

Blackfoot Confederacy Keepers of the Rocky Mountains

by

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SIGNED: Tarissa L. Spoonhunter  
*Nato Ksikstaki Aki*

## ACKNOWLEDGEMENTS AND DEDICATION

*Oki Nisitapii! Nitaniko Nato Ksikstaki Aki*—My name is Holy Beaver Woman of the *Amaskapi Pikuni* (S. PIEGAN). I was raised on the Blackfoot Indian Reservation on Big Badger on the foothills of the *Mistakis* (mountains). My family hunt, gather plants and timber, graze cattle, fast, and seek knowledge from the area known today as Glacier National Park and Badger Two Medicine. I am the daughter of Dances all Night(Arapaho) and Many Bundle Holder(Pikuni) with children of my own Long Time Bear, Bluebird Woman, Sings from Afar, and Red Paint Woman. My family are members of the Brave Dog Society, Heart Butte Society, Cowboy Society, Racehorse society, the Horns, the Beaver People, and the Thunder Medicine Pipe of the *Siksikaitstapi* (Blackfoot Confederacy).

I express my appreciation to the Blackfoot tribal leaders—*Siksika, Kainiawa, Abotsa Pikuni, and Amaskapi Pikuni*; Blackfoot Tribal Department Directors—water, forestry, land, legal, oil and gas, Chief Mountain Hotshots, and fish and game; Piegan Institute; Blackfoot Community College—Blackfoot Studies, Natural Resources, and Blackfoot History Departments as well as the greenhouse caretakers; Bureau of Indian Affairs—natural resources; Badger Two Medicine Committee; Lewis and Clark Forest Officials; Coalition to Save the Rocky Mountain Front; University of Montana--Dr. Gregory Campbell and Tom Foor; and our sacred bundle keepers—Beaver Bundle caretakers, Thunder Medicine Pipe keepers, the Horns, Brave Dogs, the *Natoas*, and the *Motoki*—for the guidance and protection in sharing knowledge to tell the Blackfoot relationship with the Rocky Mountains. I am grateful to my Tatsey and Bullshoe Family of the *Amaskapi Pikuni* for the “Transfer of Knowledge” to assist throughout the research and presentations of this dissertation. I have only scratched the surface of the collective history that ties us to the mountains through origin stories, survival through subsistence, renewal, and well being as a people among the great beings of our traditional territory—Rocky Mountains.

I dedicate this research and it’s findings to the future generations of the *Siksikaitstapi* to continue the protection of the landscape for our people as well as our continued utilization of the natural and cultural resources of the Rocky Mountains. I also dedicate this to my mother—Many Bundle Holder—who has been key in the revitalization of ceremonies throughout the Blackfoot Confederacy in the United States and Canada also asserting our rights to camp in Glacier National Park. Lastly, I dedicate this to my family, kinfolk, and the bundle caretakers who maintain and practice the Blackfoot way of life in the Great Rocky Mountains. Hunya!

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**Blackfoot Confederacy Keepers of the Rocky Mountains**Abstract:

The Blackfoot Confederacy--*Siksikaitsitapi*, which includes the *Siksika* Nation (Blackfoot), North Piegan (*Abatso Pikuni*), *Kainai* (Bloods), and the South Piegan (*Amaskapi Pikuni/Blackfeet*), have an intimate relationship with the mountains dating from Creation Time to the present day. According to a Blackfoot Creation account, *Napi* (Old Man) told his people:

Here I will mark you off a piece of ground. *Napi*'s boundary began at a pine in the summit of the Rockies west of Edmonton, Alberta then traveled south taking in country to the east, which included the Porcupine Hills, Cypress Hills, and the Little Rocky Mountains. At the Yellowstone River's confluence with the Missouri, the territory curved west until it reached a peak in Beaverhead Valley, then returned north to its starting point. *Napi* told the Blackfeet that this land was theirs (Keller and Turek 44).

For many years, the Blackfoot Confederacy controlled this area mapped out by *Napi*, as well as many of the main routes traversing the mountains, including the Old North Trail. Even though *Napi* laid out the lands, there remains controversy over who has the rights to the land. The Blackfoot Confederacy must assert their rights and protect the mountains for future generations with current resource exploitation and preservation and preservation laws established by federal land management agencies.

Today, the Blackfoot Confederacy continues to utilize cultural and natural resources in the Rocky Mountains stretching from Edmonton, Alberta, to the Yellowstone National Park. The Blackfoot have been granted many natural gifts, not only for subsistence but also for traditional ecological knowledge and cultural practices. They have interacted with the landscape, spiritual realms, wildlife, plants, water beings, and other cultural and natural resources of the Rocky Mountains, considered the "Backbone of the World" (Video 1998). Blackfoot use of resources incorporates hunting, trapping, gathering plants for food, ceremony, and medicinal purposes, as well as a place to seek the power of the animals.

The mountains are associated with the origins of the elaborate ceremonial bundles—the Beaver, Thunder Pipe, Seizures Pipe, Otter, Painted Lodge, *Natoas* (Sun Dance), and Society Bundles—fasting rituals, vision quests, and other ceremonies. The mountains have been a gateway for trade relations with many tribes following the rivers deep into the Columbian Basin, linking the Blackfoot to tribal nations as far as those in northern Mexico, adjacent to the Sea of Cortez. The Blackfoot also traveled eastward on waterways visiting tribes on the vast prairies of the Great Plains. When it comes to ceremony and cultural memory, the Blackfoot Confederacy has never recognized the United States-Canada international boundary. Their relationship with each other and their traditional lands is demarcated by the mounds of *Napi* and other beings—stretching northward to the Saskatchewan River in present-day Canada and southward to the Yellowstone River in what is today northern Wyoming and much of Montana.

The Blackfoot have traditional oral accounts that link them to the celestial bodies—sun, moon, morning star, and the "Big Dipper" with ties to the mountains.

The Blackfoot have much traditional ecological knowledge in regards to the mountains and have been “Keepers of the Rocky Mountains” for many generations. They continue to interact everyday not only for subsistence but also for physical, mental, and emotional well being. This intimate relationship with the mountains perpetuates Blackfoot traditional culture. Although this vast homeland now contains Waterton-Glacier International Peace Park, Glacier National Park, and the Lewis and Clark National Forest, the Blackfoot People use critical cultural and natural resources to abide by their traditional teachings in one of the last wilderness landscapes in North America. The federal government has recently passed federal legislation that has limited and discouraged the Blackfoot. This includes challenges to the maintenance of intellectual property, including cultural and spiritual relationships with the mountains. As the US government pushes to exploit natural resources like oil and gas Blackfoot continue to struggle to keep the mountains from being destroyed by the various private and public agendas, including industry, the federal government, and support from ordinary non-Native citizens. These mountains must be available as cultural landscapes and represent necessary human and cultural rights to the Blackfoot Confederacy as Indigenous People.

## Chapter 1: Prospectus

### Statement of Research Purpose

According to Blackfoot oral tradition the people did not sell the mountains; it was a 50-year lease and now the US government tells the story different. The United States government has restricted the Blackfoot People (*Siksika, Kainai, Abotsa Pikuni, and Amaskapi Pikuni*) in their access and use of the “Backbone of the World” (Burdeau 1998). This area called the “ceded strip” was relinquished to the United States by an Agreement from 1895 29 Stat. 353-4. The basis for denying the Blackfoot people their rights reflects United States law and policies of the so-called “Great Father” (US President). Blackfoot reserved treaty rights began in 1895, only to have their access and hunting rights terminated in 1910 with the establishment of Glacier National Park according to the Department of Interior 1935. Yet, those same reserved rights in **29 Stat. 353-4** are still recognized in the Badger Two Medicine Unit of the Lewis and Clark Forest managed by the National Forest Service. The Blackfoot have written letters, made claims, and protested the denial of their reserved rights over the last century. Today, the *Amaskapi Pikuni* is embroiled in a controversy with the State of Montana developing a compact agreement in regards to establishing water rights.

The following research question guides this dissertation, by asking: How have treaties and agreements, preservation laws and policies impacted Blackfoot culture and resource use in their ceded mountain territory of Glacier National Park, Badger Two-Medicine and other resource utilization in their traditional territory with reserved treaty rights. Their sacred sites are being threatened by recreational use and by the plans set forth by land managers in the “ceded strip.” The park service has a “let

burn” policy which has led to a recent catastrophe, the Red Eagle Fire of 2006, which eventually burned 32,000 acres of forest and wildlife habitat that affected prime timber and hunting grounds. The Park Service and Blackfoot Tribe disagree over the original western boundary of the reservation dating back to 1895. There have never been clear access rights to the ceded area as promised in the reserved treaty rights of 1895. As a result, the Blackfoot people are confused and resent the actions of the U.S. Park Service in the ceded lands.

This study examined written records, traditional ecological knowledge (TEK), and oral history of the Blackfoot people. Its purpose illuminated the Blackfoot story and highlighted the relationship of the Blackfoot Confederacy to the Great Rocky Mountains. The Blackfoot not only have explicit water, timber, hunting, fishing, and access rights, but rights they never gave up in the Rocky Mountains. The Blackfoot People have been “Keepers of the Rocky Mountains” from creation times through their relationships with the land, environment, animals, and resources necessary to their survival. The Blackfoot have maintained these relationships for generations, despite the lack of co-management (between the Blackfoot, the U.S. Forest Service and U.S. Park Service in the Rocky Mountains) and the negotiation of reserved treaty rights established in 1895.

### **Literature Review**

The Blackfoot Confederacy has maintained its intimate relationship with the Great Rocky Mountains of its traditional territory. The *Amaskapi Pikuni* was the power that negotiated with the US Government in regards to the mountains--an area which has become known as the “ceded strip” to the Blackfoot People--which is

known as Waterton-Glacier International Peace Park, Glacier National Park, and the Lewis and Clark Forest Reserve. The Blackfoot mountain territory, “ceded strip,” was negotiated in September of 1895 between the tribe and US Commissioners with an enormity of controversy as the “Minutes of the Negotiation” illustrate. The oral history accounts of the proceedings in 1895 do not agree with many of the provisions laid out in the Agreement of 1896. Many of the elders thought the tribe had leased only the rocky ridges to the United States for the valuable copper and gold. The claim that the land was only leased echoes in the tribal collective memory. This was not a sale for access only for the US to get the shiny metals—the land is still Blackfoot Territory (ICC Land Claims 1954). Unfortunately, oral history is not sufficient evidence when held up against a written historical record; therefore, the Blackfoot tribe has had to depend on the written documents to formulate its position in court and with the various government agencies in recognizing reserved rights.

The formalized document--Agreement with the Indians of the Blackfeet Indian Reservation in Montana of 1895 29 Stat. 353-354 has some discrepancies in its written form. It is vague and inconsistent with meanings of words constantly changing depending on who is interpreting both at the time of negotiation and in the past century. The *Agreement with the Blackfeet Indians in 1895* 29 stat. 353-4 laid out as follows: Article I states the reserved rights will remain “for as long as the land remains public lands and in accordance with Montana fish and game laws and regulations.” When this agreement was made, evidence indicates that the Blackfoot understood its rights would last forever, just like the mountains. Montana had become a state in 1889 and was at this time not a party to the negotiations since there were no

state representatives at the 1895 agreement signing. Article IV and Article V conflict with one another. Article IV stipulates that only Indians who are engaging in pastoral pursuits will be given goods, but the land is wholly unfit for agriculture (BIA 8). The government knew most of the crops failed on the Blackfeet Reservation. However, Article V stipulates land allotments were for civilizing Blackfoot into farmers. The agreement said there would be no more allotments in Article V. "Land allotments were made to the 2,450 Blackfeet on the tribal rolls following completion of the reservation wide survey in 1912" (BIA 8). Also, since the General Allotment Act was passed in 1887 and an agreement was made with the Blackfeet that same year, Article IX is invalid.

Article VI is still a major issue for the Blackfoot because the western boundary has been the site of an ongoing dispute for the Blackfeet Nation. At times, the fence was nonexistent for many years and once constructed moved many times by the National Park Service and the Blackfeet Nation. The park officials wanted to extend the eastern boundary of Glacier National Park to keep visitors from too much exposure to the "uncivilized" Blackfoot People. As the Blackfoot people look to exercise their rights on their land, many conflicts have broken out over the boundary and denial of their reserved rights and relationship with the "ceded strip". There remains a six-mile discrepancy that the tribe believes is a part of the reservation, based on stone markers, set up when the first survey was made outlined the ceded territory in the 19<sup>th</sup> century. The Blackfeet Tribe is still fighting for the recognition of its western boundary today.

The tribe has written numerous resolutions in managing its reserved rights but encountered limitations and denial of its reserved rights. The tribe has sought review

of its rights from the Department of Interior and Bureau of Indian Affairs only to be supported then denied the next year. This process has taken place as shown through Department of Interior “Solicitor Opinions” (1957, 1976, and 1997) in regards to Blackfeet reserved rights. The tribe hired the Native American Rights Fund (NARF) in 1974 to research its rights to access the ceded strip as laid out in the agreement, but under the limitations of the law, NARF could not support the tribe in its findings except in the case of water and timber rights.

Legislation has clearly played a major role in the shift in power and denial of Blackfeet reserved rights and has had detrimental effects on its traditional culture. The 1895 agreement is not a treaty as assumed by the tribe at the time of negotiation but is still referred to as 1895 treaty in the oral tradition and minutes of the negotiation (US National Archives) as a binding treaty. The establishment of Glacier National Park in May of 1910 16 USCS 161-164, the Act of August 22, 1914 16USCK170, the National Park Service 16 USC 1-4, and the National Forest Service 26 Stat. 1103 have limited if not prohibited Blackfoot access and reserved rights pertinent to not only their culture but maintaining their relationship with the mountains.

The *American Indian Religious Freedom Act (1978)* 42 USC 1996-1996a, the *National Historic Preservation Act NHPA (1978)* 16 USC 470-470x-6, and *Section 106 Consultation* have given some acknowledgement to access and respect for Blackfoot association with the “ceded strip”. Under NHPA *Section 106*, the tribe must be consulted in any disturbances to its traditional territory. Government agencies have satisfied themselves for years with sending a letter to the tribe and if no reply was received within 60 days, the agency has made decisions and put management plans

into effect without input from the tribe. *Section 106* has opened the door for the tribe to give input but has not granted veto power. The tribe is not an equal partner to any decision made by the government agencies during this process of consultation.

Although *Section 106* is supposed to create partnerships with tribes, the public domain is always a priority for the US Government federal land holdings. The Blackfoot Confederacy's dilemma demonstrates a paradox because it must abide by rules and regulations on lands ceded to the federal government for their cultural resources and sacred area. "We realize that neither Section 106, NEPA compliance/planning process provide the ideal context for holistic landscape or ecosystem planning and/or management" (Downer 14.). The tribe is subject to federal decisions on the "ceded strip" on what can be deemed worthy of preservation in lands managed by government agencies.

The "ceded strip" is not only a national park but also a recreation area for the public domain in the Lewis and Clark National Forest established in 1897. The Badger Two Medicine Unit (BTM) is managed by the forest service which develop travel plans that span a 10-year period. The Lewis and Clark Forest Service proposed new roads to allow for motorized vehicles into BTM in the 2004 plan. The Coalition to Protect the Rocky Mountain Front took the forefront and responded adversely to the proposed travel plan. They made direct contact with the Blackfeet tribe to notify them of the proposed plan and the tribe appointed a committee to address the issues in Badger Two Medicine. A partnership was created with the Coalition to Protect the Rocky Mountain Front. As a result, "In the fall of 2005, more than 37,000 Americans contacted the Forest service about proposed new travel plan for the Front and a

resounding 97.95 percent urged the agency to support traditional recreation on the Front” (Savethefront.org). The tribe was against the proposed travel plan and pleaded their case to the Lewis and Clark forest officials with concerns of their livelihood and culture. A plan was released excluding the Badger Two Medicine area that the coalition states--“A travel plan that protects wildlife while emphasizing traditional uses on the Front.”(Savethefront.org) It appears the Badger Two Medicine Unit was left out of the travel plan due to impending issues of reserved rights, cultural sites, and mineral leases.

“More extensive mining and timber industry activities, and greatly expanded recreation industry have impacted the use of public lands in the United States” (Deloria 323). Federal lands have been opened up to energy development. “Public lands are being used for a pittance, began to restrict Indian access to sacred sites by establishing increasingly narrow rules and regulations for managing public lands” (Deloria 324). The Blackfeet tribe responded by issuing a tribal resolution to oppose drilling in Badger Two Medicine based on their reserved rights in the area. “In 1982, the Lewis & Clark National Forest (LCNF), despite strong protest and over 50 appeals, leased most of the Badger-Two Medicine for natural gas development (47 leases). The Environmental Assessment failed to consider ‘No Leasing’ as an alternative” (Flora 2004). The public has been concerned with oil and gas leasing being offered on federal land along the Front with the Bush Administration; the coalition was proactive and lobbied Congress to protect the Front. In recent legislation, there will be no more drilling on the Front. “The 109<sup>th</sup> Congress lawmakers passed legislation sponsored by Montana’s Sen. Max Baucus to halt future

oil and gas leasing on the Front's federal lands, thus clearing the way to retire existing leases"(Savethefront.org). The forest service and tribe worked alongside the coalition to document sites in the proposed drilling areas of BTM.

The public has proposed BTM to be designated a wilderness area. "The wilderness act of 1964 aimed to preserve where the earth and its community of life are untrammelled by man, and where man himself is a visitor who does not remain" (Nagle 2005). BTM was denied wilderness status based on Blackfeet reserved rights. "Wilderness Act did not specifically allow for subsistence uses in wilderness" (Watson 2). The Blackfeet continue to gather timber and hunt as stated in the Agreement of 1896. The Blackfeet access and reserved rights could be viewed as a "political question" because the Ninth Circuit Court and Court of Claims, United States Department of Agriculture, and United States Department of Interior have had conflicting views in regards to Blackfeet Reserved rights and implementing legislation.

The tribe litigated in court to test and reaffirm their rights. (See *US v. Kipp*, *US v. Momborg*) Reserved rights have been tested in other cases such as the *Winters Doctrine* 207 stat. 564 (1908) and *US v. Winans* 198 U.S. 371 (1905) that has honored the water rights of the tribe along with some timber rights. The *Reserved Rights Doctrine (Winans)* is a tool vital to the tribe in asserting their rights to access, sustainability, and cultural preservation. The tribe is currently negotiating a water compact with the state on their water rights, which has been controversial because the mountains are the headwaters for both sides of the continental divide.

The rules and regulations mediate by restoring some partnership or at least acknowledgement back to the mountains historical caretakers—the Blackfoot Confederacy. National Historic Preservation Act *Section 106* has required consultation with all disturbances to the “ceded strip” but has also stated that regardless of meetings the government official and not the tribe will make a decision. If the tribe dislikes the decision for management of the area the supervisor will meet with the tribe and write a memorandum explaining his/her decision. The US Governmental agencies have asserted their power in managing the “backbone of the world” with little regards of the relationship the confederacy has had with the mountains. “Several small studies were sporadically conducted by cultural resource contractors over a four year period, which resulted in a lack of cohesiveness and integration while trying to comply with Section 106”(Greiser 10). The forest service has come to the conclusion Traditional Cultural Property (TCP) *National Register Bulletin 1990* is the best option for BTM. Stoffle states, “Land management agencies manage places” (232). Sites are cultural resources; therefore, the place can be managed. “Traditional Cultural Property has been offered as a tool for identifying and protecting places and objects that have special cultural significance to American Indian or other US ethnic groups”(Stoffle 230). Land managers have done extensive research utilizing the concept of TCP. The area was nominated as a TCP to be nominated to the National Register of Historic Places based on research and data collected in studies of the area which include:

1. *Blackfoot Culture, Religion, and Traditional Practices in the Badger Two Medicine Area and Surrounding Mountains* (Final Report) by Sally T. greaser and T. Weber Greiser of Historical Research Associate, Inc.

2. *An Ethno historical and Ethnographic Evaluation of Blackfeet Religious and Traditional Cultural Practices in East Glacier National Park and the Surrounding Mountains* (Final Report) by Gregory R. Campbell and Thomas A. Foor of the University of Montana.
3. *Our Mountains are our Pillows* (Final Report) by Dr. Brian Reeves and Dr. Sandra Peacock
4. *Badger-Two Medicine Traditional Cultural District, Montana - Boundary Expansion Project* by M. N. Zedona of the Bureau of Applied Research in Anthropology at the University of Arizona.

The Forest Service has expanded the proposed cultural district for BTM but the tribe has not given its letter of support. These studies have been prejudiced in leaving out three bands of the Blackfoot Confederacy in most, if not all, research done in the mountains. The Blackfoot Confederacy has united to protect their cultural and natural resource by holding annual meetings throughout their traditional Territory—the conference was held in Glacier National Park in 2010. The Blackfoot People are four bands and the international boundary is invisible when it comes to traditional culture and maintaining the relationship with the Great Rocky Mountains.

The Blackfoot Traditional Ecological Knowledge (TEK) in the mountains was key to their survival, subsistence, and ceremonial cycle in the mountains. *Ethno botany of the Blackfoot Indians* by John C. Hellson has identified some plants used by the people in the mountains. James Willard Schultz, George B. Grinnell, and Clark Wissler's books on the Blackfoot people shed light on the relationship to cultural sights, animals, the spiritual realm, and natural resources of the Rocky Mountains from an outsider's perspective.

*Section 106* of the NHPA(1978) has given the Blackfeet tribe a presence in some undertakings in BTM and GNP regarding their ties to the Rocky Mountains. Ethnographic landscape research has the potential for providing useful management

tools for a variety of federal land management situations creating a cross-cultural appreciation for the heritage of tribes and the local communities (Toupal 182). The US Forest service and National Park Service have potential for preserving cultural landscapes. “Landscapes provide scenic, economic, ecological, social, recreational and educational opportunities that us understand ourselves, communities and as a nation. Their ongoing preservation can yield an improved quality of life for all and above all, a sense of place or identity for future generations”(NPS Bulletin 36).

The Blackfeet leaders stated why they wanted to reserve their rights for future generations when they made the Agreement of 1895 with the United States and willing to share their resources with the non-Indians. It has taken 95 years for the US government to “develop the shared vision for landscape preservation that reflects the value of landscapes to the professionals and to the public” (Patten 2), even though the Blackfoot leaders stated in 1895 the value of the mountains to their people and future generations. This is reflected in their collective knowledge and intellectual property that is vital to their ceremonies and continuance as a people of this land.

There is much confusion and resentment amongst the Blackfoot People in regards to the “ceded strip” and mountains *Napi* gave to them to defend and use. The Blackfeet need to assert their rights by standing their ground in the “Backbone of the World”. The Blackfeet have claim to the ceded strip before it became Glacier National Park in 1910. “*Provided that* nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entry man to the full use and enjoyment of this

land”(36 Stat. 354). In 1932, the Glacier National Park became an international peace park stating the Blackfeet would control the use of its rights by its members.

Blackfoot knowledge and use is not only a US Blackfeet concern but also a concern of the life way of all Blackfoot including bands in Canada. There is no international border when it comes to Blackfeet ceremonies or resource utilization amongst the people. Oral history is now being recognized and taken into account by the court system and government as documentation of uses on traditional lands. This argument can be made that the tribe took the 1896 Agreement ratified by Congress to be a “treaty not a statute” based on the use of signatures. Also, the statement by the Court of Claims in 1935 “The Blackfeet have not appreciated the ceded strip in Glacier National Park or exercised their rights” 81 Ct. Cl. 101 has no validity when the Blackfoot have used the area for ceremonies, attempted gaining recognition of their reserved rights, and gathered secretly to avoid exploitation or prosecution by the park service or state officials. The Blackfoot’s relationship to their mountain territory reaches farther than the federal government, park service, general public, or state of Montana can understand.

### **Statement of Problem**

Legislation and management policies have been detrimental and limiting in regards to the Blackfoot Confederacy. There is much confusion and resentment among the Blackfoot People in regards to the “ceded strip” and mountains *Napi* gave them to defend and utilize. The Blackfoot had claim to the ceded strip before it became Glacier National Park in 1910. “*Provided that* nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United

States or the rights of any such claimant, locator, or entry man to the full use and enjoyment of this land”(36 Stat. 354). In 1932, the Glacier National Park became the International Waterton-Glacier Peace Park 72 Cong. Ch. 157. This Enabling act states the Blackfoot would control the use of its rights by its members. Blackfoot knowledge and use is not only a US Blackfoot concern but also a concern for all Blackfoot including bands in Canada. There is no international border when it comes to Blackfoot ceremonies or resource utilization among the people. Oral history is now being recognized and taken into account by the court system and government as documentation of uses on traditional lands. The argument can be made that the tribe took the 1896 Agreement ratified by Congress to be a “treaty not a statute” based on the use of signatures. Also, the statement by the Court of Claims in 1935, “The Blackfeet have not appreciated the ceded strip in Glacier National Park or exercised their rights” (see *Blackfeet v. US* vol. 81 Ct. Cl. 101) has no validity when the Blackfoot have used the area for ceremonies, attempted gaining recognition of their reserved rights, and gathered secretly to avoid exploitation or prosecution by the park service or state officials. The Blackfoot’s appreciation of their mountains creates more legitimacy than the federal government, park service, public, or state of Montana can ever understand.

