropologists refer to as the Plateau. The Plateau is a semi-arid region of mountains and valleys with a comparatively mild climate, high-level meadows, rivers, and glacial lakes, located between the Pacific Northwest and the eastern Great Plains. More specifically, the Plateau Indians resided "in a cultural area approximately bounded on the north by the McKenzie Basin Drainage, on the south by the California-Oregon border, on the west by the Cascades, and on the east by the Rocky Mountains" (Fahey 1974; xxi). The peoples inhabiting the eastern most regions of the Plateau would also cross the Rocky Mountains periodically and spill out onto the buffalo ranges of the Upper Missouri for annual or semi-annual hunts.

The word Salish is a linguistic term referring to the general language group spoken by most Plateau Indians. Due to their geographical location, these tribes served as a gateway through which all trappers, traders, settlers, and later government and military officials, had to pass. "The first

literate white men among the Flatheads observed that with Salish alone one can converse from the United States to the Willamette without the necessity of an interpreter. [Also] he will find many among the Blackfeet, the Crows, and the Crees who speak the Flathead language" (Fahey 1974; 8). The Salish, albeit unknowingly, were thus perched in a unique and rather precarious geographical and political position. The Flatheads, to whom the tribal designation "Salish" now exclusively names, resided in what is now known as the Bitterroot Valley south of present day Missoula, Montana.

The Flatheads, contrary to some popular misnomers of the time, did not engage in the practice of flattening the heads of their infants, as did some tribes west of the Plateau. Those tribes who did practice such a custom, lived near the mouth of the Columbia river and were primarily comprised of the Cathlamahs, Killmucks, Clatsops, Chinooks, and Chilts (Ronan 1890). The theory persists that the Salish, or Flathead people of the Bitterroot Valley, received the name as, over time, anyone passing across the continent to the west, as were all newcomers at the time, (except those representatives of the early trading companies riding east from the port cities of the west coast), would have to pass through using the universal sign language in the region. That language identified this tribe by "pressing both sides of the head with the hands. It stands to reason, then, that anyone unfamiliar with the inhabitants of this land probably expected to find it occupied by Indians

with flattened heads. Another reason for the discrepancy could simply be that those with flattened heads, being linguistic, cultural, and geographical cousins of the Salish, were at times seen with the Salish by whites (Fahey 1974; Hungry Wolf 1974).

This same sign, with an added gesture, signified another group of people living to the north around the Flathead Lake area who also spoke Salish. French trappers and traders later identified these people as those who ornamented themselves with dentalium earrings, and they have since been called Pend d'Oreilles, or Kalispells (Partoll 1951). They would later be distinguished from other Pend d'Oreilles living further west and north around Lake Pend d'Oreille and along the Clark's Fork of the Columbia in what is now the Idaho Panhandle (Chalfant 1974). They, like other Interior Salish peoples, such as the Spokanes and Coeur d'Alenes (*core-da-lains*), of which the Flatheads were the most prominent, told stories of earlier migrations from lands beyond the Rocky Mountains (Carriker 1973; Chalfant 1974).

The Kootenais, are the only tribe in the area not to speak the Salish tongue. In fact, they possessed a language unlike any other known tribe, according to the manuscripts of the earliest trappers and traders (Curtis 1911; Fahey 1974). At the time of contact, the Kootenai, which were later to be incorporated into the Confederated Tribes, occupied a region known as

the Tobacco Plains which lie in an area around what is now the United States and Canadian border north of present day Libby, Montana and west of Glacier National Park. The entire Kootenai nation, though, ranged from the areas just north of Flathead Lake, up through the Tobacco Plains and over a hundred miles north into present-day Alberta and British Columbia, in an area bordered on the east by the Rocky Mountains, and on the west by Arrow Lake and the Columbia river; which is all centered around the Kootenai river (Antiste 1987). Different bands of Kooteni were designated depending on where they were located in this river drainage system. It was those who resided in what would later be called the Dayton creek area of Montana, called the Flathead Lake Kootenai, who were present during the initial delegations and subsequent treaty councils with territorial governor Isaac Stevens between 1853 and 1855. They were, therefore, destined to be separated from the rest of the Kootenai people to the north and become members of the Confederated Salish and Kootenai Tribes.

The vastness and diversity of the region and its people are significant when noting not only how much land and resources were ceded by the Indians when the reservation system was established, but also in terms of which tribes were separated from which, culturally and geographically, and why. Whites misinterpreted certain cultural differences as similarities, and Indians almost invariably misinterpreted the intentions, the meanings, and

even the very words of whites; especially during treaty negotiations. Consequently, the names given to these tribes are primarily those of the first French trappers and traders. The Indians naturally had names for themselves in their own languages which meant, like most Indians' names, "the people," or ' the human beings.' However, as non-literate peoples were first contacted by literate peoples, who were new to the country and relatively ignorant, and who came from a cultural tradition which renders the world intelligible through categorization, post-contact written accounts tended to separate people into certain groups delineated by certain geographical and cultural parameters, which the Tribes may or may not have recognized themselves. In traditional times, through trade and intermarriage, peace and communal living, were for the most part, predominant in the region; with the exception of those attacks by the Blackfeet (and occasionally the Crow or Souix) to the east, and the Snakes to the south (Johnson 1969; Fahey 1974; Fuller 1974).

As a result of these written accounts by different men of different backgrounds, languages, and nationalities, and because there was no prior precedent in the first days after contact, one may find the following variations in spelling when researching into the past of these peoples: Salish, Selish, or Saleesh; Kalispell, Kullyspell, Calespelles, Pend Oreille, Pend d'Oreille, Upper Pend d'Oreille; and Kootenai, Kootanae, Kootenais, Kootenay,

Kutenee, Kutanee, or Kutenai. I will use those spellings which are agreed upon by the Tribes today: Flathead or Salish, Kootenai, and Upper Pend d'Oreille or Kalispel.

The introduction of the horse into the cultures of the Plains and Plateau peoples is significant for several reasons. It greatly increased the efficiency of hunting. This would result in the beginning of a period of decline in the numbers of available game, and thus, increased competition among neighboring tribes. It also changed the local economy between the Plains and the Plateau. With few exceptions, the social structures and subsistence activities were communal (Fahey 1974). Historically one tribe would let another dig camas or bitterroot in exchange for buffalo hunting rights later in the year. However, with the coming of the horse, these peoples were now connected, albeit indirectly, with British, French, and Spanish settlements all around the continent. Therefore as the trade routes brought more horses, it also brought more guns. And so, the disappearance of game emphasized the concept of individual wealth and prestige, as opposed to communal. It also brought epidemics of diseases such as smallpox and tuberculosis, and an increase in intertribal warfare, as variations in geographical and political positioning allowed some tribes to possess more guns and horses than others.

So even though the Confederated Tribes may have expanded and separated in their pre-historic migrations, as archaeological evidence and



oral histories suggest, and thus roamed the vast expanses of the Plateau and all its surrounding areas living communally and sharing subsistence strategies, it was the combination of horses, guns, epidemics, wars, and general overall westward expansion of Indians and settlers in the late eighteenth century which pushed both people and buffalo west and confined and isolated the tribes into their aforementioned geographical and political areas at the time of contact.

This occurred for the Salish when they met the Lewis and Clark expedition on September 4, 1805, and later helped them across the Bitterroot Mountains; which began the recorded history of the peoples who would later become the Confederated Tribes. The areas claimed by the Tribes at this time would represent how trappers and traders would establish their network of inroads into these cultures, and how the Hell Gate Treaty would later separate and categorize them. The location of the Tribes also helped to establish Salish as the predominant language of the region, and the Flatheads as the most conspicuous of its members. Their lands, the Bitterroot Valley, were geographically and politically significant as they represented the gateway between resources; mainly, the camas and bitterroot of the Plateau, and the buffalo of the Plains. They provided a sanctuary from outside influences, like war and disease, but also made it easier for their neighboring tribe, The Blackfeet, to conduct their raids and

war parties. In the future, though, this would further the Flathead's desire for protection from Jesuit missionaries, called the Blackrobes.

The Salish and Kootenai people appear, according to many of the writings of early trappers and traders, to have maintained their peaceful demeanor, in spite of their circumstances. David Thompson, formerly of the Hudson's Bay Company and later the North West Company, built Kulyspell House on Lake Pend d'Oreille, and, at the time, found the Flatheads with only "a few rude lances, and flint headed arrows" (Fahey 1974:29). This was mainly due to the intertribal wars made more frequent and more deadly by the unequal distribution of horses and guns. After establishing the first known semi-permanent structures in what would later become Montana in 1809 (Ronan 1890), Thompson spoke of the Salish "as an intelligent race of men, hospitable, proud of their industry and their skill in doing anything, and [who] are as neat in their persons as circumstances will allow" (Fahey 1974:29). Another early fur trapper, a young clerk of Jacob Astor's Pacific Fur Company, met the Flatheads in November 1810 stating, "We were quite charmed with their frank and hospitable reception, and their superiority in cleanliness over any of the tribes we haad seen hitherto" (Fahey 1974:31). T. W. Blankinship, a British lieutenant wrote of the Kutenais, "They are honest and do not beg, qualities which I have never met with yet in any Indians" (Fahey 1974:33).

The concepts of socioeconomic inequality and the decrease in available game which accompanied the coming of the horse, were increased with the introduction of a market economy by the fur traders. This furthered the destruction of their traditional way of life by altering the natural balance between man and nature. Through privatizing the formerly shared resources which were used *with* nature, they began to become something separate from nature to be competed for, and used *over* nature. However, while the results of inequality which naturally accompany the introduction of supply and demand economics, and colonial-age goods among stone-age peoples, the Flatheads, nevertheless, continued to demonstrate the many cultural characteristics which originally made them the most prominent peoples in the region, as well as those which many European newcomers would consider moral, upstanding, and civilized. This would not, however, stop them from later efforts to cheat the Indians out of their traditional homelands and subsume their traditional culture, as these inroads laid by the traders began to pave the way for religious domination as well (Fahey 1974).

Because of their being forced into these more isolated and fixed locations, making Blackfoot raids easier and more devastating, the Salish sought the protection of the white man first through his missionaries. This behavior was quite rare among Indian peoples. However, the Salish had long

anticipated requesting the advice of the white man as the prophecy of a Pend d'Oreille elder, Shining Shirt, had foretold of the coming of white men in long black dresses who would tell the Indians of another way to live. When several Iroquois settled among the Bitterroot Salish in the early nineteenth century and told them of the Jesuit missionaries, they were anxious to fulfill this prophecy (Fahey 1974; Turney-High 1937).

In an attempt for peaceful and mutual cross-cultural communication, previously unheard of in the region, the Flatheads set out on their own to make contact with, and seek out the "medicine of the Blackrobes." They sent out a series of delegations to St. Louis in the 1830's. The first three failed, ending in unknown deaths and mysterious disappearances of the Indian delegates. This did not stop them, however, and the fourth delegation succeeded in bringing Father DeSmet into the Bitterroot Valley to establish the St. Mary's mission in 1841. Later, the now famous St. Ignatius mission, and its boarding school, was established by Father Hoecken with the aid of DeSmet in the Jocko Valley in 1854, where the Pend d'Oreille camped for the winter. DeSmet described the Flatheads as "a chosen people; . . . it would be easy to make this tribe a model for other tribes. . . They are characterized by the greatest simplicity, docility, and uprightness . . . Yet to the simplicity of children is joined the courage of heroes" (Fahey 1974:75).

Despite the prophecies, the relatively good relations between the

Jesuits and the Indians, and the fulfillment of their necessity of protection, some of the Indians converted to Christianity and some did not. Some created for themselves a combination of the Christian and Indian world-view. What is significant to the missionaries' contributions to the further disintegration of Indian culture, however, is that for Christians, religion must be received through the church, which requires regular attendance. Traditionally, the Indian view held by all peoples, regardless of local idiomatic idiosyncracies, was that everything is alive. Everything under the sun, animal, mineral, plant, or human, was the manifestation of spirit, and was therefore sacred. This reverence for all forms of life, without hierarchical rank or designation, not only fostered the lifestyle which created their balance with their natural environment, which was disappearing and creating a dependence on European economic subsistence, it also fostered a lifestyle where awareness, prayer, thanksgiving, and communion with all of creation, both physical and metaphysical, was more of a constant and continuous unfolding process. This was something which the missionaries simply could not accept. Because Christianity requires attending church, the priests simply could not have the Indians "out chasing buffalo, so they sought to enculturate the Indians into an agrarian lifestyle (Bigcrane 1991).

This cultural paradigm shift, was in keeping with the pattern established in virtually all other historical cases of the Eurocentric

enculturation of the American Indians; namely, the imposition of a market economy, and hierarchically structured religion, requiring a sedentary life-style sustainable through agriculture (Fahey 1974; Prucha 1984). This was instrumental in the destruction of Indian culture in many ways. Immediately it encouraged them to reject the already diminishing numbers of buffalo as the primary means of sustenance. However, the buffalo was, of course, more than a means of sustenance. It was absolutely central to their culture. To make sure all were attending church, the nomadic cyclical hunting, harvesting, and measuring of time would be replaced by the sedentary, agricultural, and domesticated ways of the white man. The missionary's boarding schools, also used specifically for the purpose of enforcing this life-style, were another nail in the Indian's cultural coffin, as they would not only require regular attendance also, but they taught only in English; and they would physically punish and abuse the Indians for practicing their beliefs or speaking their own language.

The most destructive factor in the missionary equation was that, in forcing the Indians to become farmers, they introduced a social structure based on an economic system which rewards individual efforts and successes, and not collective or communal ones. The Indians simply could not understand any of this. The old ways certainly seemed to be capable of sustaining the people. After all, they were alive, weren't they? One elder

commented: ' to say that an Indian had to plant a garden and raise cattle [in order to eat] would be like somebody telling you that you had to dig a well when there was mountain [spring] water running on both sides of your house' (Bigcrane 1991).

It can now be concluded that, all the social factors and historical events in this systematic paradigm shift; culture, language, religion, horses, guns, disease, trade goods, wars, raids, climate, geography, topography, environmental impact, prophecy, missionaries, boarding schools, domestication, agriculture, market economy, and the promotion of individual success over collective success, all occurring over a period of approximately one hundred and seventy-five years, were not only inextricably interrelated, but were the direct causes which positioned the Indian peoples, both geographically and politically, where they were about to become the Confederated Salish and Kootenai Tribes, through the establishment of a treaty with the United States government.

### **The Hell Gate Treaty of 1855**

Prior to their induction into statehood, portions of Washington, Oregon, Idaho and Montana, comprised what was called the Washington Territory. In 1853 the governor of Washington Territory, Isaac Stevens, who's instructions from Washington D. C. were to survey and prepare the territory

for railroads, mines, and white settlement, began to send delegations into the area to prepare the indigenous peoples. By the summer of 1855, Stevens was scheduled to make a series of treaties with other tribes along a route from the territorial capital in Olympia to Council Grove, near present day Missoula, and one afterward with the Blackfeet as well. His agenda called for the removal of the "Indian problem" by the end of that summer (Bigart 1996). Governor Stevens' son, Hazard, later recalled that his father had a preconceived desire to place all the tribes in the area (which would have included the Spokanes and Couer d'Alenes as well) onto one reservation claiming that they were all really just one people to begin with (Stevens 1900).

The tribal leaders, Victor, Alexander, and Michelle, of the Salish, Pend d'Orellie, and Kootenai Tribes, respectively, were "openly jealous of one another" (Fahey 1974:94). They were not accustomed to being considered a sole hierarchical leader as this was not the Indian way. Consequently, leadership, power, and authority were misunderstood on both sides, but in this, like all else, the whites would have their way. Father Hoeken observed that the governor's translator, Ben Kiser, was performing poorly, and James Doty was not properly transcribing the proceedings (Burns 1952). Nonetheless, these were the only translations and transcriptions which were recognized by Congress. "Born of confusion and disagreement, the treaty was



one of the most important legal documents in western Montana history. It provided the legal foundation for the relationship between the Confederated Salish and Kootenai Tribes and the federal government and established the Flathead Indian Reservation" (Bigart 1996).

To this it should be added that the Hell Gate Treaty also established the political guardian-ward and financial trustee relationship the federal government had over the Tribes. Furthermore, it guaranteed that the Indians would have a permanent homeland with established land and water rights. However, their guardians would use the same treaty to circumvent these rights in their later attempts to make farmers out of the Indians, build a reimbursably funded irrigation project, and reserve so-called surplus lands for future power sites.

In the meantime, and in the midst of a great deal of confusion and cross-cultural misunderstandings, Governor Stevens, with his busy schedule, attempted to radically alter the traditional lifeways of some two thousand Indian people in a matter of days. When this did not somehow automatically happen, Stevens grew impatient and on the fourth day called for a break and that all should relax and have a great feast. By the fifth day, the governor was becoming more impatient when Salish chief, Victor, still did not want to leave his people's ancestral home "where the dust of [his] people mingles with the earth," (Ronan 1890) unless there was a justifiable reason, or if the

Great Father in Washington forced him to go (Partoll 1938). After much deliberation the governor ended up calling Victor *une vieille femme une chien*, an old female dog; essentially, an old bitch (Burns 1952). After Victor left the proceedings Pend d'Oreille chief Alexander retorted that governor Stevens was *un homme a doubles bouches*, a man with two mouths, a "double talker" (Fahey 1974).

There were several primary sources of controversy concerning the misunderstandings and broken promises pertaining to the treaty which would emerge throughout the next several decades (Bigart 1996; Saunderson 1961). The first was that the Kootenai's and Pend d'Orellies were to go to the Jocko Reservation, (which was identical to the site of the present day Flathead Indian Reservation in western Montana, named for Jeaque Finlay an early trapper the Indians called "Jocko"), and the Salish were to remain in the Bitterroot Valley until the federal government could perform a proper assessment and survey of each of the proposed reservation lands to determine which would be best suitable to the Flatheads. To this day, this has not been done (Bigart 1996; Fahey 1974; Kappler 1904).

The Tribes peacefully ceded over 22 million acres of ancestral land for the sake of white progress, in exchange for the 1.24 million acres that is now the Flathead Indian Reservation. With this there were certain provisions which prohibited whites from settling in certain portions of the Bitterroot

Valley until further agreements could be reached. The agreements were never reached. However, this did not stop the encroaching white community from collectively assuming and acting as if it were their land. They settled it, bought and sold it, and threatened the Indians who attempted to subsist off of it in the old ways (Bigart 1996; Ronan 1890).

### **The Early Reservation Years: Broken Promises and Corruption**

The Hell Gate Treaty, signed July 16, 1855 and ratified by Congress March 8, 1859 (Burlingame 1961), promised not only a survey and protection from encroaching whites, it also promised cash settlements, agricultural tools, commodities, medical services, vocational schools and training, lumber mills, grist mills, and other forms of the white man's economic infrastructure to expedite the Indians' assimilation into the dominant culture. However, the vast majority of these the Indians still had not seen by 1871, and thus were not interested in signing further agreements. Most of the few provisions which the Tribes did receive were dishonestly sold out from under them by dozens of corrupt elements in the Indian agencies which were directly or indirectly involved with the Tribes during this fifteen year period (Fahey 1974). But in 1871, due in no small part to the written appeals made by land-hungry white settlers already in the Bitterroot Valley, and their numbers steadily growing, President Grant

sent James Garfield to sign another treaty with the Bitterroot Salish; apparently disregarding the fact that the provisions of the original one were never satisfied.

So after four presidents, a half a dozen regional superintendents and governors, and over a dozen Indian agents breaking over fifteen years of promises (Fahey 1974), when it came time to sign the Garfield Treaty, which essentially was more of an executive order, Salish subchiefs Arlee and Joseph, both had made their marks and agreed to leave the Bitterroot Valley and reside on the Jocko Reservation. The head chief of the Salish, Charlot, son of the recently deceased chief Victor, whose mark is recorded on the document as well (all marks were simply X's but there were three of them), claimed to his death that he never signed the document (Ronan 1890).

The state of affairs on the reservation became somewhat improved in 1877 with the arrival of Peter Ronan. Ronan was appointed the newest Flathead Indian agent, and held that post for sixteen years. Ronan spoke out on behalf of the Indians' plight and even accompanied them to Washington for a delegation. During his tenure the amount of cattle and horses, as well as the volume of cash crops produced by the inhabitants of the reservation increased substantially (Trosper 1974); although, the self-sufficiency indicated by early treaty negotiations still seemed a long way off. For the majority of food produced was needed to feed the Tribes at home, and thus,

could not be sold on the open market.

Conversely, the Ronan years also marked the establishment of tribal police and courts, the outlawing of traditional dances and feasts, hunting and gathering off the reservation became grounds for punishment, and a portion of the reservation was handed over to the Northern Pacific Railway as well.

When the United States Assistant Attorney General visited the Tribes in 1882, the leaders of the Salish, Kootenai, and Pend d'Oreille peoples were concerned about the loss of land the railroad, rights-of-way, terminals, and depots would cause, not to mention illegal trespassing, timber cutting, livestock loss, and sales of liquor by non-Indians to the Tribes. The Tribes were given the right to bring charges up against anyone who would do so. They suggested that their ownership and control of the lands on and around the north side of Flathead Lake be reinstated in exchange for the railroad. The Attorney General said that he could not answer them right then and there but that if they would draft a treaty, and sign it, he would "promise to use [his] influence to get that strip of land [for the Tribes]." The Tribes complied, but the lands remained under white control. After the railroad was completed in 1883 some elders claimed that they tried to get that part of their country back during the railroad negotiations because it was still a source of confusion from the Hell Gate Treaty, which drew a line from the east due west "halfway in latitude between the northern and southern

extremities of the Flathead Lake" (Bigart 1996:10). Apparently some of the elders still were not sure exactly just what they had signed away

Meanwhile Salish chief Carlot, broken hearted and embittered by the lies and broken promises made by his peoples' self-appointed protectors, was watching his ancestral homelands, still not surveyed by the government, fill up more and more with white settlers, who were growing more and more impatient with the Salish presence in the valley. Nonetheless, Charlot remained the peaceful and venerable leader he is still respected for today. But, as he and several hundred of his followers continued to disregard the Garfield Treaty and the deceit surrounding it, choosing to remain in the Bitterroot Valley, the military was called in.

The Bitterroot Salish were forcibly removed to the Flathead Indian reservation in 1891, where they endured more eurocentric enculturation, diseases, poor diet, and lack of exercise as sedentary life was now the only means for survival. Depression and suicide took their toll as the Tribes were forced to live in towns on a cash economy for their only source of sustenance; while the means for earning any money, the equipment, the mills, the schools, etc., either had not been sent, or had quite simply been stolen while in route, or sold for the personal profit of the agents in charge. The Salish, who's bravery, integrity, and humility was once described as:

pre-eminent . . . a love of truth they think necessary to a warrior's character  
They are assiduous to please, peaceable, unassuming, and much attached to the  
whites. . . They are characterized by the greatest simplicity, docility, and  
uprightness. . . They are too proud to be dishonest, too candid to be cunning . . . a  
noble race [and] the Spartans of Oregon . . .

were now simply surviving on the government dole (Fahey 1974:33,75).