## **Research Design**

### *Methodology*

The research was conducted using the qualitative method. *Research Methods in Anthropology* by Russell Bernard states, “..knowledge should be based on experience and that conclusions about general cases should be based on the

observation.” This methodology assists in understanding people’s belief system, perspectives, experiences, and also encounters in the area of research for this dissertation. The research used a variety of techniques including archival research of first hand accounts, primary source material, interviews, focus groups, and ethnographic field methods:

1. Archival research assisted in identifying the issues and discourse between the tribes and the US Government agencies managing the Rocky Mountain ceded lands of the Blackfoot Confederacy through codified law, management, and their current relationship. It also provided insight into the access rights and how the reserved rights have been used or denied since the original agreement of 1895.
2. Interviews have been conducted with personnel from the Bureau of Indian Affairs (US Government Officials), Forest Service, and Park Service through email, phone, and/or face-to-face to gain insight about the interaction with the tribe in regards to management of the “ceded strip” now in the public domain. The tribal government officials were interviewed to determine how the tribe has managed its reserved rights and utilized resources, in addition to their role in cultural preservation.
3. Focus Groups were conducted within the Blackfoot Confederacy to work with elders, educators, and tribal members who utilize the traditional territory of the Rocky Mountains. “Focus Groups allow interviewers to study people in a more natural setting than a one-to-

one. You are able to get results relatively quickly and increase the sample size of a report by talking to several people at once”

(Wikipedia.org). Blackfoot oral history conveys a collective history shared in families, societies, and other traditional realms of education about their worldview.

4. Ethnographic field methods were used to record oral accounts with individual Blackfoot tribal members and assisted in identifying sites that will contribute the range of the ethnographic landscape. It also provided insight about the use of the area and answer questions like: Who utilizes the Rocky Mountains? What do they do including individual v. tribal use? What are some of the sacred sites necessary to protect and preserve for future generations?

#### *Research Population*

Historically, the Blackfoot People have lived and practiced an environmentally conscientious and sustainable lifestyle in the ceded area of the Rocky Mountains. Their tie to the land is most notable in their ceremonial animal and plant bundles as well the seasonal cycle of gathering of plants. They did not camp continuously at one site they moved camp as not to over use a resource area so it can replenish. This traditional ecological knowledge is grounded in the belief that all creation has life and symbiotic relationships and was respected for those reasons. Through the oral history and practical knowledge passed from generation to generation, the Blackfoot learned to survive in the harsh climates of the mountain front in their traditional territory. The US Government signed treaties and agreements (specifically 29 Stat. 353-354) that

intervened with the Blackfoot lifestyle in their use of resources and by living traditional culture. Although the US has asserted more power in the relationship with the tribe, the Blackfoot have still retained much of the traditional ecological knowledge and customs of their ancestors in their mountain territory.

The research population included government officials of the United States and the tribal directors who have vested interests in the ceded area of the mountains and work in the management of the area. The focus groups included elders, people of knowledge familiar with the TEK and the history of the Blackfoot with the mountains. Key interviews were conducted with the recommendations of the focus group and government officials along with tribal practitioners of the Blackfoot way of utilization of cultural and natural resources.

#### *Data Analysis*

The interviews and focus groups were recorded on audio or video where appropriate in regards to the oral historical accounts and Blackfoot use and necessity of the mountains to the Confederacy. Field notes were written while doing interviews and collecting data for the project. Maps were copied from the US government and tribal offices in regards to the ceded mountain area as well as site localities plotted as cultural sites to utilize in interviews and to identify the landscape sacred to the Blackfoot Confederacy. Historical maps have been drawn through focus group meetings and elder interviews regarding the ceded area. The raw data is only available to the researcher and Tribal Historical Preservation Offices of the Blackfoot Confederacy. The tribes will receive a copy of the interviews to store in their tribal archives for use at their discretion.

## **Significance**

Preservation laws and management policies of the ceded mountain area have been restrictive and detrimental to the Blackfoot culture and resource utilization. The rules and regulations laid out by the managing agencies do not protect Indigenous intellectual property rights or the cultural and traditional ecological knowledge of the Blackfoot Confederacy. The Blackfoot Confederacy is dependent on the mountains for cultural and natural resources along with maintaining their traditional and cultural identity as a Blackfoot. Previous studies on the Rocky Mountains have been documented from a non-Blackfoot perspective. This study proposes to allow the Blackfoot story to be told from a tribal perspective, including how the tribe utilizes resources, has developed cultural protocol, and has incorporated how necessary the Rocky Mountains are to the Blackfoot Confederacy. Also, previous studies have not included the three bands of Blackfoot (Siksika, Kainai, and N. Piegan) in Canada because of the international boundary even though the current national park of Glacier includes the Waterton International Peace Park in Canada. This study will give voice to all the bands that make up the Blackfoot Confederacy. This is needed because of the transnational border controversy over traditional Blackfoot Territory and the boundary of Glacier Waterton-International Peace Park that extends into the provinces of Alberta and British Columbia.

All the bands of the Blackfoot Confederacy have come together to preserve the mountains as intellectual property. The cultural and natural resources are vital to the survival of not only the people of the four bands of the Confederacy but to the environment and sustenance of all the beings living in the Rocky Mountains. There

has been too much denial of their rights, ignorance of their reserved rights, and neglect of their uses in the ceded lands of the Rocky Mountains by current land managers and policies dealing with the Blackfoot traditional territory.

**Chapter 2: *Nitsitapii* Keepers of the Rocky Mountains**

The Blackfoot intimate relationship with the mountains, the animals, the plants, the waters, and the spirits of the Great Rockies is best illustrated through their oral history, ceremonies, subsistence use; through their fight with the Great White Father to honor his word since the 1895 treaty; to the cooperation with land managers over the last 40 years; and more recently, at public gatherings to assert their rights as Keepers of the Rocky Mountains. The *mistakis* (Rocky Mountains) are the foundation of *Nitsitapii*-Real People (Blackfoot) as humanity in a world of natural beings--who have shared knowledge--both natural and cultural for Blackfoot existence, subsistence, and survival. “The pristine Mountains embody a spiritual, cultural religious physical refuge from the limitations of modern society”(Greiser and Greiser 3-16). The *mistakis* are a vital resource to the survival of the *Siksikaitsitapi* (Blackfoot Confederacy) from Creation Time; to the sharing of territory and teachings of the animals; horse raiding and counting coup days; to the trading at the forts era; to sharing of their territory with the brother’s from the east; through the white scabs disease and starvation winters; to the slaughter of Heavy Runner’s band—“Chase them up the Hill”; through fire water encroachment and Blackfeet Agencies of confinement; to the stealing of children and land; to denial of Blackfoot way of life; to the betrayal of the Great White Father; to the dependency on Washington D.C.; to the animals talking through the return of the sacred bundles; and recently meetings of the *Siksikaitsitapi* at their traditional boundaries to the most sacred area of their existence—St. Mary’s Lake at the foot of *Ninastiko* (Chief Mountain).

“It is the last stronghold you might say, that we have as far as practicing our way of life” (Campbell and Foor 173). The animals provide food, shelter, and power for the *Nitsitapii*. The plants are used for food and medicinal purposes for daily survival. Trees provide shelter and are used as tipi poles, ceremonial lodges, wood, and other domestic purposes. The mountaintops provide the direction as well as connection to the Spiritual Beings who reside in the *mistakis*, lakes/ rivers, and landscape where generations have fasted and had visions to survive and help their people.

“The wilderness is not just for us it’s for our grandchildren so they can see the way our grandfathers lived”(Greiser and Greiser 3-14). The oral history illustrates the timelessness and dynamics of the connection and relationship of the *Siksikaitsitapi* as Keepers of the Great Rocky Mountains. In *The World We Use to Live In*, collective history is the truthful remembrance of past events:

Our ancestors invoked the assistance of higher spiritual entities to solve pressing practical problems such as finding game, making predictions of the future, learning about medicines, participating in healings, conversing with other creatures, finding lost objects, and changing the course of physical events through a relationship with the higher spirits who controlled the winds, the clouds, the mountains, the thunders, and other phenomena of the natural world (Vine Deloria).

The Blackfoot relationship in the “Backbone of the World”--Rocky Mountains--have been documented by many outsiders over the last 100 years to gain insight and limit *Nitsitapii* connection to their sacred landscape. “Their oral traditions, sacred geography, archeology, linguistics and genetics suggest they have been resident here for thousands of years”(Reeves viii). Many of the spiritual aspects of Blackfoot beliefs and culture retell of their origin within the time of Great Water and Old Man

(*Napi*) as he marked out their territory. Weasel Traveller (*Abatso Pikuni*) states from Waterton area up to the North Saskatchewan River, through the Rocky Mountains, over to the Sand Hills (Cypress Hills), through North and South Dakota border down to the Yellowstone River the Yellowstone Park--that is our (Blackfoot) territory. That is what the Creator gave us! (Personal Communication 2010). The sacred and cultural sites found on the slopes are still a part of *Nitsitapii* life and ceremony today.

“Oral history is often told in a ceremonial way with the history of the people being related through songs, told in a particular sequence, reflecting their historical relationships” ([Trailtribes.org](http://Trailtribes.org)). The *Nitsitapii* have a long history in the *mistakis*, but during the 1895 Treaty negotiations, the spiritual significance was not mentioned and we can surmise this was done on purpose. “At the end of the nineteenth century the United States and Canada sought to suppress traditional Indian beliefs and ceremonies declaring them illegal”(Keller and Turek 48). The Blackfoot continued to practice their culture in secret so as not to offend the Great Father or incur the wrath of BIA agents but to maintain their relationship with the Great Rocky Mountains. “The backbone of the world reveals a well-spring of renewal for the Blackfeet, as a society it is intimately bound, they believe, to their identity and continuance as a people”(Campbell and Foor 171). Although, many of the Blackfoot were denied, shot at, and encouraged to ignore their duties to maintain their connection to the *mistakis*, the people never neglected their duty to honor their landscape as seen today with the continuance of Blackfoot ceremonies, plant gathering, and hunting for subsistence. “People would go into the mountains

or to remote lakes and buttes and conduct ceremonies without interference from non-Indians”(Deloria 267). The protocols of their connection to the great landscape of the Rocky Mountains is illustrated through the bundles of the confederacy opened in relation to when the natural beings speak to the people “when the waters are high”, the “Thunder Spirit awakens”, and from the battle of Cold Maker and *Natosi* (Sun) whom reside in the *mistakis* of the Blackfoot Territory.

“Not all 22 bands of Piikani followed the buffalo eastward each summer; some traditionally spend the summers on the eastern slopes and adjacent foothills” (Reeves ix). The traditional ecological knowledge (TEK) of the *mistakis* has been shared with historians, archeologists, scientists, biologists, fish and game managers, public land managers, forest service officials, national park officials, lawyers, and non-Blackfoot seeking to understand the elements of Blackfoot traditional mountain territory. Weasel Traveller states at the Blackfoot Confederacy Conference 2009, “They continuously want us to prove that we have ownership of our territory, yet they have all the evidence.” Although, this sharing of knowledge—Transfer--can assist in the current management of US public lands, it has only been utilized to limit the true connection of the *Nitsitapii* and their traditional territory. This has created mistrust and many traditionalists are hesitant about sharing their knowledge. “I will tell you (Blackfoot) but I will never tell a non-Blackfoot about my gathering of plants in the mountain areas” (personal communication 2009). At the same time, specific site localities and protocols to ceremony must be transferred properly for the well being and continuance of the Blackfoot way of life.

The Blackfoot agreed to share their territory in 1895 under a 50 year lease with explicit reserved rights to continue their intimate relationship because they knew their white brothers only wanted the shiny metal found in the *mistakis* but they never had the intention of giving up their mountains:

We will see them as long as we live; our children will see them all their lives, and when we are all dead they will still be there. This money will not last forever. Those mountains will never disappear. Those mountains will last forever; the money will not. (Chief Little Dog 1895)

Despite, the US and their oppression of Blackfoot ties to the *mistakis*, the Blackfoot honor the teachings from the animals who showed them how to survive and live in the mountain landscape through the transfer of bundles made up of animal skins found in the Great Rockies, medicines from plants native to mountain area, songs, protocols, and powers of the mountain and its sacred sites. The animals continue to be acknowledged through subsistence and cultural practices of the Blackfoot Confederacy. Blackfoot never ignore their responsibility to the animals of the Great Rocky Mountains and follow the protocols given to them for living among the other-than-human beings found in their mountain landscape. Deloria writes on page 271:

If someone does not have the experience or belief in the sacredness of lands, he or she accords tradition the respect that it deserves. Indian who have never visited certain sacred sites nevertheless know of these places from community knowledge and they intuit this knowing to be an essential part of their being.

There was a time when many bundles were gone from the people and assimilation policies have taken many people away from their traditions. Yet, there were Blackfoot whom held to their traditional values and way of life by continuing to hunt, gather, fast, build sweat lodges, name their children through ritual and

honorings, heal with plants, dance ceremonially and socially, capture new society members, and story telling to young children to teach *Nitsitapii* morals and history.

The Canadian Blackfoot—Kainai, Abotsa Pikuni, and Siksika--guided the US Blackfoot in times of need and revitalization of ceremonies and societies. In recent years, the animals have begun speaking again to the Amaskapi Pikuni as many bundles have returned to the Blackfoot Confederacy through repatriation.

“Ceremony and ritual knowledge is possessed by everyone in the Indian comity although only a few people may actually be chosen to perform these acts” (Deloria 271). Although the ceremonies cannot be shared, the songs cannot be heard, and the animals cannot write this documentation, the Blackfoot story can give glimpses and reasons why they continue to maintain their relationship to their landscape known to many as Waterton-Glacier International Peace Park, Glacier National Park, Yellowstone National Park, Lewis and Clark National Forest, the Old North Trail, and Rocky Mountain House in Canada.

### **Creation Time for the Blackfoot**

According to a *Nitsitapii* Creation myth, *Napi* (Old Man) told his people:

Here I will mark you off a piece of ground. *Napi*'s boundary began at a pine In the summit of the Rockies west of Edmonton, Alberta then traveled south taking in country to the east, which included the Porcupine Hills, Cypress Hills, and Little Rocky Mountains. At the Yellowstone River's confluence with the Missouri, the territory curved west until it reached a peak in Beaverhead Valley, then returned north to its starting point. *Napi* told the Blackfeet that this land was theirs (Keller and Turek 44).

The Blackfoot Confederacy—*Siksikaitstapi*--controlled this area, mapped out by *Napi* for many years, as well as many of the main routes traversing the mountains, including the Old North Trail. The Blackfoot collective history ties the people to a

large territory with the mountains being a vital part of their creation and survival as a people:

In the beginning Napi, old man of the Blackfeet, created the rocks and forests, the rivers, mountains, and prairie. He then made the animals and birds and fish. Then Napi molded a clay man and woman and gave them the breath of life, giving them dominion over all the creatures of the earth. For a long time Napi dwelt among men, teaching them to fashion bows and arrows, tan hides, make shelters, use herbs, and know the magic of sacred objects. When man learned how to take care of himself, Napi bade farewell to his beloved children. He then returned to his home, the Sun, going by way of the Going-to-the-Sun Mountain (in Glacier National Park)(NPS 1).

The Creation story is believed to have taken place in one of the lakes found in Glacier National Park. Many of the lakes and mountains are significant to *Nitsitapii* spirituality and their unique culture, because of this association. "...Is the place where most sacred things began and continue to be sustained" (Reeves xiii). The Blackfoot recognize many spirit helpers in their worldview who reside in the Great Rocky Mountains and the purest water sources. The oral history is a gateway to understanding some of the caves, sacred sites, and connection of all beings of the mountain landscape.

"Many traditional Piikani accounts focus on the mountains and their sacred animals"(Reeves xiv). The *Siksikaitsitapi* have a number of bundles that have origins in the *mistakis* and waters of Glacier National Park and Badger Two Medicine. The bundles are important to the well being of the tribe and when they are opened it is the highest respect for the animals and plants of the Rocky Mountains. "There are different bundles that are associated with the beliefs in the Blackfeet religion or way of life that reflect the Blackfoot Confederacy's beliefs. The bundles are a result of a vision or life experience of the first beings"(Many Bundle Holder personal communication 2001). Many of the

bundles sacred to *Nitsitapii* originated somewhere in or near the mountains. The Thunder Medicine Pipe originated in the mountains. The tobacco ceremony took place on the mountain front away from camp. Some of the ceremonial items are the Beaver Bundle, Medicine Lodge Bundle, Thunder Pipe bundles, Seizure Pipe bundles, War Medicine Bundles, Rock Medicine bundles, and tobacco planting bundles. They play a vital role in the well being of the people. “What you want to do in singing the sacred songs and praying with the pipe (bundles) is maintain a certain kind of balance with nature with the world”(Pringle 5). It is difficult to express in words what the bundles mean and how traditional people feel about them. Suffice to say, that the bundles are a fundamental aspect of Blackfoot life. They are necessary for the continuance of life.

### *Beaver Medicine*

The Beaver Medicine Story has many versions. They are different in some aspects but they all come from the same root. The version illustrated by Wissler and Duvall (75-76) is believed to have taken place at St. Mary's Lake in Glacier National Park as follows:

Once there was a man and his wife camping on the shore of a lake. This man was a great hunter, and had in his lodge the skins of almost every kind of bird and animal. Among them was the skin of a white buffalo. As he was always hunting, his wife was often left alone. One day a Beaver came out of the water and made love to her. This went on for some time, until finally she went away with the Beaver to his home in the water. Now when the man came home, he looked all about for his wife, but could not find her anywhere. As he was walking along the shore of the lake, he saw her trail going down into the water. Now he knew what had happened. He did not break camp, but continued his hunting. After four days, the woman came up out of the water and returned to her lodge. She was already heavy with child. When her husband returned that evening, he found her in her usual place and she told him all that occurred.

In the course of time the woman gave birth to a beaver. To keep it from dying, she put it in a bowl of water, which she kept at the head of her bed. In the evening her husband came in as usual, and after a while, hearing something

splashing in water, he said, "What is that?" Then the woman explained to him that she had given birth to a beaver. She brought him the bowl. He took out the little beaver, looked at it and put it back. He said nothing. As time went on he became very fond of the young beaver and played with him every evening. Now the Beaver down in the water knew everything that was going on in the lodge. He knew that the man was kind to the young beaver and so was not angry with him. He took pity on the man. Then the father of the young beaver resolved to give the man some of his medicine songs in exchange for the skins of birds and animals the man had in his lodge. So one day, when the woman went down to the lake for water, the Beaver came out and instructed her to request of her husband, that whatever he(the Beaver) should ask in his songs, that should be done. He also stated the time at which he would come to the lodge to be received by the husband.

At the appointed time, the Beaver came out of the lake and appeared before the lodge, but, before he entered, requested that the lodge be purified (the smudge). Then he entered. They smoked. After a while the Beaver began to sing a song in which he asked for the skin of a certain bird. When he had finished, the man arose and gave the bird-skin to him. Then the Beaver sang another song, in which he asked for the skin of another bird, which was given to him. Thus he went on until he secured all the skins in the man's lodge. In this way the man learned all the songs that belonged to the beaver medicine and also the skins of the animals to which the songs belonged. After this the man got together all the different kinds of bird and animal skins taken by the Beaver, made them up into a bundle, and kept the beaver medicine.

Some of the contents of the Beaver bundle are a shawl/blanket, drums, rattles, forked sticks, animal hides/skins, *iniskims* (buffalo rock), parts of animals, paint, feathers, parfleches, wristlets, bladder cases, hair locks, beaver chewed sticks, leather bags, shells, water pipe, and other items. "It is the only bundle you can take or place items in, and lend items from –for other ceremonial purposes"(Many Bundle Holder personal communication 2001). As the bundle developed, it required several horses to transport it from one place to another.

Past owners of the bundle were usually leaders of the camp, referred to as Beaver men or women, who provided guidance, counseling, and protection to the band members. The material cost is enormous to the holder, who cannot violate traditional laws and

rules. “A man who took a Beaver bundle was usually helped by his friend in the payment of the transfer”(McClintock 1). There are sacrifices, commitments, learning, and many ceremonial rules that must be followed to become “Beaver Bundle People”. The first rule is that the people caring for the bundle are only guardians (keepers) or caretakers—the beaver is the owner. One must seek out the past bundle holders and get advice. If the individuals decide that this is something that they are willing to do, they must know that from this time forward their lives will take a change and they must be willing to abide by the commitment to the bundle. “Because of the great number of songs and prayers and dances, it requires long study and application for one to learn the ritual associated with it”(McClintock 1). The personal commitment is like taking care of a small child. The bundle holder commitment can take years to be proficient in the beaver ceremony:

Because of the age of the Beaver Bundle, its ritual transfer is a complex set of instruction that requires years for the recipient to learn the songs and the animals within the proper sequence of the ritual. The new owner must watch the ritual several times before he became proficient in the several hundred songs that he is required to know. (Campbell 111)

The bundle is adhered to as the sunrises and sets each day, and opened at the request of the people for direction, guidance, and spirituality. “Both genders are necessary to complete any power transfer...bundles are never transferred to either a man or woman alone, ceremonies always involve both sexes” (Campbell 112). Together, a man and his wife will be taught the rituals and ceremonies of the Beaver bundle.

The Beaver Medicine is of great power. Chief Mad Wolf said, “It always made him happy to give the Beaver ceremony, for the bundle brought good fortune to his family and gave him a prominent position in the tribe. He had to keep count of the days and months with sets of sticks, which belonged to the bundle”(McClintock 2). This kept

a timeline for the tribe for seasons and ceremonial times. It was also very important for the family keeping the bundle to portray generosity and kindness towards others and each other. One protocol is as follows:

The family, which had custody of the Beaver Bundle, had to observe its taboos. For example, the sides of the tipi in which it was kept must never be raised, nor should cooking be done outside; food must be given to everyone who entered as a guest; no one should ever pass in front of the Beaver-man when he was smoking. If the Beaver-man went for a swim, he must sing a certain beaver song before entering the water and must never show any fear of it; he must not eat beaver meat, strike a dog, or kill any of the birds or animals represented in the bundle. (McClintock 2)

As long as the family took care and observed the Beaver's teachings, the bundle would protect and provide for them along with the *Nitsitapii*.

“The ritual of the Beaver bundle consisted of opening it and dancing with some of its contents, the skins of birds and wild animals, and other relics. The ceremony was always given in the spring when ice had melted in the rivers, for this season represented the time when beavers are accustomed to leave their winter dens”(McClintock 1). The Beaver Bundle was opened and the ritual performed in response to an Indian's vow to feast the beaver man and to give him valuable property if he or one of his family members should recover from a serious illness or be saved from imminent danger on the warpath. “By opening the bundle in age old ceremonies, keepers invoked their special powers for the benefit of all”(Pringle 5). In early times, when food was scarce and the people were hungry, they called upon the beaver man to open his almighty bundle and perform his ritual to call the buffalo. “The Beaver-men enticed the buffalo with their songs, by charming the winds to blow the right way; for it was the wind and storms that drove the buffalo toward the people”(McClintock 1). After this ritual, the buffalo would

be found the next morning near by and would be driven into a pound or over cliff by the people in the camp. In gratitude for preventing starvation, the beaver man was given first choice of the killed buffalo.

The Beaver ceremony was of great length because of the dependence of other ceremonies on the bundle. The Beaver People were the leaders of many other ceremonies throughout the year:

From the Beaver Bundle came the ceremonies associated with the Tail Feathers Woman Legend, Star Boy, and Scarface, which gave birth to the Okan Ceremony, the Natoas(Sun Dance), the Medicine Pipe, and many others. To put it simply, the encompassing rituals of the Beaver Bundle gave rise and inspiration to the whole expanse of the ceremonial life of the people. Most songs, prayers, and facial paintings of the holy bundles of the Blackfeet can be traced to the Beaver Bundle. (Scriver 212)

Seeds of the sacred tobacco planted by the Blackfoot were preserved through the winter in the bundle of the beaver man. At planting time in May, there was a feast and the seeds were prepared by mixing berries, water, and parts of animals. The soil was rendered for planting. In the fall when tobacco was ripe, the beaver man performed his ritual before the tribe harvested the tobacco.

#### *Other Bundles given to the Nitsitapii*

“Bundles were believed to possess powers of protection from various forms of harm or evil; provided safety and success on expedition of travel, hunting, or warfare have great healing powers; or be otherwise beneficial to the owner”(McCracken 3). Most bundles are tied to the landscape through origin sites and connection to the water-beings or spirits of the Great Rocky Mountains. “The plants and animals in these bundles are intimately linked with the mistakis in origin and on-going ritual” (Reeves xiii). Bundles

tie the Nitsitapii not only to the animals but the plants, waters, and their continuance within the environment of the mistakes. “Beaver bundle owners kept a calendar count with a bundle of sticks and announced the time when the geese would fly north” (Dempsey 609). Bundles opened and closed when the seasons change—Coldmaker goes north, when the waters are high, after the first Thunder, moving to winter camp after the last raid, and occasionally when vows must be fulfilled. “In 1818, *Stokan*—the Winter Sun Dance took place on Sheep River because the winter camp of the Bloods was in danger. A holy woman vowed that if they were spared from harm she would sponsor a Sun Dance immediately”(Dempsey 6). Bundles were also opened after a successful raid to give thanks for successful raid on tribes across the mountains and on the plains. Each bundle has protocols that must be followed by the keeper of the bundle to maintain the power, knowledge and ritual.

“There is one pipe among them that is so old that no one has any recollection of having heard of its being made by anyone. So this pipe must be the real one handed down by the Thunder, for all medicine pipes came from the Thunder” (Wissler and Duvall 89). This ceremony is a daylong endeavor after the first thunder beginning with a smudge and smoke of sweet pine needles, sweet grass, and tobacco. “The Thunder Bird has returned again, his voice crashing among the mountain peaks calling out ‘People it is time to renew the Sacred thunder Medicine Pipes!’” (McCracken 14). The Thunder spirit makes his home in Chief Mountain. All items that are associated with the Thunder Pipe have their own songs and are found in the mistakis. “There are 300 songs associated with the Blackfoot Thunder Pipe Bundle” (McCracken 8). Several birds, newly born antelope, rattle from buffalo, eagle feathers, porcupine, ermines, plants—tobacco, sweet pine, and

sweet grass, and the pipe make up this sacred bundle. “In the late 1880s, there were at least 20 Thunder Medicine Pipes and bundles among the three tribes of the Blackfeet” (McCracken 16). The commitment as a keeper of the pipe is time consuming and the number of bundles have declined as some of the medicine pipes left the people in the reservation period of assimilation and oppression.

The Keepers of the Long Time Pipe were highly regarded as leaders, chiefs, and decorated warriors amongst the Confederacy. “The keeper of the pipe bodies were painted red as well as their horse and the saddles used to carrying the thunder medicine pipe wore their hair tied in a top knot above the forehead” (McCracken 16). These leaders included Iron Shirt, Running Wolf, Three Bulls, Lame Bull, Red Eagle, Sleeps Long, Heavy Runner, Talks with Buffalo, White Calf, Mountain Chief, Bear Child, Weasel Tail, and Bear Chief. A recent medicine pipe—Boy Chief’s Thunder Medicine Pipe—was transferred to Bob Sriver a non-Blackfoot. It has been traced back to Lone Chief in 1855, Big Spring, Wolf Plume, Chief Crow, Boy Chief, Raven Chief, Bull Plume, and last known given to the Buffalo Bill Historical Center (McCracken 21). The Thunder Pipe is still transferred throughout the confederacy crossing the medicine line at times depending on who makes the vow and commitment as Keeper of the Medicine Pipe. The Kainai have maintained many of the bundles that have been absent among the other bands of the confederacy. The summer sun dance continues on the Belly River bringing all the bundles and medicine pipes together held on the Kainai Reserve in Canada.

“Sometime the Okan was help up against the mountains...Okan traditionally was held when the saskatoons were coming on at the end of July or early August” (Reeves

ix). The Okan ceremony encompasses the Natoas--medicine headdress given to the Blackfoot by an elk:

This medicine was given to a woman who was camping near the mountains. An Elk came to a Blackfoot woman and asked her to go away with him and he would give her some medicine. She went away and he explained to her the whole ceremony. He told her about the medicine bonnet calling in many animals to help give the woman some power. The Crane bill is used to dig the medicine turnip. The elk robe represents the elk himself. The bunches of feathers placed around the bonnet represent the prongs of the horns. A white rock arrow point and some earrings are hung on the side. Weasel tails hang down the side. Owl feathers are used on the side of bonnet while behind is hung the skin of a woodpecker and part of the tail of a wildcat. Each of these animals sang a song as they gave themselves to the sacred bonnet. The buffalo was there too and gave its hoofs, which are tied to the end of the digging stick. (Wissler and Duvall 84)

The elk importance to the *Nitsitapii* is not only ceremonial but also a main staple of food, provided clothing and tools utilized by the Blackfoot in gathering and digging roots.

“Natoas—holy turnip bundle—could encompass many of the transfers of sacred pipes, teepee designs, and other religious objects” (Dempsey 616). This is the ceremony that uses the earth paints of the *mistakis* and also brings together not only bundles but also Blackfoot ceremonial and social societies. “All society members come into the Holy Lodge to sing and dance and confess their war deeds. Beaver men are the leaders in the Okan. Holy pipes go in there to be smoked. Holy things fit together for the Sun Dance” (Trailtribes.org 5). The Brave Dogs/Crazy Dogs are called upon at the time of the sun lodge to begin the ceremonial event. They also have songs and bundles that are made up have cultural and natural resources of the *mistakis*. The Brave Dogs are also called upon to police other ceremonial and social events throughout the year. The *Motoki*—buffalo women—are also an element in the summer gatherings as well as the Horns society. The

Bulls also known as the Horns Society represents the Bull, cow and buffalo calf. “In every medicine-dance there are three people—the man, his wife, the young man. The young man is the crow (messenger)” (Wissler and Duvall 120). The bundles are made of many elements—animals, plants, rocks, songs, rituals, and protocols of behavior—that are essential to the yearly ceremonial and subsistence cycle of the *Nitsitapii* and their connection to the *mistakis*.

“Other sacred objects and ceremonies came from the mountains include sacred lodges such as the Single Circle Otter and Bear and Blue Thunder lodges; drums; other pipe bundles and the Bear Spear. Red paint, pipestone, animal skins and older times eagle catching was important activity along the front” (Reeves xiv). The *Siksikaitsitapi* are well known for their painted lodges that represent their ties to the mountains with the designs:

Blackfoot teepee included symbols for mountains, foot hills prairies, the night sky Pleiades, Ursa major, sun, moon, morning star, rainbow and puffballs. Animals or birds such as otter, mountain sheep, beaver, eagle, and buffalo each representing a spirit helper or protector of the lodge. Songs, special altars, flags and medicine bundles accompanied many of the designs, most of which derived from visions and could be transferred from one owner to another (Dempsey 610).

Many of these tipis are amongst the Blackfoot and transferred through ceremony and/or passed down to the next generation. Today, you see the Blackfoot Confederacy tipis on display at the Calgary Stampede, National Museum of the American Indian, US Presidential Inauguration, and the various social and ceremonial gatherings of the *Siksikaitsitapi*.

“Warrior societies known as all comrades were age graded each society having its own regalia, dance and rituals” (Dempsey 615). Each society represented a way of knowing based on the creation time as well as rite of passage with songs and rituals to be acted to renew the connection to the original vision. “Pigeons, mosquitos, braves, all brave dogs, front tails, raven bearers, dogs, kit foxes, catchers, and bulls—originated in a vision experience which a sacred power gave the specific rites, paints, dress, and songs that characterized the society”(Dempsey 615). Some of these were made up of young boys, warriors, unmarried men, past society leaders or chiefs, and bundle keepers. Each society has a role amongst the *Nitsitapii* social and ceremonial cycle. They also provided meat for those who cannot hunt and wood for those who cannot gather anymore.

### **Transfer of Knowledge**

“Other features across the landscape also can posses power and bestow that power to humans”(Campbell and Foor 107). The elaborate bundle system of the *Nitsitapii* set up a way of knowing and interacting within their landscape of the *mistakis*. The “transfer” of knowledge made it clear the *Siksikaitsitapi* is not owners but keepers/caretakers of their territory and many bundles given to them by the animals and great spirits of the Rocky Mountains. “To transfer power although requires the construction reciprocal relationships through kin relations. The context for an transfer of power is created through either natural or fictive kin relations”(Campbell 109). This transfer of knowledge is renewed every time the bundle is opened and closed throughout the seasonal changes and needs of the people. “For a transfer of power to occur, the person must have the right to the medicine and it’s associated behaviors” (Campbell 111). The ordinary Blackfoot person who has never vowed, fasted, slept in the *mistakis*, taken a

bundle, transferred a bundle, and grand parented a transfer ceremony has little knowledge of the songs or process that is necessary. “Ceremonies are the forms through which a common sense of transformation and transcendence is experienced. As long as the bundles remain in the community, the people will retain their connection to the transformational ways of being” (Bastien 106). Outsiders as well as non-keepers of the sacred bundle have interpreted this knowledge. The bundles are a big commitment on the keepers but also a great honor and bestow status among the *Nitsitapii*. “After a while, we transferred our bundle, I was sad when we transferred, but I also knew that it was the way you make it live. You give another family the opportunity so they will come to know”(Bastien 111). Kinship ties are created through the transfer process, which extends your family relations that you are responsible to maintain and help guide in premature years as the new caretakers for the people.

When talking about the intimate relationship with the mountains in regards to the ceremonial bundles and traditional ecological knowledge(TEK), it is difficult for any Blackfoot to transcend the transfer of knowledge to satisfy non-Blackfoot quest of information. “People were uncomfortable with the idea of transferring knowledge without proper protocol. In their traditional way, spiritual information is transferred with proper ritual and with such transfer, the responsibility for the information transfers to the person who has received it” (Greiser and Greiser 3-20). Although, researchers promise confidentiality it does not follow the *Nitsitapii* way of “coming to know” or proper transfer not only in ceremony and cultural resources but also in utilization of the natural resources in the mistakis.

The greatest transfer of knowledge always began with a vision or dream.

“Transfers always involve the teaching of ritual acts to enact that power. The origins and the visionary experiences of that power is in a state of continual renewal”(Campbell and Foor 111). The Blackfoot have many vision sites in the mountains, on high cliffs, along lakes, streams, caves, and places of significance to the transfer of power. “When I go into the Mountains I do not know which site I go to the spirits guide me. It could be any place in the mountains. If I encounter other humans or signs of human activity it can destroy my vision quest the spirits move away”(Greiser and Greiser 3-25). The sweat lodge is part of the process of seeking a vision or sleeping in the mountains. “I go to Badger Two Medicine several times a year to pray and get cleansed”(Greiser and Greiser 3-31). The sweat lodge is an essential part of the *Nitsitapii* cleansing to gain knowledge. One elder, “I had to sweat 4 times in the mountains at different places as directed by the spirits before I was able to sleep on my quest. I gathered rocks for the fire, sage for the floor, and willows for the lodge. I cannot reuse those items each lodge required new rocks, sage, and willows” (Greiser and Greiser 3-29). The cleansing sweat incorporates and serves as the doorway to the spirit world for the *Nitsitapii* when seeking help, power, and direction. *Minipokaks*—ceremonial groomed children—seek visions through dreams at a young age but primarily it is the young men mostly who go into the mountains to sleep—seek power. There are women known to have slept in the mountains to gain knowledge in times of need for the Blackfoot People. Chief on Both Sides shared his experience in the mountains—“I went to a cave with pictographs made by the ancestors to pray and be by myself on New Year’s Eve. I will not say exactly where the cave is.” The sites are held in secret to respect the transfer given to the person in order to protect

the power, spirit helper, and teachings from the landscape. “Misfortune or death could come to those who defile holy places”(Greiser and Greiser 3-28). Respect and reverence for the power is important for animals, plants, holy places, rocks, and humans to live in together in the mistakis.

### **Importance of Animals to the *Nitsitapii***

“Parts of the beaver, otter, kit fox, ermine, badger, porcupine, marmot, gopher, eagle, and a variety of other small bird and animals were used to decorate ceremonial items or placed in medicine bundles” (Campbell 114). All the animals found in Glacier National Park and Badger Two Medicine were not only utilized in ceremony but also provided food, clothing, tools, and shelter. “All animals gave power and taught us how to survive in the mountains” (Beaver Woman personal communication 2011). Crow Tail Feathers, Chairman of Natural Resources at Blackfoot Community College provided the following information—

Bears: were helpful in the Blackfeet usage of plants for food and medicinal purposes. The bear knew which plants and berries were ripe at certain times of the year. The bear provided the Blackfeet with this knowledge through his power as seen at Medicine Grizzly Lake located in Glacier National Park.

Elk: Was the main staple after the buffalo. They were used for food, clothing, tools, and shelter.

Moose: provided food along with durable hides for clothing and other purposes. The moose were a delicacy to the Blackfeet. Today, people seek out moose hides for long lasting material in traditional outfits.

Deer: provided food and was the main hide used for fine clothing. The unborn fetus was a delicacy to the elderly people.

Wolf and Coyote: taught the Blackfeet how to hunt. They showed the people methods for wild game and how to get animals to harvest out of deep snow.

Beaver and Otter: provided spiritual guidance to the Blackfeet and kept the water clean for the Blackfeet and animals. The underwater spirits are taken in high regards; as a result the people did not eat fish or underwater beings.

These were the main animals the *Nitsitapii* related to but they had a relationship with every being found in the mountains and in Blackfoot Territory. “Based on the movement of the animals and herds, the people knew which plants were ready to harvest and when it was time to move camp”(Crow Tail Feathers personal communication 2011). The people never over killed their brothers and sisters of the *mistakis* because they needed them to provide and guide them in their daily survival. With the trade era, the *Siksikaitsitapi* traded furs of wolves, badgers, beavers, skunks, antelope, and buffalo at the posts as far north as Rocky Mountain House and Edmonton and other forts set up in Blackfoot Territory.

Fire ecology plays a vital role in the pattern of the animals and people that lived in Blackfeet country. “Lodge pole pine is the first species to come out after a fire...you can tell the fire history from this species”(Crow Tail Feathers personal communication 2001). Different plants are recharged by fire providing fruits and vegetables. The Blackfeet also use the lodge pole for tipi poles.

### **Traditional Ecological Knowledge**

“Traditional ecological knowledge is the culturally and spiritually based way in which indigenous peoples relate to their ecosystems. This knowledge is founded on spiritual-cultural instructions from ‘time immemorial’ and on generations of careful observation within an ecosystem of continuous residence” (LaDuke 1). Blackfoot TEK is essential to not only the ceremonial realm but also the natural habitats of the shared

mountain landscape with other-than-human beings. “Indian medicine accounts for 80% of the modern day medicines used for healing and domestic purposes”(Fish personal communication 2011). Many of the plants were used for edible, ceremonial, and medicinal use. “Knowing the roles and responsibilities of interacting with the herbs, roots, plants, berries, and animals is essential”(Bastien 134). Often it was the animals that taught the *Nitsitapii* to survive in their landscape of the Great Rocky Mountains. Bear activity revealed when the berries were ripe which play an important role in the ceremonial cycle of the *Nitsitapii*. Some of the edible plants include berries, choke cherries, thimbleberry and wild raspberries. Many of the plants used for medicinal purposes include yarrow, wild onion, yellow angelica, kinmikinnik, sage, paintbrush, fireweed, glacier lily, and many more. Plants were also used for domestic purposes for example: buffalo berry was used to make soap. The mountains provided food and healing plants along with basic necessities for the Blackfoot when the buffalo were nowhere to be found.

Spring feasts included eggs of ducks and other waterfowl, wild turnip and roasted camas bulb. Dried meat and berries saw the *Nitsitapii* through the long winters. Many berries are essential to not only the subsistence but to the Blackfoot ceremonial feasts. “Goose berries and red willow berries were collected in late summer. Fall was the time the camp moved to where choke cherries were ripe and bull berries were ripe then too” (Trailtribes.org). Gathering of plants and digging roots is also a transfer from the animals or a result of a vision given to the *Nitsitapii* from the spirits and animal helpers. Mike Swims Under, a chief elder of the *Okan* and Beaver Ceremony, put it simply—“They sleep, they dream and they get medicine. They learn to pick roots for different

sicknesses. Get sweet pine for smudge all in the same area” (Greiser and Greiser 3-17). Seeking a vision, understanding that vision, interpreting that vision, and then gathering the plants/herbs/roots necessary for healing as well as smudging are the protocol for coming to know the power granted a Blackfoot healer along with the songs and process of making the medicine.

The transfer or “coming to know” is an important aspect of Blackfoot gathering.

Brave Dog leader Heavy Runner states:

The sacred turnip is a gift from the Star People. It is like a newborn baby when first dug; it’s washed in the pure water like the baby’s first bath...it is found in the riverbank of Badger Creek. Only women can dig this gift of the Mother; and then only after the appropriate ritual songs and prayers have been offered. When all is right, and the woman has removed her shoes and is very quiet and all around her its very quiet, the clay can be removed if it is glistening.. Only when it’s glistening, and all is done properly, will it retain its red color (Greiser Report 1993).

The *Nitsitapii* oral tradition illustrates teaching through experience or hands-on tradition when it comes to gathering of plants and medicines. The late Molly Kicking Woman—a matriarch of Blackfoot way of life—stated in an interview with Greiser and Greiser:

Much of my learning took place in the mountains. All of the mountains are important not just the area we gather earth paint (BTM) but the places where we pick plants and roots are important to our religion. Without the mountains I could not teach my children and grandchildren in the way that my mother and grandmother taught me. (1993)

Yet, the persistence of outside encroachment and the forest service management plans, much of the Blackfoot flora has been documented in hopes to protect the mountain landscape for continued use and gathering. “Many people feel they are being asked to do the impossible. The power that goes along with the information can be harmful or used inappropriate ways no one wants to take such a risk” (Greiser and Greiser 3-20).

Following is a list of the plants that are part of Blackfeet Ethno botany found in Glacier National Park provided by Tara Luna of the Blackfeet Greenhouse:

Sweet Pine: is not found on the plains. This is used for ceremonial and medicinal purposes.

Yellow Angelica: this only grows in the mountains and has a restricted range found only in the park. This is used for medicinal and ceremonial purposes.

Yarrow: This plant is used to sooth pain and applied to swelling and sores. It was also used during labor to ease the delivery.

Nodding Onion: This was eaten raw but also used for flavoring.

Alder: This plant was used as an orange dye.

Savis Berry: This was used for upset stomach, laxative, and eardrops.

Yellow Angelica: This was used for medicinal purposes. It was applied to swellings, rashes, eczema, and given to children with malnutrition.

Kinnikinnick: This is used as a salve for itching and peeling skin. It was also used for canker sores and sore gums.

Artemisia(sages): This plant was used for coughing, hair tonic, and eczema.

Camas: This root was used for cooking on special events. It was also used to induce labor and to expel afterbirth.

Paintbrush: This was used as a dye and the shine and waterproof hides. It was used as a diuretic and rubbed on the chest and abdomen.

Big Harb: This was used in tobacco mixture.

Spring Beauty: This was boiled and eaten.

Hawthorn: The berries were used for food and as a mild laxative.

Larkspur: This was given to children with diarrhea. It was also used to straighten and shine hair. It also was used as a blue dye.

Johnny Jump Up: This was used for eye drops and cankers.

Buffaloberry/silverberry: This grease from this plant was used as a salve for children with frostbite. It was also edible used to make soup and broth. The bark was used to make a strong rope.

Horsetail: This was a pink dye used for quillwork.

Fleabane Daisy: This was used for diarrhea and childbirth hemorrhage.

Glacier Lily: The bulb was eaten fresh or with soup.

Wild Strawberry: This was used to make tea, as a fruit, and used for diarrhea.

Blanket Flower: This was used for skin disorders, eyewash, nose drops, and a foot wash.

Sticky geranium: The plant was taken for colds, used for sore eyes, and helped prevent spoiling of stored food.

Cow Parsnip: This was used to remove warts, applied to bruises and chronic swellings, and also eaten as a vegetable.

Alumroot: This was used for diarrhea, sores, eyewash, snakebites, and as a dye.

Sweetgrass: This was inhaled for colds, coughing, sore throats, hair tonic, chapping windburn, and for ceremonial purposes.

Common Juniper: This plant was used for lung disease and venereal diseases.

Rug Juniper: This was for kidney problems, used on horses to shine their hair, used for fasting beds, used in the Okan ceremony, used for headpieces, and other decorative purposes.

Rocky Mountain Juniper: The berries were taken for vomiting, arthritis, rheumatism, and used during the Sun Dance ceremony.

Bitterroot: The plant was eaten but also used for sore throats.

Biscuit Root: The root was used for incense, to make a drink as a tonic for weight gain, used to distemper horses, and soft tanning hides.

Black Twinberry: This cleansed the body especially the stomach and chest.

Lupine: this plant eased indigestion and gas. It also cured hiccups and applied to wounds from flies. Warriors often chewed the leaves before painting their faces.

Oregon Grape: This was used during hemorrhages, for boils, kidney troubles, and as an antiseptic to wounds.

Wild Mint: Tea was made from the dried plant and also used in pemmican and soups.

Horsemint: This herb was taken for coughs, applied to boils, cut, and used for aching kidneys along with sore eyes.

Wild Sweet Cicely: This was used to induce labor, as a feminine deodorant, applied to swollen breasts, taken for coughs, applied to sores, and helped eye and nose troubles.

Yampah: This was used to massage sore breasts, chewed for coughs and sore throats, and applied to wounds.

Lodgepole: This was used for tubercular coughs, chewed as gum, used for tipi poles, back rests, and bed supports, bows, and made sticks for fastening. It served as a glue for headdresses and bows, presented to newly married couples, applied to moccasins for waterproofing, and used as story sticks.

Bistort: This was used in soups and stews.

Cottonwood: This was used for food but also concealed human scent when stealing enemy horses.

Aspen: This helped heartburn, food for the horses, and used as a snack for children. Whistles were also made from the bark.

Chokecherry: This plant was used for diarrhea, sore throats, for purging, and was served as a special drink to husbands and favorite children. It was used in pemmican, to make soup during ceremonial occasions, and used as a spice for meat.

Selfheal: This was used on boils, neck and back sores, and as eyewash.

Douglas Fir: The wood was used to make bows.

Wintergreen: This was given to children with coughs, applied to wounds, eye and ear disorders, and to expel afterbirth.

Gooseberries: This was used for food purposes as well as a laxative.

Wild Rose: The berries were eaten but also helped children with diarrhea.

Thimbleberry: This plant helped with chest disorders was edible, provided dye to tanned robes, and strengthened quivers.

Dock: This plant was used for sores and on swelling.

Willow: This was used as a hair tonic and blood shot eyes.

Goldenrod: This was used for sore throats, nasal congestion, and throat constrictions.

Subalpine spiraea: This can be used as an enema but was also used as a paintbrush for tipis.

Snowberry: This was used to blacken newly made pipes.

Meadow Rue: This was used as incense, perfume, hair tonic, insect repellent, and helped chest pains. It was also used as a spice.

Mountain Townsendia: This helped relieve tired horses.

Cattail: This was used for food but the down was used as diapers.

Valerian: This helped stomach troubles and given to horses for colic or distemper.

Snuff: This was used for headaches and snuff.

Beargrass: This was chewed and applied to wounds, used for bleeding, breaks, and sprains.

The plants are still a vital part of *Nitsitapii* life today and are found only in the *mistakis*.

“The Piikani believe that the plants in the park are bigger and have more power than those on the reservation outside” (Reeves xv). The plants in the mountains are not subject to chemicals sprayed along the roadways, pollution, and grazing of cattle. “It is the only place I can get my root that helps me in preventing diabetes”(Vaile personal communication 2014). The Blackfeet have been restricted from gathering in Glacier National Park. Lewis and Clark Forest Service has honored the treaty reserved rights at times and has been key to the continuance of Blackfoot gathering of plants, digging roots, healing, and recognizing ceremonial use for the *Nitsitapii*.

“Most people gather secretly and try not to get caught”(personal communication 2011). There are still herbalists that use the plants in Glacier National Park and it is also vital to the continuation of *Nitsitapii* culture and well-being. “A Blackfoot has a gift, the power to help other people. He doctors people to help them. The white man has the same thing, the white man has the same power but the white man uses it to make money, that’s the difference”(Greiser and Greiser 3-6). The power to heal from injuries and

sickness is how the *Nitsitapii* have survived in their encounters with new sicknesses in the past and present.

One of my daughters was so badly hurt that the white doctors did not hold out much hope. I had a vision that I should get Indian help. I got help from the Blackfeet religion and its practitioners. My daughter is well now and the white doctor who had helped us before said that my daughter's recovery was a miracle (Greiser and Greiser 3-18).

The Blackfoot have many medicines to help with birth control, infertility, broken bones, arthritis, skin problems, diabetes, high blood pressure, cleansing, and many other ailments just to name a few.

“There are quite a few people who won't talk about these things unless they are asked specifically in the right way”(Greiser and Greiser 3-14). There is much mistrust in sharing Blackfoot TEK in regards to medicinal uses and gathering sites but the herbalists continue to help their people with their sacred knowledge of the natural resources necessary for well-being of the *Nitsitapii* physically, mentally, and among the *mistakis* cultural resources. “Indigenous communities also face threats to their traditional knowledge of foods, plants, and animals which can be lost or exploited by others (Phillips 17). It's a difficult task to ask Blackfoot gatherers as a traditionalist you understand “transfer” but also limits the understanding of outsiders who manage the Blackfoot mountains. Heavy Runner summarizes it best in his statement in regards to Badger Two Medicine affidavit in 1991:

They (sacred gifts) are all ashamed. I have chosen to give this specific information that is mine to tell of if it will somehow make people understand. I show these sacred items with the women as witnesses because this is their concern. They dig the turnip roots they dig the red paint. They now understand the seriousness of the issue before the Blackfoot people. (Greiser and Greiser 3-21)

The sharing of TEK makes the Blackfoot vulnerable to exploitation but most importantly jeopardizes their relationship to their landscape. The *Nitsitapii* will continue their traditional gathering regardless of limitations of outsiders, as it is a necessity to their continued renewal of their obligations to their *mistakis*. The late Patrick Carlson, a practitioner states, "Anytime we go there to gather wood or plants or hunt, we leave an offering. Some people think this is foolish—they wonder why we're praying to the rocks and the plants—but this is our way, we're thanking the Creator for all that he gives us"(Greiser and Greiser 3-25). The researchers often seek categorical information of culture use, archeological site localities, plants—edible or medicinal, animal transfers, and other aspects of the *mistakis* when dealing with the *Nitsitapii*. It is very difficult for a Blackfoot to separate their use into such confines but all beings (plants and animals) are connected as seen in the Medicine Lodge preparation:

I am a member of the Medicine Pipe society of the South Piegan Indians; I am a member of the Magpie Society of the Blood Indian Tribe of Canada. I have participated in four Sun Dances in the last nine years. I am a weather dancer in the Medicine Lodge. I have ridden horseback 3 times with the Crazy Dog Society to gather willows for the hundred-willow Sundance sweat lodge. I have cut the hide for the Medicine Lodge. I have brought the sacred rhubarb for the medicine Lodge. I have bought the sacred tree to the fasting lodge. I have hauled the sacred center pole with team and wagon to the Medicine Lodge site. All these activities were done under the guidance of elderly Blackfeet who had participated in previous Medicine lodges (Greiser and Greiser 3-28).

The transfer of knowledge, rites and protocols taught through gathering for ceremonies today, the capturing into the various societies, knowing where to go to collect the rhubarb, willows, and center pole in the mountains is generational

knowledge that has been passed down not in a year but through sleeping on the rocks—vision quests, animal teachings and sacrificing, spiritual existence, constant renewal and practicing many years of the Nitsitapii way of life in the Great Rocky Mountains.