### **The Flathead Allotment Act of 1904**

The last two decades of the nineteenth century witnessed a push for increased growth and development in America. There was a sense of urgency in the public toward increased "civilization, and that the nation's strength would be in the measure of its natural resources, and its unlimited access to them (Smith 1979). In less than one hundred years, the Indians which remained within the borders of what was to become the forty-eight contiguous states, saw their lands reduced from "all land[s] west of the Appalachian Mountains to desolate reservations totalling less than 4 percent of the continental United States. The once proud hunter-warrior had been relegated to a confined beggar's existence of ridicule and abuse" (Russell 1995).

With the last of the American Indians rounded up and placed onto reservations, and the last in the series of Indian wars culminating at the Wounded Knee massacre, The original inhabitants of this land were not only desimated and demoralized, they were socioeconomically underdeveloped.

However, the majority of the underdevelopment they would experience was yet to come.

It has been argued that the federal government's policies of allotment in the late nineteenth and early twentieth centuries were possibly the single most influential factor in perpetuating poverty and a state of colonialism on Indian reservations (Trospen 1974). The attempt to solve the "Indian problem" by allotting lands to tribal members occurred for several reasons. Congress was looking to stop the increase of appropriations to Indians. With "civilization" growing all around the reservations there was not only a demand from whites for the last of the Indian's lands, there was also a fear that a bunch of Indians roaming free on their own lands might represent a threat to that civilization. Also, there was a growing sense that the country had a legal as well as moral obligation to civilize the Indians in a way they considered to be "humanitarian." Plus there was the push to acquire the last of the natural resources left to the Indians. This push was rather forceful at times as exemplified by Colorado Congressman James Belford, when he declared, in 1880, that "an idle and thriftless race of savages cannot be permitted to guard the treasure vaults of the nation" (Smith 1979:131). Montana is called "the Treasure State."

Article 6 of the Hell Gate Treaty of 1855 set the precedent for allotment on the Flathead reservation. The mechanism, however, was set in



motion in 1887 through the work of Senator Henry L. Dawes of Massachusetts. As the chairman of the Committee on Indian Affairs, Dawes sought to legalize the individualization of the Indian people by assigning private plots of land in severalty to the inhabitants of the reservations and their families. This separation and privatization was, of course, a necessary condition for farming and future homesteading by whites (Prucha 1984). The Dawes Act further called for each reservation agent to establish a tribal roll and for parcels of land, (usually in 20, 40, or 80, acre plots and sometimes of the most nonproductive and undisireable land) to be asigned to tribal members (Otis 1973).

The Dawes Act, or General Allotment Act, of 1887, contained two important conditions which would effect the state of Montana and its Indians forever. It called for the creation of "surplus" lands to be sold to whites, and it called for a second set of more specific bills to be passed pertaining to each individual reservation. Not only was white settlement more on the minds, and in the agendas, of this generation of policy-makers than those who drafted the treaties which originally established the reservations, so too were the "idealized goals of civilization and assimilation." So the second condition of the Dawes Act made these idealized goals rather difficult to achieve through the legislative process, as they were "a poor match for individual ambition, partisan politics, and the desire to make money" (Smith

1979:132).

That is precisely what occurred with the passing of the Flathead Allotment Act of 1904 (33 Stat., 302). Referred to as possibly "the most important factor leading up to Montana Power's construction of Kerr Dam, (Bigcrane 1991) the Flathead Allotment Act not only allotted lands, and created and sold the surplus, it also established certain water rights, and reserved lands for future irrigation and power use. And the passage of this Act can be attributed almost exclusively to the efforts of Montana Senator, Joseph M. Dixon.

Beginning in late 1903, Dixon, a Missoula businessman, who owned land on the reservation, introduced a bill into Congress calling for the Flathead Indian Reservation to have its lands allotted and the remainder, or "surplus" lands, sold off for white settlement. Despite ardent opposition, the bill passed. This Act was significant in three ways. In terms of Indian culture, this Act hegemonically divided and conquered, ethnocentrically separated and subsumed, the Indian people, for assimilation into the dominant regime. Moreover, "the most significant [culturally] destructive force of the Flathead Allotment Act was that it forever ended the [Indian's] communal economy and stewardship of the land" (Bigcrane 1991).

Secondly, it was an ironic example of representative democracy and underdevelopment at work. To claim that Senator Dixon was efficient in the

use of his time in passing this bill would be an understatement. In fact, "Dixon did more in one term to open Indian reservations than any of his predecessors" (Smith 1979:138). This was due in no small part to the lobbying efforts of many local business constituents of Senator Dixon. Because local and influential merchants, bankers, and land owners coveted the resources within the boundaries of the reservation, and their ability to profit from them, they created an excellent example of representative democracy at work, in that they took local political ambitions all the way to Washington D. C., and won (Dixon 1904). The irony, however, was that, inasmuch as this was hailed as democracy, the Indian voice was non-existent. In fact, it was purposefully and systematically suppressed (Dixon 1904; Smith 1979).

The lack of Indian voice becomes increasingly important when one discovers the way the law is actually worded. Senator Dixon convinced a Congress to forcibly assign allotments, but misinformed them of the Indian's intentions. Without any Indians present anywhere in the proceedings, in Montana or in Washington D. C., Senator Dixon convinced Congress that the Indians wanted allotments, because it is so indicated in their treaty of 1855 (Karlin 1974). Article 6 of the Hell Gate Treaty (12 Stats., 975), does provide for the possibility of future allotments of land to be assigned to the Indians. However, it also says that for the logistical details of such a possibility, one

must refer to the allotment provisions laid out in the treaty made with the *Omahas* for the allotment of *their* lands. And Article 6 of *that* treaty, signed by President Franklin Pierce on March 16, 1854, specifically states that the President may, "from time to time, cause the whole or such portion of the land hereby reserved, to be surveyed into lots, and to assign to such Indian or Indians as are willing to avail of the privilege . . . (Kapler 1904;1044).

So apparently only those Indians *who were willing to avail themselves of the privilege* of receiving allotments, were to actually receive allotments. Congress was not at this time legally permitted to force allotment or surplus land sales onto unwilling participants. Both historical documentation and oral histories indicates that the Confederated Salish and Kootenai Tribes clearly did not want it (Arnold 2002; Bigcrane 1991). They were not given a fair voice or a hearing of any kind. Furthermore, some have argued that Senator Dixon over-stepped his boundries as the interpreter of the Omaha treaty. as that treaty is unclear, or simply does not mention, its provisions which call for the creation and redistribution of so-called "surplus lands" (Arnold 2002).

However, the legal precedent for reinterpreting Indian legislation whenever Congress deems it "in the Indian's best interest" to do so, was set the previous year in the famous Supreme Court case, *Lonewolf v Hitchcock*.

Furthermore, through rewording the provisions for the surplus lands, Dixon would be able to maintain his constituencies with his local bankers, merchants, and land owners. For it would be they who would profit from the surplus land sales, as they would be sold, at auction, to the highest bidders; in other words, those who were *able* to bid the highest (Fahey 1974; Karlin 1974; Smith 1979).

The third significant factor in the passage of the Flathead Allotment Act of 1904 was that it established the federal government's right to use its self-proclaimed guardian-trustee role over the Tribes to lay the ground work, literally and figuratively, for the major undertaking of the Flathead Irrigation Project. Furthermore, it would be the huge debt amassed from federally appropriated but reimbursable funds, which could not be paid back due to this largely unfinished and unusable project, which would cause the federal government to elicit the services of a transnational corporation to fix its financial quandry, at the direct expense of its wards and rightful owners of the land, the Indian people.

### **The Opening of the Reservation to White Settlement**

From 1905 through 1907 the only significant legislation passed was for monies to be appropriated for the continuing of the allotment and enrollment process, or for the "support and civilization of Indians at [the]

Flathead agency," as well as for the surveyal and appraisal of future town-sites to be conducted. However, in the first session of the sixtieth Congress in 1908, came the first mention of funds to be appropriated for the "preliminary surveys, plans, and estimates of irrigation systems to irrigate the allotted lands of the Indians of the Flathead Reservation in Montana and [for] the unallotted irrigable lands to be disposed of " (34 Stat., 83). These plans for irrigation, and those later to reserve lands specifically for power and reservoir sites, would be made official the following year on March 3, 1909 (35 Stats., 795).

Meanwhile, the first session of the sixtieth Congress also contained the amendments to sections nine and fourteen of the original Allotment Act of 1904, passed May 29, 1908 (35 Stats., 450). These acts called for the opening of the land for white settlement, after the President issued such a proclamation; even though, some fifty-three years earlier, Article 2 of the Hell Gate Treaty explicitly stated that no "white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes (12 Stats., 975). These amendments also provided for the payments for water rights, and for the reclamation of portions of irrigable lands; even though Article 3 of the Hell Gate Treaty states that the exclusive rights of the Confederated Tribes to hunt and fish in all the accustomed places, and on open and

unclaimed lands, within the reservation, were never to be denied (12 Stats., 975). With all the new, imaginary lines being drawn on the ground, and all the games being played on them, the Indians referred to this time in their history as "making checkers" (Bigcrane 1991).

On April 12, 1910, further amendments to the 1904 act were passed (36 Stats., 296). These allowed the Secretary of the Interior to cause surplus lands on the reservation to be surveyed and subdivided into lots, regardless of their status as grazing, agricultural, or timber lands, and sold to the highest bidder. They also allowed lands previously allotted to Indians to be sold, and the proceeds disposed of for funding irrigation purposes. Half of the monies to be paid to the Indian(s), and the other half to be held *for them* in trust. Furthermore, this same act provided for the acquisition of any and all lands which had been reserved for power and reservoir sites by the Act of 1909. And if any Indian had been allotted lands between 1904 and 1909 that, by 1909 were to be reserved for power and reservoir sites, he must relinquish them immediately or have them confiscated (36 Stats., 296).

So the reservation was opened up in 1910 and white homesteaders poured in. Now the Indians became visitors, and were told they did not belong on their own land; or what little land they still had (Bigcrane 1991). They might return from a visit or from a hunt only to find that someone had squatted in the path they had traveled for generations. Consequently, they

attempted to grab all the land they could and a wave of greed fell over the people for the first time. Farmers killed off the wild foods, and considered the Indians hostile if they continued to harvest (Bigcrane 1991). The Indian people were not only feeling extremely depressed and powerless at this time, they were also almost completely ill-equipped to handle the day-to-day language, procedures, and cultural mindsets necessary to compete for and secure the remainder of their land. As a result, most of the best land was acquired by whites. "The [Flathead] Allotment Act, [with its future amendments], combined with the many other pressures we have seen, in many ways subverted the promise of cultural coexistence held out by the [Hell Gate] treaty" (Bigcrane 1991).

Culture and tradition changed so fast [in those days]. What happens when your whole lifeway changes? What happens when you're no longer a hunter? When you're no longer a fisherman? When you no longer camp and move around and visit with your people . . . and rely on trade . . . and rely on your traditional life style? What happens to you when you get lost that way? The people, I think, got lost (Wall, as cited in: Bigcrane 1991).

### **The Flathead Irrigation Project**

The last example of underdevelopment on the path leading to the construction of the Kerr Dam was the Flathead Irrigation Project. Designed to serve over 150,000 acres of lands newly deeded from the recent allotments, the irrigation project claimed to further Indians endeavors to become farmers. However, the irrigation project ended up helping non-Indians



considerably more. This is evident in the number of Indian farms which were going under in the early years of white settlement; and, thus, the project actually forced the Indians to fight to acquire the land and water rights guaranteed in 1855. Also, because the project was to be paid for by those who benefited from it, in terms of the revenue from sales of livestock and crops, many Indians lost their land through foreclosure when they could not afford to pay for the water delivered (Bigcrane 1991; Flathead Indian Agency 1944).

Even whites fell prey to the conditions necessary for foreclosure. As more and more money was being appropriated for the irrigation project, which was never completed until decades later, the operation and maintenance costs, in terms of dollars per acre, increased. However, these costs would increase much faster than the annual profits yielded from sales of crops and livestock. In fact, many were being charged for water whether they used it or not, whether they had access to it or not, and whether it came when ordered in time to save that year's crops or not. As a result, only a small number, "maybe less than a dozen Indians," were successful irrigators during the first two decades of the project (Survey 1929).

Indian protests arose but were never heard outside the reservation. Even when the Tribes elected their very own tribal council in 1916, Congress still ignored them, and continued their practice of withholding information as

to where their money was going. At a series of hearings entitled, A Survey of the Conditions of the Indians in the United States, attended in 1929 and 1930 in St. Ignatius, Montana, by Senators Frazier (chairman), Wheeler, and Pine, Assistant Indian Commissioner Scattergood, Montana Representative Evans, John Collier of the American Indian Defense Association, and later the Peoples Lobby, and others, both Indians and whites got to voice their opinions, albeit arguably too late, about the ongoing problems pertaining to the Flathead Irrigation Project (Survey 1929).

At the hearings C. J. Moody, project engineer, testified that the project, which officially began through the Act of March 3, 1909 (35 Stat., 795), after preliminary surveys were conducted in July of 1907, authorized by the Allotment Act of 1904, was barely half completed by 1915. Furthermore, the irrigation project still needed to borrow \$2.4 million, on top of the \$5 million debt already amassed. He testified that most of the people "under the ditch," that is, under the jurisdiction of the irrigation project, would have a great deal of trouble paying off their debt to the project with the forty years worth of payments that were set up, if at all. And, that if a landowner could not pay and had to sell his land, the profit from the sale must, under the provisions of the current legislation, be deposited toward the debt on the land. With the debts all being more than the land was worth, no one selling their land saw a penny from the sales, regardless of the improvements made

on it. Even those who were not in severe financial trouble due to the irrigation project could not sell their land at a worthwhile price due to the lowering of property values caused by the project (Survey 1929).

Another illustration of the eurocentric concept of guardianship and governmental control over Indians, political and financial connections between Congressmen, local landowners, and merchants were also instrumental in facilitating the legislation and the materials for the irrigation project; as well as benefiting those involved politically and economically from all of the land forfeitures associated with the project cost. What was most important to note, the Indian Bureau, through the Commissioners of Indian Affairs, was overseeing all of these proceedings, supposedly as protectors of Indian interests. However it was instead, going out of its way to serve non-Indians, on an Indian reservation (Survey 1929).

It was well known that the Indian's guardians and protectors were permitting corporate interests to be involved in survey work on the reservation, even before the legislation was passed officially designating land for power and reservoir sites. However there could be no doubt after 1911, as to their prior plans for placing a dam and hydroelectric plant at the Place of Falling Waters on the Flathead River just below Flathead Lake. In 1911 an Act passed stating that any patent issued on lands bordering Flathead Lake must contain an easement "of one hundred linear feet back from a

contour of elevation nine feet above the high-water mark of the year nineteen hundred and nine of Flathead Lake, to remain in government control for purposes connected with the development of water power" (36 Stats., 1066).

Conditions on the reservation continued to worsen throughout the nineteen-teens. The Indian Rights Association, the Board of Indian Officials, Indian Commissioners, and the Indian Bureau, continued to survey the problems and hold hearings, but the standard of living still deteriorated (Brosius 1916; Ketcham 1915). This was because the laws which authorized the construction of the irrigation project, also held, in trust, monies from the sale of surplus lands to be hypothecated to the federal government to be held as collateral against repayment for the work undertaken by the Reclamation Service. In other words, if a particular settler benefited from the irrigation, he would still have to pay for his own land, in annual installments, without interest, against the revenue it generated (if the revenue was to actually exceed the debt). But if he did not succeed, in his failure, "the Indian tribe pays for the white man's experiment. In addition, the United States withholds the funds due to the Indians .without interest to the Indian debtor" (Brosius 1916).

The Indian Rights Association concluded, that

The spirited debates in the recent session of Congress disclosed the fact that unless the Government is very prompt in protecting the interests of these Indians, they will suffer loss in water rights, being almost reduced to bankruptcy and suffer hardship as a result of these unwarranted conditions. .

The Indians within these reservations are doomed, under existing laws, to suffer gigantic wrongs through legislation enacted within the past ten years which provide for the construction of irrigation projects on their tribal lands. The provisions contained in the various laws no doubt were better understood by those urging their adoption than by the Indians. . (Brosius 1929).

In addition to further underdeveloping the Tribes financially, the irrigation project dealt severe blows to the Tribe's cultural identity as well. It significantly altered the water tables, the fish habitat, and the local ecosystem in general. Swimming holes dried up and gardens died out. Furthermore, it continued the destruction of the Tribes' cultural and economic independence, forcing the Indian people even further into an economy based entirely on cash; and this occurred just in time for the Great American Depression when most of the country would be poverty stricken anyway. It is no small irony, then, that after seventy years of forced enculturation, this proud and noble band, now reduced exclusively to cash dollars for survival, with virtually no means for acquiring cash, had no choice but to stay on the reservation receiving government rations and near starvation, or traveling throughout the land, hitch-hiking, and searching for odd jobs.

Even though the Tribes' control of resources and economic independence were provided for in the Hell Gate treaty, now nearly eighty

years old, Congress and the Indian Bureau pushed for the allocation of the water-power site for the dam. At the same time, no one attempted to protect the rights or interests of the Indian people. These days, the Indians were so poor, economically and psychologically, that they were forced to make decisions which placed their individual and tribal needs aside, in spite of their objections to the inevitable destruction of their sacred site, The Place of the Falling Waters.

So, the Confederated Salish and Kootenai Tribes, who were among the very few peoples in history to 'welcome the coming of the white man, remain his friends, and refrain from joining in the battle against him,' (Fahey 1974) once again had their land and their culture taken from them, this time with a handshake and a written agreement, instead of with a gun or sword, as they silently looked on. After all, to survive in a cash economy, they needed cash; and the next inevitable step in acquiring that cash, even at the expense of their cultural identity, would involve the struggle over the licensing of the Flathead River's Power Site No.1.

## Chapter 3

### The Battle for the Federal License to Develop, Operate, and Exploit Flathead Power Site No.1 1926-1930

*One of the most scandalous actions that has occurred in this century with regard to the affairs of the Indian has been the embittered struggle over the Flathead power-sites. Perhaps this case will appear infinitely more scandalous to the American public when it learns that its national welfare had suffered twice as much as the Indians'. The Flatheads of Montana were cheated out of one-half of their prospective income. The result of the battle has been a bare fifty percent victory for the earliest settlers, while the public and its regulation of utilities have been a hundred percent defeat (Gessner 1931).*

\* \* \* \* \*

By 1926, The Confederated Salish and Kootenai Tribes had been systematically forced into a social, cultural, and economic position of dependency. They were dependent on a government they did not ask for, who created development they did not want, or need. They were dependent on an economy they could not even participate in, let alone benefit from. During this same time they were being told by their self-appointed protectors that all of this was designed to make them independent, assimilated, and civilized. This was coming from the same protector that was about to commit its biggest sin of all. It was about to solicit the services of an outside agent, a transnational corporation connected to a regional power

monopoly. to fix the mess that it created by constructing an unwanted, unworkable, and incomplete irrigation system.

The Indians were systematically denied access to the means to benefit from the irrigation water, yet they were expected to pay for it, with money they could not control or even see. Furthermore, during this entire process, the needs and wishes of the Tribes were almost completely ignored or suppressed. If anyone should ever need to see a textbook case of socioeconomic underdevelopment, they need not search any farther than the history of the Confederated Tribes of the Flathead Indian Reservation from 1855 to 1930. The Flathead Irrigation project thus serves as the pivotal point in this study. There were those aspects of the project discussed in chapter 2 which epitomized the increasing efficiency with which the guardians of the Indians were able to further enculturate and underdevelop them. Moreover, there are also those financial aspects of the project which explain the presence of the private corporate interests which would lead to the culminating underdevelopmental event since the birth of the reservation itself; the battle over the Kerr Dam site.

The construction of the Kerr Dam was to be a direct cure for the massive \$5,141,497.53 debt which the irrigation project had amassed by 1926. Only 112,000 acres of the 150,000 plus they had originally intended were capable of being irrigated, and less than 30,000 were actually being



irrigated, bringing the cost of irrigable lands up to \$175 per acre. "Of the total only 1,882 acres were cultivated by Indians, while 23,312 acres [were] white owned and 5,696 [were] white leased" (Knox 1926;28). Furthermore, by 1924, the average revenue generated by crops per acre in the district, excluding labor, operation, and maintenance costs for the irrigation itself, was a mere \$19.07 per acre (Knox 1926). Critics were now also noticing that not only the annual yield from the agriculture aided by the irrigation was becoming exponentially less each year than the debt amassed by the same irrigation, causing land values to plummet, they also made note that the climate, the marginal quality of the soil, and the distance between this region and any market which could bring a fair price, justified the accusations that the project largely was a failure.

In addition to the increasing debt on this failed project, the Indian Bureau had also spent over \$101,000 on the Newell tunnel, a huge hole through a mountain situated in the inside of a large s-curve which the Flathead River took through the canyon and over the sacred falls. Work on the tunnel began in 1909 which was originally intended, so said the Indian Bureau, to generate about 7,500 horsepower of electricity for the Tribes, to be used for irrigation purposes (Brosius 1927). However, this was the sacred site, the Place of the Falling Waters, which belonged to the Indians from time immemorial, which would later become the place of the Kerr Dam; Flathead

## Power Site No.1.

Federal officials claimed that the unfinished tunnel was originally intended to be part of a pumping station to gravity-feed water into irrigation ditches for the Indians' and settler's farms. However, later evidence suggests that the earlier secret presence of the power monopoly might indicate that the tunnel, at some point earlier than indicated, was in fact intended to aid in the building of the dam, as the river would need to be temporarily diverted during construction (Survey 1929).

By the mid 1920's, even though those who were to pay for the irrigation were supposed to be those who benefitted from its uses, and those who supposedly benefitted were not capable of paying, Congressman Louis Cramton's Interior Committee was investigating ways to continue funding the project. Meanwhile, the Montana Power Company and the Anaconda Copper Company, who were both owned by John D. Ryan, were witnessing a large expansion in their industry, and with that, their influence in the affairs of the state. Furthermore, they needed more electricity to power their operations.