### **Blackfoot Cultural Resources in the *Mistakis***

One of the main shrines for Blackfoot People is Chief Mountain. “They came here to fast, to pray for visions as they slept and brought these buffalo skulls for pillows”(Schultz 320). The people know that this is a spiritual area. “Eagle Head obtained the vision that enabled him to become the most powerful warrior and successful hunter that our tribe has ever had”(Schultz 332). The mountain is very steep and only the strongest warriors could make the hike to the top; therefore, they were rewarded with visions and powerful medicine. “In earlier days, the mountains use to talk and reveal upcoming events. The mountains told of the white men coming” (Murray personal communication 2000). Today, people still fast, pursue vision quests, and recognize Chief Mountain as sacred through offerings and ceremonies.

All the mountains, lakes, rivers, and culture areas had original Blackfoot names. Two Medicine River was named after two Medicine Lodge ceremonies that took place in one summer, but few of the names were used once the area became a national park. The park officials changed many of the names. Few of the *Nitsitapii* names remain today but the oral history has carried the original names. The Blackfoot names were given by events that took place at each site. Some of the names identified in the oral history and written record include—

1. Whispering Spirit Lake is now Lake McDonald (Doore personal communication 2001).
2. Rising Bull Mountain is Mount Rockwell.
3. Trick Falls is Running Eagle Falls, which is named after a Blackfeet Woman Chief (Schultz 7).
4. Many Chiefs' River is now St. Mary's River (Schultz 332).
5. Swift Flowing River renamed by Grinnell and became Swift Current River.
6. Single Shot Mountain named by Yellow Fish (Schultz 88).
7. Jealous Woman's Lake is now Lake Josephine (Schultz 92).
8. Lakes Inside is now known as Chief Mountain Lakes (Schultz 63).
9. Under-water-people in the south Big Inside Lake gave horse to the Pikanii (Reeves xiv).
10. Heart Butte Mountain, Bullshoe Mountain, Little Plume Mountain, and Running Crane Mountain are Blackfeet names that are still found on the reservation today (Many Bundle Holder personal communication 2001).

Little Plume Mountain is a sacred mountain because the Blue Lodge originated there. Iron Pipe was the keeper and it is said to be in California at this time (Greiser and Greiser 3-5). Little Plume was a great leader of the Amaskapi Pikuni; therefore, his name is revered today in the area of Badger Two Medicine. BTM is also believed to be origins for thunder pipes and the sacred elk tipi according to the late George Kicking Woman in the Greiser Report. Other sites of origin or event were named after Napi—old man. “Oldman River, Tongue Creek, and Okotoks are named for Napi or his exploits” (Dempsey 616). The Canadian bands have more intimate knowledge of cultural areas of the Rocky Mountains north of the Waterton-Glacier International Peace Park. “Raven-- known as cold weather maker--helped a man whose wife was stolen by Thunder who resided in Crowsnest” (Weasel Traveller personal communication 2009). Chief Mountain—*Ninastiko*--is a central point for the Siksikaitstapi as a gathering area for camping, sleeps, and renewal of the bundles, societies, and people.

There are numerous campsites that are of importance to the *Nitsitapii*. “In 1783 Peigan were observed hunting mountain sheep in a valley of Rocky Mountains at the headwaters of the Bow River” (Campbell 114). Many campsites can be located along the mountain front as the *Nitsitapii* set up camps to hunt and gather. “Just below pumpelly Glacier down Nyack Creek three or four miles are an alkaline spring and clay bed that attracted game animals”(Campbell 114). Elk meat was a main staple and preferred meat for the Blackfoot especially with the decline of the buffalo. “Last haven for many of the animals although right now animals are threatened by livestock grazing” (Greiser and Greiser 3-31). The mountains are still utilized especially BTM in the winter to hunt elk especially by the *Amaskapi Pikuni* families. Hunting is a rite of passage for many boys, as they become men in Blackfoot society. Families have campsites they have used and return to hunt every year.

“Sometimes we made trips in there in the winter time when we have serious needs like an illness in the family and go there to seek spiritual help” (Greiser and Greiser 3-21). The mountains were fasting sites for many of the Blackfoot People and vital to the survival of the various bands throughout the United States and Canada. Rides-at-the-Doore, a Thunder Pipe Keeper is guided by bundle praying to the sun, moon, and stars and has utilized the area around Cooper lake to fast to fulfill his vow and sleep (Greiser and Greiser 3-31). Goat Mountain, Badger and Half Dome creeks are areas in the mountains where many have fasted and slept to attain power and knowledge of the mistakis. “My family uses Goat Mountain. It is like a church to them” (Greiser and Greiser 3-31). Three generations recall not only hunting trips but also visits to sleep in the area of Goat Mountain.

“My father once told me of an expedition on the Old North Trail the Blackfeet went south to visit the people with dark skins. They were absent 4 years” ([Trailtribes.org](http://Trailtribes.org) 2). The mountains also served as a roadway for trade and travel routes and the livelihood of raiding enemy camps for the Blackfoot. The Old North Trail is located on the southern portion of Glacier National Park down south along the *mistakis*. Brings Down the Sun (*Pikanii*) once stated, “I have followed the Old North Trail so often that I know every mountain, stream, river far to the south as well as toward the distant north. Many of the travois trails are still visible. The mountains were a highway to Mexico and the Bering Sea. “They served as a guide for the Blackfeet people to explore the North American continent”(Murray personal communication 2001). The *Siksikaitstapi* were gatekeepers for many years until they made treaties in 1855, 1865, 1868, 1888 and 1896 Agreement, which gave US citizens, access to the area now known as Glacier National Park, Waterton-Glacier International Peace Park, Yellowstone National Park, and Lewis and Clark National Forest.

The mountains are important not only as archeological site, historical event, origin, subsistence, cultural, plant and animal habitats, nor the purity of water but crucial to the continuance of the *Siksikaitstapi*. “I explained that all of the mountains are sacred and necessary to our religions. It is not possible to name certain peaks and designate them as sacred peaks. Blackfeet beliefs are tied to the mountains” (Greiser and Greiser 3-16). On a recent visit to an area called Hall Creek 2004, an elder shared a story of a lake that healed sick babies. “The Badger was the water that opened up the life of our sons. When we submerged them in this water, and introduced them to the Sun, Moon, and all the ancestors and called their name, this was the way we introduced our new sons to our

ancestors” (Greiser and Greiser 3-21). Blackfoot names invoke the spiritual connection between the *Nitsitapii* and the beings of the *mistakis*.

### **Blackfoot Names related to Other-than-Humans**

The society names of the *Nitsitapii* gave reverence to the animals of the *mistakis*. “Pigeons, mosquitos, braves, all braves dogs, front tails, raven bearers, dogs, kit foxes, catchers and bulls—originated in a vision experience which a sacred power gave the specific rights, paints, dress, and songs that characterized the society”(Dempsey 615). Often these societies danced and characterized the animal or spirit helper in their behavior. Each band had different social and ceremonial societies that were named after the animals who habitat the Rocky Mountains. “Eagles, bluebirds, ravens had sacred powers” (Dempsey 616). Depending on the band size and visions, each band had varying societies based on the help of the animals and transfer of power to the people.

Individual Blackfoot names also represented the respect and characteristics of the many animals found in the *mistakis*. “Both men and women gave names honoring sacred animals and holy powers and often a family name no longer in use would be passed down”(Dempsey 613). The following is a story of a Blood holy man who married into the *Amaskapi Pikuni* around 1985:

Long Time Bear (Blood) was a *minipokaks*—special child—groomed for ceremony from toddler age. He was decorated with the weasel tail outfit on elk hide with a straight up war bonnet from childhood. He was part of various ceremonial societies—brave dogs, horns—and acquired rites to songs rarely any man achieves in his lifetime. He married a daughter of Bullshoe (*Amaskapi Pikuni*) and took in her children growing attached to 2 of her grandchildren whom he named at the foot of the mountains near the Chief. He passed his name Long Time Bear to the grandson and the little girl he named Night Star Woman because these were connections to the spirits

sacred to the Nitsitapii. His daughter went into labor and was flown across the mountains so he made an offering for the newborn boy—Evening Star Cross—brother of Long Time Bear (*Amaskapi Pikuni*). The spirits had said the baby was not suppose to have survived but because of the offerings made by Long Time Bear the child grew to be a great man—Dances Alone--carrier of the Thunderbird whistle transferred to him by leader of the Brave Dogs and the song keeper of the Bloods. Long Time Bear joined the Brave Dogs of the Bloods and earned his adult name Kit Fox Runner upon his capturing into the society. Blackfoot names are representative of the animals and connections to spirits, events, places and oral history of the Nitsitapii. The name Long Time Bear was transferred to the nephew recently as he resembled the characteristics of the name, passed down to another generation, and born during the 2002 *Kyiyo* (grizzly bear) Indian gathering at the University of Montana.

Another story that shows how landscape is tied to Blackfoot people is illustrated through the naming of a young girl...

During the Heart Butte Society gathering at the bottom of the mountains, another grandchild was named Holy Beaver Woman. This name comes from the central bundle of the *Nitsitapii* People. Children are selected and groomed through their names. Holy Beaver Woman was well aware of her name throughout her childhood and felt she was unsure she could live up to her name but it guided her throughout her lifetime. She became a great student taking pride in the Blackfoot way of life when public schools didn't allow Blackfoot knowledge into the classroom. She made friends to all and helped those who came to her for help never refusing. As she became a woman, she attended beaver ceremonies and knew that whatever field she goes into in college she would utilize her education to help her people. Although, she was not raised in the bundle keepers realm she knew her name was of high respect and status. She once attended a Medicine Night lodge on Two Medicine with the intention of cooking and serving but because of her work and name status she was treated with high regards to her surprise. One cannot say that the Blackfeet way of life has died or no longer is relevant because the ways are adaptive to the needs of the people as illustrated by Holy Beaver Woman and the importance of her role in her community today. Her children--Long Time Bear, Blue Bird Woman, and Red Paint Woman all reside in Badger Creek on the foothills of the Great Rocky Mountains.

Blackfoot names are carried on through generations, passed on to children, attained through great endeavors, tied to sacred bundles, connect the humans to the animals, plants, spirits who make their home in the mountain territory of the *Nitsitapii*.

Some of the great leaders and chiefs of the *Siksikaitsitapi* carry the power of the animals such as Bear Chief, Red Crow, Mountain Chief, Lamé Bull, Yellow Wolf, Weasel Tail, Red Eagle, Sleeps Long, Talks with Buffalo, Bear child, Elk Woman, Beaver Woman, Beaver child, Wolf Plume, Big Spring, Chief Crow, Raven Chief Bull Plume, Spotted Eagle, Running Fisher, Bullshoe, Swims Under, Night Star, Yellow Owl, Weaselfat, Weaselchild, Running Crane, Little Plume, Big Plume, and other individual names.

There was a Blackfoot man named Fence as told by Joe Weatherwax and Earl Old Person. The US government placed a border fence on the Cut Bank Creek and the man wouldn't let them put it up. From the day forward, he was called Fence or Fencepost. This is one of the earliest protests once the "ceded strip" became Glacier National Park and the government was trying to extend the boundary as far as Cut Bank Creek to keep the Blackfoot out of the park.

### **Animals Speak Again**

The Blackfoot were on the verge of losing the Beaver Bundle ceremony and other traditional ceremonies. The tribe has few elders who know the process of transfer (Beaver to man), prayers, songs, and dances of the great bundles. The Beaver Bundle and Medicine Thunder Pipe are central to Blackfeet well being. In the years of oppression, the Beaver medicine had nearly disappeared with only 2 or 3 bundles remaining. The Blackfeet have been fortunate enough to repatriate some bundles under the *Native American Graves Protection and Repatriation Act* 104 Stat. 3048. Many of the bundles are incomplete so the Blackfeet must replace the birds, animals, and items missing to complete the bundle.

Under NAGPRA, the *Siksikaitsitapi* have encountered resurrection in bundles coming home to the people in both the United States and Canada. It has been a longer process than intended due to a lot of cultural loss and change in values with many of the Blackfoot People who have lost touch with their traditional ways. There have been a few people who have continued to be caretakers of the Beaver Bundle, Thunder Pipe, *Okan*, *Natoas*, Medicine Lodges, the Horns, the *Motoki*, Brave Dogs, Crazy dogs, and children bundles with the stronghold being the *Kainai* (Blood Tribe). Repatriation empowered the Confederacy ceremonially and they have worked together to bring the sacred bundles, lodges, animals, headdresses, and other than human beings home.

The journey of Repatriation was a big commitment for a tribe that had lost so much under US policies. Elders of ceremony must be consulted and laid the groundwork for the process to repatriate. A vow must be made and a transfer would take place immediately upon the return of the items. The Canadian Blackfoot were key to the success of the return of these items of cultural patrimony to the *Nitsitapii* of the Great Rocky Mountains. In order to handle the bundles protocols and rites are necessary in Blackfoot beliefs. Many Bundle Holder (*Amaskapi Pikuni*) was the Repatriation Officer for the Blackfeet Nation in the United States when NAGPRA was initiated. She earned this name for the work she took on under Repatriation and was named by the Horns Society. They transferred her knowledge through ceremony, fasting, and prayers so she could bring the bundles back home to the people. The ceremonial people were always notified when she was going on a visit to a museum or federal collection.

Curators throughout the United States flooded the tribe with phone calls and inventories of Blackfoot animals, plants, rattles, drums, headdresses, shirts, dresses, and

items of cultural patrimony. Museums were very ignorant about Blackfoot bundles and took them apart to fit into the appropriate categories throughout the collection. When Many Bundle Holder arrived, she would explain what items were essential to keep together and rewrap the bundle as necessary. Curators had shared stories of animals and items making noises and moving constantly within the shelves/vaults of the facility and were very anxious to see these items returned. There were also many museums that fought repatriation and surprisingly it was the native professionals who gave the Blackfoot difficulty in the process at times. They did not understand the *Nitsitapii* view as Keeper rather than “owner” of the sacred items. Names were associated with some of the bundles but among the Blackfoot those were the people in last possession of the bundle that got lost, sold, or taken from the people in distress.

There have been over 70 bundles that have returned to the Blackfoot Confederacy in the last 20 years. There is a strong spiritual connection when animals Many Bundle Holder shares an experience below:

When I go into these museums, all the animal spirits and items in those bundles were so happy to see you and hear you. I greeted them in Blackfeet they knew who I was and I could feel their presence—they just come at you and pull you to them. The loudest they came at me was when I went to the museum in Bend, Oregon, which had a Beaver Bundle. We only had one keeper left at this time Mr. Mike Swims Under he was about 86 years old and very feeble and weak we had to help him get in and out of the car. He didn't eat (fasted) all the way from Browning to Bend Oregon. As soon as he got there, he walked back into the collections and began singing, crying, crying tears of happiness. He was calling people that were gone—Weasel Necklace, Double Blades, Mountain Chief, Stabs by Mistake, and people from the south side. He was dancing; he wasn't helpless; he was lifting things off the shelf; he would touch things and start praying, crying and dancing saying “they are here with us! They are here with us!” He said you two girls go over there and bring that over and here it was my papa's rattle—it had good documentation on it so whoever collected it said it belonged to Mountain Chief 1, Mountain Chief 2, Stabs by Mistake and then Weasel Necklace that is who it was all transferred to. Then it left in 1972 and that's the year my papa died. How it went, I don't know! We had to leave the museum and Mike

goes out to car and we go eat. He ate an appetizer, salad, dinner, dessert, and took some home for a snack he was so happy first time he ate in 2 days. We checked into our hotel and I was exhausted but I kept hearing all these noises. I looked out and said they must put us by a zoo and called the front desk asking them why there was so much noise. I was with my sister who was a bundle holder so I was acting like a little sister. She told me sit down and listen what does it sound like. So I stopped and closed my eyes and it sounded like the sounds on Badger with the animals in the morning time. I asked them to let me rest and it quit next morning right at sunrise the animals woke me up waiting for us to come get them (Personal communication 2014).

The *Kainai* are highly respected and appreciated for the responsibility and persistence they had to carry on the bundle and society ceremonial renewals despite all the policies to terminate, acculturate, and oppress the *Nitsitapii* way of life and connection to the *mistakis*. They sponsored all the trips to bring these bundles home and back to ceremony throughout the Confederacy. The *Siksika* have brought back two of the larger societies—the Horns and *Motoki*—that have been stagnant for decades. The *Abotsa Pikuni* have brought the Beaver Ceremony back to the *Amaskapi Pikuni*. The *Kainai* are still central for the entire *Siksikaitstapi* in July. “When part of the bundle needs to be replaced or replenished it is with the plants and animals from Badger”(Greiser and Greiser 3-33). All the sacred items are found in the Great Rocky Mountains.

In 2009, Chief on Both Sides asserted the right to camp within Glacier National Park. The western boundary of the reservation has always been disputed and moved by both the Blackfoot Nation and the National Park Service. The *Amaskapi Pikuni* were hosting the confederacy meeting and decided to ask Glacier National Park to allow the people to camp within the park in the *mistakis*. There was some paternalism by the park service but the tribe had evidence that supported their rights to camp within the park dating back from the opening of the park to

contracting Blackfeet to camp to bring in tourists who long to see Indians in the wild in the 1920s, 1930s, and 1950s. The first area proposed for the encampment there was a herd of elk so the tribal officials decided to not encroach upon them. As they walked along the creek that runs out of the St. Mary's lake, they came across the foundation of the original post office and general mercantile store on the west side of the creek. This would definitely push the original reservation and park boundary west about two miles. Finally, after some animosity the park went along with the tribal proposal to host the *Siksikaitsitapi* encampment on their traditional landscape.

The four bands of the Blackfoot Confederacy rode in on horses coming from the four directions lead by their chiefs and tribal leaders followed by their bundle keepers, societies, warriors, and people. The Blackfeet Chief Mountain Hot Shots—the first native hot shot crew called upon during fires in the US--were all inducted and transferred into the Brave Dog Society and given direction to revive amongst the *Amaskapi Pikuni*. They had to gather wood, sage, and sweet pine within the park and build the sweat lodge. The 24 men all gifted the grandfather with the appropriate items for “coming to know” and capture into the Brave Dog Society. With this honor, these men now have the rights to put up the sacred lodges amongst the *Siksikaitsitapi* and fulfilled their commitment throughout the encampment being the camp criers and policing the encampment. Medicine Lodges were transferred and the sacred rites to paint rocks and tipis were gifted to those needed to mark traditional *Nitsitapii* territory in Glacier National Park with the Circle of the

Confederacy. The Bloods also marked at the previous gathering held in Medicine Hat near the Cypress Hills in Canada.

The first night of the encampment the park rangers surrounded the lodges because a *kyiyo* (grizzly/slobbering mouth) had come to the *Siksikaitstapi* camp. The grizzly bear just passed through and kept on his way although park official were ready to shoot and rescue the Blackfoot camp. Many were grateful for the blessing of the Medicine Grizzly letting the people know he came to visit with them. The hearts of the *Nitsitapii* were filled with pride and happiness being in the *mistakis* and among their spirit helpers of *Natosi*, Thunder, elk, bear, otter, beaver, and the stars of the sacred lodge. The greatest acknowledgment was the mountains that had been silent for decades began to speak to the people when visiting the Great Continental Divide as a Confederacy again. Within two years of this great encampment, Waterton-Glacier allowed the *Siksikaitstapi* to host in the lodges where the animals greeted the people by deer walking into the banquet rooms and mountain lion standing at the doorway with not threat but observation of the *Nitsitapii* gathering.

The *Amaskapi Pikuni* has taken notice of the animals that speak. In a recent visit to an area in Badger Two Medicine of forest officials, coalition to save the Rocky Mountain Front, Blackfoot practitioners, and the Army Corp of Engineers, an Eagle flew above guiding the group up the mountain. As the party approached the flat on top, an elk stood there for a while acknowledging the *Nitsitapii* and Medicine Pipe People. The beaver was located just below on the river as the group stopped for lunch. Days, months, and years go by when the animals do not greet the *Nitsitapii* in

daily life but on these occasions their presence was much needed and appreciated to see their brothers and sisters the Blackfoot People have not forgotten their ties.

### **Keepers of the Rocky Mountains**

“The Piikani are the ‘oldest’ of the 3 *Nitsitapii* tribes in the Waterton-Glacier region with camps in Waterton, Bell, St. Mary, Cut bank and Two Medicine Valleys”(Reeves 76). The *Nitsitapii* know the *mistakis* (mountains) and all the gifts they offer to all beings. The natural resources were used for domestic, spiritual, and other purposes for survival. The cultural resources are vital to the Blackfoot Confederacy and their responsibility to being the caretaker of their bundles given to them by Beaver, Thunder, *Natosi*, Scarface, the Elk, the Otter, and plants of the Great Rocky Mountains. “A complex web of relationships if not a unity. Are a fully integrated into all aspects of social, cultural, and environmental activity” (Campbell 101). The knowledge and utilization of the mountains has continued in Blackfoot oral history, ceremony, and domestic purposes to this day since time immemorial. The examples provided are only a small fraction of *Nitsitapii* history and ties to the mountains stretching from the North Saskatchewan River by Fort Edmonton to the far south of Blackfoot Territory the Yellowstone area as well as the Old North Trail which allowed them to visit other tribes down into Central America.

As the US and Canada immigrated into Blackfoot Territory, the *Nitsitapii* remained true to their lifeway given to them in the *mistakis* from the animals, plants, and waters who reside in the Great Rocky Mountains. They have shared natural resources with other tribes and citizens for survival purposes and in creating a kinship with the United States and Canadian Governments. The biggest impact on

this relationship dates back to 1895 in a treaty made to lease the Rocky Mountains to allow the US citizens access to copper and nickel. This brief insight into Blackfoot relationship with the Rocky Mountains will illustrate the commitment required to be a Keeper of the Rocky Mountains in the *Nitsitapii* traditional way of life.

### **Chapter 3: Sharing of the *Mistakis* with non-Blackfoot**

The Blackfoot People have lived upon and share an intimate relationship with the Great Rocky Mountains--*mistakis*. They were historically a hunting and gathering society following the buffalo and moving camp seasonally. However, the mountains were a vital part of Blackfoot survival and culture for generations. The Blackfoot Confederacy (*Siksikaitstapi*) controlled the area mapped out by Napi for many years, as well as many of the main routes traversing the mountains, including the Old North Trail. The bands gathered many plants and herbs for food and medicinal purposes. They hunted the big game like deer, elk, moose, beaver, and other animals for food and gathered in the *mistakis* for ceremonial purposes. The lakes and rivers provided water to the people along with the connection to the oral history of *Nitsitapii* culture. The Blackfoot People still are tied to the mountain landscape today for survival and cultural purposes.

#### **History of the Blackfoot People before treaties**

Life before the treaties was peaceful amongst the Blackfoot people. They moved seasonally following the animals and living off our provider, Mother Earth. They paid their respects to the creator by worshipping *Napi/Natosi* (Sun) through the *Natoas* (Sun Dance) and other ceremonies that used the various sacred bundles—Beaver, Horns, Medicine Lodge, *Motoki*, Medicine Thunder Pipe, and Seizure's Pipe--and in society gatherings. The animals are our providers and helpers in our daily survival as they made up all the bundles found in *Siksikaitstapi* societies and ceremonies. They respected the animals' territories and did not try to kill our brothers/sisters (animals) in order to take over their land base through

resource exploitation. The Blackfoot relied on the animals in our daily survival. They lived in harmony with nature by respecting the land, animals, plants, and the giver of life. The *Sisikaitstapi* had many leaders: chiefs, bundle holders, society leaders, warriors, and doctors. The livelihood of the Blackfeet men was based on hunting, stealing horses, and counting coup on the enemy. The women were caretakers and assisted the men in taking care of the various bundles. Through encounters a man was recognized for various leadership positions. They had many bands in the Blackfoot Confederacy that sustained us when one band was low on supply or food the other band shared their bare necessities. They used what we needed from the land but never exploited with over population or taking all plants and animals in the area. Our ancestors allowed the ecosystem to replenish itself by camping in short duration in each place. The bands only met during the Sun Dance or other ceremonies. These usually took place in the spring and summer.

Through the interaction with their landscape the Blackfoot followed *Napi's* teachings along with the knowledge shared through the elaborate bundle system throughout the Confederacy. The bundle keepers were never "owners" as seen in Western society. Humans could not own the animals, plants, and songs associated with the bundles; therefore, they were known as bundle holders or keepers. The calendar for the Blackfoot people was tied to the bundle opening and closing protocols associated with the first thunder, when the waters were high, and seasonal cycle. This was the establishment of the intimate relationship of the Blackfoot and the Rocky Mountains that not only was the home of the plants,

animals, and spirits—Wind, Sun, Moon, etc., but the foundation of the Blackfoot tie to their territory.

When the white man began coming from the east, the Blackfoot people believed they were brothers of *Natosi* (Sun). They took the strangers in and shared their resources. The newcomers, however, wanted papers signed to make sure the *Siksikaitsitapi* would keep their word about taking them as their brothers and sharing resources. The Blackfoot cooperated, not knowing that little by little their brothers from the east were undermining their belief system and stealing from them.

“Although the Blackfoot hunting grounds straddled both British and American Territories, trading with these tribes was controlled by the Hudson’s Bay and North West companies for the first several decades of white contact” (CAA web April 2014). The Blackfoot people often took many of the traders into their tribes through adoption as kinfolk by bestowing *Nitsitapii* names, induction into societies, and/or through marriage. The traders would not have survived without the Blackfoot assistance in their territory.