Therefore, because the government desperately needed a way to clear the debt on the still unfinished irrigation project, and the project engineers still needed more horsepower to pump the water to be gravity fed into the ditches, to get the people the water they deserved, and to draw attention

away from the fact that the people's land was being foreclosed upon due to the government's broken promises, big government and big business came together to formulate a solution to this problem. Before I describe their solution, I must first elaborate on just how "big" this big business was.

### **The Power Monopoly**

All of this, while obviously rather shady, might at first appear to be the typical bitter battles within Washington's power politics, until one becomes more familiar with the roll of the Montana Power Company. Mr. John D. Ryan headed both the Montana Power Company and the Anaconda Copper Company, and with them, an interlocked chemical-fertilizer-metallurgical monopoly, the extent of which was referred to as "incalculable. Furthermore, this monopoly was in need of a great deal of cheap power to run its operation (Gessner 1931).

Montana Power originally grew out of a series of mergers between smaller companies; among these were the Butte Electric Company, the Missouri River Electricity and Power Company, the Great Falls Power Company, and the Thompson Falls Power Company (Abbott 1954). The Montana Power Company and its subsidiary, the Rocky Mountain Power Company, both of which Mr. Frank M. Kerr was the vice-president and general manager (Collier 1927e), were under the ownership of the American

Power and Light Company And that company was but one of four huge branches of the transnational conglomerate called the Electric Bond and Share Company, which, with its numerous connecting branches, "measured its strides in terms of billions of dollars" (Collier 1930b). A considerable sum in the era of the Great Depression.

Along with the American Power and Light Company, the other three main branches of the Electric Bond and Share Company were the American Gas and Electric Company, the Electric Power and Light Corporation, and the National Power and Light Company. "The subsidiaries of these four holding companies supply electric power and light and other utility services in thirty-one states of the United States. What a monopoly!" (Gessner 1931:313). "This, then, is the impregnable, iron-clad power trust -- a veritable wolf in sheep's skin -- into whose clutches wandered the unsuspecting Flathead lamb, led by a rope in the hands of the Indian Bureau, the supposed shepard of the flock" (Gessner 1931:314).

### **First Solution: Confiscation Through a Secret Agreement**

Returning to the solution devised by the association of federal and corporate interests, the reader should recal that any solution the government would come up with, with or without corporate help, would contain a rather obvious dilemma; namely, that this was all on Indian lands. The first three

Articles of the Hell Gate Treaty reserved all the lands within the borders of what is now the Flathead Indian Reservation for the Confederated Tribes, including what would later become the Flathead power sites, forever. However, the precedent set by the Lonewolf v. Hitchcock case of 1903, and the Flathead Allotment Act of 1904 changed all of that, forever.

After the land was divided, allotted, and surplus created, lands could then be reserved for power sites, according to the provisions laid out in the Act of 1904. However, it was a body of Indian lands, federally designated by the same government which held a guardian-trustee authority over the Indians. Therefore, no government or corporation could legally take the land and exploit it, without at least purchasing or renting it from the Tribes. Purchasing lands would naturally empower the Tribes with funds which could be used toward greater self-determination. However, this was not the goal of their guardians, nor the rhetoric of the federal government at that time.

In the event that a power site should be developed on Indian lands, provisions for properly compensating the Tribes, usually through some rental agreement, were laid out in the Federal Water Power Act of 1920 (41 Stats., 1063). This act stated "that all proceeds from [power developed on] any Indian Reservation shall be placed to the credit of the Indians of such reservation" (Collier 1927b). This same Act called for the formation of a

Federal Power Commission, a three person committee consisting of the Secretaries of War, Agriculture, and the Interior, with the latter as chairperson. They would serve as arbitrators in disputes over water-power issues on Indian lands, and administer licenses to federal or private interests who wished to develop and exploit these Indian properties. Implicit in this arrangement is, of course, that the Indians were not capable of accomplishing this on their own. This would explain why they were never present during any of these, or the following deliberations.

In 1925 and 1926, Senator Cramton, with the weight of his Interior Committee, attempted to push through an "uninformed" Congress, several riders on appropriations bills. They were specifically designed to undermine the Confederated Tribes' ownership of Flathead Site No.1 and completely confiscate it from the Indians, so that permits to develop power could be granted to the Montana Power Company. This would enable them to turn a profit, as well as satisfy the needs of the Interior Department and the Indian Bureau to clear their debt as Montana Power would agree to sell electricity to the government at cost (Survey 1929).

After this "trickery" slipped through Congress, it opened the door for a private contract to be "hurriedly" signed on February 17, 1927. Present at this meeting were members of the Montana Power Company, the Indian Service, the Interior Department, the Federal Power Commission, and even

the Flathead Water Users Association, a local group consisting of white land owners on the reservation who were trying to make the irrigation project work for them. Those absent at these meetings were, of course, the Indians. The agreements reached at these conferences, agreements which would have "divided the spoils" between everyone but the Indians, were first denied but later made public through the diligence of the American Indian Defense Association, spearheaded by John Collier, and the Tribes' own attorney, Albert A. Grorud. They successfully demonstrated that this secret contract attempted to confiscate the ownership and subvert the control of the power site away from the Indians, its rightful heir and owner. Collier confirmed this when he later stated that

[t]he Flatheads were not invited to the conferences. They were not admitted to them. They were not informed of them. They were not parties to the bargain, the agreement, the undertaking, which were, in simplest English: that with their official gaurdian's [the federal government's] consent their property should be confiscated" (Collier 1927b).

Their motives, those of the government and the Montana Power Company, for subverting the Hell Gate Treaty of 1855 and the Federal Water Power Act of 1920, which the American Indian Defense Association exposed, will become clear, and proven, as this chapter proceeds. The Montana Power Company, whose owner and executive director, John D. Ryan, also owned and operated the Anaconda Copper Company, had rather clear intentions: to maintain and better secure the power monopoly, which already stood in

place, under their's and their parent company's control in the northwest portion of the country, by securing the necessary legal permits, early on, to further monopolize the power industry and illiminate the possibility of any competition.

The Power Company's ability to profit from the site was undisputed. The minimum or constant projected horsepower output from Flathead Power Site No.1 was 214,000 with a projected maximum of 280,000 (Collier 1930b). The quest for complete confiscation of the power site by the private and public interests involved, the ground work for which was laid out in the Acts of 1904, 1908, and 1909, had come at the Indians with full force by 1927 with this confidential initial agreement, previously "unrevealed but now absolutely proved" (Collier 1927c).

The Interior Department, through the Indian Bureau, had amassed, by this time, over a \$5 million debt on the Flathead Irrigation Project, 74 percent of which was, by then, owned exclusively by whites, and a total of 85 percent was to some degree being farmed by whites. As for the Indian Bureau, they had been accused by groups such as the American Indian Defense Association of corruption for decades at this point. Investigative committees were exploring, at the opposition of the Bureau, why for years the national total of Indian lands had been shrinking at the rate of 4 percent per year, while the Indian death rate had been twice that of the rest of the



American population (Collier 1927e). In this particular case, the Bureau was looking to save face in light of these and other accusations, and achieve some re-compensation for all the wasted (or missing) money on the Congressionally approved but still incomplete irrigation system, and especially on the \$101,000 spent on the defunked Newell tunnel project.

So the investigations were stepped up when the Indian Bureau embarked on their quest to seize the land necessary for the Flathead power sites, which "exceed[ed] in its primary horsepower capacity the entire developed horsepower of England, Wales, Scotland and Ireland" (Collier 1927d). Later, sworn testimony from the Montana Power Company and the Federal Power Commission would confirm that the "attempted despoliation [of the Indians] originated with the Indian Bureau" (Gessner 1931).

To summarize thus far, the Federal Water Power Act of 1920 was designed to oversee the activities surrounding "licensed or rented power sites under government control" (Collier 1930b). However, clauses "smuggled" into appropriation acts in 1925 and 1926 provided for governmental developement of the site where the dam now stands, with earnings from the site to be made payable to the federal government and the white owners of the irrigation district. In this way the Indian Bureau attempted to subvert the provisions of the Power Act of 1920 and illiminate the possibility of the Indians gaining control of the site, or benefiting in any

way. This should not, however, have changed the fact that the Indians still exclusively owned the site as of the Treaty of 1855, a fact that would later emerge time and time again in witness testimony during Senate hearings (Survey 1929; Survey 1933). The slight amount of attention drawn to the exposure of these earliest attempts at complete confiscation, caused the Montana Power Company to pursue its interests at ever increasing rates.

### **Second Solution: Partial Confiscation**

So the Montana Power Company later proposed, that if it were to be granted the license to develop and operate the No.1 power site, which controlled the remainder of the proposed sites, it would pay \$1 per horsepower per year to the government, to the whites of the irrigation district, and to the Indians, respectively. The first part of the payment was to cover the cost of the Newell tunnel project, immediately skimming money off the top, rightfully belonging to the Indians and appropriating it to a debt to which they had no fault or responsibility. Another part was to be distributed to the irrigation district in the form of power-at-cost, which was only 15 percent Indian. And the balance, in the form of cash, to be split up again between the whites and the Indians.

Because the power monopoly was partially exposed, and could no longer attempt complete confiscation, a voracious white-settler and

power-company lobby descended upon Washington" and attempted what John Collier called "a seventy percent confiscation." For, of the proposed \$1 per horsepower year rent, the government, the whites, and the Indians were to receive 10¢, 60¢, and 30¢, respectively. The Indian annual payment proposed in this agreement, then, amounted to \$20,400 as the Montana Power Company predicted a mere total annual output of 68,000 horsepower (Collier 1927e). Furthermore, the Indian share was to decrease while the white share was to increase with each year hence forward (Collier 1927b).

There was another example of paternalistic intervention occurring, designed to stifle the Indian voice throughout this entire battle. Even though there was overwhelming opposition from the Tribes, the Indian Bureau, and the Commissioners of Indian Affairs, Burke, Meritt, and Rhoads, all refused to allow the Tribes to pay Albert A. Grorud, the tribal attorney which, the tribal council elected themselves, out of their own tribal funds, which at the time, exceeded \$158,000. The Tribes' attorney continued to work in Washington, as he would do throughout this entire battle, by himself, and without payment for fees and expenditures from tribal funds. In addition to Grorud, and Collier's American Indian Defense Association, some support was also received from the National Council of American Indians, and the General Federation of Women's Clubs (Collier 1930b).

Those party to this second agreement did not inform Congress before

the congressional session held in May of 1927. However, six days before the session adjourned, there arrived a recommendation through President Calvin Coolidge from the Budget Director and the Secretary of the Interior calling for an amendment to the Second Urgent Deficiency Bill, which contained within it two "jokers" (Collier 1927a). One sought to distribute the earnings between whites and the Indians similarly to the distribution proposed in the Power Company's initial agreement. The other transferred discretion over power site lease granting from the Federal Power Commission, created by the Federal Water Power Act of 1920, exclusively to the Secretary of the Interior. The bill passed in the House without question. After pro-Indian lobbies fiercely battled in Washington, the bill was killed in the Senate.

This amendment to the Second Urgent Deficiency Bill, recommended by the Budget Director and the Interior Department, and sponsored by the Chairman of the Sub-Committee on Interior Department matters in the House Appropriations Committee, Louis Cramton, contained language, albeit disguised, which authorized the Interior Secretary to make official the conditions of the original secret lease agreement of February, 1927. This was later confirmed in a letter from O. C. Merrill, executive secretary of the Federal Power Commission, to Senator Borah, May 26, 1927:

The Department of the Interior sought to secure in the Urgent Deficiency Bill of the last Congress, amendment in a form corresponding to the tentative arrangements made between the Interior Department and the Rocky

Mountain Power Company [a subsidiary of the Montana Power Company formed for the sole purpose of acquiring and exploiting the Flathead powers]

In order that it might have protection against other possible applicants, the Rocky Mountain Power Company has requested a preliminary permit under which it proposes to make the investigation and prepare the plans for the proposed power development. If the Commission grants a preliminary permit for this site, the permit will contain provisions that all rights and priorities under it will expire on a given date unless Congress meantime has amended existing legislation so as to permit the issuance of a licence on substantially the lines laid out in the tentative agreement between the Interior Department and the power company (Merrill, as cited in: Collier 1927b).

It was later proven that, at a prior date, Montana Power agreed to furnish 25,000 kilowatts to its sister corporation, the Anaconda Copper Company, from a hydroelectric power facility, which at that time it did not have, had not started, and had not even secured the rights to construct. Montana Power had to see that legislation would pass enabling them to acquire the rights to operate the site, which comes in the form of a license from the Federal Power Commission, which the power company could not have until Congressional authorization of governmental control over the Newell tunnel site was lifted (Collier 1927b).

This first round of battles in 1927, surrounding these agreements made behind the scenes, determined that Montana Power could not pass the necessary legislation until it at least acknowledge that it must divide the spoils, which in reality, belonged exclusively to the Indians. Collier considered the victory only temporary, though, noting that being "[c]onfronted with what can only be described as a hold-up, the Power

Company has yielded. It yielded without any groans, because the Indian pockets were being emptied not its own. (Collier 1927b). The power company did not, however, yield in its quest to generate more power for the Anaconda Company, eliminate competition, increase its profits, and better secure the established power monopoly.

So if the exposure of the plot by the Indian Bureau, through the Rocky Mountain Power Company, alias the Montana Power Company, (the relationship between these two companies will be explained later), in the form of the initial contractual agreement of February 17, 1927 was not enough to convince an observer that all these parties, including the Power Commission, Congress and state legislators, and the Flathead Water Users Association, were in collaboration against the Tribes, who had no voice in these deliberations, then the work accomplished by John Collier's American Indian Defense Association should be completely convincing.

In addition to the Merrill letter, Collier obtained the summary of the initial agreement addressed to the Commissioner of Indian Affairs, and signed by Frank M. Kerr. They had a published statement by the representative of the irrigation project's local interests, Mr. B. F. Johnson, wherein he revealed the contents of the contract and boasted of his contribution. They had a statement by the Hon. Louis C. Cramton in a letter to the secretary of the Flathead Water Users Association, Mr. F. M. Hillman,

in which he mentions the contract, the parties involved, that the terms will favor the irrigation district which the Indians will not be entitled to, and also, that the Federal Power Commission will grant a preliminary permit using the Federal Water Power Act, which created the Power Commission and was supposed to guarantee Indian revenues for rental of power sites. They also had speeches and correspondences from Frank Kerr reiterating this information (Collier 1927e). With this evidence, and with the help of Senator Borah and others, the American Indian Defense Association stopped the earlier attempt at complete confiscation, and exposed some of the dirty dealings of the Indian Bureau prompting formal apologies. The Cramton bills of 1925 and 1926, undermining Indian ownership of their land, still had not been lifted, but for now, the business of the "preliminary permit" demanded their immediate attention.

With Congress ready to convene session in December of 1927, the American Indian Defense Association tried to ensure that the Tribes would somehow have their voices heard and their consent obtained before any preliminary permits were issued; and, from thereafter, have their arguments presented with the help of legal counsel. Moreover, the Defense Association attempted to ensure that all of their evidence become public, and requested that no significant action be taken until Congress met in December. Even with their political weight, and with the support of Senators Wheeler and

Frazier, the power monopoly remained silent, and continued to work behind the scenes on their agenda to preserve the provisions of the 1927 contract.

In fact, all parties involved were silent except for the Indian Bureau who wrote responses to accusations saying, "Trust the Indian Bureau -- the Bureau will protect the Indians!" Even the Assistant Commissioner of Indian Affairs, E. B. Meritt, wrote the chairman of Indian Welfare for the General Federation of Women's Clubs ' that any preliminary permit that may be issued will not grant any right in and to such company or corporation to receive a license for development purposes. This is a complete falsification of the truth, for Section 5 of the Federal Water Power Act states ' that each preliminary permit issued under this act shall be for the sole purpose of maintaining priority of application for a licence under the terms of this act

Each such permit shall set forth the conditions under which priority shall be maintained and a license issued.' (Collier 1927b; 41 Stats., 1063).

### **First Attempt at Complete Confiscation Thwarted**

While the Indians were still attempting to be heard for the first time on the license, the engineers of the Montana Power Company began to work on the power site without a permit. They claimed they were just finishing some survey work they were entitled to over a year before. The Indian Bureau and the Federal Power Commission both denied any knowledge of



the engineer's presence. The local residents, however, did not need any confirmation of this. Apparently the Indian Bureau had no problem with upholding federal legislation, or simply ignoring it, whenever it suited them to do so. Nonetheless, the engineers completed their work furnishing Congressional Committees with sufficient data to support their request for a preliminary permit, while the Bureau looked the other way.

If this would succeed, the Montana Power Company, under the guise of the Rocky Mountain Power Company, would circumvent the Federal Water Power Act of 1920 and the Hell Gate Treaty of 1855, and would thwart all potential competitive threats which an open market would naturally produce. The Bureau even went so far as to organize a group of tribal members claiming to represent the Tribes' interests, to be brought to Washington, at the expense of the Tribes, to be given a hearing before the Power Commission and the Indian Bureau. These Indians, who would claim to favor the granting of the preliminary permit to Rocky Mountain Power, who were appointed by the Bureau, and who had no training in the law, the courts, parliamentary procedure, or in business, would be hailed by the Bureau as proof that "the Flathead tribe has been fully taken into our confidence" (Collier 1927b). Mr. Grorud, tribal attorney, was still prohibited by the Indian Bureau from being compensated for any of his fees or expenses.

Between late 1927 and early 1928, a fierce debate raged in Washington. The Power Commission attempted to issue the license to operate the power site, without competition, to the Rocky Mountain Power Company at a "fantastically low rental." Grorud and Collier worked the legal end of things while the Indian people remained confident, vigilant, and hopeful. Meanwhile, Montana Power embarked on a campaign throughout Montana of "lavish spending" attempting to "win" support for their cause. A Senate Investigating Committee would later unearth many questionable activities related to Montana Power's political tactics. Nonetheless, Indian morale was holding steadfast.

In March of 1928, after an eleven month contest, the Senate voted to uphold the Tribes' ownership of the reservation power sites, repealing the Cramton "confiscation rider" of 1926. Spearheaded by a few Indian representatives, Grorud, Collier, Senators Wheeler, La Follete, Fraizer, and others, their efforts indicated, as Collier said, that "[t]he day when Indian community spirit can be killed by purchase or by violence has gone by" (Collier 1930b). Despite overwhelming financial and political opposition, the Confederated Tribes of the Flathead reservation, had, in two short years, progressed from a situation of total confiscation, to approximately one third compensation, to a re-establishment of tribal ownership of the power sites. The story of the battle over the power site license, however, was far from

over.

### **Competition to the Power Monopoly is Introduced**

The Indians, while not too familiar with the procedures of big business or of big government, did come from a cultural tradition which empowered them with skills in the politics of trade. They wasted no time after the March 1928 victory to take the next step in attempting to impede the progress of the power monopoly. They solicited the services of an independent engineer from Minneapolis, named Walter H. Wheeler, to make his own bid on the development of the power sites. He too applied for a preliminary permit which required that he acquire the endorsements of his bankers and other customers, and if not, would be forced to withdraw from the licensing battle. After conducting his studies, Wheeler offered long term contracts which promised to produce large amounts of affordable electricity to companies in the chemical, metallurgical, and fertilizer industries. He claimed he could guarantee an annual output of 214,000 horsepower, and at a wholesale price of \$15 per horsepower-year (Gessner 1931).

This was an important and appealing proposal to the Indians for several reasons. First, the proposal for business and industry to boost the local economy, if it were to happen, would be the first time since the dawn of the reservation, that the Indians could now have the potential to earn cash

dollars close to home, and be on the road to self-sufficiency promised them so long ago. Second, Indian land values would significantly increase, since the people still had to travel far from home to find even adequate work. On the other hand, the Montana Power Company, "proposed no local development, but a transportation of power 140 miles to Anaconda, for industrial uses at Anaconda, and beyond, and for general utility uses" (Collier 1930b). The third reason the Indians were eager to sign a contract with Mr. Wheeler was the numbers he was offering.

Wheeler guaranteed 214,000 horsepower, compared to Montana Power's 68,000. He proposed to develop all five of the Flathead power sites, whereas Montana Power offered to develop only the principle one (which would control the other four regardless of who may or may not operate them in the future). His sale price of \$15 per horsepower-year was "one-half the average switch board rate of the Montana Power Company and 58 percent below that company's wholesale rate to customers other than the Anaconda Copper Company" (Collier 1930b). Finally, he offered to the Indians an annual rental fee of \$240,000, again, of more than 280 percent over Montana Power's \$68,000. Wheeler's work gave the Tribes good cause to be optimistic. "For once, in the history of the State of Montana, the power monopoly was threatened" (Gessner 1931).

## The Power Monopoly is Threatened

The Montana Power Company had long been accused of "taking money from one pocket and depositing it in another, but keeping the valuable pants on all the time" (Gessner 1931). In other words, it took annually a 4.7 percent excess profit over the legal limit, by providing reduced rates for companies which it owned or was directly affiliated with. Not a bad idea, until one discovers that they were passing the cost along to the consumer public. Montana consumers alone were said to be squeezed out of \$2.1 million of Montana Power's annual profits over and above its legal return. Approximately half of the power generated by Montana Power at the time was being sent to the Anaconda Copper Company, who payed only 3.82 mills (\$0.001) per kilowatt-hour, while other industrial customers paid between 10 and 20 mills per kilowatt-hour (Gessner 1931). Collier's reaserch revealed that, at the time, "all industrial and domestic consumers in Montana [were] required to subsidize the Anaconda Copper Company through rates" (Collier 1930b). To beat this monopoly, Wheeler even offered to change his bid to match, or exceed, any bid, or future amendment to a bid, proposed by the Montana Power Company. Needless to say, these business practices, heretofore unchallenged, were indeed quite threatened.

Both whites and Indians saw the obvious advantages Mr. Wheeler was offering and overwhelmingly supported him. However, Wheeler was,

naturally, refused the preliminary permit by the Federal Power Commission with the argument that he would not be capable of soliciting the customers necessary to satisfy his offer. Wheeler countered that the very nature of the preliminary permit was to grant a certain amount of time for the bidder to secure the business, and he purported to have that very business secured at that time. At future Senate Committee hearings, dozens of letters from prospective clients substantiating Wheeler's claims would be read into the record (Survey 1929). For now, though, it was to no avail. He was denied.

After a chance to attend a hearing before Secretary Bonner of the Power Commission, which the Interior Secretary would not permit Wheeler to attend because he planned to continue to insist on rebutting the power monopoly's claim of 68,000 maximum horsepower, he delivered a lengthy and convincing *prime facie* case in the large Senate hearings of 1929 and 1930. Wheeler delivered his case before the Senate Committee on Indian Affairs, instead of just the Interior Secretary or the Federal Power Commission, in spite of Senate protest. In it he even tried to expose a plot by the Indian agent and superintendent to get the Senate to approve another attorney from Missoula to represent the Tribes' interest (when he clearly did not) instead of the attorney which the Indians themselves had selected. The preliminary permit, which he personally applied for, and paid over \$10,000 in court for, was still denied to him. For not only was Montana Power's

monopoly threatened, so too was the rating structure of the whole northwestern region of the country. due to the far-reaching financial and political arms of the intercontinental Electric Bond and Share Company (Gessner 1931; Survey 1929).