### **US Treaties**

Treaties are the foundation of government-to-government relationships between the United States and Indian tribes. Tribes were in a position of power and viewed as a sovereign entity able to make agreements which became treaties for peace, land cessions, and instrument of granting rights. After 1812, treaties were responsive to westward expansion with the “results of the treaty being almost always unsatisfactory” (Getches 129). There was a shift in power in the relationship

between the US and tribes—“numerous accounts of threats, coercion, bribery, and outright fraud by the negotiators of the United States” (Getches 129). The domineering attitude began to abrogate and break the promises laid out in treaties with tribes. Indian Tribes held onto the faith of the “Great White Father” and asserted their rights specified in treaties but have been met with hostility and outright denial by states and federal rules and regulations along with jurisdictional issues. The canons of construction have been indoctrinated to rectify the inequality and calm the conflicts that have arisen over reserved rights. These canons were applied to a number of cases; including two cases—*US v. Washington in 1976* 423 U.S. 1086 and *US v. Winans in 1905* 198 U.S. 371—, which were heavily in favor of Indian treaty rights. Tribes have had to rely upon the US government to recognize most of the treaties made with tribes to assert rights reserved by the tribes both on and off their reserved and ceded lands.

Indian treaties predated the US Constitution. “The United States entered into more than four hundred treaties with Indian tribes between 1778 and 1871” (Miller 1). The United States Constitution states in article VI of the Supremacy Clause:

This constitution and the Laws of the US which shall be made in Pursuance thereof: and all treaties made, or which shall be made under the authority of the US shall be the supreme law of the Land: and the Judges in every State shall be bound thereby, and any thing in the constitution or Laws of any State to the contrary notwithstanding.

These binding agreements were of mutual consent between tribes and the US.

Treaties kept or made peace, established trade relations, set boundaries between nations, and transferred land from one nation to another including payment in services or goods. Tribes surrendered their external sovereignty, pledged allegiance

to the US in war and trade in return for promises of mutual protection, ceded lands to the US, reserved land for own use and jurisdiction, and reserved certain important rights (Luna 1999).

“Treaties have a complex history because they were negotiated for many purposes and by many people”(Prucha 1). American Indian treaties are the foundation of tribal nations and their political relationship with the United States. Tribes were viewed as sovereign entities which allowed them to make treaties with foreign powers in the colonial period. Although the formalized written treaties begin with the Delaware Treaty of 1778, “the idea of treaties with Indian tribes had roots in European practice”(Prucha 21). Upon the centralization of power under the Articles of Confederation and the US Constitution, treaties became the primary instrument for carrying out federal Indian policy (Prucha 103). Indian treaties and sovereignty have been challenged, recognized, then unrecognized by the various branches of the US Government—President, Congress, and the Supreme Court including states. The Indian side of treaty process has been absent from most of the literature. In order to gain an understanding of American Indian treaties, it is pertinent to analyze US legal documents but also to acknowledge and incorporate the perspective of the many tribal nations that negotiated with the US in its early years. Prucha in his book *American Indian Treaties: a Political Anomaly*, states the US played an increasingly dominate role making use of the treaty process for its own purposes and took the stance of telling the Anglo-American perspective. Vine Deloria, Jr., in his two book series *Documents of American Indian Diplomacy: Treaties, Agreements and Conventions, 1775-1979*, incorporated records of early

“treaty negotiations”, treaties that were ratified and un-ratified, conventions, and agreements to broaden the concept of Indian treaties. Finally, David E. Wilkins, *Uneven Ground: American Indian Sovereignty and Federal Law (2001)* and his other writings analyze treaties and federal doctrines in depth to argue and legitimize tribal sovereignty.

“A treaty is a contract between sovereign nations”(Pevar 37). The tribes and government viewed each other equally or like brothers. “But American treaties have departed from the norm in numerous ways as their history shows”(Prucha 2). The treaties were negotiated on a voluntary basis between both parties—the tribe and U.S.--in the beginning of colonization. “Treaties recognized the tribes as self governing peoples over issue of trade, alliance, and land”(Getches 73). Treaties entailed a guarantee of peace, delineation of territory, guarantee of hunting and fishing rights, recognition of United States authority, agreement of regulation of trade and travel for people in Indian Territory, and the punishment of crimes. Treaty making followed a format in laying out provisions. The preamble or introduction recognized the tribe and the government as distinct nations. Land concessions were given to the United States government, and an “Indian Territory” was recognized. Property was exchanged for payment in services with money, protection, agency, and annuities. Stipulations and declarations were made to honor the agreement. Peace and friendship were identified as the basis for the council that guided the treaty making process between the two parties. There was an obligation stated to abide by the provisions set forth in the treaty by all interested parties. The tribes recognized the power of the United States by

establishing treaties. Treaties also gave tribes control over their tribal territory—a notion of sovereignty.

Sovereignty is a status rigorously guarded and maintained by tribal nations. The notion of sovereignty is recognized in conception of American Indian treaties. “Early treaties of peace and friendship were a function of sovereign nations”(Prucha 3). Sovereignty must be defined to illustrate the status of a tribal nation and their ability to make a treaty:

A sovereign nation defines itself and its citizens, exercise self-government and the right to treat with other nations, applies its jurisdiction over the internal legal affairs of its citizens, applies its jurisdiction over the internal legal affairs of its citizens and subparts (such as state), claims political jurisdiction over the lands within its border and may define certain right that inhere in its citizens (or others). (Wilkins 4)

Sovereignty is called into question by government entities when utilized by tribes to recognize their nationhood and assert their sovereign rights. “Tribal sovereignty is inherent, pre or extra constitutional, and is explicitly recognized in the Constitutions”(Wilkins 5). The United States viewed itself independent and sovereign with the revolt against Britain and the founding of the US Constitution (Wilkins 4). The US and Indian nations were both able to establish treaties with others implying equality in their status with the forming of the United States. The United States gave peace to the Indians and received them into its favor and protection but it was a mutual understanding of peace (Prucha 3). Peace was often stated in the first article of treaties:

Nations, parties to this treaty having assembled for the purpose of establishing and confirming peaceful relations amongst themselves, do hereby covenant and agree to abstain in future from all hostilities whatever against each other, to maintain good faith and friendship in

all their mutual intercourse, and to make an effective and lasting peace. (Treaty of Fort Laramie 1851)

Indian nations have been sovereign but it has diminished and was limited at various times in the history of this country. “The US recognized a measure of autonomy and in the Indian bands and tribes. Treaties rested upon a concept of Indian sovereignty or quasi sovereignty”(Prucha 2). Tribal sovereignty was recognized and used to uphold treaty provisions and reserved rights in cases like *Worcester v. Georgia*, and *Native American Church v. Navajo Tribal Council* (1959) which will be discussed later. There were also times where tribal sovereignty was limited not only in case law but in legislation by the US federal government.

“The treaty itself was a special kind of story: a way of imagining a world of human solidarity where we regard others as our relatives”(Williams 84). Tribes told stories, sang songs, and used metaphors to explain their visions of a treaty relationship. Indians were quite familiar with diplomatic relations even though they had their own forms for making agreements that established confederacies for territorial protection, sharing of resources or for trading alliances. Tribal morality was the dominant feature in making agreements like when the Sioux stole the corn from the Arikara Nation. Rather than take revenge upon the Sioux, the two tribes established a relationship that cemented their relationship through the use of the corn ceremony (Deloria 7). “A treaty made with the Indians; it is likely that no document recording the negotiation exists. A treaty signed with the Indians is almost certain that some formal document making the negotiations exists or did exist at some time”(Deloria 6). Treaties exhibited irregular and incongruous or even

contradictorily elements and did not follow the general rule of international treaties (Prucha 2).

European powers made treaties with tribal nations before the centralization of government during the Revolutionary War years. (Prucha 1994; Wilkins 2001; Deloria 1999). These treaties sought to gain favor of tribes in attendance and involved small tracts of land (Deloria 12). Robert Williams in *Linking our arms Together*, constitute those informal treaties as “Encounter Era” treaties. “Few treaties were formally recorded”(Wilkins 31). These treaties predated the Articles of Confederation, which led to the US Constitution that was the birthright of the United States. “France adopted the American Indian format for making diplomatic agreements with the use of wampum belts and other Indian political customs focused on the idea of a covenant chain that bound the Indian nations together”(Deloria 6). Treaties were sacred covenants in from the standpoint of tribal nations. The power of word is held in high regards in many native nations. Few tribes kept winter counts on robes but the exchanging of gifts and smoking tobacco were the highest form of treaty making.

“Because we live in a literate society that places great emphasis on written and legal instruments, it would be very difficult to use the description of an Indian treaty made in the traditional manner as the basis for a legal claim”(Deloria 8). The United States Government made over 370 treaties with the native people of this land. “The US played an increasingly dominant role in making use of the treaty process for its own purposes”(Prucha 1). It acquired land and peace from the tribes. In return, it promised protection of Indian territories and payment for the land in

services such as protection, annuities, reserved rights, or services to the various tribes. "In their actions whites frequently enough disregarded Indian rights but both theoretically and in practice the treaties gave the Indians a protected existence"(Prucha 2). Treaties recognized the tribes as "sovereign independent nations" with the capacity to handle their own affairs and to bargain their assets. "Any agreement that was signed was a sacred agreement because it was sealed by the smoking of the pipe. It was not signed by chiefs and headmen before the pipe sealed the treaty, making the agreement hold and binding" (Williams 44). Native nations bound their treaties with their spirituality which meant it was crucial for them to live up to such an agreement. "Even a casual reading of the treaty literature confirms that the language of North American Indian diplomacy regarded the negotiating of a treaty as a type of divinely supervised, sacred business" (Williams 39). The Indian perspective was contradicted by the Anglo-American ideology of treaties being a mere business transaction rather than a diplomatic act (Deloria 3).

It has been held that the United States, "As the party with presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded has a responsibility to avoid taking advantage of the other side"(Pevar 41). This ideal was not respected at the time of treaty making. "A treaty was sometimes made by one set of representatives and its amendments approved by yet another"(Deloria 8). The people involved in treaty making were often looking for personal gains and often took advantage of the tribes they were negotiating with. For example, treaties were written in English. Many of the tribal leaders spoke only their native tongues. The government used interpreters to

construct the provisions in the various treaties. This aspect has been criticized and led to confusion for native people. Also, translations can differ because native languages are descriptive unlike English terminology. Often terms in treaties are vague and not readily understood.

The whole concept of land ownership, for example, was unknown to tribes; as a result, this hindered successful communications. Tribes did not own the land in the same manner white men owned land under Discovery and Conquest. Tribes were caretakers and respected land as their provider rather than seeing themselves as domineering over land. This relationship is defined by Blackfoot bundle holders who do not own their bundles but are keepers/caretakers of the bundle. The treaty was the bargain for the land and it was a massive land cession by which Indian lost title to most of the continental US (Prucha 103). "Some treaties purported to bind Indian tribes not present at negotiations by the signatures of unauthorized head men who were unaware that their signatures would bind those tribes. There are numerous accounts of threats, coercion, bribery, and outright fraud by negotiators for the United States"(Getches 129). Indians end up losing in the negotiations not knowing what the bargain entailed.

"A series of treaties beginning in 1815 through 1818 involved Indian tribes along the Missouri. For many of these tribes, these treaties marked the end of the political independence and the beginning of the period in which the US vigorously claimed the role of trustee" (Deloria 101). Treaties led to a continuing and increasing, and in many cases absolute dependence upon white citizens and began to erode tribal sovereignty in the eyes of the US. "Indian rights were generally

contained within the kinds and quantities of resources allocated to the US. It was not clear that the US, in beginning its negotiations, always remembered that portion of land, water, fish, or game birds was due to the Indian nations” (Deloria 104). Tribes were not ignorant once they were betrayed in treaties. “As time passed and the Indians became increasingly reluctant to part with more land, the US had to increase its offers” (Prucha 229). Officials realizing the constraints of appropriation began making treaties with unrealistic means which resulted in outright stealing of Indian lands by coercing, bribery, lack of formality, and misleading of tribes at negotiations.

By the 1850s, the US Indian office and treaty commissioners appointed were not well acquainted with the new found Indians in the west. There were mistakes made in trying to determine tribal organization and the chiefs with whom the US should deal with at treaty negotiations often time only men who came to the forts not necessarily the leaders of tribes (Prucha 229). Treaties were being made by the numbers some ratified and some unratified based on Congressional appropriations which contributed to the chaos in the process of treaty making.

Tribes were no longer viewed as equal to the United States Government. Their relationship became a political relationship. The federal government has neglected the enforcement of treaties as United States citizens continue to violate treaty stipulations and boundaries. President Andrew Jackson signed into law the *Indian Removal Act of 1830* that violated treaties between the US and southern tribal nations. This act authorized the president to negotiate Indians for their removal to federal territory west of the Mississippi River in exchange for their homelands.

Rather than enforce original treaties new treaties were negotiated as Indian lands were trespassed. As the United States government grew more powerful in its relationship with the tribe, it has unilaterally abrogated treaties and trust responsibilities. "Many tribes lost their ability to remain self-sufficient. Deprived of a land base large enough to supply their subsistence, they became dependent on federal rations promised in treaties"(Getches 141). The United States government implemented its next policy of reservation concept, allotments and assimilation through agreements and statutes of Congress after 1871. Tribes have had to fight for their rights and lands made in treaties.

"In 1871, Congress passed a law that prohibited the making of treaties with Indians. This law (Title 25, United States Code, Section 71) declared that Indian tribes were not sovereign nations with whom the United States could make treaties"(Pevar 39). Reservations and Indian affairs were then established through congressional legislation and Executive Orders. With this process, the United States Government "did not need the consent of the Indians"(Pevar 39). This has made it easier for Congress to break or breach most treaties made with the Indian tribes. As the US became the domineering party, it took on a paternalistic role of civilizing and assimilating in its domestic policy with Indian nations.

"The Supreme Court has held that Indian treaty rights are a form of private property protected by the Just Compensation Clause"(Pevar 40). This clause is found in the Fifth Amendment of the United States Constitution . Congress also protected the treaty rights. "It took shape primarily in a series of federal laws 'to regulate trade and intercourse with the Indian tribes, and to preserve peace on the

frontier” (Getches 88). The Trade and Intercourse Acts established borders and boundaries; prohibited states and private people from entering into treaties for land; regulated the trade through licensing; set up jurisdictional authority; and controlled the liquor trade.

“The Supreme Court first recognized the existence of a trust relationship between the federal government and Indian people in its early decision interpreting Indian treaties” (Pevar 26). The Marshall Trilogy also set up new provisions in interpreting the treaties and status of tribal nations. Indian title was set forth in *Johnson v. McIntosh* 5 L. Ed. 681(1823). It gave power to discovery and conquest, right of occupancy, possessor interest but not ownership without the consent of Congress, and said Indian land could not be sold except to the federal government. The tribal nations became “domestic dependent nations” in *Cherokee v. Georgia* 8 L. Ed. 25(1831). It gave the tribal nations limited sovereignty—they were not foreign nations. They had the right to self-governance, however the guardianship doctrine and trust relationship came out of this case. State power over Indian Affairs was invalid in *Worcester v. Georgia* 8 L. Ed. 483(1832) and the government became a protectorate of tribal nations. The court recognized the tribal nations as distinct political entities with territorial boundaries. It gave them control over their land and affairs as stated in treaties within their boundaries.

In the case, *Lone Wolf v. Hitchcock* 47 L. ED 299(1903), Congress violated the Medicine Lodge treaty with allotment of their land without their consent. The court held that Congress has the power to abrogate treaties based on “plenary power” and the notion they acted in “good faith”. Although sovereignty was diminished in *Lone*

*Wolf and Native American Church v. Navajo Tribal Council*(1959) the court stated “Indian tribes are not states. They have a status higher than that of states” recognizing sovereignty based on the treaty relationship (Wilkins 55).

Today it is still the custom of many Indian peoples in North America to smoke the sacred pipe before any important business commences. These contemporary ceremonies may suggest useful pathways for understanding at least some of the tribal tradition referred to in the treaty literature of the past (Williams 40).

The first treaties included a protocol of speeches from both sides and sealed with the smoking of the pipe on the agreements that had been made. This practice is found today in tribal governments with prayer and rituals utilized to start tribal meetings. Tribes continue to reassert their sovereign status and rights to those historical treaties that defined their sovereignty in the last 2 centuries. Treaty partners who had learned to rely on each other in a chaotic and hostile world in the forming of the US are still relying on each other to protect their respective territories established in treaties (Williams 125). Although the “domestic dependent nation”—the newly forming US—is now applied to tribal nations, tribal nations retain sovereignty in their political relationship with the United States.

Tribes west of the Mississippi still in control of their traditional territory in the late 1800s were naïve about the legislation and court cases that did away with Indian Title to their land and the reality treaties were easily abrogated. The paternalism of the United States was unknown to the tribes who made treaties in the mid-1800s. The Blackfoot People who had a territory stretching into Canada and never had treaties with their territorial governor for peace or land cessions thought they were in the position of power when treaties came to the plains and

Rocky Mountain area. The value of word or exchanging of resources is far more reaching than the written record for native people. Kinship ties play a vital role in the sharing of resources and many non-Blackfoot were taken as kin through the fur trade and undocumented agreements of peace.

“Friendly Indians were commonly selected as chief by federal officials and given power and prestige over tribes that had their own methods for selecting leaders”(Getches 129). The Confederacy of the Blackfoot was made up of four *Nitsitapii* bands, the Sarcee, and the Gros Ventres with their own chiefs, society leaders, war leaders, and bundle keepers. Each had their territorial domain so to expect a full representation of true leaders of a confederacy at a treaty negotiation seems highly unlikely. The collective history still criticizes the 1855 Lame Bull Treaty stating he was not the true leader for the Blackfeet but was recognized by US commissioners. There is also a concept called “hang around the fort” Indians. These were people who became victims in the Whiskey Trade Era in the late 1800s and were enticed by the rations given at the forts. The strongest of leaders refused to be confined at the forts and agencies set up through treaties. The “Blackfeet War” is a great example of “peace chiefs” those who camped near the forts and those chiefs who still hunted and gathered in their mountain landscape and traditional territory. This war apparently began after the first treaty in 1855 but yet the hostile and peace chiefs continued to hunt, gather, camp, and interact ceremonially throughout the year.

The Blackfoot at times assisted tribes during the white scabs disease and times of hardship. The Piegan Crows are believed to be kinfolk to the Blackfoot

when many of their people were dying of small pox the *Nitsitapii* married into the tribe (Murray personal communication 2011). The Long Time Pipe came from the Arapaho people. The *Motokis* is a shared society with the Mandan and Arapaho Nations (Many Bundle Holder personal communication 2014). These are the truest forms of treaties for the *Siksikaitsitapi*. The only written documentation for many were the winter counts found throughout the Confederacy and in the spirits revealing's on the rocks found today in the mountains along the Blackfoot Territory, Sweet Grass Hills, and Writing on the Stone Park.

It is ethnocentric to think the US was capable of having interpreters for negotiation treaties to converse effectively. The language diversity of tribes and their ability to understand English was a barrier in interpreting and understanding what was being negotiated in treaties. Even today bilingual speakers have difficulty translating between English and their native tongue. Chief Earl Old Person of the Blackfeet Nation said, "It is difficult for me to translate to the elders what is going on today in our council chambers. The language is different and we do not have words nor speak in the same manner as the English". Often times what the Indians agreed to in treaty councils was changed or absent when put into written form by government officials. In 1895, the Blackfeet agreed to a 50 year lease for the rocky ridges in what is now Montana and it is echoed in oral history even going as far as the tribe filing a claim in 1954. Yet, the statute was written as a land cession with reserved rights in the ceded land and ratified by Congress June 5, 1896. "Treaties were imposed upon them and they had no choice but to consent" (Getches 130).

However, the US Supreme Court has given some teeth to treaties through the use of judicial rules of construction.

### **Judicial Rules of Construction**

Treaties are the written form of the negotiations between tribes and the US. Although, breach by the US was common, treaties are legally binding as stated in the US Constitution. The US Supreme Court designed canons of construction to rectify the inequality of the unequal bargaining position of the tribes and recognition of the trust relationship. (Getches 131) These canons are utilized in “interpreting written instruments” (Wilkins and Lomawaima 141). There are three primary rules:

1. Ambiguous expression must be resolved in favor of the Indian parties concerned. See *Winters v. United States* 207 U.S. 564, 576-577 (1908); *Carpenter v. Shaw* 280 U.S. 363, 367 (1930); *McClanahan v. State Tax Commission* 411 U.S. 164, 174 (1973).
2. Indian Treaties must be interpreted as the Indian themselves would have understood them. See *Worcester v. Georgia* 31 U.S. 515, 582. (1832); *US v. Shoshone Tribe* 304 U.S. 111, 116 (1938); *Choctaw Nation v. Oklahoma* 397 U.S. 620, 631 (1970)
3. Indian Treaties must be liberally construed in favor of the Indians. See *United States v. Walker River Irrig. Dist* 104 F2d 334, 337. (1942); *Tulee v. Washington* 315 US 681, 684-85 (1942); *Choctaw Nation v. US* 318 U.S. 423, 431-432 (1943).

Another canon developed in regards to treaties known as the Reserved Rights Doctrine. The rules state, “Use the history to interpret treaties” (Wilkins and Lomawaima 132). Tribes understood reserved rights were on ceded lands to be asserted in common with non-Indians. The reserved rights doctrine has been utilized when interpreting treaties specifically in regards to reserved rights explicitly stated in a treaty.

## **Reserved Rights Doctrine**

Reserved rights have been a controversial issue not only for tribes when asserting them, but for states who believe they have exclusive jurisdiction in ceded lands. “Tribes exercise rights based on their original and indigenous sovereignty” (Wilkins and Lomawaima 120). States have now acquired most if not all of the ceded territory and set rules and regulations in regards to many of the rights tribes reserved in treaties. “Treaty performs the same function for Indian nations as does the Tenth Amendment does for states—reserved powers” (Wilkins and Lomawaima 120). States have reserved powers as they were admitted into the United States. Treaty rights are intimately connected to the trust relationship between the federal government and Indian tribes (Wilkins and Lomawaima 120). Reserved rights can be a property right or political right. A property right can be the right to hunt, or gather, or fish. A political right can include the power to regulate domestic relations, tax, administer justice, or exercise civil and criminal jurisdiction (Wilkins and Lomawaima 119).

“Many treaty rights are clearly expressed in Indian treaties others are not” (Wilkins and Lomawaima 141). Those rights stated are explicit and those that are not stated outright in treaties or agreements are implied. “Rights to land, water, hunting, government, etc...Which were not expressly granted away by the tribes in a treaty or taken away by later federal statute are reserved by that tribe” (Wilkins 117). Explicit rights have had a higher level of legal protection than implied rights (Wilkins and Lomawaima 120).

The granting of rights seems to be a notion of confusion due to the change in power in the political relationship between the US and tribes. “Tribes were the grantors and the US the recipient and rights were granted to the US by or from Indian nations” (Wilkins and Lomawaima 117). This is a highly misunderstood fact in American society and governmental affairs. “These rights were not gifts from the United States but were a sale of rights from the tribes to the United States in which tribes preserved certain rights they owned and wanted to retain”(Miller 2). The concept of reserved rights has been misinterpreted by government officials at all levels from state to federal bureaucrats when it comes to Indian treaty rights.

#### *Setting Precedence for Indian Treaty Rights*

Treaty rights have been the forefront of controversy between tribal, federal, and state jurisdiction. “Judicial recognition of these rights has led to calls for the elimination of Indian treaties, Indian reservations, and other Indian rights” (Getches 139). The states have outright denied or prohibited treaty rights and litigation has laid out some precedence for favoring Indian treaty rights in two landmark cases:

1. *United States v. Washington* 47 L.Ed.2d 97 US District Court, 1974.

The canons of construction were utilized to affirm the ruling on the extent of off reservation fishing rights for tribes in Washington State. The state was exercising their regulatory over fishing which imposed on the treaty fishing right. Between the years of 1854 to 1859 the court listed six treaties with 14 tribes that had treaties containing a provision securing to the Indian certain off-reservation fishing rights. For example, the Medicine Creek Treaty states, “The right of taking at all usual and accustomed grounds

and station is further secured to say Indians, in common with all citizen of the Territory and of erecting temporary houses for the purpose of curing..”. (10 Stat. 1132). The tribes at the time of negotiations were dependent on the aquatic economy to sustain their way of life—diet, religious, trade, and economy (Getches 133). The tribes wanted access to the resources on the ceded lands and made these reservations in the various treaties during the negotiation process.

Governor Isaac Stevens of Washington Territory assured the Indians they would be allowed to fish during the negotiations but that the Whiteman also would be allowed to fish (Getches 134). The principle purpose of the treaties he made was to get land in Washington Territory and allow for peace and coexistence of Indians and non-Indians. (Wikipedia.org) But the court also noted that there was no record of English spoken at the treaty councils and had to define specific terms in this case. The language was must be interpreted as Indians understood at the time:

1. Accustomed: being familiar by use, habituated, inured...usual; often practiced.
2. Common: belonging equally to more than one or too many indefinitely...belonging to the public; having no separate owner...general serving for the use of all.
3. Usual: customary; common; frequent; such as occurs in ordinary practice or I the ordinary course of events. (Getches 134)

The application of language was crucial for the tribe’s retention of their treaty fishing rights on ceded lands.

The State argued in common meant that a small number of Indian fishers would be subject to all state regulations

including seasons and bag limits. The court rejected that argument construing the treaty provision liberally and as the Indians themselves would have understood it. See *Winters v. United States* 207 U.S. 564, 576-577 (1908).

As stated, the Indians were dependent on the fish and their seasonal cycle predated state rules and regulations. The tribes fishing practices were clearly stated in treaties to take at “usual and accustomed places” and the court recognized that as a treaty right. The ruling stated “That those rights are also reserved to descendants of treaty Indians, without limitation in time, excepting as Congress may determine, has been recognized and applied by the US Supreme Court from the first to the latest decision of that court involving Indian treaty fishing rights”.

The case also stated that off reservation fishing by other citizens and residents of the state is not a right but merely a privilege which may be granted or limited or withdrawn by the state. Treaty rights cannot be extinguished by the state or rules and regulations and must be a clear statement from Congress. This was a major blow to State jurisdiction and power but recognition of the trust relationship and treaty right. This case also asserted federal jurisdiction of treaty rights elaborating Congress could extinguish treaty rights by statutory law. Tribal jurisdiction was extended to all members or descendants as stated in the case.

2. *United States v. Winans* 49 L.Ed. 1089 Supreme Court of the US, 1905.

This case was the basis for the Reserved Rights Doctrine. It also “reinforces the supremacy of federal and treaty law over state law” (Wilkins and Lomawaima 129). The Winans brothers were using fish wheels to catch

salmon by the ton. The Yakima tribe complained this was diminishing the fish supply and eventually destroys it. The tribe stated they were also denied to fish at their usual and accustomed place by the brothers and the court focused on this complaint.

The defendants claim exclusive rights and that if the Indians can fish at all, they must do so at other points along this stretch as these lands have been patented, and are owned by the defendants. The Indians cannot cross the lands to reach the fishery and are without any right whatever except what the defendants allow as a matter of grace. They are allowed no real rights. See *US v. Winans* 49 L.Ed. 1089 (1905).

The Supreme Court then revisited the purposes of treaties and their stature in reserved rights. The court ruled, "The patents never gave absolute title, and the fee was always conditional. The treaty gave the right. Congress has never divested the Indians of the rights" (2). This was based on the Treaty of 1859. "The Indians neither reserved nor did they acquire a title by occupancy to the lands bordering their usual and customary fishing grounds. They acquired merely an executive license or privilege apply to no certain and defined places and revocable at will of the US, to fish, hunt, and build temporary houses upon public lands, in common with white citizens"(3). The Yakima have abided by their treaty.

"The treaty was not a grant of rights to the Indians, but a grant of rights from the—a reservation of those not granted...the Indians were given a right in the land—the right of crossing it to the river—the right to occupy it to the extent and for the purpose mentioned"(6). The court defined reserved rights and laid it as a canon in interpreting the 1859 treaty. "This right was

intended to be continuing against the US and its grantees as well as against the state and its grantees" (6). The US Supreme court also asserted the federal jurisdiction in Indian treaty rights by upholding its promised made in the treaties in regards to reserved rights.

These two cases are the foundation of reserved rights for tribes today. They were very important to recognizing reserved rights on ceded territory. Tribes rely upon this precedence when it comes to their treaty rights.

"Treaties were moral statements which could not be broken unless by mutual consent" (Wilkins and Lomawaima 117). This is the understanding most tribes relied upon when negotiating various treaties and reserving explicit rights on their ceded territory. *Washington* and *Winans* were critical to Indian treaty rights not only in recognizing but in asserting these rights when ceded territory became state property. This led to much confusion for the states as they sought equal footing for their territory as a state within the United States and wanted to govern their lands by making laws and regulations. The controversy of Indian treaty rights became an issue in the state's ability to utilize the resources of ceded territory and caused much contention between Indians and non-Indians. This led to much debate on the status of treaties and whether they were valid.

The reserved rights doctrine was elaborated in the two cases to the extent of making all government entities either work or recognize authority when it comes to Indian treaty rights. United States Constitution Supremacy Clause and the US Supreme Court can only base it's ruling on the constitution bind the federal government. The court also recognized the shift of power being tipped in favor of

the US and devised the canons of construction to interpret the various treaties made with tribes. The trust relationship is a vital role for the federal government because tribes are dependent on it to uphold their treaties and assert their reserved rights on ceded lands. The state of Washington did not abide by the federal government's promises and prohibited tribes from asserting their rights. The state had to take into account treaty rights, which had no standing as far as they were concerned when implementing their regulatory authority. Indians were treated as state citizens and subject to the limits set by the state of Washington. But these two cases recognized the rights as tribe's ability to grant and reserve rights to ceded territory found in treaties—the Supreme Law of the Land. Indian treaty rights were defined rights not privileges given by states to their citizens through regulations. Tribal governments must be aware of their reserved rights and assert these rights in common with other citizens. This can be confusing for some tribes where their ceded territory is owned by the federal government and regulated by the state. The controversies that arise are often a misunderstanding of reserved rights by states and citizens in regards to the Doctrine of Reserved Rights. See *Winters v. United States* 207 U.S. 564, 576-577 (1908) Tribes have a “political relationship” with the federal government as defined through treaties, agreements, and executive orders.

The rulings in favor of Indian Treaty Rights have been a great asset to tribes who are dependent on resources for their survival as a people, critical to their ceremonies, and part of their livelihood. Treaties were negotiated in good faith and established a relationship between the US and tribes to share resources rather than inhibit one society from living their own way. Many of the reserved rights tribes

held onto are located in areas where resources are in great abundance and vital to the culture of the people. For many years, the federal and state government has benefited from the areas tribes have reserved rights in. The tribes were the original caretakers of the areas and utilized the resources and have continued to prosper in these areas. In recent legislation, tribes are being consulted in managing areas where they have reserved rights which can be attributed to the recognition of treaty Indian rights by both the federal and state governments.

### **Treaty Period for the Blackfoot**

Peace Treaties with the Blackfeet were made in 1851 and 1855. “The last to negotiate a treaty with the United States were those the government referred to as ‘the Blackfoot Nation’, which included the four bands and their allies,” (Ewers 205). The Blackfoot Confederacy includes the Siksika—Blackfoot (Alberta), Kainai--Blood (Alberta), Abotso Pikuni—North Peigan (Alberta), and Amaskapi Pikuni—South Piegan (Montana). The Sarcee (Alberta) and the Gros Ventres (Montana) were different tribes but also a part of the confederacy. The Blackfeet known as “Raiders of the Great Plains” often discouraged intrusions into their territory by enemies and emigrants. The Blackfeet were mentioned in the Fort Laramie Treaty of 1851 on the Platte River but sent no representatives. “Nevertheless, because part of their country was located south and east of the Missouri, their lands within that area were defined in the treaty” (Ewers 207). Enemy chiefs—Crow, Shoshone, Salish, and Kootnai--were present but did not try to take claim on Blackfoot territory. “For the Blackfeet nothing really changed as a result of the first treaty and few of them were even aware that a land-defining treaty had been negotiated” (Trailtribes.org). In the

1851 Fort Laramie Treaty, the Blackfoot Territory was mapped out even though no Blackfoot leaders attended the treaty signing but there three white men—Mitchell, Culbertson, and Father Pierre De Smet, mapped out territory. The Blackfeet had made friends with non-Indians who traded and did missionary work with them; therefore, these men at the treaty of Fort Laramie protected their interests. The surrounding tribes agreeing to the treaty assisted in defining Blackfoot Territory.

The Treaty of 1855 (11 Stat 756) with the Blackfoot Nation, also known as the “Lame Bull Treaty,” was the first treaty between the United States and the Blackfoot Confederacy. Lame Bull was one of the chief’s who signed the treaty of 1855. This treaty was made with Washington Territorial Governor Isaac Stevens as a peace treaty not a land cession treaty. Article 1 states, “Peace, friendship and amity shall hereafter exist between the United States and the aforesaid nations and tribes of Indians, parties to this treaty, and the same shall be perpetual.” It also recognized the territory mapped out in 1851 Fort Laramie Treaty. Territorial governors were limited to making land cessions with only tribes in their territory but the 1855 Treaty with the Blackfeet is held as a land cession treaty. The treaty was a land cession to the United States in return for services in return and also established Blackfoot Territory, a Blackfeet Agency, and a common hunting ground with nearby tribes. This was the beginning of the confusion for the Blackfeet Confederacy. The whiskey trade and the discovery of gold brought new people into Blackfoot territory; these men disregarded all treaties and agreements made with the people and the Great White Father (United States Government). Once people realized how the non-Indians were imposing on their lifestyle a division occurred;

some continued to treat the whites as their brother while others distanced themselves from them.

There were few settlers in Blackfeet territory up to 1860. Hence, the Indians viewed themselves as numerous and strong. They had no exposure to the “civilized” agriculture lifestyle the United States imposed on them because they were so distant from civilization. The continuance of their livelihood in raiding their enemy tribes and following the game was not restricted. The Blackfeet tried to keep the peace with the United States and cooperated with the provisions set forth at the treaty council.

In 1862, gold was discovered in Blackfoot Territory. Prospectors filtered into Indian country disregarding the treaty provisions. The whiskey trade expanded into Canada into Blackfoot Territory as more settlers came in search for gold. This created a lot of conflicts and many depredations against the Blackfeet went unpunished and unnoticed by the “Great White Father”. “The gold discoveries of 1862-1863 attracted a large white population...there was still no war with the whites who ran through the country at will without molestation” (Dunn 442). The Blackfoot continued to interact with their landscape through hunting and gathering in their traditional territory.

The United States proposed two more treaties in 1865 and 1868 seeking more land for white settlers and opened up areas for gold seekers. Each treaty decreased Blackfoot Territory and elaborated on the Lane Bull’s Treaty of 1855 but neither one was ever ratified by Congress. The Treaty of 1855 is the only treaty enforced for the Blackfeet People in regards to the treaty period with the Great

White Father. The new treaties allowed more encroachment and white influx into Blackfeet country. The Blackfeet were becoming very discouraged with their relationship with the United States Government. The white settlers were committing crimes without punishment at the various forts and getting rich while many of the Blackfeet people were starving at the agency. Many of the friendly Blackfeet abandoned the forts after the crimes and shortage of rations or lack of rations delivered by the U.S. officials--to return to their nomadic life way following the buffalo.

“During the years the agency had been at Fort Benton, a number of Blackfoot Indians had been killed in its streets and bars”(Ewers 246). None of the citizens were punished and the Blackfeet lost faith in the provisions set forth in the treaties. Similar criminal actions continued and the people lost faith in their white brothers and retaliated. The Blackfeet chiefs could no longer control their young warriors—often referred to as renegades. Most of the Blackfoot Confederacy withdrew into Canada after the Baker Massacre of 1870, which killed 219 Blackfeet. The U.S. Government was no longer a friend to the Blackfeet killing off a band that had cooperated and followed the provisions set forth at the various treaty councils. Most of the bands decided to leave the U.S. and moved across the medicine line—Canadian Border. “The 49<sup>th</sup> parallel split the confederacy into either ‘subjects of the Canadian Government’ or ‘wards of the United States’”(Samek 14). The bands had few intrusions into their homelands in Canada at this time period and were provided protection from the depredations.

The Blackfeet Territory was still a large tract of land in the possession of uncivilized people in the eyes of the local citizens and Indian agents. In order to reduce their landholdings after 1871—no more treaties-- numerous Presidential executive orders were passed to decrease Blackfoot territory in 1873, 1874, 1875, and 1880. “No payment was ever received by the Blackfeet for this lost territory”(BIA 4). Yet, the Blackfoot People were subjected to foreign concepts of subsistence through government rations and agricultural. These orders also set up new Blackfeet Agencies:

1. Fort Benton 1855 Treaty: built on the Teton River, as it was the most important trading post for the Blackfeet People.
2. Four Persons Agency 1869: built on Badger Creek known for some braves had overtaken 4 Cree Indians here. This post was also the first agricultural experiment and the first public school for the Blackfeet Reservation.
3. Old Agency 1876 (Old Ration Place): built on Upper Badger Creek. This location became associated with Starvation Winter 1883-1884.
4. Browning Agency 1893: built on Willow Creek near a trading post alongside the railroad but soon the agency buildings and a hospital were established in 1897 and it was designated a town site. (BIA 6)

The Blackfeet traditional livelihood was slowly being curtailed with the loss of the buffalo herds and the shrinking of traditional territory in the 1870s. “The Blackfeet complained bitterly because of the loss of their prime hunting ground in the 1874 Executive Order and that they had no right of protest in the matter”(BIA 3). At this time, the South Peigan of the Blackfoot Confederacy (Blackfeet) were becoming dependent on the annuities of the “Great White Father”. The crops had failed due to drought and the soil was unfit for farming. Many Indians remained at the agency in cabins or villages set up by the government in 1881-1882. “Due to the extermination of the buffalo, crop failure, and inadequate Government supplies the

Indians on the Blackfeet Reservation were destitute in the winter of 1883-1884...more than a quarter of the Peigan died of starvation”(Ewers 49). The second smallpox epidemic also took its toll, killing one-third of the population during the imprisonment times of the reservation. The Whiskey Trade was at its height contributing in the deterioration of the Blackfeet People. In the years 1869-1874, “a quarter of the population died through alcohol related deaths”(Arima 189). Disease, alcohol, loss of the buffalo, loss of land base, and crimes contributed to the desperate state of the tribe. The population was down to 2, 000 from approximately 8,000 in 1854. The Blackfeet had no choice but to try agriculture as their livelihood faded with the buffalo. They had become dependent on the government for the bare necessities of food, clothing, and shelter.

### **1877 Treaty 7 of Canada**

“During the Period from 1871 to 1876, The government of Canada had systematically concluded treaties with all tribes in the arable regions of the NW Territories, with the exception of those inhabiting some 50, 000 square miles of land south of the Red Deer River and adjacent to the Rocky Mountains”(Aadnc-aandc.gc.ca). Three bands of the Blackfoot Confederacy along with the Sarcee signed the Blackfoot Treaty in Canada in 1877. Although, a few of the chiefs such as Medicine Calf, Many Spotted Horses, and Father of Many Children signed the Lame Bull Treaty with the United States in 1855, the relationship with the Canadian government seemed more appealing. “Annuities failed to be delivered on time, the quality of goods deteriorated, and as settlers arrived the treaty was renegotiated, each time trimming the hunting grounds to smaller and smaller areas”(Dempsey 4).

The Whiskey Trade was at its height followed by the second small pox epidemic, the 1870 Baker Massacre, and 1883-1884 Starvation Winter. The US and Blackfoot relationship had become strained and disappointing for the Blackfoot People. Often times, the border was referred to as the Medicine Line in Blackfoot oral tradition. This was due to the lack of US ability to cross the border to attack or punish Blackfoot they considered renegades—those who refused to live a reservation lifestyle that had failed them. The Blackfoot, Bloods, and Piegan still The Canadian government officials knew the frustrations of the Blackfoot bands and tried to not make promises they could not keep by being sympathetic and fair in their dealings. (Dempsey 6). Since 1877, the three bands have remained in Canada with the Southern Peigan—referred to as the Blackfeet continued to maintain relations with the United States Government.

### **Agreements between the Blackfeet and the US**

The Blackfeet land base was a necessity to their survival. “The Blackfeet still owned land in great abundance. They had much more land than they needed for farming or stock raising”(Ewers 52). They used their land to bargain for government support because it was of no value to them as far as land ownership. Stock raising seemed fit to the environment and economy than agriculture when the *General Allotment Act of 1887* was imposed on them. “The cattle raising industry was second choice by the government...it received less financial support than agriculture because it was less civilizing on the Blackfeet”(Samek 79). The men preferred ranching to farming because the tradition of the horse was able to carry on in the new lifestyle. The horse was the only measure of wealth and status for Blackfeet men before the treaty period.

The *Allotment Act of 1887* divided the reservation into individual land segments and declared only deserving (i.e.: civilized) Indians would receive cattle under this act. (segonku.unl.edu) Allotment had a detrimental effect on the Blackfeet. The people were struggling for survival and had little knowledge about individualism of working the land through farming. Their social organization was based on communalism—traditional societal structure--not individual small families. The sale of lands reduced the Blackfeet land base. In addition, allotment not only decreased their landholding but also broke up many families and bands. The Allotment Act superseded all treaties and previous agreements. The Blackfeet also became wards of the government, who are felt to be incapable of handling their own affairs. All “surplus” land was sold and most of the remaining land was in trust. “Few benefited from allotment”(Samek 121). The Blackfeet were faced with depressed economic conditions relying heavily on weekly government rations because crops failed due to the harsh climatic conditions in Blackfoot country.

Few had adopted the government’s farming concept and few ever would. In order to live and gain a foothold in their new way of life the tribe began to bargain with the government to supply them with more supplies and cattle in exchange for tribal land (BIA 13).

The Blackfoot Confederacy was finally separated into three smaller reservations at Fort Peck, Fort Belknap, and Blackfeet in the Agreement of 1888 29 Stat. 129. “This exchange is referred to by the older Indians as ‘when we sold the Sweet Grass Hills’”(BIA 13). The area was ideal for farming and rich in oil production that soon the Blackfoot knew the US government made more than what they had given the Blackfoot People in the agreement.

The *Agreement of 1895* 29 Stat. 321, 353-354 ceded more land and agreed to prolong the support set forth in provisions from an Agreement in 1888 for another decade. Gold had been discovered in Blackfoot Territory so the government wanted access and rights to the mineral. The Blackfeet ceded land but was hesitant to cede the mountain front. This included the ceded strip on the western edge of the reservation making up part of the Glacier National Park. The last agreement has been questioned to this day. The Blackfeet had agreed to lease the strip as a source of income but the act states it was sold. Land ceded is land sold according to the United States treaty concept. But the oral history shows how the Blackfeet misunderstood the provisions and negotiation process in 1895.

#### **Proceedings of the Agreement of 1895-6**

In 1895, the United States wanted to acquire more land from the Blackfeet. Minerals—copper and gold—had been discovered on the rocky ridges of the Blackfeet Reservation. The Blackfeet agent set up a meeting in September of 1895 to discuss a land cession to acquire the minerals. William C. Polluck, George Bird Grinnell, and Walter M. Clements were the United States Commissioners sent to negotiate with the Blackfeet People. They met with 35 Blackfeet men who were full and mixed bloods of the South Peigan. Some of the men included Little Dog, White Calf, Three Suns, Little Bear Chief, White Grass, Bull Shoe, Horace Clark, Little Plume, Running Crane, Middle Calf, Four Horns, Running Rabbit, Mad Wolf, John Miller, Mountain Chief, Curly Bear, Tearing Lodge, Double Runner, Yellow Wolf, Wolf Tail, and Bull Calf. The meeting was held at the Blackfeet Agency hospital building beginning on September 21, 1895.

“The government wants to buy land that the Indian do not want and will pay what it is worth”(Clements, 1895 Minutes 1). The U.S. commissioners wanted the negotiation to be made in friendship and gave the Blackfeet the opportunity to make them an offer. Chief Little Dog spoke for the Blackfeet responding, “The Indians did not ask the government to come and buy their land”(1895 Minutes1). The Blackfeet were very apprehensive about selling more land because they had seen few annuities and benefits from previous treaties and agreements made with the Great Father.

The government tried to convince the Blackfeet to open up their reservation to white men because gold seekers often violated agreements made with tribes in their quest for greed. “The white men will come after mineral in spite of all that you and the government can do”(Polluck, 1895 Minutes 2). Yet, the Blackfeet were hesitant about making another agreement. The Blackfeet expressed their concerns of being cheated in past agreements where they had sold their land and the money went to Bureau of Indian Affairs and agent salaries with little or nothing making it to the tribal people on the reservation. The Blackfeet were hesitant about making any more agreements with the U.S. White Calf stated, “The last treaty was unfair and a boundary line was made even before a treaty had been concluded”(1895 Minutes 3). The Blackfeet had tried to follow the provisions set forth in the last agreement, which included the General Allotment Act, but many of their crops had failed. The only thing working for the Blackfeet was the raising of cattle. As a result, the Blackfeet told the commissioners, they did not want to sell any grazing land or timber.

The Blackfeet did not want to see their white brothers leave empty handed. The Blackfeet finally made an offer to sell a tract of land extending from Cut Bank north to the Boundary line for \$ 2 million. However, the commissioners said that the government would not pay that much and counter offered \$ 1 million. The Blackfeet agreed to the \$ 1 million but the U.S. commissioners were not satisfied and asked for the mountain front. The Blackfeet had no intention of selling the mountain front. Chief Little Dog gave his perspective stating—“Those mountains will never disappear. We will see them as long as we live; our children will see them all their lives and when we are dead they will still be there. This money will not last forever”(1895 Minutes 7). The mountains had provided for the Blackfeet for many years and would provide for their people for years to come.

Commissioner Polluck tried to convince the Blackfeet that the Great Father was a better caretaker of the Blackfeet than the mountains. He said the mountains, “...were there when your grandfathers lived. They never furnished you houses; never fed your cattle nor fed you; and clothed you. You must know that you can keep those mountains forever and not realize anything from them”(1895 Minutes 7). The Blackfeet knew better: Little Plume put it directly—“We learned that you found some very rich rock. All of the young men who have come here to the treaty were chopping wood in the mountains and getting money for it. If we are hungry we go up to the mountains to get game”(1895 Minutes 16).

The commissioners decided to adjourn the meeting until the next day due to the lack of conformity to their wishes. The Blackfeet used the time to discuss amongst themselves the proposal sale of the mountain land. Negotiations picked up

the next afternoon--“The mountains will never disappear. All people will get benefit from the mountains on both sides. Everything the white men can get benefit from is there. They all know it is rich”(White Calf, 1895 Minutes 7). Through discussions, the Blackfeet set a price of \$ 3 million for the land north of the railroad to the mountains but reserved part of the mountains to provide for their people. The Blackfeet knew this was a high price to ask but they were tired of being cheated by the Great Father. “The mountains will stand longer than the Great Father. We will not sell any grazing land as our cattle feed upon it. We will not sell the timber as we use it”(Curly Bear, 1895 Minutes 13).

Chief Little Dog delivered the proposition to the commissioners for the \$3 million. Polluck and Clements made a counteroffer of \$ 1 million. “All the advisors (commissioners) claimed that the Blackfeet wanted to sell the mountains”(Keller and Turek 48). The Blackfeet, however, were becoming very irritated with the government officials. Running Rabbit told the commissioners, “The people don’t want to sell the mountains. But you have come a long way and we have given them to you”(1895 Minutes 12). It was a tradition of reciprocity and brotherhood the Blackfeet were trying to share with the Great Father. “The Great Father always gets more money from the land than he pays for it”(Miller, 1895 Minutes 12). The Blackfeet knew the mountains were of great value and quickly learned from past experience how the government resold their land. Mountain Chief said, “In two years the Great Father will get more than \$3 million from these mountains”(1895 Minutes 13).

The U.S. commissioners would not agree to the Blackfeet proposition. Four Horns responded by telling the representatives, “Two of you went into the mountains and saw the rock. Now, you have set too small a price on them”(1895 Minutes 11). Chief Little Dog felt they could not agree and there was no use having another meeting. On September 23, negotiations broke off after two days of wrangling (Keller & Turek 49). Many of the Blackfeet People returned to their campsites throughout the reservation.

“That evening agent Steell and trader Kipp met with Little Plume, Tail Feathers, Curly Bear and Eagle Ribs” (Keller and Turek 49). The Blackfeet agents tried to convince the Blackfeet leaders who were still at the agency to reconsider and come to some agreement with the Great Father. The Bureau of Indian Affairs had leased Indian land for 50-year time periods so this would be sufficient time for the white men to get the minerals in the mountains and the Blackfeet would still have their rights and land. This is why many of the Blackfeet believe the rocky ridges were only leased because the commissioners had talked to them about leasing rather than ceding the land. The Blackfeet agreed to meet with the commissioners to try and come to some agreement. At the same time, the commissioners were making a counter offer of \$ 1.5 million for the land north of the railroad to the rocky ridges.

Two days after the dismissal of the earlier meeting, another meeting was set for September 26, 1895. “Of all the land the government has bought this that you have come to buy is the most valuable”(Tearing Lodge, 1895 Minutes 14). The Blackfeet were still hesitant about selling their mountain front property but did not

want the U.S. to walk away empty handed. “I hope we will have no more talk with the commissioners for fifty years”(Big Brave, 1895 Minutes 19). The Blackfeet were a gift-giving people sharing their wealth with all who came to their homeland. As the meeting began, Little Bear Chief relayed a vision—“It is because a snake has crawled into our councils and I saw it would take a long time make out this treaty”(1895 Minutes 14). Both sides were growing tired and restless. The Blackfeet decided to accept the \$1.5 million offer for their land but reserved hunting, timber, and grazing rights to the land ceded. Commissioner Grinnell tried to sympathize with the Blackfeet, “Now, in this treaty we will leave you all the wood you need and take only the rocky ridges”(1895 Minutes 16). The white men were only after the minerals, so the Blackfeet agreed.

“Chief Mountain is my head. Now, my head is cut off. The mountains have been my last refuge”(White Calf, 1895 Minutes 18). This was a big loss to the Blackfeet but the Great Father had promised to take care of them and provide for their people for years to come. The Blackfeet reserved specific rights to hunt, fish, and go upon the land to gather timber along with stating they did not want any more of their land allotted. “Although the Indians were divided over selling they were in agreement that they wanted hunting, fishing, grazing, and timber rights on any land they ceded”(Keller & Turek 48). When the Agreement was written, the commission stated which rights the Blackfeet specifically reserved in the ceded land.

*Agreement with the Blackfeet Indians of 1895* 29 Stat. 321, 353-354 (1896)

The United States Commissioners next took time to draft up the agreement to be made with the Blackfeet; in which, was not ratified by Congress until June of 1896. The Agreement of 1896 29 Stat 321, 353-354 summarizes as follows:

Article I: defines boundaries and reserved rights to go upon the land to cut and remove timber for agency and school uses, personal—houses, fences, and other domestic purposes. The Blackfeet reserve and retain the right to hunt on said lands along with fish in the streams. *For as long as the land remain public lands and in accordance with fish and game laws of the state of Montana.*

Article II: \$1.5 million would be given to the tribe. This could be given in cows, bulls, and other livestock, goods, clothing, subsistence agriculture implements, providing employees, educating Indian children, procuring medicine and medical attendance, agency buildings, mills, blacksmith, carpenter, wagon shops, build and repair houses, and to irrigate farms. *This article was to promote civilization and improvement.*

Article III: Indian preference would be given for agency and school employees. Cattle would be issued for stock raising but must have BIA brand.