### **The Indian Voice is Finally Heard**

Beginning October 28, 1929, and lasting eleven days, the first in a series of Senate hearings on the power site development, and the granting of such licenses and permits to do the work and reap the spoils, were held. The records of the meetings cover 2,295 pages. In them, every one from the Indian Commissioners, Senators, Congressmen, the members of the Federal Power Commission, Albert Grorud, John Collier, Walter Wheeler, Frank Kerr, and others, can all be heard. All in all, though, less than 10 percent of the text has recorded the actual words of tribal members, even though the hearings were held in the reservation town of St. Ignatius, Montana. One Indian, tribal council president Caville Dupuis, had quite a bit to say on behalf of the issues (Survey 1929).

Mr. Dupuis began by stating that the Tribes wanted a proper appraisal of what the power site was worth so they could be paid a fair market value for their land. He also urged that the Tribes' rental payment should not be shared with irrigation district customers, or to clear any Indian Bureau debts

which the Tribes had nothing to do with, such as the repayment demand for the Newell Tunnel debacle, which he called "blackmail. He stated clearly that the Tribes wanted their attorney to be paid, and that, at that point, he had been working, mostly in Washington, for six years without any pay

There had been confusion concerning the true Indian opinion due to what some were calling falsified petitions which were circulating around at the time. Furthermore, there had been tribal hearings and meetings, with hundreds of tribal members and superintendent Coe present, where all of these arguments were made public and were overwhelmingly supported by the Indian people. Nevertheless, Dupuis argued, the general consensus of the Tribes were never conveyed outside of the boundaries of the reservation. The tribal council president, therefore, requested that the Indian voice be made public. Dupuis further stated that the Tribes' intention was to accept a bidder who did not plan to sell their power at cost to the government, but would be in the position to clear its own debts at its own expense (Survey 1929).

These were all worthy claims supported by worthy arguments, and similar if not identical to those of Grorud, Collier, and others. However there was clearly a different tone to Dupuis' testimony. It was apparent that he represented the voice of the tribal people, who, by all principle and law, ought to be in control of their own destiny, but quite obviously were not.



Dupuis spoke for himself, and for the Confederated Tribes of the Flathead as the president of their tribal council, but he also spoke for Indians everywhere. He told the Committee that he did not trust the Indian Bureau or the Montana Power Company, but that he would take the Committee's word that the Senators and the new Indian Commissioners were trustworthy. Dupuis would trust them until they gave him a reason not to. Dupuis summarized the Indian attitude when he said: "I wish to state that we are not so much concerned with the loss of money to the Tribe[s] through the proposed blackmailing and bribery as we are concerned with the fact that this action is defended on the grounds that the Flathead Tribe does not in fact own its power site. The whole scheme is dishonest and illegal" (Survey 1929:3288).

Dupuis indicated that the Tribes were somewhat used to being taken advantage of financially, and this should not be surprising given their twenty-year history of power site licensing. They were more interested in receiving what they considered to be honorable behavior on the part of their supposed protectors. He admitted that the Indians needed money, and cited examples of how they were given opportunities to earn cash and try to be self-sufficient. Then these opportunities were taken away from them, such as the livestock industry which the Indian Bureau pushed on them, which was later rendered obsolete after allotment and white settlement (Live Stock

1936). Dupuis further argued that the Indians were continually uninformed as to what was in the tribal trust accounts, how much was coming and going, and where. It was also discussed that all but a small handful of tribal members up to that point had even been educated as to how to farm and how to use the irrigation systems that all tribal members were expected to pay for (Survey 1929).

In addition to hearing the Indian voice, and making a matter of public record the Indian's concurrence with those who were arguing on their behalf, this lengthy hearing was significant in terms of the behavior of an Indian Bureau official. Assistant Commissioner of Indian Affairs, Scattergood, questioned the power monopoly to such an extent as to expose their intentions, and ability to earn huge excess profits from the power site, and that the Indians were not going to be able to participate. [H]e forced into the record a mass of extraordinary evidence, bearing on the immediate question of the Flathead site, and on the wider question of rates, capitalization, pyramiding of control and, generally, the hydro-electric operations of Montana" (Collier 1930a). This "shocking and unprecedented" proposal, revealing Montana Power's expectation of a 20 percent net revenue from the No.1 power site alone, was very instrumental in increasing the rental amount to be paid to the Indians, but not so in illuminating the monopoly entirely from the scene.

Later, rather mysteriously, Scattergood "made a hasty exit [from the focus of the proceedings] and from then on remained hidden somewhere backstage" (Gessner 1931). This, however, does not appear so mysterious after reexamining the Assistant Commissioner's track record throughout these proceedings. He, and his boss, Commissioner Rhoads, were instrumental in the official proposals to eliminate the possibility of compensation to be paid to the tribal attorney. They were quick to give credence to the fake group of Indian delegates, lead by paid "chiefs" of the power monopoly and implemented by superintendant Coe, who claimed that the Tribes wished to accept the power company's offers. They considered the actual elected tribal council "no longer official" Furthermore, they even drafted memorandums suggesting the establishment of the dummy company, Rocky Mountain Power. Later, Scattergood even went so far as to urge Walter Wheeler to withdraw from the competition for the license bid, and to join forces with the power monopoly as an engineer or stockholder (Gessner 1931).

### **The Power Monopoly Increases Its Offers: The Indians Settle**

After the Senate Hearings on Indian Affairs in 1929, the Montana Power Company greatly increased its efforts to secure its bid for the license. Twice before the Senate, the Indians' pleas for fairness in the proceedings

were squelched by arguments drafted by the army engineers working at the site, the same engineers employed by the Power Commission. Each time the American Indian Defense Association, subpoenaed witnesses, and other friends of the Indians fought before the Senate of behalf of the Tribes. The Defense Association claimed the engineer's proposals "drew impossible conclusions from fictitious data, all weighted heavily against the Indian claims and in favor of the Montana Power Company" (Collier 1930b). Then another proposal came in. This time it came directly from the Secretary of the Interior to the Montana Power Company, completely disregarding Walter Wheeler, and offering \$104,400 in annual rental fees to the Indians, to be attained only "after a term of years."

Even with friends in Washington, Montana Power was not going to take any chances. They also embarked on a campaign at home, superseding their aforementioned scandalous activities, through what were called "post Civil War tactics in a Herculean effort to drown out Wheeler, by "launch[ing] itself on a spending orgy" (Gessner 1931). Ever since its bid of \$68,000, the Montana Power Company, through its own paid agents, and even with bought Indians, bribed local officials and prominent peoples. "It paid out thousands of dollars to rabbis, and priests, to Deaconesses' homes and Y.M.C.A. s, to comercial clubs and wool-grower's associations, and to individual Indians, Indian 'fixers, Indian picnics, and Indian powwows." The

power company's fake petitions and monies all were circulating for one reason, and with a clear message: "the instant [and] unconditional grant of the power sites to the [Montana Power] Company" (Gessner 1931). Later, Montana Power even went so far as to claim, for reimbursement, the "one hundred odd items of bribe money" when the Power Commission required that they list their preliminary costs leading up to the license. These costs, listed as "necessary investments, were to be eventually charged to consumers (Gessner 1931).

Again the Indian Defense Association mounted a defense on behalf of the Indians forcing the power company to rethink its offers. Montana Power, claimed they simply decided to renegotiate, but in the end, they were finally forced to accept another offer. This was due partly to the efforts of Assistant Commissioner of Indian Affairs Scattergood at the 1929 hearings, but mostly to the efforts of Indian Defense Association's executive Secretary John Collier, tribal attorney Grorud, and other popular lobbys and government leagues, not to mention the competition offered by Walter Wheeler, which would not have been heard so loudly had it not been for the Indian Defense Association. On May 23, 1930, Montana Power accepted a license from the Federal Power Commission requiring them to pay a maximum of \$175,000 per year to the Tribes, with an average per year of \$140,000 over the next twenty years. For now the battle was over, and the

material and financial gains for the Indians, which are not really gains considering it was theirs to begin with, can be summarized thusly.

In 1926 a House sub-committee lead by Louis Cramton issued a proposal calling for complete confiscation of the power site from the Tribes to the power monopoly headed by the Montana Power Company, with annual rentals and revenues for the Indians to be exactly \$0.00. In 1927, Montana Power, after stating that they intend to produce only 68,000 horsepower per year, offered a \$1.00 per horsepower-year rental to be divided among the whites of the Water User's Association (\$0.60), the federal government (\$0.10), and the Tribes (\$0.30), amounting to \$20,400 per year. Then, in 1928, an offer that all of the \$1.00 per horsepower-year rental be paid to the Indians, in the amount of \$68,000 per year, was proposed and the earlier attempt at confiscation of the ownership of the land at the power site was repealed (Collier 1930b).

In late 1929 and early 1930, a series of offers began appearing more rapidly. First, the Power Commissions' army engineers proposed an offer which attempted to further subvert the Indian's rights, and benefit the federal government, until the Indian Defense Association exposed and illiminated it. Next was the plan of Interior Secretary Wilbur given personally to the Montana Power Company. This was the one ignoring engineer Wheeler's competitive bids, and which Montana Power supposedly

"rejected" themselves. It offered the Indians \$104,400 annually, derived from the profits of Rocky Mountain Power, the dummy company, and was defeated by Collier, the People's Lobby, Senator Lynn Frazier, and the National Popular Government League. Finally, the proposal in April of 1930 by Montana Power to pay the Tribes \$140,000 annually, was maximized to \$175,000 annually on May 23, 1930 by Collier's Association. That Association, through the discovery of letters written to Interior Secretary Wilbur, exposed the scheme that Montana Power was attempting to employ to have retail consumers shoulder the burden of the reduced wholesale power costs to her sister organizations, such as the Anaconda Copper Company (Collier 1930b).

Collier's last letter, dated April 26, 1930, cited evidence from the Power Commission hearings, stating that "it would seem that the domestic users suffer even worse than the competing industrial users as a result of the discriminating rates enjoyed by the Anaconda Copper Company. The power house rate of the Montana Power Company to the Anaconda Copper Company is \$17.50 per horsepower-year. The rate to other industries for 24-hour power is \$36.25 per horsepower-year" (Gessner 1931).

Considering that the land for the power site was guaranteed to the Indians by the Hell Gate Treaty, and the revenues generated from power development were guaranteed to them by the Federal Water Power Act of

1920, the Indians, nonetheless, considered themselves fortunate that they received what material compensation they did, given the weight and magnitude of the monopoly they were up against, even though the figures fell short by measure of 50 percent of that of Walter Wheeler's. The whites on the reservation in the end, however, received next to nothing; and the violations of the Indian's rights, which began at Council Grove in July of 1855, were still far from over.

### **The Rocky Mountain Power Company: A Dummy Corporation**

The final proposals which granted the license were made with reference to the Rocky Mountain Power Company, a dummy company, completely owned and operated by the Montana Power Company. The stipulations of the license required that it sell all of its power and subsequent profits from the Flathead power site No.1 exclusively to the Montana Power Company. Also, no federal regulations on profit making or price fixing would, by the Federal Water Power Act of 1920, extend beyond the licensee, even though it is apparent to all that the licensee, in actuality, is only the Montana Power Company in disguise. Even in the 1930's in America, big business was so "big" that its power, authority, and influence over the affairs of the common people, who made all of their tremendous profits possible, were so extensive that it made federal regulation of its



actions and dealings impossible; unofficially ushering in an age of deregulation in the power industry. This occurred long before Americans would be told, by their leaders, that deregulation, and the invisible hand of competition in open markets, were the only sensible solution to rising power costs. Collier wrote:

The Federal Power Commission and Interior Department, by the particular terms of the license as issued in May [1930], have destroyed irrevocably a mass of vital public rights which had been, it was assumed, guaranteed by the Federal Water Power Act. As follows:

The Federal Power Act requires of a licensee that he stipulate to the Government a control over all of his operations which are not controlled under the Law of the State wherein the issuance of securities, in kind and amount of utilities in that State. Hence, if the Montana Power Company had been required to take the Flathead License in its own name that company's accounting, its capitalization, its securities in kind and amount, would have been brought under the regulation of the Federal Power Commission -- of the reorganized Federal Power Commission, altered from being, what it now is, essentially a political agency, to being (it is hoped) a technical agency equipped to enforce public regulation. . . . [T]he Rocky Mountain Power Company [was] created to become the Flathead licensee, and financed, officered and controlled by the Montana Power Company, and bound by contract *and required by the licensee* to sell the Flathead power only to its monopolistic owner. The dummy, according to the Montana Power Company's scheme, was to become the licensee. The Government would regulate the licensee -- the dummy. Government regulation could not reach beyond the licensee. The Montana Power Company would be made immune. Regulation would be nullified (Collier 1930b).

Here it is evident that the Montana Power Company had not only "cheated the Indians and the public," but had even usurped the federal power to regulate their dealings and practices. For now that the Rocky Mountain Power Company was established, legally and openly, as the sole licensee to the Flathead power site No.1, and that that company was exclusively owned, operated, and now *regulated* by none other than its parent company, the Montana Power Company, who was in turn regulated

and parented by still other companies, unofficial deregulation was secured. With this "dummy" company as the licensee, and not the parent company, the federal government, through the Federal Power Commission, would only regulate the affairs of the dummy, according to the Federal Water Power Act of 1920.

After four years of heated debate and political battle, it was the scheme of the dummy company which underdeveloped whites and Indians alike. It prevented further benefits from being bestowed upon the power site's rightful owners. Also, by "subverting the regulatory intentions of the Act, Montana Power was then able to 'run up, by 100 percent or more the capitalization of the project -- capitalization on which power consumers will pay inflated rates for all time to come' (Collier 1930b).

Furthermore, the reader should not take lightly the federal government's role in these final proceedings. These protectors of Indians not only surrendered to the power monopoly, but set up fake Indian delegations who claimed to support these endeavors, discouraged Wheeler from competing and encouraged him to join forces with the monopoly. In addition, they disallowed their white American citizens their own voice, voluntarily participated in the dissolution of their own regulatory authority, and moreover, did so in writing, signing it all away for the period of the license granted to operate the power site, namely, fifty years. No Act of

Congress could now prohibit the sale of profits from the power site, undisputedly lying on Indian land, from the dummy company to the parent company. as of May 23, 1930. Robert Gessner concludes the four years of the battling for the rights to profit from the power site as follows:

By this singular action the Federal Power Commission and the Interior Department, prompted by the Indian Bureau, have destroyed the accumulative public rights, which have been previously guaranteed by the Federal Water Power Act. Those officials have chosen to surrender to the Montana Power Company's scheme of a dummy licensee. Regulation has been nullified. The Indians, who have witnessed this confiscation of their rentals to the estimated amount of at least \$5,000,000 can only appeal to the justice that dons a black robe. It would be useless to seek any further protection from their betrayer, the Indian Bureau. (Gessner 1931)

Additionally, there was another way that this "singular action" by an outside force with self-appointed authority had underdeveloped local socioeconomic interests. The power company openly retracted its prior promise to bring local jobs and affordable power to the area. Rather the Montana Power Company decided to transmit its electricity 140 miles away to Anaconda, unlike Wheeler who promised to create local industry and employment. Furthermore,

Secretary Wilbur and Commissioner Rhoads have been preaching eloquently for the need of jobs for the Indians near their homes, and yet by their action, not their empty words, they have destroyed the one possibility for industrializing and Americanizing the Flatheads. . The Flathead Indians are in desperate need of employment. Their farm life has been stifled under a tremendous reclamation failure, which has placed on their backs a debt of many millions. The Indian Bureau, not satisfied with this lien, has already started to accumulate one still greater. The revenue from the power-site rental will go toward paying for this failure and toward the construction of another. In the meanwhile, the Indians, paper-rich, are compelled to leave their reservation and seek employment elsewhere. (Gessner 1931)

Nevertheless, the Tribes could be pleased with their victory, albeit a rather bitter-sweet one; for no other reason than the magnitude of the odds and the corporate and political power thrust against them.

## Chapter 4

### The Construction of Kerr Dam: 1930-1939 A Monument to Underdevelopment.

*The Federal Power Commission required the power company to give job preference to tribal members, and hundreds of Indian men did help build the dam, in spite of the sacred nature of the place*

*By 1936 the independent tribal economy had been largely broken as a direct result of federal policies. Native people had become poor and dependent on the cash economy for their survival. So the sudden chance to earn good wages loomed larger for most than their cultural and spiritual objections to the dam.*

*For many of the Indian workers, it was their first experience in industrial labor. So the company assigned them to the toughest manual jobs the most dangerous work at the dam site, and there were few safety precautions (Bigcrane 1991)*

\* \* \* \* \*

Now that the license to construct the dam had been granted, another phase of socioeconomic underdevelopment, as well as further threats to the extinction of the Indians' cultural identity, were ushered in. The Confederated Salish and Kootenai Tribes, the descendants of those who had always done their best to welcome the changes brought by their white brethren with compassion and understanding, be they invited or not, were now faced with the ultimate test of that faith. They knew that this immense concrete structure would change the sacred river and their lives as Indians, forever. They knew that it would exist for countless generations as a monument to underdevelopment. It would represent how their sovereignty

independence, and identity were overrun by another, more dominant culture. However, given their state of underdevelopment and the dependency which accompanies it, as well as the harsh realities of the Great American Depression, the Indians were forced to place their traditional ways and tribal goals aside in favor of their immediate economic needs, even though they knew they did not ask for them, nor did they want them, or deserve them.

They were even forced to appear as if they wanted this dam, in formal ceremonies as well as by doing the work itself. Even when they would lose their lives in the construction of this monstrous monument to underdevelopment, they would neither fight their oppressors, nor would they forget. Rather, like the flowing water they so related to, which was about to be bent to serve the needs of the white man as they had been, they would gather their strength behind the obstacles in their path, instead of hastily attempting to crash through them. Without rash expediency, and with calculated efficiency, the people would attempt to follow the ways of the waters in the rivers, around the obstacles, in a path of least resistance. Even though that path included resisting, as well as participating, in promoting the needs of their conquerors, and benefitting outside industry's hunger for electrical energy.

## **The Newspapers Tell a Different Story**

Following the announcement in May of 1930 that the Rocky Mountain Power Company, the subsidiary "dummy" company of the Montana Power Company would be granted permission to develop hydroelectric power at the Place of the Falling Waters, the local and regional newspapers began a trend which would last for decades. They would present the conditions of the lease agreement as "an advance over the previous practice of the Power Commission" (Flathead Water-Power Lease 1930). Some editors and writers would present the scheme of the dummy corporation as safe, legal, in the public's best interest, and even that it ought to be used as a model for similar situations in the future (Flathead A Power Yardstick 1930).

The Montana Power Company was portrayed as wise benevolent leaders doing what everyone knew to be best for the Indians, who could not possibly know for themselves. Furthermore, the newspapers would assert that everyone from all cultural and socioeconomic backgrounds were rejoicing at the decision. In short, the local reports would all say how much Montana Power was giving and how much the Indians were getting; rarely would they even care to suggest what Montana Power might be gaining, or what the Indians were losing. Even though the circumstances surrounding the battle for the power site were unique, they were virtually unknown outside of the relatively isolated circles of those directly involved or

affected.

At the same time, the press did not help to dispell this collective ignorance, in fact, they perpetuated it. This was the second or third most valuable economic natural resource remaining within the boundries of a federally recognized body of Indian lands anywhere in the country. The site was the most ideally suited for a hydroelectric power generating facility of any site anywhere in the country. The geography and topography were such that a natural reservoir, the largest fresh water lake in the country after the Great Lakes, with an endless supply of millions of acre-feet of water, was already in place. Also, a natural channelling effect at the lower end of this reservoir-lake in the form of a narrow canyon of water falls, caused not only the build up of water behind it, but also the force necessary to drive it over and to make it fall, ready to turn turbines in generators from potential energy to kenetic energy. Add to these the facts that it was one of the largest of the hundreds of proposed hydroelectric projects going on in the country in the early part of the twentieth century. Moreover, it was one of the most cost-effective and profit-generating, in terms of potential horsepower versus the cost of construction, production, transmission, distribution, and maintenance of that horsepower.

Despite these possitive aspects, the site was on lands undisputedly owned by a sovereign nation. It involved local white interests on Indian



lands in the form of the Flathead Irrigation Project and the Flathead Water Users Association. The struggle for the site's control involved illegal corporate activities and corrupt high ranking government officials whose actions and intentions were publicly exposed and recorded, all of whom retained their positions. Finally, the players involved included a huge transnational power monopoly, and for the first time, a threat to that monopoly in the form of competition (Collier 1930a, 1930b; Gessner 1931).

These factors, and their combination, made the entire drama surrounding the Flathead Power Site No.1, one of the most unique and significant of its kind. Yet the Indian voices were still barely being heard by anyone outside the boundaries of the reservation (Survey 1933).

When the Federal Power Commission announced that the lease would be granted to the Rocky Mountain Power Company, the newspapers indicated two things. They explained both, the elimination of Walter Wheeler as a competitor, and the establishment of the annual rentals to the Indians as fair, and justified this simply because Interior Secretary Wilbur deemed Wheeler's promises to be unreliable. Therefore, the newspapers claimed, the Indians would be better off with a steady income which they could count on (Montana Power 1930). Furthermore, it stated that construction would begin immediately (Development of 1930), and take only three and a half years to complete (Construction Will 1930). The future,

however, would not bare these out.

The local white opinion of the dam, the conditions of the license agreement, and the impending construction work, was presented with joy and exuberance. The entire town of Polson, Montana, just six miles from the power site, was said to be in a state of grand jubilee celebration. "Every man, woman and child in town joined in the merrymaking. Bonfires glowed into the night and every kind of noise-making instrument that was available was brought into use in the hilarity that followed the announcement that the residents of the town had been waiting 20 years to hear" (Polson Thrills 1930). The Missoulian, from Missoula, Montana, some seventy miles to the south, also proclaimed that people from *all* social classes were pleased at the decision. Naming as those classes businessmen, public officials, professional men, and working men, no one else (All Classes 1930). The writers spoke of praise for the further development of the Flathead district in the form of railroads and power lines which would need to be built to facilitate further construction (Railway Line 1930).

The editors promoted Frank Kerr as a benevolent visionary who had the insight to see what was best for the development of the economy, and the social evolution of the Indians, and the wherewithal and the tenacity to accomplish the task. The traditional chiefs Charlo and Koostatah participated in a ceremony wherein the Confederated Tribes adopted Kerr as a member

of the Tribes (White Man 1930). At the ceremony, hundreds, including John D. Ryan, CEO of Montana Power and Anaconda Copper, and a film crew, recorded the Indians in traditional dress presenting Kerr with a tanned hide of buckskin encrypted with their new Indian name for their new conqueror, 'A-Kalt-Muc-Quait,' meaning "Light" (Red Man 1930).

### **Construction to Begin Immediately**

The terms of the lease were rather lengthy, containing over forty Articles (Terms of 1930). Among these terms were stipulations that construction must begin within one year from the date the license was issued, and must be completed within three years after it has begun; meaning that the maximum allowable time from the issuance of the license to the completion of construction would be four years, or until May 23, 1934. It also indicated, against the Indians requests and those of the local whites, that Rocky Mountain Power would owe the United States Treasury \$101,685.11, within nine months, for the use and completion of the partially constructed Newell tunnel. The engineering crew would need this tunnel to divert the river during construction. It further promised the users of the Flathead irrigation system, those who were hanging on after twenty years of drought, depression, foreclosure, and false promises, that the power company would make 15,000 horsepower available for the local water users. This

would come in the form of 5,000 horsepower for free, 5,000 horsepower to be set up for retail resale, and another 5,000 horsepower to be made available for the locals to purchase, at 2.5 mills per kilowatt hour, if they so desired. Naturally, the terms of the lease also contained within them the provisions which guaranteed that the power monopoly would not be threatened or questioned, by stating that Rocky Mountain Power owes all of its power and profits to Montana Power (Terms of 1930).

The underdevelopmental details of the rentals to be paid to the Indians would be a source of controversy throughout the 1930's. The newspapers always presented the Indians as making good on the deal, by stating the total amount they were to receive over the course of the license, excluding the details as to how the annual rental money was to be distributed. Dollar figures in the millions seemed to be rather exorbitant in 1930's terms. However, \$2,845,000, over a twenty year period does not amount to much, even in 1930's standards; especially when compared to the profits Montana Power would be making by operating the power site. Nor did the reports of the time remind the reader that the Indians would only receive payments on paper, not in actuality. For all rental payments would not go into a separate account exclusively in the name of the Confederated Tribes, but would become incorporated into the the whole of the United States Treasury to be spent on behalf of the Tribes as Congress saw fit. This is the familiar

paternalistic and underdevelopmental guardian-trustee relationship perpetuating itself.

The license also provided that Rocky Mountain Power pay the Tribes \$1,000 per calendar month from the time the license was issued to the time when the plant was suitable for commercial operation. Whereupon a charge of \$5,000 per calendar month would be charged to the power company from then until the start of the next calendar year. When the annual rental charge for the first five years thereafter would be 60, 60, 75, 100, and 125 thousand dollars respectively. Then annual charges of \$150,000 for the next five years, \$160,000 for the following five years, and \$175,000 for the final five years, were to be collected by the Tribes (Terms of 1930). None of this would happen, though, as a year and a half later, all construction would come to a halt.

Even with all of the controversy and dissent surrounding the power site license, there were a significant number of local townspeople who were anxious for the work to begin. In these hard economic times, they celebrated at the prospect of more prosperous times with carnivals and festivals of all kinds, featuring baseball games, boxing matches, water sports, boat races, swimming races, ferris wheels, parachute jumps, and dance parties (Very Interesting 1930). They were even trying to get the President to come and join in the festivities (Speakers Say 1930).

Regardless of what side of the issue a person was on, Indian resident or local water user, there was no arguing that this was a big deal. Yet it would not be until July that the engineers from the Phoenix Utility Company would arrive from their other projects in Great Falls, Montana (Construction Men 1930). It would not be until October that people would be put to work on the preliminary projects, such as constructing the camp, building a railroad from Pablo, Montana to haul supplies and equipment, and bringing in power from Thompson Falls, Montana to facilitate the dam construction (Work On 1930).

Therefore, the economic prosperity that the people hoped for now appeared to be much farther off. Winter was coming and there were only 200 people at work. Yet locals were honoring Montana Senator Walsh and Montana Congressman Evans, not only with parties and parades for securing more money for irrigation, thereby increasing its enormous debt (Walsh and Evens 1930); but also for agreeing to extend the repayment terms for the irrigation district (Repayment 1930). The bitter-sweet combination of the prospect of economic prosperity, and the realization that one needed the work from a power monopoly, which placed that prosperity perpetually just out of reach, forced the local people to make those sorts of compromises. Nonetheless, hope for better times seemed to flourish.

However, this was the Great Depression. On Christmas day, 1930, the

Mission State Bank, one owned by the Beckwith Mercantile Company, who had been supplying a great deal of the materials for the irrigation project, and contributing to the vast amount of debtors who lost their lands to the mercantile through foreclosure, closed its doors and filed for bankruptcy (Mission State 1930). Over 500 workers were employed on the dam by then. However, in the cold hard Montana month of January, 1931, 125 men were laid off, while the papers claimed everything was going according to schedule (Dam Work 1931). In February, 1931, the construction of the dam claimed its first life when a worker pouring concrete onto the smaller coffer dam used to divert the raging waters into the tunnel and around the main construction area, fell into the chilly waters of the Flathead River and was never seen again (Dam Construction 1931). By March, 1931, the number of those employed fell to 200 (200 Men 1931), and continued to fall thereafter. The press would continue to claim that the work was on schedule. On June 24, 1931, all construction was suspended indefinitely

The local workers were forced to trust their parental gaurdins, the keepers of their economic means of survival, when they said that this great dam, one which would rise higher than the great falls of Niagra themselves, would be completed in eleven months, and would then contain three 75,000 horsepower generators instead of two 50,000 horsepower ones (Kerr of 1931;Work on 1931). These promises, like the others, would prove to be

simply more in a seemingly endless stream of insubstantial ones. The power monopoly would blame the Great Depression for its failure to meet its goals, in breaking its promises, and in suspending the dam construction which laid off hundreds of workers. The monopoly even suspended their \$1,000 monthly payments to the Tribes, as agreed upon in the lease. So much for the economic prosperity anticipated for years, and celebrated nine short months before.

### **Another Survey of the Conditions of the Indians is Called For**

Dispite the obvious local complaints, from Indians and whites alike, it would be two years before any attention from the world outside was given to the issue. In May, 1933, a Senate Sub Committee scheduled hearings. It was then put off until July, and later to September. Finally in October, 1933, the Sub Committee held a hearing at St. Ignatius, Montana. Senators Wheeler and Frazier were overseers, and William Zimmerman, Assistant Commissioner of Indian Affairs, Charles E. Coe superintendent of the Flathead Indian Resevation and Albert Grorud, now serving as a special assistant to the committee, were also present (Survey 1933).

Among the many issues discussed was a scandal exposing the affairs of the timber industry on the reservation. It seems, that since the dam was no longer being built, and the local residents were still required, although



mostly unable, to make their payments for the unwanted and unworkable irrigation project. Trees were continuously being cut down on Indian lands to supplement funds used to reimburse the federal government for the project. Whites from off the reservation were given the work even though there were countless numbers of qualified Indians who desired the work. The Polleys Lumber Company and the Herron Lumber Company, who had been cutting timber on the reservation since 1916, claimed that they had to cut more and more due to the lower market value of the local timber. These companies argued that the trees were of lesser quality, and that they had to be shipped farther to market, even though there were plenty of mills in the region and on the reservation; as well as Indian men capable, willing, and in need of the work (Survey 1933).

The Tribes timber was supposedly only bringing \$3.25 per thousand board feet, when other operations, equally far from the markets were bringing much more. The timber companies could not explain why they seemed to require college educated whites from forestry schools who passed Civil Service examinations when similar operations throughout the country used scores of men who could not read or write. None of them were able to explain why they practiced clearcutting without properly leaving or planting seedlings when they were supposedly educated in forestry schools. (Survey 1933). It would appear that socioeconomic underdevelopment is

facilitated more efficiently, the more secluded the operation, and the less outside attention that is drawn to it.

Senator Wheeler, chairman of the Subcommittee of the Committee on Indian Affairs, stated at the outset that this hearing would also address problems with irrigation, reclamation, and the power project near Poison. Compared to prior hearings there was, at this time, considerably more of an Indian voice read into the over-all record. However, after over one hundred pages of evidence and testimony concerning the condition of the Indian's health, intoxication, housing, education, mining, livestock, rations, allotments, heirship, surveys, roads, bridges, and dozens of personal complaints, the only issues concerning the power project which were discussed were the rates at which the locals were being charged for power, and that comprised less than 5 percent of the total deliberations (Survey 1933).

The rates were not in proportion to the standard of living at the time. The power company was reaping large profits even in the Great Depression. Those affected by this testified that it was obvious that there was simply a monopoly which would not lower its prices to an affordable rate for fear of having their rating structure threatened. The power trust was charging fiat rates whether power was being used or not. Meanwhile, the local residents were still paying for all of the power, irrigation, and reclamation projects, as the agreement they signed stated that Rocky Mountain Power would

compensate the construction costs with revenue generated from the sale of power. However, it was three and a half years since the license agreement had been reached, and the power site had barely been developed. The committee said simply that they would look into the matter (Survey 1933).

### **The Lease Goes into Default**

By May of 1934, Rocky Mountain Power's several previous requests for extensions on their lease agreement to May of 1935, were denied. So too were later requests for three-year extensions and indefinite extensions, and they were officially found in default of their lease. Not only was the promised power still not available, neither were the socioeconomic benefits of all of the local construction work; not to mention the further delays in annual rentals owed to the Tribes. Secretary Ickes of the Interior Department wrote a letter to the Federal Power Commission on August 16, 1934, stating that "any postponement of the time set by the license for the completion of construction would be prejudicial to the Flathead Tribe of Indians" (The Flathead Power Site 1934).

John Collier's American Indian Defense Association became more directly involved again. They took this opportunity to ask that Article 36 of the lease be reworded to eliminate the deregulation achieved by the legally permitted "dummy" scheme, and thereby permit any Indian tribe, any

State, or any municipality, irrigation, or other political subdivision of a state, outside of the Flathead Reservation, to purchase power at the switchboard for the same rate" They likewise suggested that the Indians begin receiving their increased rentals at once (The Flathead Power Site 1934).

A hearing was held on August 20, 1934. The Chairman of the Federal Power Commission denied the Indian Defense Association's requests, but also chose not to grant the power company's request for an extension. However, even though the original lease granted by the Power Commission had the power company clearly in default as of May 23, 1934, Power Commission Chairman, McNinch, stated that the Commission would not proceed with any action toward a suit to officially declare the license in default for at least six months. Rocky Mountain Power, or Montana Power, conveniently took that opportunity to not only ignore the lease agreement in terms of its increased annual rental payments to the Tribes, but went so far as to suspend all pre-construction payments as well, claiming later that they did not know that they were supposed to continue paying the Tribes anything because the lease expired and the government never instructed them to do otherwise.

### **The Tribes Renew the Lease Agreement on Their Terms**

By 1936, a change seemed to be occurring in the players in this drama. As new public and government officials were replacing the former, the

Indian voice was heard a little louder. The Power Commission was asking the United States Attorney General for court action in the matter of the lease still defaulted and the construction still suspended. They further asked the Justice Department to sue Montana Power for \$7,355,000; although it never happened. The Indian Bureau even spoke out on behalf of the Tribes, asking that \$50,000 be paid to the Tribes for retroactive fines since May of 1934. Edwin Dupuis, tribal council president, was sent to Washiong D. C. for a conference with the Federal Power Commission and Interior Department officials (Outlook 1936).

On May 23, 1936, the tribal council voted yes to a new lease proposal (Indian Council 1936; Okay 1936). This agreement called for \$168,000 in penalties to be paid to the Tribes by the power company, plus the royalties originally agreed upon. \$27,000 of the \$168,000 was to be given to resume construction immediately, and the remaining \$141,000 was to be paid when the project was completed. This date was now to be May, 23, 1939. If that date would come and the project was not yet considered suitable for commercial use, a fine of \$500 per day, up to \$1,000,000 total, was to be applied for all days until completion. The Tribes also were awarded changes in the annual rentals from the original lease, now to begin at \$180,000 per year, and increase to \$205,000 per year. Also, they were to be given preference for employment (Early Approval 1936; Indian Council 1936).

Further provisions called for payments to the government, and providing power for local irrigation purposes (Federal Power 1936).

On July 16, 1936, on the 81-year anniversary of the signing of the Hell Gate Treaty, the headlines in the Lake County Vista read in bright orange letters, "Polson Dam Work Starts" (Flathead Indian Council 1936). The only other time in the paper's history that such celebrated lettering was employed, was in May of 1930. Four days later the licensee began work. Two weeks after that seventy out of seventy-nine employees working on the project were tribal members (Flathead Power Site 1936).

The pressure for Rocky Mountain Power to come to some kind of agreement came not only from the threats of law suits and the like from government officials, but also from the Tribes themselves. After Congress passed the Indian Reorganization Act in June of 1934, The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation applied for, and had approved, their first tribal constitution in October, 1935. On April 22, 1936, their charter was voted on and adopted, and they became the very first Indian nation in the country to become incorporated under Section 17 of the Indian Reorganization Act. At that point, the Tribes first corporate business was to send Mr. Edwin Dupuis, tribal council chairman, to Washington and complete the negotiations for the new lease on the power site (Flathead Power Site 1936). Apparently, in their quiet and watchful, but

steady and perceptive way. the Indians were much busier since 1934 than the public realized, or the press seemed to indicate. The positive aspects of the Indian's growing strength and awareness in their attempts to fight the white man on his own turf, and his own terms, would, unfortunately be overshadowed by the events to come.

### **Construction Efforts are Accelerated**

By August, 1936, Rocky Mountain Power was already building power lines and transmitting power to Anaconda (Director Now 1936). By early 1937 over 600 employees were working steadily around the clock (Polson Dam). Meanwhile, Senator Burton Wheeler, previously out-spoken against the controversy associated with the power site license, was becoming a central figure of controversy in Washington. He was openly ratteling chains in Washington over the New Deal and its administration's failure to force the Justice Department to act promptly and forcefully in the matter of the law suit against the Rocky Mountain Power Company (Senator Wheeler 1937). He also denounced some of President Roosevelt's proposals which seemed rather favorable to the Indians (More Trouble 1937).

Back at the construction site, in February, 1937, two more men lost their lives when a locomotive left its tracks (Two Men 1937). Nevertheless, the power company, and the contractors, the Phoenix Engineering Company

were accelerating the work load. They were not about to default on the lease another time. Nearly eight months had passed since they were awarded this one, and they still had not begun to pour concrete. When the total number of workers was approaching 800 in a "push" to get enough concrete poured on the north bank to be ahead of the spring runoff, more laborers were needed to move much more material.

Those doing the jobs involving the heaviest burdens were, of course, Indian people, as every skilled labor position was occupied by whites. At the same time, there was little regard for the safety of the laborers. Some were working double shifts throughout the night. In the dry river bed after the river had been successfully diverted into the tunnel, and at the base of the towering canyon walls, the river bottom was being excavated faster than the earth above it. Some claimed to have been ignored when they complained that the earth was becoming unstable overhead (Bigcrane 1991).

Shortly after midnight on March 1, 1937, as the night shift came on duty, a huge mass of earth and rock, over 1,000 cubic yards, broke free of its hold on the canyon wall and roared down, in the form of a rock slide into the dry river bottom, with a thunderous crash. The seven Indian men who had been picking, shoveling, and wheel-barrowing underneath the overhang, died instantly. The superintendent of the Phoenix Engineering Company, C. H. Tornquist, blamed the rock slide on frost (Seven Men 1937; Seven



Workers 1937; Workers Crushed 1937).

Two out of the three men, forman and bosses, working at the opening of the man made tunnel suffered serious injury, and the third ended up in critical condition after being rushed to the hospital in Polson. Crews at the construction site began excavating the rock slide by removing the still overhanging dirt and rocks above the bodies of the Indians who died in the rock slide, some 60 hours later, on Wednesday afternoon. The last of the bodies was recovered on March 8 (Bodies 1937).

The man in critical condition would die a few days later. The two injured men would recover. On March 11, 1937 three more workers were injured and another man killed when a seven-ton steel beam in the tunnel approach to the power house broke free of the support of its girders. That made for a total of eleven killed and five injured in the previous month. In hindsight, an ethnohistorian could not help but notice another trend in the newspaper writing at that time. The stories of the dead and injured always contained background information of the victim's occupations, their parents names, place of birth, where they live, names of surviving kin, memorial services, etc., if they were of European decent. If they were Indian, they were lucky to have their names printed (James Emerson 1937).

## **Construction is Completed**

In July, 1937, sixty to eighty workers finally got the go ahead to begin work on a pumping plant which would pump water up from the river and over and into the reservoir at Pablo, increasing the pumping capacity of the irrigation project by 60,000 acre-feet, fulfilling part of the promises granted the local water users (Pumping Plant 1937). By August there were 973 men employed by the project working around the clock in three shifts. They were now predicting that 175,000 horsepower would be produced from the site. A significant increase from the figure of 68,000 horsepower which was always used in conjunction with predicting what the tribal rental payment would be. This now appeared probable, as more power was being diverted to the project on its way from Thompson Falls to Anaconda (Nearly 1937).

By September, the job was being called 60 percent complete and Indians were still being given job preference. The river roared through the large tunnel at 10,000 cubic feet per second as hundreds of men worked to complete the smaller tunnels which would bring the water through the mountain and into the plant, to turn the generators after the dam was in place (Huge Polson Dam 1937). By November, 1937, the project was over three quarters complete. The dam itself was nearly in place in slightly more than one year's time, and the remainder of the work consisted of completing the smaller 20' by 700' penstock tunnel, and the power house

itself (Polson Dam 1937; Rapid Progress 1937).

By March, 1938, Phoenix Engineering confidently predicted that the project would be completed one year ahead of time, and would generate 56,000 kilowatts, or around 75,000 horsepower (the kilowatts to horsepower ratio is about three to four), increasing Montana Power's total generating capacity by about 20 percent, or from 294,000 to 350,000 kilowatts. The additional waters of the natural power reservoir called Flathead Lake would further increase the company's water storage capacity from 578,000 acre-feet to over 1,650,000, a nearly 200 percent increase (Huge Polson Power 1938).

On Monday April 16, 1938, a concrete plug twenty feet thick was lowered into place at the mouth of the Newell tunnel; and, for the first time in the river's history, for several hours, the rushing water ceased. The elimination of the perpetual numbing effect of the thundering water made the silence deafening. The exponentially increasing crescendo of men, heavy equipment, and anticipation, nearly two years running, was now, in one abrupt instance, as capped-off as the river had been working on (Straight Jacket 1938).

For the first time since time was known by men, the Flathead River did not flow beyond the Place of the Falling Waters. For the remainder of that day, the waters down stream would slowly dry up into smaller and smaller

pools and trickling streams. At 9:53 pm on Tuesday evening, after building up 100,000 tons of pressure on the back wall of the dam, all the waters of Glacier National Park, the Northern and Southern Forks of the Upper and Lower Flathead Rivers and all of their tributaries, and the whole of Flathead Lake, began to run through the gates at the top of the dam, cascading in an ever increasing volume to the dry river bed some 240 feet below, 30 feet higher than the falls of Niagara (Cascade Flows 1938).

By mid May, 1938, the thirty-foot diameter generator was properly installed, ready to rotate 112 times per minute to produce 75,000 horsepower of electricity (Generator 1938). By August it was suitable for commercial operation, and began to manufacture minimal electrical power for local uses.

Hundreds turned out for the dedication ceremony on August 6, 1938, including power industry officials, Senators, Congressman, and Indian chiefs (Brower 1938). The newspapers promised prosperity, and attributed everything necessary to create and complete the project, to Mr. Frank M. Kerr. He was referred to as a visionary, industrious, tireless, forthright, a great arbitrator, diplomat, and businessman (Kelly Delivers 1938; Kerr Dam 1938). The white man's economy was presented as superior, and praise was granted to this way of life where private citizens, through the mechanisms of capitalism, can legally become more powerful than big government. The

Kerr dam was presented as a monument to free enterprise, celebrating power in the hands of the people. They neglected to mention, however, that the all the rate payers in the region were now completely powerless over their choice of utilites companies, as well as the price they would be charged for retail electricity for the next sixty years.

The power monopoly had their eye on this site of Indian lands since at least as far back as 1921 when they placed their first bids, but more likely 1907 when the studies first began. Even with the entire battle over the rights to exploit the site, the suspended construction, and the defaulted lease, the power trust, in the end, still managed to complete construction, in terms of commercial operation capabilities, in twenty-three short months. The Polson Dam, officially called the Kerr Dam after the dedication ceremony of August 6th, now stood 204 feet higher than the river below, and 800 feet long along the top. 89,148 cubic yards of concrete and 1,645,448 pounds of steel made this monument to Man 42 feet thick at the bottom and 17 feet thick at the top. The 14 gates at the top, weighing 32 tons each, regulated the water level and storage capacity of Flathead lake, while the 800 foot long by 28 foot diameter concrete-lined penstock tunnel carried all the river water that it could to the power house (Frank Kerr 1939). The 1800 foot long diversion tunnel, named for one of Theodore Roosevelt's cabinet members influential in passing the Reclamation Act some 30 years prior, was

closed forever.

This colossal endeavor employed thousands of men, the most at one time being 1,231 in November of 1937. The total payroll to these men reached over \$2.4 million (Frank Kerr 1939). In the end, thirteen men died during the excavation of the 180,000 cubic yards of grey quartzite necessary to construct the dam and the powerhouse. Flathead Lake, now 28 miles long and 16 miles wide, boasted over 150 miles of shoreline. Fed by the Flathead River which drains over 7,000 square miles of land in northwestern Montana and southern Alberta and British Columbia, the lake now stored 1,100,000 acre-feet of water, and permitted over 7,000,000 acre-feet to pass over the dam annually. 50,000 acre-feet could now be used for irrigation, up to 12,000 per month, increasing the 124,000 total irrigable acres in the Flathead Irrigation Project by more than 30,000.

There was also talk of contractors bidding for the construction of the pumphouse, along with the propellers, motors, and transformers, and it looked as if the local water users might benefit as well. The irrigation project still contained its many flaws and limitations of the past, due to geology, topography, climate, and the usual politics. However, the local water users were projected to save over \$6 million over the course of the fifty-year lease in bonuses made possible by the recent construction. The Indian people were projected to receive over \$7.5 million during the same period, for the

use of their sacred lands (Competition 1938; Glance 1937).