Article IV: Preference of goods goes to Indians with honest labor undertaking the cultivation of the soil and engaging in pastoral pursuits.

Article V: The Blackfeet reservation was “wholly unfit for agriculture” so there would be no more allotments from this agreement. Communal grazing herds may feed undisturbed.

Article VI: Surveying and designated boundaries upon approval of Congress will be marked by monuments ½ mile apart. The United States and Tribe will share the expense. Laborers must be Blackfeet. This must be completed within 90 days.

Article VII: Right of away for railroads, highways, telegraph and telephone lines, and canals was granted.

Article VIII: None of the money will be used for claims for damages prior to this date.

Article IX: Parts of the 1887 Agreement that doesn't conflict with this agreement is still in effect.

Article X: Indian includes full bloods and mixed bloods.

Article XI: Must be ratified by Congress. Showed signatures of 305 Blackfeet, witnesses, writer, agent, interpreters, and U.S. Commissioners.

Chief Little Dog, Middle Calf, and John Miller did not sign the agreement of 1896.

They had left when the first meeting came to a close but there were still some Blackfeet who hung around the fort. Only four of the 35 original men representing the Blackfeet spoke on the day the agreement was made September 26, 1895. The commission was able to get 305 signatures but it is unclear on how they obtained them. The agents had access to tribal rolls or agency records, which showed all the men who lived on the reservation over the age of 18 based on allotments. (Backbone of the World DVD) Collective history does not support the 1895 Treaty as a land cession but only a lease in lines with the allotment act of 1887 that allowed Blackfeet to lease their lands for a set amount of years.

**Chapter 4: Blackfoot Mountain Territory Managed by the US and Reserved Rights**

The oral history accounts of the proceedings in 1895 do not agree with many of the provisions laid out in the Agreement of 1896. Many of the elders thought the tribe had leased only the rocky ridges to the United States so they could get the rich rock. The claim that the land was only leased still echoes throughout the oral accounts of the Blackfeet People today. Unfortunately, oral history is not sufficient evidence when held up against a written historical record; therefore, the Blackfeet tribe has had to depend on the written documents to state their position in court and to the various government agencies to recognize their reserved rights.

This leads to the next dilemma of translation. As Chief Earl Old Person stated at the 1855 treaty gathering at Blackfeet Community College 2005, “It is very difficult for me to translate from English to my native tongue for my elders. We do not have some words because our native language is descriptive.” The Blackfeet were one of the last tribes to make a treaty with the Great Father and had limited access to education or the English language. Their isolation kept them at a distance from the civilization and assimilation process for many years. As a fluent English speaker, I have taken nearly two years of Blackfeet Language classes and am not fluent enough to translate or interpret for my elders and people. The Blackfeet Language Immersion Schools directed by the late Darryl Kipp have found that few adults can pick up the traditional native tongue when English is their first language as most Blackfeet use today. “We must start with the children at an early age” (Kipp personal communication 2000). Mr. Kipp worked with the Blackfeet Language for nearly 10 years and concludes he was not fluent enough in the language to have a conversation.

The English language in the written document of the *Agreement of 1896* 29 Stat. 253-354 has some discrepancies. It is vague and inconsistent with meanings of words constantly changing depending on who is interpreting. Article I states the reserved rights will remain “for as long as the land remains public lands and in accordance with Montana fish and game laws and regulations.” When this agreement was made, evidence indicates that the Blackfeet understood their rights would last forever, just like the mountains. Montana had just become a state in 1889 and was not recognized to Blackfoot People as a governing institution with power in their territory at this time. There were no state representatives at the agreement of 1895. Article IV and Article V conflict with one another. Only Indians who were engaging in pastoral pursuits was given goods but the land is "wholly unfit for agriculture” and the government knew most of the crops failed on the Blackfeet Reservation. The agreement said there would be no more allotments in Article V. “Land allotments were made to the 2,450 Blackfeet on the tribal rolls following completion of the reservation wide survey in 1912”(BIA 8). Since the General Allotment Act was passed in 1887 and an agreement was made with the Blackfeet that same year, Article IX is invalid. Allotments were part of the 1887 Agreement but by the 1896 Agreement, there would be no more allotments.

Article VI is still a major issue for the Blackfeet. The western boundary has been the site of an ongoing dispute for the Blackfeet Nation. The fence was nonexistent for many years and was moved many times by the National Park Service and tribe. The park officials wanted to extend the eastern boundary of Glacier National Park to keep visitors from too much exposure to the uncivilized Blackfeet People. As the Blackfeet look to exercise their rights on their land, many conflicts have broken out over the boundary and

denial of their existence and appreciation to the ceded strip. The Blackfeet Tribe is still fighting for the recognition of their western boundary today. There is a six-mile discrepancy that the tribe believes is a part of the reservation based on stone markers set up when the first survey was made outlining the ceded territory.

There has always been a question of who really signed the agreement, which was Article XI. Many of the first treaties were marked by a thumbprint to show evidence. Yet, the Agreement of 1896 has only the letter “X” to represent a signature. There were only 35 men at the initial meeting with the commissioners and many broke camp, leaving when no agreement could be made. The few Blackfeet who remained after the breakup of the negotiations 2 days earlier made the 1895 Agreement that is now 29 Stat 321, 353-354. The Blackfeet Agent had the records of names of Blackfeet members enrolled at the agency. Why were there no thumbprints used like in previous treaties and agreements? When reviewing the original document in the video *Backbone of the World*, the signatures and handwriting is the same throughout the 300 “S’s”. The signatures indicate that all the Blackfeet men write the same or make the same “X”.

The last concern for the Blackfeet would be—they understood the negotiation of 1895 to be a treaty not an agreement. The United States no longer made treaties after 1871. However, the Blackfeet refer to this as a treaty, not a statute of Congress. But Congress does not need signatures for a statute. The Blackfeet knew Congress had to ratify all treaties in order to be in effect and that was why the agreement was not ratified until June of 1896. In the 1895 Minutes of the Negotiation(National Archives), the Blackfeet during the negotiations referred to the meeting as making a “treaty” 37 times. The United States Commissioners also referred to the agreement as a treaty at least 12

times throughout the week of negotiations. The government misled the Blackfeet into believing this was another treaty council, but it was not a treaty but an agreement that is recognized only as a statute passed by Congress. A treaty is protected by the “Canons of Construction” but a statute can be abrogated by the plenary power of Congress through legislation.

**Do the Blackfeet have any rights to the “ceded strip” (i.e. traditional territory) today?**

The Blackfeet in proceedings of the 1895 Agreement were looking out for their future generations and general public. White Calf stated—

From Birch Creek to the boundary line is what I now give you. I want the timber because in the future my children will need it. I also want the grazing land. I would like to have the right to hunt game and fish in the mountains (1895 Minutes 18).

The Blackfeet men knew the mountains would last forever so they reserved rights in the agreement. “Those mountains will never disappear. We will see them as long as we live; our children will see them all their lives and when we are all dead they will still be there”(Little Dog, 1895 Minutes 7). The U.S. Commission knew the Blackfeet concerns and reserved specific rights in the agreement. The Blackfeet knew they were negotiating the ceded strip but made it clear to retain the right to hunt, fish, and gather timber.

The Blackfeet People reserved rights in the ceded strip of Glacier National Park in the *Agreement with the Blackfeet Indians of 1895* 29 Stat. 321, 353-354. The rights reserved by the tribe are as follows:

1. The right to go upon the land to cut and remove timber for agency and school uses, personal—houses, fences, and other domestic purposes.
2. The tribe retains the right to hunt on said lands along with fish in the streams.
3. *For as long as the land remain public lands and in accordance with the fish and game laws and regulations in the state of Montana.*

These are the rights stated in the agreement between the United States and Blackfeet Nation. Although there was discussion in the “1895 Proceedings of the Agreement” regarding grazing lands for tribal stock, grazing was not included as a provision in the final statute (4).

“Those rights not explicitly granted to the United States are reserved to the tribe” (*U.S. v. Winans* 198 U.S. 371, 378, 1905). The Blackfeet People have exercised those rights not included in the 1895 Agreement for the next century. “We only sold them the rocks” (Keller and Turek 61). The white men were after the gold and that was the main purpose for the agreement in 1895. But in later years, many rights not reserved in the agreement have been tested which include water rights, oil and gas rights, access to traditional lands for spiritual purposes, and the gathering of traditional herbs.

Blackfeet Tribal members were asked in this research dissertation what rights they have in Glacier National Park. Following is a list of their responses:

4. Terry Tatsey (BCC Natural Resources): gather timber and should have hunting but it is not acknowledged.
5. Darryl Kipp (Pigeon Institute): access to cultural sites.
6. Wilbert Fish (BCC Herbalist): reserved rights, ongoing use today for vision quest and ceremonies, but gathering is restricted.
7. Mike Tatsey (Natural Resources): water rights to the headwaters, grazing rights, free entry, some fishing, but dispute over hunting and grazing.
8. Roy Doore (BIA Natural Resources): water, elk pasture, reserved rights—right to access, gathering of wood, hunting and fishing (limited), and grazing.
9. Ira New Breast (Fish and Game): wood gathering, hunting season limits hunting rights, and free admission.
10. Robert Mad Plume (Forestry): right to get in free but can't exercise reserved rights.
11. Melinda Kipp (Beaver Bundle and Medicine Pipe Holder): fishing, hunting, wood gathering, and free admission.
12. Carol Murray (Beaver Bundle and Horns Society): hunt, fish, gather wood, free access, and gather plants.
13. John Murray (Beaver Bundle and Horns Society): right to hunt, gather wood, fish, and water rights.

Tribal members know they have rights in their traditional lands but their understanding is limited. They do not know how federal law, state law and regulations, the park service, and the courts have manipulated the statute to strip away their reserved rights.

### **Blackfoot Mountain Territory in the hands of the United States**

“Tribal religious rituals were prohibited by the BIA in the 1870s and 1880s. Some tribes shifted their ceremonial year to coincide with white’s holidays” (Deloria 1994:267). Other tribes went underground and practiced in secret by going to sacred areas. The mountains, remote lakes, and buttes were accessible to Indians to conduct ceremonies without interference from non-Indians. People made the treks to shrines and holy places to make the connections necessary for the well being of not only the tribe but all life on the earth.

“Western people who come into an Indian environment attempt to preach and take along their own set of categories and use it to deal with Indian people they meet” (Deloria 1999:224). Many of the sacred sites on public lands are threatened by visitors and subjected to new uses through land managed by the National Park Service (NPS), the US Forest Service, and the Bureau of Land Management (BLM). The various agendas for land use create conflicts among tribes, agencies, and other stakeholders. Professionals in parks, tourism and recreation understand too little about issue and values important to Native Americans (Freedman 2). As a result, federal legislation plays a key role in access and what level to preserve sacred lands.

“The ‘crown jewels’ of Yosemite, Yellowstone, Mount Rainier, Crater Lake, Mesa Verde, Olympic, Grand Canyon, Glacier and Rocky Mountain had been ‘Indian Country’ in 1850” (Keller and Turek 19). When conducting research and interviews

throughout the Blackfeet Reservation, every tribal member knew the tribe's territory included Glacier National Park before dealing with the Great White Father--US. "Glacier National Park tends to neglect Blackfeet" (Kipp personal communication 2001). The Blackfeet People have been present in the area known as Glacier National Park for thousands of years. This is illustrated not only through oral history and origin stories but also by archeologist Dr. Barney Reeves of the University of Calgary. "Reeves clearly showed Blackfeet use of the wide range of resources including camp sites, hunting, subsistence, religion, habitat, and domestic purposes"(Kipp personal communication 2001). Dr. Reeves has done extensive work for Glacier National Park and the Blackfeet Tribe in proving Blackfeet presence in Glacier National Park. The area is part of the original homeland of the Blackfoot Confederacy, it has historical value, spiritual meaning, viewed, as a sacred area, valuable for hunting and timber, used for gathering of foods and medicines, is the headwaters, and sustained the Blackfeet People long before gold was discovered. Most importantly, the Blackfeet reserved rights when the area was ceded to the United States in 1895.

### **Legislation impacting the "ceded strip"**

The late 1800s *General Allotment Act of 1887*, the *Canadian Indian Act of 1876*, and Reservation boundary of 1888 drastically changed the lifestyle for the Blackfoot Confederacy. In 1885, the Canadian Government amended the Indian Act to prohibit religious ceremonies and dances of the Blackfoot People. Gold and copper had been discovered in Blackfoot Territory so the United States Government wanted access and rights to the mineral. The Blackfeet end up ceding land in 1896 with much hesitation because it was the mountain front; therefore, "The Blackfeet reserve and retain the right

to hunt on said lands along with fish in the streams. For as long as the land remain public lands and in accordance with fish and game laws of the State of Montana.” (29 Stat. 321, 353-4) The “ceded strip” is on the western edge of the current reservation making up Glacier National Park (GNP) and the Badger Two Medicine (BTM) Unit of the Lewis and Clark National Forest.

The Glacier National Park was a dream of George Bird Grinnell. Since the *Agreement of 1895* 29 Stat. 353-4, he had campaigned for a national park to be created from the land ceded by the Blackfeet. “George Bird Grinnell would later claim that his only motive for serving on the commission had been concern for the Blackfeet. Yet, he hoped the cession could lead to a national park” (Keller and Turek 49). Grinnell along with James Willard Schultz had hunted and explored the territory for many years while living amongst the Blackfeet. Together, they described the mountains and wildlife surrounding St. Mary’s Lake in *Century Magazine*, newsletters, and many books which included Schultz’s books *Blackfeet and Buffalo*; *Memories of Life among the Indians*, *Blackfeet Tales of Glacier National Park*, *Sign Posts of Adventure*, and *Blackfoot Lodge Tales* by Grinnell. These men were considered friends of the Indians and given Blackfeet names. James Willard Schultz was known as “Apikuni” and George Bird Grinnell was known as Fisher’s Cap.

“On March 1, 1872, the Congress and President Ulysses S. Grant created the first national park in the history of the world” (Keller and Turek 23). This was the Yellowstone National Park. Yosemite in California was also another birthplace for the national park concept. “A national park open to all people” (Keller and Turek 21). The parks were viewed as public parks. No settlement was allowed in the park. “Hereby

reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people”(42 Cong. Sess. II, Ch. 23). All violators would be considered trespassers and be removed. The Secretary of Interior would make rules and regulations deemed necessary for the management of the park.

As awareness grew, many people lobbied Congress to set aside the Blackfeet ceded strip as a national park. “In December of 1906 Senator T.H. Carter of Montana introduced a bill to set aside the ceded strip as a National Park”(National Park Service 7). The bill did not pass because there were some clauses that conflicted. In February of 1908, a revised bill was approved by the Senate but died in the House of Representatives. The Public Lands committee made some adjustments to the bill in June of 1909 to be reviewed by both houses. January 25, 1910, the amendments were discussed then compromised in the Senate and House of Representatives. Upon approval, the bill was sent to President Taft who signed it.

### *1895 Ceded Strip Land Status Legislation*

Glacier National Park 36 Stat. 354 was established May 11, 1910. The park is viewed as a public park or pleasure ground for the benefit and enjoyment of the people in the United States. But there is, “Nothing contained in the statute that shall affect any valid existing claim, location, or entry under the land laws of the United States or rights of any such claimant, locator, or entry man to the full use and enjoyment of his land.” Do Blackfeet have any claim or protection of their rights under this statute? The Department of Interior has said their rights cease to exist but the District Court of Montana has recognized specific rights in Glacier for the Blackfeet. One of the limitations on

Blackfeet rights is the *Act of August 22, 1914* 16 USCS 170 which states—“all hunting or the killing, wounding, or capturing of any bird or wild animal is prohibited within the limits of said park”. The law also regulates fishing in Glacier National Park. This law does not specifically refer to or state application to reserved rights of the Blackfeet but has been used to prosecute and deny hunting for the Blackfeet People.

Glacier National Park falls under the National Park Service (NPS) 39 Stat. 535. The NPS established in 1916 is “to oversee national parks for the enjoyment of future generations”. The director, under the Secretary of Interior, controls and manages regulations for national parks, disposes of timber, punishes violators, oversees leases for accommodating visitors, grants grazing permits, and provides monuments. “The Secretary of Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service”(39 Stat. 535). The statute does not call for or require any consultation with interested parties, which would be the tribes. The park service would develop into a system gaining exclusive jurisdiction over Glacier National Park. Bureaucrats have control in the park system. “The Park Service appeared during a grim era for Indians”(Keller and Turek 27). The Blackfeet were starving and nearly two thirds of their population was dependent on government annuities. The National Park Service came into existence on August 25, 1916 by 64 P.L. 235: 64 Cong. Ch. 408; 39 Stat. 535. “When Congress created the National Park service in 1916 to operate the national parks, it bequeathed distortions and ignorance about native history”(Keller and Turek 26). Indians were believed to have disappeared from many of the parks. (Reeves)

One of the main goals for the park service is to conserve the scenery, natural and historic objects, and wildlife. (nps.gov) The Blackfoot fulfilled this role for thousands of years as the caretaker of the mountains long before the white man came into their traditional territory. Blackfeet are a vital part of the history of Glacier National Park and only recently with legislation like the 1978 *American Indian Religious Freedom Act* (AIRFA) 92 Stat. 469, their sacred and cultural sites are being protected. AIRFA allows the tribe access to sites and the use and possession of sacred objects is no longer prohibited.

“The Enabling Act for Lewis and Clark National Forest explicitly reserved Blackfeet Treaty Rights”(Pitt 3). In an area just south of Glacier National Park called Badger Two Medicine, the National Forestry has recognized Blackfeet rights reserved in the *1896 Agreement* 29 Stat. 353-354. “The southern portion of the ceded strip was included in the newly formed Lewis and Clark National Forest in 1897”(Pitt 3). This was only two years after the agreement between the tribe and U.S. Wilderness legislation for the ceded strip has been a threat to Blackfeet Reserved Rights. Recently, the tribe protested Badger Two Medicine becoming a wilderness area claiming their reserved rights would cease to exist. “The area is not available for wilderness classification because of rights retained by the Blackfeet Tribe in the Agreement of 1896”(Vest 30). The forestry interpreted the word “public lands” to include the Badger Two Medicine area found in the Lewis and Clark National Forest. “Lewis and Clark National Forest have been meeting with tribal officials in recent years to try to reach agreements on how those rights should be interpreted”(Lindler 7A). The tribe has passed resolutions—109-91 3/1/91 and 89-93 2/4/93-- protecting Badger Two Medicine and outlining the

agreements made with the Lewis and Clark National Forest. The National Forestry has been cooperative in working with the tribe to uphold their reserved rights to the ceded strip in their possession. Another issue arose dealing with oil and gas rights in the ceded strip of Badger Two Medicine. “Those minerals were not negotiated for by the government and were not considered minerals by the standards of the time”(Muhn 1). Gold was the main purpose of the 1896 negotiations but the classification of sub surface and surface rights for the tribe is yet to be determined.

The *Wilderness Act of 1964* 16 USC 1131-1136, 78 Stat 890 aimed to keep landscapes in their most pristine undisturbed sense of being. This conflicted with many subsistence activities of Indian people. Glacier National Park has been seeking wilderness status but with little concern or consultation with the Blackfeet. In 1973, Glacier National Park was being proposed as a wilderness area. “Implementation of the Wilderness Proposal would destroy all rights of the Blackfeet Tribe to irrigation storage and flowage sites in the area designated as wilderness”(Office of Trust Responsibilities, BIA 1). The Office of Trust Responsibilities acknowledged their role in protecting Blackfeet rights reserved from the 1895 Agreement 29 Stat. 353-4. As a result, they recommended the National Park Service consider the effects of the wilderness legislation in regards to protecting Blackfeet rights. Badger Two Medicine was denied wilderness status because they had specifically reserved rights in the negotiations of 1895 (Vest). The concept of sacred as seen in the wilderness act is a separate mechanism from subsistence activity. “Sun Lodges were erected on both Badger and Two Medicine Rivers” (Greiser 2). At the same time, the tribe has hunted, gathered plants and herbs,

and lived off the resources in Badger Two Medicine since the time of Creation in Blackfeet history.

### **Denial of Blackfeet Reserved Rights**

“When the ceded land became part of GNP, the land ceased to be public land and from the Federal Governments legal perspective, their rights were terminated” (Campbell and Foor 74). In the premature years, the Blackfeet were never consulted and the park rangers tried to deny the Blackfeet any rights to the park. “Although the service’s first two directors...plus many of the superintendents had a genuine interest in archaeology and native artifacts, their knowledge of living Indians was superficial and naïve”(Turek and Keller 28). This led to conflict between the Blackfeet people and park officials.

“The Indians protested renaming lakes, mountains, glaciers, and rivers in the park. The Indians wanted Blackfeet names to remain” (Keller and Turek 51). But their efforts failed due to many other elements the tribe was dealing with at this time period. In the early years of Glacier National Park, the Blackfeet presence was not a concern. From 1903 to 1909, a fence was built around the entire perimeter of the reservation. Whether an Indian was allowed to leave or not was the decision of the Superintendent. (BIA Plan 15). The Blackfoot did not venture outside the reservation in order to avoid prosecution.

From 1880 to 1930, the Office of Indian affairs had an intense period of assimilation (Campbell and Foor 51). “Without a reservation pass Native Americans found off reservation without the Agent’s permission could be jailed for their transgression”(Campbell 88). The Blackfeet had more pressing issues like accepting the Indian Reorganization Act, Court of Claims denying their rights, and policies of termination over the next decades. Blackfeet continued to sporadically press their rights

inside park boundaries. The unappealed ruling while terminating Piikani rights to GNP did not halt their use of the area even when Park Officials denied them (Campbell and Foor 76).

“While creation of Glacier terminated Blackfeet rights, it sustained those of non-Indians”(Keller and Turek 51). In 1910, Glacier National Park was established by 61 P.L. 171: 6th Cong. Ch. 226: 36 Stat 354. There were 4,000 visitors in 1911. As a result, the Blackfeet presence in the park area was not a concern. The visitor population increased to 800,000 by 1963 and the park service no longer wanted to acknowledge Blackfeet uses of the park. Yet, Louise Hill an entrepreneur in Glacier National Park employed many Blackfeet Indians as official hosts at his chalets and hotels. (Keller and Turek 57) The Blackfeet were exploited to promote Glacier National Park but their rights were stripped away in years to come. “Since Glacier’s founding tourists had always taken home postcards, posters, ashtrays, and coffee mugs with Blackfeet motif. Blackfeet appeared in the parks promotional films, magazines, and calendars”(Keller and Turek 62). The Blackfeet were only beneficial to the advertising and the drawing of visitors to Glacier National Park.

The National Park Service neglected Blackfoot presence in Glacier National Park. “Land now included in Glacier National Park has been under the claim of several countries—England, France, Spain, United States”(NPS 1964). As the land exchanged between territories and countries, Blackfeet presence was not mentioned. The United States Government did acknowledge their presence in the *1896 Agreement* once gold was discovered but other government agencies chose to ignore or abolish any Blackfeet claims including reserved rights.

In 1914, Congress enacted legislation, which gave federal jurisdiction and control over hunting and fishing in Glacier National Park 16 U.S.C.A 170. But the act did not extinguish Blackfeet rights. It only was gaining federal jurisdiction over Glacier National park in regards to hunting and fishing. This act prohibited hunting in the park but allowed fishing under regulations.

“Despite efforts of the NPS, the state, conservationists, and the BIA, Blackfeet persisted in hunting”(Keller and Turek 54). The Blackfeet knew they had reserved the right to hunt, fish, and go upon the land for timber in the 1895 Agreement. Being that hunting was essential to Blackfeet survival and ceremony, the people used the game to prepare clothing, meat, and other items needed for domestic purposes. “Deer and elk browsed in Glacier until winter storms drove them to lower elevations on the reservation. An obvious way to protect animals from being ‘ruthlessly slaughtered’ was to extend the park boundary six miles to the east”(Keller and Turek 53). The Blackfeet hunted long before the park was established and the game was still sufficient. They continue to hunt a hundred years later. Being that the elk need Goose Lake for their winter pasture the two entities made a cooperative agreement in the 1970s to allow elk to go back and forth. “There is no fence at the western boundary line near Goose Lake”(Doore personal communication 2001). The tribe has even tagged elk that can be killed on the reservation side of the pasture but members must have a tribal hunting permit.

“The Trust obligation has become a convoluted doctrine, and has been used by the US not only to protect the rights of tribes but also to infringe upon their inherent rights and sovereignty”(Sholar 157). The Blackfeet People were aware of their rights to the ceded strip. “In 1924, Peter Oscar Little Chief claimed by petition the Blackfeet retained

their 1895 reserved rights”(Keller and Turek 55). The petition was submitted to BIA but the Blackfeet were denied any rights to the park. “The Blackfeet held no rights in Glacier National Park other than those enjoyed by the general public”(Keller and Turek 53). Yet, in 1931 the Blackfeet were recognized when Glacier National Park became Waterton Glacier International Peace Park. “The international park is related to three governments: those of the United States, Canada, and the Blackfeet”(Keller and Turek 43). The act was passed by Congress in 1933 and signed by President Hoover.

“The right to go upon the land and cut timber” had been halted by the Department of Interior. “In June 1932, a report from Solicitor E.C. Finney who believed the claim by the Blackfeet that they had the right to cut timber could not be sustained”(Deal 1). The right to cut timber was still an issue for the tribe. In 1957, the tribe hired an attorney to look more in depth into their rights to cut timber. Attorney Lazarus in Washington D.C. stated to councilman Peter Redhorn, “The Blackfeet did have the right to cut timber in 1957 and this right was later recognized by the Field Solicitor in a letter to the Regional Director that the Blackfeet do have certain flowage and woodcutting rights in 1971”(Deal 1). The right to cut timber has been recognized despite the limitations on hunting and fishing.