### **The Independence and Sovereignty of a People is Overshadowed**

During the eighty-four years from the Hell Gate Treaty of 1855 until the construction, dedication, and successful commercial operation of the Kerr Dam in 1939, the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation had endured an unfathomable and unconscionable degree of enculturation. They had survived trappers, traders, sickness, disease, governors, armies, raiding, trespassing and warring Indian parties, hundreds of illegal settlers, dozens of corrupt Indian agents, broken and unfulfilled promises from treaties, missionaries and boarding schools, the outlawing of their language and religion, the forced removal from their ancestral homelands, the allotment of their tribal reservation lands, the selling off of their surplus lands, the coming of the homesteaders, and further confiscation of timber, mining, and irrigation lands, for no more than possession and exploitation by their conquerors.

The enculturation thrust upon them by their aggressive and technologically superior brothers forced the Indians to stop roaming nomadically, and to stop hunting and gathering. It forced them away from their tribal economy, and onto one which instead promoted individual success and collective competition. In the Indian tradition, one was

considered rich by what he gave away, not by what he owned. Now not only was that principle removed, so too was its practice, as Indian peoples were not even able to be rich by owning things. They were forced onto a cash economy and had their abilities to earn and spend that cash systematically removed by people who, from a seat of power on the other side of the continent, promoted a plan of socioeconomic underdevelopment, keeping the Indians in a perpetual state of colonialism and paternalistic dependency

There are cultural rifts which occur naturally during times such as these between young and old. Or, more accurately, they occur between what a tribe collectively feels is ment by the traditional and the progressive, in terms of what is necessary for survival. Some will feel that the only way to ensure that their collective cultural identity, who they are as a people, is maintained, is to keep the old ways alive. In this way, a traditional indigenous cultural awareness will always be there to be tapped as is needed, like the central fire of a camp, which is maintained so individual tipi fires may always have plenty of coals from which to light their smaller fires.

Others feel that it is precisely the old ways which make the Indian unable to function in the new world established by their conquerers -- that the old and the new cannot mutually co-exist -- and therefore, the only way for the collective identity to survive is to change, and to assimilate; or have



its central flame be extinguished forever. The question remains: if cultural identity, the collective subjective experience of what it means to be in and of such culture, must change, to what degree can, or should there be maintenance of traditional cultural identity? In other words, if the central flame is to be lost to ensure cultural survival, is it essentially the culture which is surviving?

The argument is one experienced thousands of times throughout the era of colonialism. It is essentially one of principle versus practice. Within a conquered people there will be those who feel that in principle they have been wronged and therefore in practice they must not forget the past, so as not to lose their traditional ways; and further, that this will carry them through these difficult times. On the other hand, there will be those who will feel that such a philosophy in practice is simply unworkable if the two cultures are mutually exclusive; and therefore, in principle, one must change. For if one acts in such a way which does not work, he will not be around to wonder about it, and neither will his children.

The evidence for these rifts among the Salish and Kootenai are that they had a tribally elected president and council as far back as 1916, and also had the "bought" tribal officials set up by the power trust. Also, it was their aging traditional leaders, who would be asked to present themselves, "in full regalia" at the dedication ceremonies, to demonstrate for the white

man how much the Indian approves of his oppression, and how far he has come along in his growth toward that which the parent culture has deemed as advanced, enlightened, and proper.

In the future, however, these sociocultural rifts would prove to be relatively minimal, at least for the Confederated Tribes. In fact, one might argue that they were ultimately a catalyst for more positive change.

## Chapter 5

### Further Dam Construction and the Latest Battle for the Control of the Power Site: 1939-1985

*The Flathead Reservation is one of these odd third world pockets that suddenly found itself in a colonial situation. Some leaders of the tribes respond with learned reflexes: worshipping the machinery, the means and the ends of their exploiters. Others see the situation for what it really is: a life-and-death confrontation between their culture and the forces that would engulf them (Eggart 1977)*

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During the four decades which followed the completion of the Kerr dam in 1939, incidents of governmental paternalism and socioeconomic underdevelopment (concerning the dam) on the Flathead Indian Reservation continued. These events, while they became relatively less frequent, did, however, play out according to the all too familiar formulas. In the end, while they were were occurring less often, they were no less intense, as the damage had already been done. Those outsiders, such as federal authorities and power company officials, had already successfully set in motion their developmental efforts, and the underdevelopment of the Indians, from 1855 to 1939, that all they needed to do now was to maintain its course.

From 1940 to 1975, The Montana Power Company continued to control

tribal resources according to previous patterns. Montana Power continued to do everything in their power to exempt themselves from coming through on any of their promises, even after they had successfully established their ability to profit from controlling the power site; and the blow dealt to the collective psyche and cultural identity of the Tribes experienced as a result of that control, continued as well. However, their traditional ways did not die, they merely reidentified themselves. So during the 1980's, another familiar pattern reemerged as well, as the tribal leaders were ready to break the previous patterns of underdevelopment.

In the 1980's, the Indians were somewhat divided between those who wished to be compliant and not make waves, and those of another generation who wished to use their political sophistication, and reestablish their rightful place in the modern political arena as the sovereign nation they were guaranteed to be in 1855. The power company once again used petitions and propaganda to divide and conquer the collective will of the people. However, this time, the weight and support that the powerful Indian lobbies provided in the past, came from the Tribes themselves. A surprising twist in the plot occurred when the previous patterns of governmental constituency with big business and industry, coupled with apathy and indifference toward Indian affairs, to some degree, reversed themselves and began to actually act in the Indians interest. However, this would take over

forty years.

Even though the Tribes would be awarded the option of taking over the dam in the future, by the year 2015, through the political battles of the 1980's, their legal rights to do so were established in the provisions of the lease agreements of the 1930's. Nevertheless, Congressmen, Indian officials, and the Interior Department began, as early as 1941, to debate publically the pros and cons of a future Indian take over, or reclamation, of the power site. Some of these men were arguing, all the way from Washington D. C., some forty years in advance of the expiration of the fifty-year lease agreement, claiming that it would still be in the Indian's best interest to have Montana Power own and operate the power structures at the place where the falling waters now fell at the behest of the white man (Official favors 1941). This paternalistic guardian-ward relationship and self-proclaimed trustee responsibility on the part of the federal government, pervaded the political arena for four decades, until the next battle for the federal license to control the dam occurred. However, before this debate was to begin, the power company continued to expand the hydroelectric facility at Kerr dam, increase its profits, and neglect its legal responsibilities to properly compensate the Tribes.

## **Further Construction of Kerr Dam**

After the plant became fully operational in 1939 with its single 56,000 kilowatt generator, construction slowed. Then, in the mid 1940's, the company began to talk of the second generator, provided for in the lease. The power company's delay in installing the second generator was mainly due to World War II, and the time and energy it took Montana Power to support the war effort by sending its electricity out of state, while taking care of its company and consumer demands at home. After the war, however, the company could concentrate its efforts on its original plans for the second 56,000 kilowatt generator at Kerr dam (Montana power 1946).

By May, 1949, the project was completed and the engineers were ready to throw the switch, making the second generator operational, sending more power off the reservation. When connected, it increased Montana Power's generating capacity to more than a half a million horsepower. It was constructed so as to be connected to the remainder of the power grid in the northwestern United States (Second Kerr 1949). In another series of public ceremonies and celebrations the project was once again, hailed as a "monument to free enterprise" (Mammoth Generator 1949).

However, free enterprise, if it is to be free, must not be bound or restricted, even if that restriction is a publicly recognized and legally binding agreement. On the other hand, there are ways of getting around that.

According to the original lease agreement, the Kerr dam and power plant was to house two 56,000 kilowatt generators only. But in April of 1955, the Montana Power Company filed applications with the Securities and Exchange Commission, as well as the Federal Power Commission, requesting permission to issue \$12 million in new securities; half in the form of mortgage bonds, and half as preferred stocks, to fund its new construction initiative laid out during the previous year. The power company's proposed expansion program involved, among other things, the construction of a 161,000 volt transmission line from Billings to Anaconda, the acquisition of northern Montana gas properties from Montana-Dakota Utilities, and the construction of a third generator at Kerr dam (Montana Power Plans 1955).

Plans were made in 1958, and the third generator was completed in 1959. By 1960, Montana Power, the company who "wrote the book" on long distance transmission of electricity for homes and industry as far back as 1910, was producing two-thirds of Montana's electricity, and wheeling it into more than a half a million Montana homes. Montana Power had nearly doubled its capacity to produce, transmit, and distribute electricity since World War II. Their production costs were still among the cheapest in the nation. They boasted fourteen power generating plants on two major watersheds, the Missouri and the Clark Fork, on both sides of the continental divide. They had more than 12,000 miles of transmission lines, distributing

to a 90,000-square-mile area, equivalent to all of New England and half of New York state (Plentiful Natural 1960).

In addition, they had recently acquired vast coal deposits from the Northern Pacific Railway at Colstrip, Montana, 100 miles east of Billings. They began supplying power to National Parks, like Yellowstone. They still had direct connections with other companies like the Anaconda Copper Company and the Milwaukee Railroad, and countless other residential and industrial ties, and were now expanding into the natural gas industry. And this was the Montana Power Company alone, which was still only one branch of a corporate tree whose roots were still embedded transnationally (Plentiful Natural 1960).

Imagine the surprise of the Confederated Salish and Kootenai Tribes then, given the immense wealth amassed by such a corporate giant, when the same power company would demonstrate, time and time again throughout the remainder of the fifty-year term of the original lease, their inexplicable inability to make the proper and timely increases to the Tribes annual rental payments; while the power company was, all the while, reaping huge profits from their exploitation of Indian properties (Kerr Dam Rental Fees 1965).



## Montana Power Fails to Pay Rent on Time

The Montana Power Company did not honor any of its agreements to make fair and timely rental increases to the Tribes. From 1940 to 1975 the Tribes received payments late, if at all, and these payments did not adequately reflect the power company's profits. Not only did this cost the Tribes additional money by forcing them to fight the power company in the courts; also, Montana Power, by continuously delaying the process, was able to extend their profit-making capabilities to cover the cost of the rental increase once it did go into effect.

Even after the increases would be applied, the Tribes would never be given rental payments reflecting the actual commercial value of the site. Montana Power's cost for the legal battles would be passed along to its consumers, while the Indians had to pay for their battles out of their own funds, which the government still controlled and held in trust for them. Therefore, with the federal government still operating under its self-appointed role as guardian over its ward, for whom it claimed to know what was best, there would be no one to stop big business from further exploitation of the Indians, their property, and their payments. Montana Power would always benefit from the delays in annual rental payments at the expense of the Indians, and even the rate payers (Kerr Dam Facts 1977). However each time around, the Tribes were getting wiser in the ways of

their conquerors.

The Tribes already went through the lengthy battles with the government and the power company between 1926 and 1930. They made amendments to the original lease agreement when work was discontinued in 1931, and when the license defaulted in 1934. The provisions were changed a third time in 1939 when the plant became commercially operational, and the Tribes began to deal with Montana Power directly again, not Rocky Mountain Power, the dummy company. All of these events effected the dates of the ten-year incremental rental increases, but did not effect the date of the establishment of the lease itself. The initial license to operate the site was issued May 23, 1930 and by law could not be changed. Therefore, the license would expire on the same date in 1980, regardless of the continuous court battles the Indians would be forced to fight each time the power company changed its mind, and its word.

By the mid 1950's the Tribes were earning their \$175,000 per year as originally agreed upon. With Montana Power's violation of the agreement in the form of the third generator, and the Montana Power's ability to earn more profits, the Tribes wanted their compensation to increase. Through the familiar patterns of socioeconomic underdevelopment, though, this did not happen. Nor did the increase agreed upon in the amendments of the mid and late 1930's that called for a reevaluation and increase of the \$175,000

payment, twenty years after commercial operation was established, and every ten years thereafter.

It would not be until 1962 that the Tribes would see an increase from \$175,000 to \$235,000, retroactive back to 1954, for the construction of the third generator. However, during this battle, 1959 came and went, and with it, the time for the federally mandated twenty-year rental increase (Kerr Dam Negotiations 1978).

It would not be until 1972, thirteen years later, until the annual \$235,000 rental would be increased to \$950,000, retroactive back to 1959. This paid the Tribes over \$11.2 million. However, once again, Montana Power would continue its trend of always playing a game of catch up, as 1969 also came and went without its increase. It would not be until 1978 that the rental payments for the dam would be increased from \$950,000 per year, to \$2.6 million. This time however, the retroactivity of the payments would only go back to 1975 (Kerr Dam Negotiations 1978).

From 1969 through 1974 the Tribes agreed to be paid \$950,000 for each year. On the other hand, from 1975 through 1977 they received \$2.6 million for each year. They further agreed to have the \$2.6 million remain through 1979. The reasons for their backing off on this particular legal battle, of their fifty-year war over the dam and their one hundred twenty-year war over underdevelopment, was because, at this point they

were fighting the war on multiple fronts (Tribal Council 1978).

### **Other Legal Battles Occuring Simultaneously During the 1970's**

In addition to the perpetual fights with the federal government and the power company, over rental increases, other problems emerged. Besides the Right-of-way issues concerning power lines and natural gas lines through tribal property, mitigation for the destruction of further traditional lifeways and cultural identity through the radical alteration of fish and wildlife habitats, and compensation for other loss of wildlife due to accidental chemical spills, and purposeful and improper waste disposal, the 1970's also saw the Tribes fighting for the control of the dam in 1980 when the license would expire, as far back as 1975, when they filed a request with the Federal Power Commission to take over the dam in 1980. This was substantiated further the following year when the Tribes voted unanimously among themselves to attempt a takeover of the control and ownership of the dam and the power plant (Tribes Bid 1975).

In addition to these smaller overlapping legal battles occurring during the last decade before the license to control Kerr dam was to be renewed, there were also three other larger ones occurring during this time. These other cases more directly related to the issues surrounding the relicensing of Kerr dam. Furthermore, they represented the changing times, in terms of the

attitude of the federal government toward the Tribes, as well as the Tribes resurgence of tribalism and cultural identity that would be necessary to win the forthcoming battles. Films and news reels in the 1940's and 1950's, made by whites, and watched by whites, proclaimed that the building of the dams and other forms of so-called development, marked the end of Indian culture. "The Red man bows before white progress, they said. This would prove to be another myth, as spiritual strength, tribal awareness, and a new sense of what it meant to be sovereign, independent, and self-determined was growing in the Indian community (Bigcrane 1991).

The first of these larger battles to be discussed occurred in 1977, when the Army Corps of Engineers, through legislation enacted by Congress back in 1964, were given authorization to perform dam feasibility studies. In these studies, which the Tribes approved, the U. S. Army Corps looked at the possibility of developing some or all of the five other sites on the Flathead River recognized by governmentally authorized surveys seventy years prior, and still not developed. The studies concentrated on the Buffalo Rapids sites, and the Knowles site which would have required a 265-foot-tall dam, flooding the entire town of Dixon, Montana. Public outcry was, of course, very notable and sparked more public forums and Senate hearings (Proposed Dams 1978). Even though a rebirth of tribalism and political awareness were being experienced on the reservation, the Tribes were still

not in control of their own lives, or their own lands. Big government and big business had socially and economically underdeveloped the Tribes many times in the past. So the proposals of five more dams, when issues concerning the existing dam were perpetually pending, caused an anxiety and heightened tension among the Indian people. However, it also spawned a resurgence of political prowess and sophistication (Eggert 1977; Lindler 1977).

The Tribes would fight these proposals, and time and time again, throughout the 1980's, would vote them down. The Tribes later claimed they did not necessarily intend to develop any or all of the sites. But they did authorize the studies in order to possess knowledge and information that the government was so adamant about acquiring, and was willing to pay for, to use in their own fight (Dam Studies 1977). It also provided a great opportunity to express the Indian views that had always existed but were not always voiced. For instance, that "[t]he self-perpetuating poverty of reservation society has kept tribes from developing and marketing *their own* resources" (Eggart 1977). Furthermore, it provided an opportunity to express the need for poise, patience, conservation of nature, and of future generations, all sources of Indian cultural identity, as well as for communities to come together. Tribal councilman Joe McDonald stated:

We have to draw a line someplace between progress and the preservation of our sacred trust to our ancestors and our grand children. . . These places are sacred and our generation has no right to destroy them for all time . . . The only chance of survival Indian tribes have is to stick together. (Eggart 1977)

Secondly, in 1977, an issue arose, in light of the Tribes' public decision to attempt control of Kerr Dam, to attack previous legislation concerning irrigation. In 1948, Congress passed legislation which stated that private land owners were to be relieved of the responsibility of paying for the construction costs of the irrigation. The money would, on the other hand, come from tribal funds created by the same law, called "Net Power Revenue" funds.

This was yet another example of socioeconomic underdevelopment as Congress, through the Interior Department, decided to allow the Flathead Water Users Association to put those funds to use, whether the Indians liked it or not, providing cheap power for irrigation and passing a portion of the costs onto the Tribes. This was also important in 1977 because the Tribes were not receiving any compensation under the annual rentals for the 15,000 horsepower of electricity being used for irrigation on the reservation. The Flathead Irrigation Project did not pay the Tribes a separate rental for the power generated, the water used for power generation, or the water used for irrigation. This was being made public as it would be necessary to include these issues in the up and coming negotiations concerning the

takeover of Kerr dam (Tribe Was 1977).

Finally, the most significant legal issue which occurred in the years before and during and battle for the Kerr dam license, from 1973 to 1982, other than the battles over the rental increases, was what came to be known as the Namen case. This case, between a local land owner and merchant, and the Tribes, would be appealed all the way to the Supreme Court, and would have local, state, and federal governments involved. It would also mark the beginning of federal support in favor of the Indians from their long-time paternalistic guardians, who, traditionally, had not exactly operated in the Indian's best interest, as the designation of their self-appointed role had implied.

James Namen owned a marina in Polson on the south shore of Flathead Lake. The Tribes owned the entire south half of the lake according to the treaty of 1855. Mr. Namen had decided to use his authority as a landowner on the reservation to construct his property, his docks, and the lake shore as he saw fit. In 1973, the Tribes sued Mr. Namen. The case had escalated and begun to involve larger contingencies of organizations. In 1975, the city of Polson and the State of Montana filed a suit against the Tribes which sought not only to remove tribal riparian rights on their own lake shore, but also to terminate the very existence of the reservation, forever. They attempted to prove their case by claiming that the Flathead Allotment Act of 1904



contained clauses which implied the termination of the reservation ever since. As these two cases continued through higher courts, they became lumped into one case. In 1977 the United States government counter-sued both the city of Polson and the State of Montana against their claims that they ought to be given *carte blanche* to do as they pleased on Indian lands, undermining the city and state claims that the reservation did not really exist in the first place.

In April of 1980, one month before the license on Kerr dam was to expire, the courts ruled on the Namen case, and determined three outcomes: that the United States owns title to the bed and the banks of the south shore of Flathead Lake in trust for the Indians; the reservation, in fact, did not, and would not, dissolve due to the Act of 1904 or any other, and finally that the Tribes had no authority themselves over riparian rights and issues concerning their own portion of the Lake.

Predictably, neither side was completely satisfied with the outcome. But after the appeals court ruled finally on the matter in 1982, the first two decisions were upheld, and the third was reversed (Tribes Authority 1982). It was a great victory for the Indians, except for the financial burden of paying the court costs, and the psychological deterioration experienced everytime they have to fight threats to their sovereignty and cultural identity. Nevertheless, this time a federal court ruled that the Tribes had the

authority over all riparian rights on their portion of the lake. These rights were, of course, guaranteed by the Treaty of 1855, but were called into question many times, publicly and privately, until the Namen case (Arnold 2002; Haddon 1965).

To continue the story of the relicensing of Kerr dam, though, it will be necessary to digress chronologically. However, the Namen case, as well as the future dam proposals from the Army Corps, and the continuation of conflict over loss of Indian funds through the irrigation project, were significant to mention. These cases marked not only a shift of political trends in Washington, they also represented the pinnacle of an escalation of differing local attitudes, on and off the reservation, that had been brewing for decades. Moreover, they were indicative of the emergence and presence of the new generation of Indians, those who had the desire to 'out-white the whites' through their own legal system, which had not been traditionally beneficial to Indian interests, to say the least. The Tribes were letting the world know that they had the skills, the backing, the money, and the tenacity to accomplish their goals (Arnold 2002).

### **The Battle Over the Relicensing of Kerr Dam**

The late 1970's saw the Montana Power Company continuing their practice of delaying their payments to the Tribes until after the generated

power was consumed and all the profits made. Even when they did finally show up, the rental payments, from the dam which produced one seventh of the power company's generating capabilities, were merely a slight fraction of the profits generated from the dam. Nonetheless, the Tribes did receive \$2.6 million each year from 1978-1980; but they had to be cautious at this time. Even though they deserved more money, this was certainly more than they were used to, and they needed it to provide their own funds in the fight. They had filed requests to acquire the dam themselves five years in advance, but they still had to contend with the all too familiar guardian-ward, trust-responsibility relationship they had with those who would have authority over their interests and affairs.

In other words, the federal government still had it set up so that the Indians would not be in control of the outcome of the litigation process. Granted, the Tribes were now able to speak for themselves, somewhat, and their claims were gaining influence, respect, and credibility in the eyes of the public as well as the government. Their tenacity had finally brought them, better late than never, funding to support their fight. However, the federal government still had the final say-so over tribal spending, and the license to operate the dam. The government could legally grant the license to Montana Power, to themselves, or even to an interested outside third party organization in the region, such as the Bonneville Power Administration.

To summarize the Tribes precarious political position, then, they had to fight loud enough to not lose what was rightfully theirs: but also, quiet enough to not lose what was rightfully theirs. After all, the federal government, who was supposed to act in the Indians best interest, historically had sided with big business. The Indians knew they might be told, simply, "no." And local irrigation interests were still being heard along with tribal ones. As one informant and I noted, it seemed that "they were damned if they did, and damned if they didn't" (Arnold 2002).

Another problem which rose during this time, and a rather ironic one at that, was the politics the tribal council had to play on their own turf. As 1980 approached, and with the recent rental increase to \$2.6 million, a significant number of tribal members were protesting the fact that their annual per capita checks were not increasing proportionately with the amount of the Kerr dam rental increases. The Tribes learned very quickly that the more you have, the more you have to manage. Even if the rental fees were paid entirely in the form of per capita checks, the 6,001 enrolled members, as of March of 1980, would have received only \$433 each (Pablo 1980). The irony was that the tribal council had to play the role of guardian and trustee to their own people, while attempting to usurp the the same role being perpetrated on them by the United States. "Out-whiting the whites has always been a delicate matter, if not a painful one. But these were the

Salish, Pend d'Orielle, and Kootenai, a politically sophisticated people.

Nevertheless, the negotiating parties on either side of the Kerr dam relicensing issue could not seem to come to any kind of agreement. No one could seem to get the overseers, the former Federal Power Commission, now known as the Federal Energy Regulatory Commission (FERC), to expedite the proceedings. Consequently, Montana Power would once again be afforded an opportunity to delay rental increases, as the former lease agreements would simply be carried on indefinitely after May of 1980 when the license expired, if FERC deemed it acceptable.

From 1980 to 1984, that is precisely what happened. These years saw bureaucratic underdevelopment in the form of a series of meetings, hearings, proposals, and resolutions between the Montana Power Company, the Tribes, the local water users, and FERC. The local water users were making it known that to grant the Tribes permission to operate the dam would hurt their chances of receiving power for irrigation at reasonable rates. They cited the act of 1948 which they claimed had intended for the local irrigation users to take over the project in the future, and that the project should be permitted to operate at a level such that its profits would meet their needs to make the payments on it. However, the Tribes voted it down in 1960 to maintain their own water rights, so the Indian Bureau was, therefore, still administering the project. The irrigation users did not want to lose their rights to profit from

the power received from the dam. The Tribes were tired of having to pay for something that they did not ask for, did not need, and were not profiting from themselves; with money that they supposedly had, but could not control (Power Outlook 1980).

During this time, the Namen Case was still pending, and the Army Corps of Engineers was still doing its feasibility studies begun in 1977. In 1981, The Army Corps determined there were 51 "high potential" sites out of the 2,037 which they inventoried, in Montana alone. These studies proclaimed that, of the 51 sites, 24 existing and 27 undeveloped, a potential 9.945 billion kilowatts could be generated (Corps 1981). As attention was being drawn toward more development in the area, which most likely meant underdevelopment for the Indians, the Tribes appealed to FERC to speed up the pending situation surrounding the license on Kerr dam. Yet, the Tribes offers continued to be met with further delays, if not even evasion or denial.

By early 1984, the Montana Power Company resorted to their age old standard tactics of finding power-friendly Indians to speak on their behalf and circulate petitions. These petitions, presented as the collective will of the Indian people, offered a one time pay-off to the tribes of \$30 million. Maybe the power company was counting on such a large figure to appear like a better offer than it really was. Appealing to someone's short term desires at the expense of their long term needs is a profit-making tactic used

in the business world as old as the business world itself. Did the power company really think the people would go for it? After all, the company had only paid a little more than \$40 million total on the dam since 1930. Furthermore, this one time payment would be instead of, not in addition to, the annual rental. Yes, the annual rental would be suspended for the first twenty years of the fifty-year license, subsequently sending the Tribes back to the negotiating table once more in 2000, to begin all over again; with Montana Power making enormous profits for another twenty years, at the expense of the Indian people (Don't be Fooled 1984).

Montana Power believed that if they could get some of the Indians, even tribal council members, to agree with them, and that the \$30 million would be split among the 6,001 tribal members in the form of a per capita check (even for those who were living off the reservation anywhere in the country), that the thought of receiving a check for \$5,000 for doing nothing more than signing a piece of paper would be incentive enough to have large numbers of Indians sign the petitions, and thus appear to FERC as if the Tribes were in favor of allowing Montana Power another fifty-year lease (Don't be Fooled 1984). That is what they were thinking, and that is almost what happened.

In March 1984, another significant event took place, this time in terms of local politics on the reservation. Tribal council member E. W. "Bill"

Morigeau, who had served as the Polson representative for thirty-four uninterrupted years (since 1950), was asked by the rest of the council to resign (Morigeau Removed 1984). Morigeau, who had long represented the Indians of prior generations who believed in maintaining cultural identity through accomidation with the white man, was apparently caught in fraudulent activities when reimbursing personal expenses from tribal coffers. Morgieau reluctantly stepped down and the council appointed Teresa Wall to replace him in April (Polson's New 1984). This shift of power, the public acknowledgement and acceptance of it by the council, and the symbolic nature of it, a sort of out-with-the-old and in-with-the-new, marked the beginning of accelerated times in the relicensing proceedings.

The Tribes had spent years and hundreds of thousands of dollars in their fight to gain control of their own resource, and thereby took a giant step toward self-sufficiency and self-determination. Judging by Montana Power's acceleration of its own campain efforts, occuring in relatively the same pattern as they did in the spring of 1930, the Tribes were getting close to achieving their goals.

Meanwhile, Morgieau and three other tribal members formed what they called the Kerr Dam Relicensing Team, which again claimed to represent the collective voice of the people. However, the relicensing team ended up being the voice of Indian support that the power company needed. The Kerr



Dam Relicensing Team whole heartedly supported Montana Power's one-time \$30 million offer, in spite of its obvious drawbacks. They claimed that even though the figure was less than what the Tribes would receive through annual rental payments at the current \$2.6 million, the Tribes would save money in the long run by not having to pay for Montana Power's original investment, subsequent repairs, or the attorney and consultant fees for constant renegotiations. They repeated Montana Power's rhetoric about everyone's power bills going up. The debate was the same as before: short term wants versus long term needs. The relicensing team knew that there were many tribal members who were complaining for years that they had not personally seen any immediate increases in their per capita checks to the extent that they felt should correlate with the recent rental increases (Petitioners 1984).

However, the tribal council, looking toward the future strength of its people, knew that they had to win now or risk repeating the whole scenario twenty years down the line. Plus, the \$30 million offer was not only less than the current rental, \$2.6 million, but that figure was due to go up again and again in the provisions of the renewed license, as it had in the original one. In fact, the council was planning to use the last fifty-five years of discrepancies between tribal rental payments and power company profits to argue for the substantial increase of the annual payment. Montana Power

claimed, in written testimony to FERC, that they believed that \$11.9 million would be fair based on the dam's established profit-making abilities. Yet Montana Power offered the Tribes \$3.0 million in negotiations. While the Tribes were claiming \$30 to \$40 million was fair (Petitioners 1984).

When the self-appointed Morigeau-led relicensing team was failing to get more support for their cause, they tried to make an appeal to the tribal constitution, in order to advocate the power company's \$30 million offer. Article 9 of the constitution of the Confederated Salish and Kootenai Tribes states, that if either one third of the eligible voters petition, or one half of the council decides, then "any enacted or proposed ordinance or resolution of the [tribal] council shall be submitted to a popular referendum" (Relicensing Team 1984). Then, a majority of voters could use such a referendum to overturn the ordinance, provided that 30 percent of all eligible voters vote.

While the relicensing team was claiming that they were not being given a chance to have their voice heard, and were being treated unconstitutionally by being denied their referendum, the tribal council was continuing its negotiations with FERC. The council claimed that Morigeau did not have enough signatures, and that there were questions as to the validity of some of them. Even if he had enough, the council claimed that this particular issue was unique and was not covered by Article 9, and was constitutionally not applicable. Besides, there were more parties involved in

this case than Tribes. Therefore, the federal government, be it the Indian Bureau, FERC, or the Interior Department, simply would not recognize proposals from a self-appointed, non-elected, unrecognized group of tribal officials. This time, they were correct (Tribal Information 1984).

Nevertheless, the tribal council was continuously forced to fight further battles on its own turf. The relicensing team kept up its efforts in spite of opposition. Other groups, such as Montanans Opposed to Discrimination (MOD, or the "mod squad), were becoming more vocal. Groups such as these were throw-backs to those who would try to put fourth the argument that the reservation system was antiquated and obsolete, and that non-Indians had rights that were being violated on the reservation, and thus, were being discriminated against (Tribal Information 1984).

By June, Montana Power was mailing out fact sheets to its customers. The company claimed in their mailers that, should the Tribes be permitted to operate the dam and the power plant, that they would be engaging in profiteering,' exploiting the power and the site. This is a strange rhetorical device as that would be exactly what the power company itself had done since 1939. The Tribes argued that the rental payments never reflected the true profit-making potential of the site. As for rate increases to consumers, the Tribes, as a private owner, would still be bound by the established federal regulations as a corporate owner, plus they would be forced to use

hardware already in place to transmit and distribute their power. In addition to the Kerr Dam Relicensing Team, the mod squad, and FERC, the Tribes were still fighting with the Flathead Water Users Association, now calling it self the Joint Board of Control. Counting its own people and the Indian Bureau, the Tribes were fighting a war on at least six fronts.

### **The Final Arguments are Presented**

The more 1984 was progressing, the more it began to be reminiscent of 1930, in terms of Montana Power's rhetorical and political tactics, and its attempts to benefit at the Indian's expense. This time, though, the Tribes had the benifit of past history to educate them, as well as greater political awareness, and what seemed to be a surprise supporter in their corner, the federal government; but the power company, naturally, would continue to prove to be a worthy adversary.

The arguments proceeded as follows. The power company claimed that if the Tribes were awarded the license, the power company would have to replace the plant, costing consumers more money. The Tribes proved that since the power company sent slightly more power outside the local area than it produced for local residents, that consumers were being asked to pay extra already. Therefore, giving the site to the Tribes would cause the costs and benifits to cancel each other out (Tribal Information 1984).

The Tribes said they wanted a significant rental increase if Montana Power was to be awarded the license. Again, the Montana Power Company claimed that would hurt the consumers. Again, the Tribes proved this was untrue. First of all, the Interior Department had to agree with both Montana Power and the Tribes, determining a payment that was both "reasonable" and one based on "commercial value." Secondly, Montana Power should have had plenty of money through not paying the Tribes for the site's true commercial value since 1930. Therefore, the consumers should not have to be penalized. Furthermore, from 1950 to 1975 the Tribes' annual payment increased by only 0.1 mills per kilowatt-hour, that is, by one one-hundredth of a penny each year, or by one mill every ten years. While the power company's Colstrip plant, for instance, during the same time, increased its pay-offs by 64.5 mills per kilowatt-hour (Tribal Information 1984).

The Tribes reminded everyone that even the original lease of 1930, signed by the Montana Power Company, as Rocky Mountain Power Company, contained provisions for the future Indian ownership of the dam. The Tribes also reminded the public that their control of the site would boost the local economy, through huge taxes the Tribes agreed to pay Lake County, and through not having to pay corporate stockholders, most of whom lived out of state.

To counter, Montana Power began to use another of their

fifty-four-year-old arguments, claiming that the Tribes would have no way to secure a market to sell their power. To this the Tribes said that they, in fact, did have some preliminary energy contracts. However, it should not be held against them if they had not completely secured a market. The Indians were attempting something for which they had no prior precedent, and they were becoming victims of a proverbial Catch Twenty-two. The Tribes argued that they could not secure the license without the contracts, and could not secure the contracts without the license. The Tribes further argued that Montana Power had never been concerned with the well-being of the Tribes before, so their recent claims to that fact were insincere. On the contrary, the power company had been delaying payments and trying to pass legislation for right-of-way issues concerning power lines and pipe lines. Instead of fixing the problems, they lied, denied, and fought for the right to pay less. The Tribes argued, therefore, that the consumers certainly would not suffer under Indian control of the power site, and the Tribes could only stand to gain a great deal of profits; only Montana Power's stockholders, with whom the power company's true loyalty lies, stood to lose on the deal (Tribal Information 1984).

Furthermore, the south half of the lake, as well as its bed and banks, is now, and has always been, tribally owned. Ownership of the dam and power plant, the most valuable resource on the reservation, would increase the

Indian's potential for self-sufficiency and decrease their dependency. They could create jobs, programs, awards, increase per capita payments, eliminate the need to pay for legal battles, and pay the taxes to Lake County, all at the same time. June and July, 1984, saw rallies, dinners, and vigils held at the dam site, honoring those killed during construction, and promoting Indian control of the Dam (Come Support 1984). Some tribal members decided to camp there permanently until the negotiations were complete. At the same time, hearings were conducted in Polson, Pablo, and Missoula addressing the issue. The Char-Koosta, the newspaper for the Tribes, covered all the details (Dam Hearings 1984; 1984 Kerr History 1984).

By September, 1984, the Tribes' tenacity and legal prowess were finally paying off. Montana Power was now throwing offers like \$5 million per year for twenty years, in addition to their original \$30 million per capita payment, but with the current \$2.6 million added on each year. The first offer would mean \$100 million for the Tribes over a twenty-year period, and the second, \$82.7 million for the same period. Morigeau was still vocal in his support of the power company, but realistically no longer influential or acknowledged by the authorities involved (Council Offers 1984).

The council's research expert, Teresa Wall, with the support of the council, called both Montana Power offers "grossly inadequate. As the Tribes kept pushing for more money, FERC judge Bruce Birchman was

reluctant to grant their request. Citing as his reason, a throw-back to one heard some fifty-four years before. Birchman said the Tribes would not be able to secure a market for the power. He said that he would deny the Tribes' offer unless they could demonstrate why he should not. After an arduous up-hill battle, still caught in their Catch Twenty-two of which Birchman was undoubtedly aware, the Tribes looked as if they were about to witness history repeating itself.

At the last minute, an "eleventh hour" letter of support came from, none other than, the only party that was in any position to help the Tribes, the Department of the Interior. Wall said that their subordinates, the Bureau of Indian Affairs, were even there standing along beside them. The United States government, the guardian, the protector, the parent, and the trustee, to the Indians, who had been uncharacteristically silent so far, came to the aide of its wards with an offer to purchase 24 percent of the power produced at Kerr dam, if the Indians were awarded the license (Judge 1984).

Birchmen immediately ordered delays in the proceedings, while Interior Department officials agreed to visit the reservation. Meanwhile, the Tribes and their attorney, Foster DeReitz, regrouped and reemerged with new demands at a meeting on September 10, 1984. The Tribes asked that the Interior Department be present from now on, to support the Tribes in their negotiations with FERC and the power company. They requested a



federally financed inspection of the Kerr facility to establish its current condition to determine its true value and future depreciation. Interior Department officials were to arrange meetings with Interior Secretary, William Clark, where he would formally express support for the Tribes position. The Tribes further asked that the Interior Department give firm written details concerning the September 5th agreement for purchasing 24 percent of the power generated, and the Tribes asked that Montana Power be forced to pay them \$29 million per year until the company was to be completely unaffiliated with the dam (Judge 1984).

Other tribes around the nation were voicing their support by this time. The thunderstorms were not discouraging those who still participated in the continuous vigil at the dam. Letters continued to pour into tribal headquarters, both pro and con, as writers expressed their opinions during this time of temporary stalemate. As for Mr. Morigeau, he still claimed to have enough supporters to take the power company's offer (Judge 1984).

### **The Kerr Dam Relicensing Dispute is Settled**

On October 4, 1984, the power company and the tribal leaders, at last came to an agreement over the relicensing of the dam. They settled on a fifty-year joint license. Montana Power would operate the dam for the first thirty years and the Tribes would have the option of taking complete control

of the operation for the final twenty years. The Tribes forced Montana Power to agree to a \$9 million annual rental fee for the first thirty years, to be paid quarterly; and this time, the payments were to be in advance. This time the rental increases would occur, as needed, not at the whim of the power company or its lawyers, but according to the federally regulated Consumer Price Index.

If the Tribes decided to take over after thirty years, they would have to buy the power company out. This would involve paying for initial construction costs, plus improvements, minus depreciation. Montana Power further agreed to spend their thirty years training selected members of the Tribes to train them for the possible take over. The Tribes agreed to drop a court case pending since 1980 concerning the lack of rental increases from the \$2.6 million figure (Kerr Settled 1984).

In all, it was a great victory for the Tribes. They had to persevere among the various different groups who did not have tribal interests at heart. To make matters worse, some of the dissention even came from within the Indian people themselves. They had endured and they had much to be proud of. However, the deal would not be made final without FERC approval. Some of the Indians wondered if it was not somewhat of a hollow victory, given the buy-back clause. After all, it was their property all along, why should they buy it back?

There were other issues to iron out as well. Questions included what the Tribes would do for the irrigation project and the local water users. Also, how would the Tribes maintain the water level in the lake given their cultural tendency toward ecological matters; that is, more for the farmers, or more for the fish, the river, and the whole ecosystem which had been disrupted since 1930. As it was, 8 percent of Kerr dam's output went to the Flathead Irrigation Project, equaling only 30 percent of the project's needs. The remainder of the power came from the Bonneville Power Administration. There were also issues concerning the right-of-way of certain transmission lines, and an environmental impact statement might have to be completed before FERC would sign anything. All parties agreed that the Kerr Dam Relicensing Team was not, and never was, legally in a position to negotiate anything (Kerr Dam, Polluted 1984).

With all of these specific issues to iron out, FERC postponed its final approval for quite some time. In late March, 1985, one week before the end of FERC's six month grace period to finalize the license, tribal leaders were still experiencing delays. Despite these delays, Montana Power and the Confederated Tribes were ready to close the deal. However, others such as the Interior Department, the Indian Bureau, the recently involved Montana Consumers Council, who represented the rate-payers interests, and the Joint Board of Control representing the local water users' interests, all had

something to say about this fundamentally Indian issue. Of course, even though the Tribes had fought a great battle and were considered by many to be victorious, they still had many outside organizations to answer to, who were not concerned with Indian cultural identity (Kerr Dam Lease 1985). The United States still had their position of guardians over the Tribes. Would they stand up for their wards as they did they previous year?

A decision could not be made immediately, and FERC approved an extension beyond the allowable six month grace period. Each day the negotiations were delayed, the Tribes lost another \$17,534 that they would never see (FERC Action 1985). On July 17, 1985, after more than five years of battling, FERC approved the fifty-year joint license settlement (FERC Says 1985). The agreement would not become effective, though, for another fifty days, to allow time for appeals. So the Tribes would have to wait still longer for their money. In spite of the victories, socioeconomic underdevelopment continued to remind the Indians who was boss.

In keeping with the Indian way, the Tribes did not gloat or boast. They did not publicly denounce their rivals. They simply waited for their rightful appropriations, and began immediately to spend them wisely: for their future generations, not for the short term. They outlined a spending plan involving significant increases in per capita payments, assistance for the elderly, land acquisition, grants for Indian students, and establishing savings

plans for future economic development. They even began to save immediately for the possibility of the thirty-year buy back option on the dam (Council 1985).

In this way, it seems that the Kerr dam was just beginning, to assist the Indian's cultural identity, self-determination, sovereignty, and independence, by finally contributing to them. Granted, it was certainly considered a bitter-sweet victory by the likes of some, but a victory nonetheless. However, the questions put forth by Roy Bigcrane would also begin to haunt even the minds of those enjoying the spoils of victory. "Will the dam bring empowerment or disaster?" In other words, "[i]s the dam inherently destructive of traditional native cultures, or can the Tribes use it to regenerate the way of life it helped to destroy, thus bringing further underdevelopment and dependency? (Bigcrane 1991).

## Chapter 6

### Final mitigation on the Environmental Impacts of Kerr dam, Summary, and Conclusion: 1985-2002

*Since the beginning of time the cultural fabric of the Salish, Pend d'Oreille and Kootenai people has been linked to water - the earthly blood of life. It provided the life-sustaining gifts of food, shelter, and water, and it served as a "water path" to neighboring tribes and relatives to the west. It is for these reasons, among others that the river has earned the spiritual reverence of the Tribes. And it must be saved today so future generations of people and animals - can partake in its life-giving nutrients (Azure 1997).*

\* \* \* \* \*

For the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, water served as not only a means of transportation and a sustainer of life, but a vital source of cultural identity. Water served, both literally and symbolically as the link between the earth and her people. Water, the universal element for life, was inextricably interwoven into the fabric and fiber, the body and the blood of the living planet, and the living people. Thus, it may serve as a metaphorical representation of the source of the Tribe's social and political identity as well.

Water is simple and humble. It lives close to the earth. It even hugs the earth, always choosing the low road over the high road. It is patient and gentle, always circumventing the obstacles in its path: never trying to force

its way through them. Water is respectful and non-confrontational, naturally seeking, and by nature always finding, the path of least resistance. It is adaptive and accomodating, always taking on the shape of whatever vessel it is placed in, and it will always make room for whatever is placed in it. It is content to yield to others, assuming for itself only the lowest level. It is the life-blood of the Earth.

Water is also tireless in its pursuit of balance. It is tenacious in its quest for equality. It makes the sharp dull, the hard soft, and the square round. It will nurture and heal, but its relentlessness will carve a canyon out of bedrock. Water is accepting and tolerant, as it is the universal solvent of both solid and gas. Thus, it will make the crystalline etheric. Likewise, it will transpose these qualities onto the nature, and merge with the identity of anyone who would be as receptive, and willing to listen. The Indians were willing to listen.

It is no irony then, that the Confederated Tribes of the Flathead Indian Reservation, while being unfortunate as the victims of systematic eurocentric enculturation and the socioeconomic underdevoptment which almost invariably accompanies it, were, nevertheless, fortunate in that the reservation they had reserved to themselves was, and still is, rich with water resources. Within the boundries of the reservation there are 89 lakes, including the south half of the largest fresh-water lake west of the

Mississippi River. There are 60,000 surface acres on Flathead Lake that fall within the reservation. At the same time, there are the Jocko, Little Bitterroot, and Lower Flathead rivers; all fed by 460 miles of streams. Plus there are hot springs, water falls, wetlands, marshes, and glaciers. All are fed throughout the entire year by the snow-capped mountain peaks, rising at times more than a mile above the valleys below, which catch the rain clouds coming from the west (Bruggers 1987).

Therefore, given the necessity, as well as their ability, to be as adaptive and accommodating to dominant outside forces as the water they so dearly love, the Confederated Tribes have been tireless in their patient pursuit to turn their source of cultural identity into a source of self-determination as well. They are now succeeding in their fight against outside underdevelopmental forces who have wished to exploit and control their resources, as well as their identity.

### **The Perpetual Battle with Montana Power Over Money**

The Federal Water Power Act of 1920 required that Indian lands, which were utilizing water power, be protected from negative environmental impact. Likewise, the new license on the Kerr Dam, issued in 1985, called for the Montana Power Company to come to terms with the Tribes, through FERC, on a Mitigation and Management Plan (MMP) to offset past, and to



reduce future, environmental impacts, on the land, the fish, and the wildlife, caused by the the Kerr Dam (Kerr Dam Mitigation 1994).

It was not until 1990, though, that Montana Power presented their first MMP to the Tribes. In keeping with their recent policy of actually acting as gaurdian to their wards, the Interior Department also got involved. Officials from the Interior Department developed their own MMP standards that they would request FERC to monitor on behalf of the Tribes. These came to be known as the 4(e) conditions and would play a pivotal role in the negotiations over the provisions of the MMP. However, the years following 1990 did not see much progression in the proceedings, outside of the publication of the 4(e) conditions. Because of loopholes dragging time in the appeals process, and the complexity of the issue, it was not until 1994 that any significant progress in the MMP, and subsequently any monetary compensation for the Tribes, would be seen.

The Secretary of the Interior, Bruce Babbitt claimed in March, 1994, that by June of that year he would take "prompt action" on the mitigation proposals. Tribal chairman Mickey Pablo and tribal attorney Ronald McDonald considered filing a "breach of trust" suit against the Interior Department if Babbitt did not come through (Kerr Dam Mitigation 1994). The Tribes were pushing for the MMP approval. They were anxious, even with their relatively recent victories, to continue their pursuit of justice for

the damages done to their lakeshores, fisheries, and wildlife habitat.

When FERC began moving faster on the issue, their office was developing a Draft Environmental Assessment to fulfill part of the stipulations put forth in the Federal Water Power Act, and the new dam-operating license of 1985. In the Environmental Assessment, FERC modified Montana Power's offer, and forced further delays until the results of additional scientific studies could be analyzed and publicized. These studies and the controversy which surrounded them epitomized the mitigation issue at the local level, because it pertained directly to the lake level. Inasmuch as this issue was complex, though, it was essentially not very complicated.

### **Controversy at the Local Level Delays Mitigation Proceedings**

For the Tribes to begin to be compensated for the loss of their resources and their cultural identity, in terms of the loss of water quality, fish and wildlife, and the tribally-owned lands they once inhabited, the dam would have to be used to monitor and control the level of the elevation of the lake to approximate the natural rising and falling, ebbing and flowing, of the surface of the lake, as it was before the existence of the dam. This was, of course, quite possible as dams are equipped with large gates at the top of their mass of concrete for just such quality control. In this case, the reservoir, or pool, Flathead Lake itself, was also being artificially controlled

on the intake side to the north, through the Hungry Horse Dam, adding additional control over the lake level.

However, as is normally the case when climatic conditions and natural rhythms are viewed against the backdrop of mankind's ever-vigilant attempts to maximize his profit-making through their exploitation, the two do not always coincide. Using the MMP to periodically lower the lake level and restore the natural environmental cycles, and thereby, properly compensate the Tribes, would not always synchronistically overlap with the rising and falling of the demand for electricity, or of irrigation. So Montana Power, and the Joint Board of Control, arguing for the local water users, were after different ends than the Tribes, as they had been in the past. Now there were also others to consider: the white landowners residing on the federally recognized tribally owned south shore of the lake.

These landowners were interested in the commercial value of their property value as landowners on a beautiful mountain lakeshore. They were also interested in the recreation opportunities that such a location provides for themselves, as well as their ability to profit from the sale of such recreation to tourists, and other local residents.

So in addition to the usual arguments from the Montana Power Company and the local water users, in terms of profit-making from the water and the electricity, the Tribes had to deal with similar arguments from

local landowners in terms of tourism and recreation, who had Montana Senators and Congressman speaking on their behalf (Tribes 1994). Since this was a federally recognized Indian reservation, Indians had federally recognized rights on their own lands, including the lakeshore. Even though the white landowners resided within the boundaries of an Indian reservation, their claims to land ownership were also recognized by the same government which established the reservation. The only entity they were not always recognized by was, of course, the traditional culture of the Indians, who were at the mercy of their government. This time, however, the recent events indicated the Tribes had the Interior Department on their side, and FERC appeared to be interested in making the best decision for all involved.

FERC listened to the concerns of the scientists at the Yellow Bay Biological Station, even though they were denounced by Montana's Senators and local landowners. Dr. Jack Stanford of Yellow Bay explained, at public debates and hearings, that their findings were not intended to be instructions, or even suggestions, but only studies with corresponding results. The Biological Station provided a study which showed a possible annual cycle of rise and fall in the lake level, called the Lorang Model after the student who developed it, which sparked much controversy and delayed the mitigation proceedings beyond the date promised by Interior Secretary

Babbitt (Lake Erosion 1994).

The Lorang model demonstrated that the natural rising and falling of a lake level creates a cycle in which the shoreline becomes alternately dried and soaked. This occurs during periods of increased water volume in the spring and fall, and, as a result, constructs a shoreline made of well armored soil. Dams on the other hand, maintain an unnaturally high water level. Consequently, like stagnant water in a bath tub, they leave deposits of dirt and scum around the edge, in this case, along the shoreline. Therefore, the erosion everyone is worried about is the eroded land that has been recently deposited on the shoreline by the unnaturally high and relatively slow moving waters behind the dam. Fluctuating the annual water levels again would loosen these deposits hindering water quality. Therefore, it may be necessary to mimic the flushing activity that ebbing and flowing in pre-dam years performed naturally. In the case of this particular dam, keeping the water level lower than the "unarmored soils, which were mostly above the high-water mark, might even eliminate most of the so-called erosion (Lake Erosion 1994).

This study had opponants. Whites did not want their current situation regarding recreation, tourism, property values, and revenue, to change. They persued FERC and had that agency dismiss the scientist's findings. Politicians denounced the studies as well.

### **The Interior Department's 4(e) Conditions Accelerates Mitigation**

FERC was still hearing testimony from various sources. However, its efforts were concentrated on completing mitigation on only one of the six articles of the 1985 license agreement pertaining to mitigation. This was the article that concentrated on the north shore of the lake, off of the reservation entirely. FERC officials also determined that Montana Power's proposals still had "significant impact." The Interior Department finally compiled their conditions for tribal mitigation, which were as established in the Federal Water Power Act, FERC was forced to seriously consider them. Surprisingly, the 4(e) conditions were almost identical to those of the Tribes (Kerr Dam to 1994).

The Interior Department's conditions included restrictions of water flow and fluctuations, a fish and wildlife implementation strategy, riparian habitat acquisition on the south shore of the lake, redevelopment of wildlife habitat, drought management plans, protection and utilization of cultural and recreational resources, north shore erosion control projects, a waterfowl protection area, and last but not least, a policy which would make Kerr Dam a base-load operating plant only. For its entire history, the dam was being run as a "peak operating" facility, meaning maximizing profit from the sale of electricity was the primary concern which caused the lake level to rise and fall with the demands for generated power. Now it was to be a back-up, low

energy producing plant (FERC Summarized 1995).

These conditions laid out by the Tribes guardian and protector, the Interior Department, heightened the environmental nature of the debate, forcing other groups to oppose these plans. Montana Power was concerned with its bottom line, and the Joint Board of Control wanted FERC to delay the proceedings until their requests for the increasing their already low-cost block of power from the dam was approved. The Tribes still did not receive a penny for this power, on which they lose an estimated \$1 million annually. Also, the Technical Review Board who first presented the Draft Environmental Assessment, a local organization called the Flathead Lakers, and something called the National Organization to Save Flathead Lake, were voicing their concerns against the Indian people. However in addition to the Interior Department, the Flathead Fishing Association, Montana's Department of Fish Wildlife and Parks, and even the United States Army Corps of Engineers supported stronger mitigation than that which was laid out in the original Environmental Impact Statement (FERC Denies 1996; FERC Summarized 1995; JBC Defends 1996).

On July 11, 1996, FERC issued a Final Environmental Impact Statement advocating for the adopting of the Interior Department's 4(e) conditions in their entirety. This decision, coupled with the recent federally mandated deregulation of the power utilities industry, and the possibility from the

Final Environmental Impact Statement of a retroactive payment to the Tribes of nearly \$48 million, the Montana Power Company attempted to cut their losses by selling out to the Tribes right away (Kerr History 1996).

### **Montana Power's Profits Falling With the Lake Level**

The ongoing environmental mitigation dispute, the ever increasing payments to the Tribes, and deregulation prompted the corporate decision for Montana Power to move more in the direction of the Telecommunications industry. So it was that nineteen years ahead of schedule, Montana Power offered to sell Kerr Dam to the Tribes. Montana Power's president, Bob Gannon, said it would be economically beneficial for both sides. However, if Montana Power could not turn a profit how could the Tribes?

The power company claimed that the recent deregulation of the power utilities industry was causing more competition, and as a result, lower prices. But wouldn't the same deregulation effect the Tribes as well? Montana Power further claimed that the mitigation called for in FERC's Final Environmental Impact Statement was unaffordable. The Statement provided for a one-time payment of \$47.4 million, and an annual payment of \$1.3 million be paid to the Tribes, in addition to the annual rental payments, which by this time were up from \$9 million to \$12.8 million in 1996, and



projected to be \$13.1 million by 1997 (Kerr Dam: MPC 1996). However, all of these figures would fall well below the profit that Montana Power was earning, according to testimony read into the records of several Senate Hearings, over sixty years before (Survey 1929). So why were they claiming that these large checks would break their bank?

Montana Power Company chairman, and Chief Executive Officer, Daniel T. Berube, claimed:

It looks as if the economic line will be crossed for us, but we think the Tribes, with a different cost structure, may find Kerr an attractive opportunity. The Tribes would not have the same cost structures, nor the same Montana Power overheads, such as the state's centrally assessed property taxes, if they assumed the license. This could be a very valuable plant for the Tribes; it has been maintained and upgraded; and it is in excellent working order (MPC Considering 1996).

Montana Power officials further called the 4(e) conditions of the mitigation plan "too much too late, unreasonable, and untimely," complaining that the figures were too high, and that FERC took too long to reach their decision. Yet, it was the power company who drug its feet and took its time, for the past sixty-six years, each and every time they were scheduled to give the Tribes any amount of compensation for the use of their land. Nevertheless, Montana Power claimed that it would literally cost more to produce the electricity than they could possibly sell it for. "The two lines, Gannon asserted, "cost and income, have crossed" (Kerr Mitigation 1996).

The Tribes had much to consider. They had not even received final

mitigation according to the lease agreement that was set in motion eleven years prior, and now they would not ever receive this compensation, if they accepted the power company's offer. The Tribes were also concerned about the agreement to train tribal members for the possible tribal take-over of the dam in 2015. Deregulation would certainly effect their ability to sell their power in a market that all the other players had nearly a century head-start on them. At the same time, deregulation might just drive market prices so low as to minimize mitigation monies still pending, indicating that the Tribes should consider the early buy-out. However, federal restructuring, which became the deregulation of the power utilities industry in 1992, and its effects were just beginning to reach the western Montana area (2001: A Power 1996).

For the tribal council, and tribal economist Ron Trosper, it seemed once again that, like the water itself, the smart thing to do was to be patient and humble, but persistent. The Tribes chose, for the time being, to do nothing. They reminded themselves that they have the "option" to purchase the dam. With the dust of deregulation still not settled, and mitigation not yet reached, the Tribes believed they could do better with their rentals than with full ownership of the dam. In January, 1997 the Tribes officially declined Montana Power's offer to sell them the dam, and decided instead to concentrate their efforts on closing the mitigation issues (Tribal Council

1997; Tribe Turns 1997).

After much deliberation, FERC announced on June 6, 1997, that it had issued its final order on the Kerr Dam mitigation for environmental impacts. Effective immediately, the Montana Power Company owed the Tribes \$12.5 million retroactive from 1985, and a \$1.27 million annual mitigatory rental payment, also subject to increases through the Consumer Pricing Index, until 2015, in addition to the license rental. FERC's final order also determined that Kerr Dam was to operate as a base-load operation only. The power company naturally challenged FERC on all counts. For now, Montana Power would not only have their rental payment increased, and have their attempts to profit from the sale of the dam thwarted, they would also have to write the Tribes a large check, and have their future profit-earning capabilities reduced as well (Kerr Dam: Place 1997).

### **Montana Power Sells Off All of its Power Generating Business**

The power utilities industry consists of three main sectors: generation, transmission, and distribution. In December, 1997, the Montana Power Company announced that it would sell its entire generating business through an auction process. They would attempt to sell their fourteen dams, and four coal-fed plants at Colstrip, valued at over \$600 million, about one fourth of their \$2.7 billion in total assets. Company officials stated that the

geographical region they claimed as their market, was not large enough to successfully compete in deregulated markets. The sale of the generating portion of their operation would significantly reduce the burden of regulatory complexities. Plus, power officials noted, they could no longer afford the risk of fluctuating prices (MPC Wants Out 1997). Also in December, 1997, Montana Power and the Interior Department's Fish and Wildlife Service, along with the Tribes, reached a partial settlement of the 1990 Mitigation Management Plan from the 1985 license agreement. It pertained to erosion and wildlife habitat on the north shore of Flathead Lake only, but it was a start. Furthermore, there were more delays in the environmental mitigation after the power company, the Tribes, and the Interior Department all filed appeals after FERC's final order of 1997

The spring of 1998 saw water levels on Flathead Lake drop to an all-time low. Some blamed El Niño. Biologists conducted their experiments of flow rates, as the 1985 license agreement and the Final Environmental Impact Statement ordered. The minimum flow rate over the dam was held at 3,200 cubic feet per second. The persistent drought conditions were not helping, but Montana Power could not increase the flow rate even if it wanted to. Kerr Dam was now a base-load operation only. Also, in the spring of 1998, Montana Power filed a law suit appealing FERC's mitigatory decision to higher courts (Kerr Dam Included 1998; Partial Settlement 1997).

In November, 1998, the Montana Power Company announced that it had found a buyer for its generating operation. Pennsylvania Power and Light (PPL) would buy the entire operation except for the dam at Milltown just east of Missoula. That was not a worthwhile investment for PPL, as over 6.6 million cubic yards of arsenic and other heavy metals had deposited themselves in the bed, and along the banks of the Clark Fork river, due to almost a century of intense industry and mining activity in the Butte and Anaconda areas up stream. Industrial and mining activities which Montana Power and its corporate ties had no small part in themselves (Kerr Dam Included 1998).

PPL paid Montana Power \$988 million and, in 1999, assumed its operation, as well as its debts, litigation, mitigation, and rentals to the Tribes. Would this move mean that the Tribes would now have a better business partner, one who would not engage in the irresponsible, underhanded, and illegal practices of Montana Power? Or would this be a step backward, toward underdevelopment again, as the seat of corporate power moved back to the east coast? Time would tell (Bureau 2000).

### **Final Mitigation Reached**

The parties involved certainly did take their time on this nearly twenty-year old issue. However, in the spring of 2000, FERC announced that

an agreement to settle further mitigation had been reached. Pennsylvania Power and Light, the Interior Department, the Tribes, and FERC, jointly petitioned the court for dismissal of the Montana Power law suit against the initial mitigation covering the north shore erosion and loss of wildlife habitat, as Montana Power was now out of the picture. Their petition worked and in March of 2001 it was announced, at last, that final mitigation would be awarded and the lawsuit dismissed (Kerr Dam Mitigation 2001).

The Tribes were awarded a total of \$35 million from PPL. Of this amount, \$16.2 million was to be applied to fish and wildlife habitat acquisition; \$10.8 million would be applied toward fish and wildlife restoration; and \$6.6 million was to be spent on fish hatcheries, fish stocking, and reintroduction. Plus the annual mitigation payment was raised to \$1.4 million; and the annual rental payment was now up to \$14.4 million (Kerr Dam Mitigation 2001).

After nearly a century of irrigation and hydroelectric development, and nearly a century and a half of socioeconomic underdevelopment, the dam, which had only recently begun paying for itself, was paying exponentially more for itself. The Tribes had lived to see the day when their conquerors fulfilled their end of the "bargain" by finally acting in their self-appointed paternalistic role, established more than a century before. The Tribes were now among the nations leaders in terms of Indian

self-determination. This was due as much to the natural resources with which the process of underdevelopment had left them, as to their sophisticated political ability to profit from those resources. The Tribes had maintained their social and cultural dignity, and identity, as traditional tribal peoples, first by non-violently battling their aggressors, and further, by not compromising their integrity while doing it. Although they had paid a tremendous price, they could claim victory, as well as honor. They were beating their enemies, without cheating them.

### **Summary and Conclusion**

Questions as to whether or not the Tribes will assume commercial operation of the Kerr dam and hydroelectric plant, as well as the profits and greater self-determination that such an operation would naturally produce, still abound on the reservation. The written information on this issue, as well as the information gathered during the interviews conducted for this project, while they are comparatively minimal, are enough to indicate that further study is warranted. Therefore I will refrain from speculating at this time. However, the editors of the Char-Koosta, along with tribal studies and reports seem to indicate that the Tribes, at least superficially, do appear as if a complete take-over is on their agenda. As the thirty-year portion of the fifty-year lease approaches expiration in the year 2015, we will no doubt

witness a resurgence of the sociocultural issues explored and recorded in this project. Whether these will be accompanied by the familiar socioeconomic issues, however, remains to be seen (Arnold 2002).

As for this thesis, hopefully it will serve the reader in several primary capacities: 1) as a reference to the general historical events in the history of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Montana; 2) as a case study in socioeconomic underdevelopment in general, for American Indian Peoples, and specifically for the Confederated Tribes using the sociopolitical events surrounding the history of the Kerr dam; and 3) as a model or formula for the principles and practices which, willingly or unwillingly, have, since the modern era of colonialism, caused one people to be subsumed, divided and conquered, or separated and assimilated, into a dominant regime, socially, culturally, historically, politically, and economically.

Additionally, through certain themes throughout the text, I have intended this thesis to expose certain realities concerning our history as Americans, and as Westerners, both European and indigenous. This thesis is also, therefore, designed to expose political injustices and economic inequalities which seem to be necessary and unavoidable conditions, not unfortunate and unpredictable by-products, of our industrialist, mercantilist, capitalist system. Ultimately, my aim is to inform and to invite debate



concerning the attributes, as well as the detriments, of our Western eurocentric ways.

In this globalistic age, it may be surprising to some that big business was as big as it was, even in the era of the Great Depression. The repercussions of the business practices by the key players in this story are still reverberating today; be they from the local level, such as with the Missoula mercantile monopoly, or from the transnational level, as with the Electric Bond and Share Company, and the pricing structures of the now deregulated power utilities industry. There is a growing awareness within the populations of democratic nations that the work of scholars such as Andre Gunder Frank, was, and is, more real than most people first imagined.

It seems that marginalized portions of the population are not so because they are retarded in their progress, as those at the core purport them to be. It seems they are marginalized, categorized, and disenfranchised, by those at the core; who have placed them there, specifically so that those at the core can remain at the core. The system not only gets them down but keeps them down, while also eliminating other options which contain the possibility for those marginalized to circumvent the obstacles in their path which seek to impede their socioeconomic progress.

Throughout the human history of cultures in conflict there have been,

and will be, winners and losers. However, it is another situation entirely if the losers are placed there by the winners, specifically so that the winners, who also establish the standards and criteria for winning itself, can continue to win. In such a case, the economic system is the direct cause of the underdevelopment; and therefore, any attempts to use the same system to cure the problem, as Einstein once explained, will invariably perpetuate it.

Furthermore, the explanations as to why certain citizens are *not* prospering are put forth by those who *are* prospering, and they are claiming (as we have heard for a century and a half), that those who are not benefitting *will* not because they are primitive and retarded in their progress, or that they simply are not trying hard enough. On the other hand, it may be closer to the truth to say that they *cannot* because the economic system currently in place, at least to some degree, purposefully or not, creates its losers in order to define and to distinguish its winners. In such a case, the worst fears of Adam Smith, forewarned over two hundred years ago during the birth of our nation, would now be realized. I hope that this thesis will invite debate into these problematic issues, as none other could be more pertinent to our times.

Finally, I have intended this work to serve as an example of how one marginalized group of American citizens have taken the methods put forth by those at the core, which have pushed them to the periphery (on their own

lands), and incorporated those methods into a new paradigm. The accomplishments of the Confederated Tribes of the Flathead reservation, through their political sophistication, are an excellent example, (and there are too few), as to how a marginalized people can use the core, to approach the core, and thereby change the definition of the core, by forcing, or coaxing, the core into including themselves in it. The legal victories pertaining to the lakeshore, the Namen case, and the dam, its rentals, and its mitigatory payments, were not all that the Tribes were victorious of during the times covered in this project.

Since the 1980's the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation declared their homelands a nuclear-free zone. They adopted the highest air quality standards possible. They passed legislation regulating the transportation of hazardous materials through the reservation, as well as the disposal of wastes on the reservation. They also won numerous cases against those who challenged right-of-way issues on Indian lands, pertaining to power lines and gas lines. They established the 90,000 acre Mission Mountain Wilderness area, and within it, the Grizzly Bear Conservation Zone. They have successfully assumed control over their own fish and game management, and established a primitive wilderness area around the headwaters of the Jocko River, deep into the Jocko canyon, and reserved it for tribal members only (Bruggers 1987).

However, the fight is far from over. The Lake's water quality is still suffering due to the partial stagnation that comes with any dam. Eutrophication, septic systems, algae, fertilizer, timbercutting, and road building, are some of the issues still being discussed. The lake level, for all the aforementioned reasons, as well as below average precipitation in recent years, continues to create conflict between the Indians and the local white population. However, at the time of this writing, the spring of 2002, the federally mandated deregulation of the power utilities industry has been completed; and the final chapter in the history of the antagonist in our story, the Montana Power Company, has also been written. On March 12, 2002, Montana Power completely sold out to, and had their assets subsumed under another utilities company, Northwestern (Arnold 2002).

Montana Power is, now, officially, no longer; and the Confederated Tribes, remain. Is this in name only? Or will the future chapters of this story contain the continuation of the trends we have witnessed thus far? As development has now been seen as underdevelopment, will its victims re-develop, or un-develop, underdevelopment? Likewise, will consumers and tribal members alike, eventually witness the regulation of the deregulation of regulation?

Finally, the ultimate question: what will the Tribes do with the dam in 2015? Would passing the hat to another corporate giant in the industry

perpetuate underdevelopment, or invite further political strategy. Would ownership bring increased revenues over and above rental and mitigation monies? If so, will they assume control? If not, will they continue with the present situation, or sell to a third party? The answer to these questions will undoubtedly be determined by the degree to which the Tribes have incorporated the white man's economics, his politics, and his government, both into, and at the expense of, their traditional ways; or, stated differently, the degree to which the Tribes now view the dam, and the revenue generated from it, as a new source of cultural identity, along with the traditional sources of that identity

In other words, the answer will undoubtedly lie in the current definition of their collective and contextualized cultural identity; which, like the sacred waters, by their very nature, are continuously redefining and redetermining themselves.

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\* A note to the reader: Due to the variety of different types of sources used in this paper, the standard methods in cultural anthropology for citing sources, those used by the journal *American Anthropologist*, have been deviated from in several notable ways.

Many sources normally used by the historian have been cited in an anthropological format. As a result, there is no distinction between primary and secondary sources, published or unpublished, etc. All are listed together alphabetically.

Titles of Books are in italics. Titles of academic journal articles, as well as popular magazine articles, are in normal print while the journal titles are in italics. All of these are listed by author. Unpublished materials are also listed by author, as if published.

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