“The Secretary of Interior is obligated under federal law to protect both the natural resources of Glacier National Park and unique rights of Indian People”(NARF 1974). In 1974, the tribe proposed an agreement to the Department of Interior to regulate hunting, fishing, and the cutting of timber on the ceded strip of Glacier National Park. The Native American Rights Fund (NARF) in their petition to Secretary of Interior joined the tribe in 1975. By 1976, the Solicitor replied to the Blackfeet and NARF stating—

“Such rights have ceased to exist and therefore denied the tribe’s petition”(Solicitor 1976). But suggested to the tribe to seek legislation to recognize reserved rights. The solicitor used the 1935 Court of Claims decision, the establishment of Glacier National Park 16 USC 161, the Solicitor Finney Opinion of 1932, Act of 1914 prohibiting hunting and regulating fishing 16 USC 170, *United States v. Kipp* 369 F. Supp 774, *United States v. Momberg* 376 F. Supp 1152, and “plenary power” in denying the petition submitted to the Department of Interior. The *Kipp* decision as read by the solicitor only gave the right to free entry to tribal members into Glacier National Park. *Momberg* a tribal member was convicted for violation of park regulations for cutting timber; therefore, this case was used to support the solicitor’s decision. “Plenary Power” came out of the *Lone Wolf v. Hitchcock* 47 L. Ed 299. “The decision confirmed absolute congressional control of native land”(Keller and Turek 27). Plenary power was at the controls of Congress and used when passing legislation.

The Native American Rights Fund backed down after the solicitor delivered his opinion. The only recommendation was litigation or a legislative solution. The tribe would have difficulty in winning the case because the statute reads “hunting and fishing regulated in accordance with state law”. Secondly, *the Act of 1914* 16 USC 170 was a barrier to tribal hunting. Lastly, the Court of Claims decision of 1935 was questionable in regards to jurisdiction over the case of reserved rights. But NARF felt the tribe had a stronger case for their timbering rights.

Legislation along with Rules and Regulations have played a major role in the shift in power and denial of Blackfoot Reserved Rights and detriment to their traditional culture and resources. The establishment of Glacier National Park in May of 1910 and

the National Forest Service have limited if not prohibited Blackfeet access and rights pertinent to their culture. The National Park Service continued to deny Blackfeet rights. They wanted to extend the boundary but this only led to confrontation and there is no boundary that satisfies the tribe or the park service. To give a better understanding of the park service, we must look at the phases between the park and Indian relations.

1. Unilateral appropriation of recreational land by the government.
2. An end to land taking but a continued federal neglect of tribal needs, cultures, and treaties.
3. Indian resistance, leading to aggressive pursuit of tribal interests.
4. A new National Park Service commitment to cross cultural integrity and cooperation. (Keller and Turek 233).

The park service has been making cooperative agreements with the Blackfeet People in the 1980s and 1990s under the guidelines of the *National Historic Preservation Act of 1978*. Although, the reserved rights are still not clear and the boundary problem is still an issue—the tribe and Glacier National Park are working together in identifying and protecting cultural sites under tribal resolution 357-99. “Glacier National Park recognizes the cultural and religious significance of Chief Mountain to the Blackfeet and is willing to work in protecting these sites”(NPS 1). There has been progress under *Section 106* in the work between the park and the tribe in identifying cultural and sacred sites.

### **Legislation that supports 1895 Reserved Rights**

The *American Indian Religious Freedom Act*(AIRFA), the *Enabling Act*, the *National Historic Preservation Act* (NHPA), the *National Environmental Protection Act*, and *Section 106 of NHPA* have given some acknowledgement to access and recognition of Blackfeet association with the “ceded strip”. The *American Indian Religious Freedom Act* of 1978 was passed to give Indian people the equal free exercise as

members of the western society. AIRFA was easily dismantled by *Lyng v. Northwest Cemetery Protective Association*. The court ruled that the “Free exercise clause did not prevent the government from using its property in any way it saw fit and in effect rolling back the religious use of the area completely”(Deloria 1994:269). There was no protection for traditional religions in US law which equated tribal spirituality to that of Western Organized Religion. Time honored ceremonies were treated as fads or matters of personal preference.

Under *Section 106*, the tribe must be consulted in any disturbances to their traditional territory. But government agencies have satisfied themselves for years with sending a letter to the tribe and if no reply within 60 days, the agency made decisions and put management plans into effect with no input from the tribe. Section 106 has opened the door for the tribe to give input but has no veto power. The tribe is not an equal partner to any decision made by the government agencies subjected to this process of consultation. Although *Section 106* is suppose to create partnerships with tribes the public domain is always a priority for the US Government. “We realize that neither Section 106, NEPA compliance/planning process provide the ideal context for holistic landscape or ecosystem planning and/or management” (Downer 14). The Blackfeet are in a bind because they must abide by rules and regulations on lands ceded to the federal government for their cultural resources and sacred area. The tribe is subject to federal decisions on the “ceded strip” on what can be deemed worthy of preservation in lands managed by government agencies.

“More extensive mining and timber industry activities, and greatly expanded recreation industry have impacted the use of public lands in the United States” (Deloria

323). Federal lands have been opened up to energy development. “Public lands are being used for a pittance, began to restrict Indian access to sacred sites by establishing increasingly narrow rules and regulations for managing public lands” (Deloria 324). The Blackfoot tribe responded by issuing a tribal resolution to oppose drilling in Badger Two Medicine based on their reserved rights in the area. “In 1982, the Lewis & Clark National Forest (LCNF), despite strong protest and over 50 appeals, leased most of the Badger-Two Medicine for natural gas development (47 leases). The Environmental Assessment failed to consider ‘No Leasing’ as an alternative” (Flora 2004). The public has been concerned with oil and gas leasing being offered on federal land along the Front with the Bush Administration. The coalition was proactive and lobbied Congress to protect the Front:

Anyone who gazes at the Front, even from afar, must have some notion of how so many care so deeply about it. It is here, where the Rocky Mountains spill onto the prairies and amid the elk, bighorns, grizzlies, and other wildlife that you discover the soul of Montana. There are people that would drill holes in that soul! And to them we say this: not even if this were the last place on earth left to drill (Savethefront.org).

In recent legislation, there will be no more drilling on the Front. “The 109<sup>th</sup> Congress lawmakers passed legislation sponsored by Montana’s Sen. Max Baucus to halt future oil and gas leasing on the Front’s federal lands, thus clearing the way to retire existing leases”(www.savethefront.org). The forest service and tribe worked alongside the coalition to document sites in the proposed drilling areas of BTM.

In *Backbone of the World*, Curly Bear (Blackfoot Traditionalist) was asked to point out sacred sites in Badger Two Medicine but he could not translate Blackfoot concept of sacred land to satisfy the archeologist. He asked the non-Indian show me where in the church is your sacred area so the guy pointed out 3 areas in the church.

Curly Bear said well now I am going to bulldoze everything except those 3 places in your church and tell me how you feel. The archeologist replied, "I'll just go to another church."

"Sacred places are the foundation of all other beliefs and practices because they represent the presence of the sacred in our lives" (Deloria 1999:337). More recent legislation like the *Native American Graves Protection and Repatriation Act* of passed in 1990, have acknowledged the sacred to some extent. Items of cultural patrimony have been returned along with human remains under this law. This has created new burial grounds for tribes. It has also created a corridor for people to connect with the spiritual realms in their traditions. The Blackfeet cultural director was named Many Bundle Holder by traditional leaders to accommodate NAGPRA for the Blackfoot Confederacy. When visiting museums on behalf of the Siksikaititapi, the repatriation officer began experiencing a deeper connection to not only the bundles but the animals and items of cultural patrimony. Although, the repatriation officer was never a bundle holder the sacred made its presence known and was still a part of her.

There have been drafts of new legislation directly related to protection of sacred sites since AIRFA failed to grant protection of these areas. Meanwhile, tribes have been restricted to work within the confines of preservation laws and policies to grant protection of their sacred lands. "Tribal leaders were often able to work out informal arrangements with federal and state agencies to allow them access to these places of religious purposes" (Deloria 1994:268). Through these agreements specific site localities are revealed for access just to conform to western materialistic evidence of the sacred. Cultural districts made up of these specific sites are being mapped out in federal lands to

be incorporated into the National Registrar of Historic Places. There is no guarantee it will be protected from future management plans but at least it will be recorded in the Keeper of Historic Properties.

“There are many new studies that seem to confirm certain tribal practices are reasonable and sometimes even as sophisticated techniques for handling certain kinds of problems...including everything is alive and related”(Deloria 1994:281). Tribes have been consulted under various legislation requirements to allude to some form of protection of their sacred sites. The actual protection has not been a reality. Tribes are reluctant to reveal the sacred for reasons of exploitation, repercussions on the well being of their world, and lack of understanding of land tenure by western society.

### **Blackfoot fight for Rights**

“They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants, and address the President as the great father”(Sholar 157). The ceded strip, which is now part of Glacier National Park, was negotiated in the *1895-6 Agreement* 29 Stat. 353-354. The Blackfeet use this document to recognize and refer to their reserved rights to hunt, fish, and go upon the land to gather timber. “Court decisions have been indecisive” (Sholar 153). Their rights have been granted at times by the US Government but also have been stripped away on a case-by-case basis. The Blackfeet reserved rights could be viewed as a “political question” because the courts and Department of Interior have had conflicting views in regards to Blackfeet Reserved Rights and understandings. A “political question” is a signal to Congress that if they speak to speak explicitly where legislation can only be challenged on a constitutional basis not what they think is right.

“Prior to the act of May 11, 1910, the Indians of the Blackfeet Reservation did not exercise to any appreciable extent the rights reserved in the 1895 agreement...such rights were authoritatively terminated by the limitations of the act of May 11, 1910”(Court of Claims 1935). The Blackfoot Confederacy, the Gros Ventres, and the Nez Perce Nation filed suit against the United States in the Court of Claims in 1935. The tribe had four claims:

1. Their land was not protected from invasion, and consequently the destruction of buffalo and other game upon the territory set forth as Indian Territory. The Blackfeet sought \$19,200,000.
2. The tribe is seeking royalty and surface values to 13,361,200 acres of land granted in the 1855 Treaty (11 Stat. 657) article 4. The tribe should be compensated for \$24,312, 753.09.
3. The tribe was not compensated for the Executive Order of August 19, 1874, which amounts to \$2,615,525.00.
4. In depriving the tribe of their rights to the ceded strip 36 Stat 354 also part of the Glacier National Park, The Blackfeet are seeking \$250,000.

The court heard testimony of the tribes but could only go by historical and official documents held by the government. Tribes at this time were limited in their written records; therefore, their testimony and oral accounts had no standing in the federal court system contrary to the “Canons of Construction”.

“Blackfeet believed they would reserve the right to hunt and fish in the ceded area in perpetuity” (Sholar 160). The Blackfeet did not convince the United States government of their uses and exercising their rights to the park, which lead to their rights being “authoritatively” terminated by the limitations of the act of May 11, 1910. “They will no longer be permitted in Glacier National Park”(Keller and Turek 52). In reviewing the statute, there is no mention of terminating Blackfeet rights to the ceded strip in neither Glacier National Park nor who is the “authority” with the right to terminate their reserved rights. The Court of Claims did not speak on this issue specifically just in reference that

the land was part of the 1895 Executive Order. “The Court implies that the Blackfoot were not entitled to compensation and lost the right to hunt and fish in Glacier National Park because they had failed to exercise their reserve rights”(Sholar 159). The Blackfeet had never abandoned their ties to the ceded areas and continued to exercise their rights that are why GNP had asked the US to put up fences to deny Blackfoot access.

*United States v. Kipp* 369 F. Supp. 774 was decided January 3, 1974. Woodrow L. Kipp is a Blackfeet Tribal member who was arrested for not paying the entrance fee to Glacier National Park. He used the 1895 Agreement 29 Stat. 353 reserved rights for his argument. The Blackfeet had reserved the right to “go upon any portion of the lands so long as it remained public lands”. Glacier National Park 36 Stat 354 is a “public park” according to the language of the statute.

The term “public land” seems to have caused a major misunderstanding for the Blackfeet People. The court found that “public land” may mean land owned by a government and “public lands” means land owned by the federal government. The dictionary meaning refers to it as land owned by a government, especially a national government. *Kipp* found it is inconceivable that the Indians understood that there was hidden in that questioned phrase a privilege in the US to terminate the reserved rights by changing the character of the public ownership. (Sholar 158) Interviews within the Blackfeet Reservation of tribal members, Water Resources, Fish and Game Department, Natural Resources, Tribal Council, Peigan Institute, Blackfeet Community College, and the Forestry Department all understood the word “public land” to still apply to Glacier National Park. “National Park and by implication of the National Forest lands are to be considered public lands for the narrow purpose of interpreting Indian treaties and

agreements”(Pitt 37). This came out of the rules of judicial construction as they apply to Indian treaties. In *Swim v. Bergland* 696 F. 2d 712 (1983) the word “public land” was referred to in deciding the case for the Shoshone Bannock tribes right to grazing. The court found that “no evidence that the Tribes originally understood the term in a narrow legalistic sense”. The tribe could not have anticipated a narrow reading of the words “public lands”. The court held in *Swim v. Bergland* tribal recognition of grazing rights continued in fair proportion to grazing capacity on federal lands in the Caribou National Forest.

“The U.S. District Court for the District of Montana has determined that the establishment of Glacier National Park did not alter the character of ceded lands as public lands”(NARF 1). The word “public” must be applied to the understanding of the tribe. “As transactions between a guardian and his wards are to be construed favorable to the latter, doubts, if there were any, as to ownership of lands, minerals, or timber would be resolved in favor of the tribe”(Pitt 24). The Blackfeet who made the agreement understood their rights would last as long as the mountains were there. Even today, Blackfeet still understand the word “public” as applying to Glacier National Park; therefore, their rights should still exist. “Public Park” and “public lands” are the terms used in relation to Glacier National Park in federal terminology. The Blackfeet understand those terms to be related in meaning; whereas, the Department of Interior has said the park is no longer a public domain.

The district court found in *Kipp* 369 F. Supp. 774 the following:

1. The commissioners were interested in the minerals and nothing else:

The commission had told the Blackfeet during negotiations that this was the only chance the tribe had to get any compensation because the gold seekers

would invade anyway. The Blackfeet agreed to allow the U.S. to develop the minerals in the ceded area.

2. The Indians were interested in rights to grazing, timber, hunting, and fishing and wanted to reserve them:

The Blackfeet had benefited from the ceded area for years. It provided for them in daily survival and was a spiritual area in Blackfeet life way.

3. The Indians knew that the lands would be opened for mineral entry and that some of the reserved rights could be diminished, as lands became privately owned:

The Blackfeet only knew the land was being sought for the shiny metal. They could not predict a national park but they knew they would live in harmony with the U.S. citizens and wildlife of the ceded strip.

4. Neither party had any land values in mind except those expressly mentioned:

“Of all the land the government has bought this that you have come to buy is the most valuable”(Tearing Lodge, 1895 Minutes 14). The commission tried to devalue the ceded strip to persuade the Blackfeet into selling the mountain front but the people knew the importance of the area to their survival and culture.

5. The Indians were told that the agreement expressed their wishes and were not told that under the agreement the U.S. could alter the character of its ownership and defeat reserved rights:

The Blackfeet could not foresee the meaning of “public lands” in the provisions laid out in the agreement of 1895. “Public Lands should be construed as the Blackfeet would have understood it at the time of the agreement”(Pitt 33). Their understanding of treaties would be the “law of the land—as long as the river flows and grass grows”. Their rights were in no danger of being denied to their traditional homelands and origin place.

6. The court ruled that the 1935 Court of Claims decision was not dispositive:

The Blackfeet retained rights in the ceded strip and there is debate on whether the Court of Claims had jurisdiction over the reserved rights.

The court also stated the *Agreement of 1895* 29 Stat. 353 opened the land for mineral entry only. The purpose of the agreement was to gain access to gold found in Blackfoot Territory and that is why the U.S. paid \$ 1.5 million for the area. Also, the U.S. had

promised the Indians the reserved rights as long as the U.S. owned the lands. “District Court of Montana determined that the establishment of the park did not alter the character of ceded lands as public lands”(NARF 1). The federal government still owns the land whether it is classified as a public or reserve land. The word “claim” in Glacier National Park 36 Stat. 354 can be construed to embrace the Indian reserved rights. The Blackfeet had made an agreement reserving their rights so they have claim to the ceded strip as “usual and accustomed places”(U.S. v. *Washington & Washington*). “Land laws” in 36 Stat. 354 must apply to the land ceded in 1895 by the Blackfeet. The court decided, “The reserved rights were not extinguished by the act of creating Glacier Park”. This case was never appealed and the Blackfeet have been able to gain free access to Glacier National Park since 1974.

*United States v. Momberg* 378 F. Supp. 1152 followed the *Kipp* case in July 15, 1974. Momberg was found guilty and fined \$ 1.00 for cutting a piece of dead wood from a live tree in Glacier National Park. Momberg claimed he was testing his reserved rights derived from the 1895 Agreement. The court did not acknowledge the reserved rights of the Blackfeet in this case. The court followed the *Kipp* decision saying the reserved rights were not extinguished by the act creating Glacier National Park 36 Stat. 354. US District Court of Montana also cited the Court of Claims decision in 1935 that, “The Blackfeet did not exercise to any appreciable extent the rights reserved in the aforesaid agreement of September 26, 1895 to hunt and fish in and remove timber from the land ceded in the agreement and such rights were authoritatively terminated by limitations of the act of May 11, 1910.” The Court in a sense gave the Department of Interior power to terminate Blackfeet Reserved Rights being it is the authority in regards to upholding

treating obligations and the trust relationship and oversees the National Park Service.

This is a conflicting view because the court found the creation of Glacier National Park did not cease the existing reserved rights but the limitations of Glacier National Park could be used authoritatively to terminate the rights. Did Congress speak explicitly to Blackfeet Reserved Rights in establishing Glacier National Park 36 Stat. 354? There is no clear statement but the Department of Interior has manipulated the statute to support their claims on behalf of Glacier Park and neglected their duties to protect their trust responsibilities to the Blackfeet Tribe.

*United States v. Peterson* was decided in the U.S. District Court on November 17, 2000. A Blackfeet Tribal member, Bailey D. Peterson, was charged with hunting in a national park and violation of two accounts in the *Lacey Act* 31 Stat. 187. The *Lacey Act* prohibits transporting dead bodies or parts of any wild animals/birds where such animals or birds have been killed in violation of the laws of the state, territory, or district. The defendant killed three bighorn sheep but did not preserve the meat and just took the heads. The court found the Blackfeet have no treaty right to hunt in Glacier National Park using the statutory language of the establishment of the park. The district court said the *Act of August 22, 1914* 16 USCS 170 applies to the Blackfeet in abrogating their right to hunt as all hunting was prohibited in the park. The court held--“Despite Congress’s failure to refer to treaty rights explicitly, it is clear that Congress intended to create a game preserve in Glacier Park where the Secretary of Interior was not authorized to allow any hunting.” Yet, the trust relationship between the federal government and tribes is the protection and obligation under treaties to manage all their affairs through treaty provisions. The protectorate status came out of the 1832 case *Worcester v. Georgia* 8 L.

Ed 483; where the U.S. is a protectorate through obligations of treaties. This was a conflict of interest for the Secretary of Interior who must protect tribal treaty rights and the park service regulations. The facts against *Peterson* were in conflict with the traditional views and concept of hunting for the Blackfeet. The tribe was divided on whether to support Mr. Peterson because he was viewed as trophy hunting and killed 3 big horn sheep only taking the heads. The case could be another obstacle in asserting reserved rights for the tribe.

The *Peterson* and *Momberg* cases are a setback for the Blackfeet in exercising their reserved rights. It seems the district court is not definite about how the establishment of Glacier National Park 36 Stat. 354 and Act of 1914 16 USCS 170 applies to the Agreement of 1896 29 Stat. 353. In the *Kipp* decision the park establishment did not apply to Blackfeet Rights but when it came to a specific right like hunting in *Peterson* and *Momberg* the statute abrogated the rights reserved by the tribe. The prohibiting of hunting in 1914 in Glacier Park backed the basis for the decision against *Peterson*. It did not specifically address the issue of fishing and gathering in GNP. The Blackfeet continue to struggle in exercising their reserved rights on their traditional lands.

Other tribes like the Menominee and Yakima have been able to retain their hunting and fishing rights off the reservation. In 1968 the case *Menominee v. U.S.* 391 U.S. 404, found the tribe possessed hunting and fishing rights under their treaty. They had reserved rights like the Blackfeet that survived the termination of their land but in the Blackfeet case--the ceded strip. The case also stated that there must be an "explicit statement" that is clear and specific by Congress in the statute or legislative history

before finding an intention to extinguish treaty rights. The establishment of Glacier National Park 35 Stat. 354, prohibition of hunting in GNP 16 USCS 170, and National Park Service 39 Stat. 535 do not speak specifically to Blackfeet Reserved Rights in the 1896 Agreement 29 Stat. 353. Reserved Rights were interpreted in 1905 out of *United States v. Winans* 198 U.S. 371 (1905) from rights reserved in treaty. Treaty was not a grant of rights to the Indians but a grant of rights from them. The finding was that off reservation fishing rights at “usual and accustomed places in common with citizens of the Territory” still existed although the land is no longer part of the reservation. (See also *U.S. V. Washington 1976 and Washington v. Washington State Commercial Passenger Fishing Vessel Association 1979*) This reiterates the Canons of Construction—living documents interpreted by courts and people to rectify the inequality of treaties:

1. Ambiguities in favor of Indians
2. Understood as Indians would have understood.
3. Liberally construed not narrowly.
4. *Reserved Rights Doctrine*—that what has not been taken away, remains.

*Winans* also stated that a treaty must be understood by examining the circumstances existing at the time of its enactment. The Blackfeet understood their reserved rights to last as long as the mountains would last, public lands meant use of the land by the public, and their right to regulate tribal members use of the ceded strip (Murray 2011). The circumstances at the time of the 1896 Agreement included the new statehood of Montana. Did the Blackfeet predict the state would have the right to regulate hunting and fishing, gathering of timber, and right to go upon the ceded strip? The U.S. government came to the Blackfeet asking for land, the Blackfeet understanding was they were in control. But by the time the statute was written and interpreted Blackfeet rights and control were

subordinate to state law and regulations. State power was not a threat to Blackfeet at the time of the agreement.

*Winters v. United States* 207 U.S. 564 (1908) is the only case that has helped the Blackfeet assert its' water right in Glacier National Park. *Winters* upheld federally protected reserved tribal right to water independent of state law. This was reserved in treaties, reservations, and Indian rights. The tribe is guaranteed enough water to meet their needs to sustain their reservation. "Winters rights extend to streams, lakes and springs which arise upon, border, or traverse a reservation"(Getches 805). The Blackfeet Headwaters are in Glacier National Park; therefore the water from the park must meet tribal needs before the park can stake it's claim to water rights. Many of the tribes east of the Blackfeet Reservation are dependent on the Blackfeet for their water rights too. "The tribe has continued to negotiate their water rights to use water with the state, federal government, and tribes"(BIA 2). The tribe continues to cooperate with the agencies— park service, forestry, fish and wildlife, tribes, state, and the U.S.--involved in water rights. The right is being limited with the push to settle water rights for all tribes in Montana.

"The controversy over the scope of the Blackfoot Nation's reserved rights still continues almost a 150 years later" (Sholar 152). Chief Earl Old Person has continued to gain support and recognition for Blackfeet Reserved Rights in the ceded strip. He has written to Senator Conrad Burns, Department of Interior Secretary and Assistant Secretary of Indian Affairs outlining the agreement of 1896 and related court cases. In 1993, Gil Lusk, Park Service Superintendent, publicly stated—"The tribe does not have any rights in the Park and that even if it did, he would go to Congress to have them

terminated”(Old Person 1). The tribe is willing to preserve and conserve for the enjoyment of all, work cooperatively, and share in economic venues. The tribe would rather see their rights upheld than any compensation or termination of their rights.

**Chapter 5: Blackfoot Traditional Territory and Intellectual Property Rights**

“American Indian People typically want to provide the fullest protection for their cultural resources found beyond the bounds of tribal reservation”(Stoffle 229). The Blackfoot People were historically hunters and gatherers in the mountain territory given to them by *Napi*. They also followed the buffalo and moved their camps seasonally. Even during times of hardship with the loss of the buffalo and the lack of treaty rations the mountains provided for the various Blackfoot bands. The Rocky Mountains is an essential part of Blackfoot survival and culture; therefore, in the 1895 Agreement with the Blackfeet Indian Reservation in Montana (29 Stat. 353) the tribe reserved rights within the “ceded strip” of the mountains. The Blackfeet did not relinquish any claims to resource utilization—“Not a grant of rights to the Indians, but a grant of rights from them”(Winans 1905) The bands gathered many plants and herbs for food and medicinal purposes. They hunted the big game like deer, elk, moose, beaver, and other animals for food and ceremonial purposes. The lakes and rivers provided water to the people along with the connection to the oral history of Blackfeet culture. The Blackfeet People are still tied to the land today for survival and cultural purposes.

The Blackfeet have participated in many ethnographic studies(Reeves 2001; Campbell and Foor 2002; Greiser and Greiser 1993; Zedeno 2005) sharing their traditional ecological knowledge, relationship to the animals, plants, and cultural landscape to assist in land preservation in the “Ceded Strip” in recent years. Culture can be defined in many ways depending on who is defining and for what reason. “Taken in its wide ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member

of society”(“Encyclopedia of Social Science” 527). This chapter will focus on a society’s interaction with its environment based on culture. “Culture is defined as shared beliefs, values, and norms about a particular domain, in this case the landscape” (Toupal 2). Tribal culture is intertwined with their landscape as shown through their oral traditions, resource utilization, ceremonies, and connections to the land. “You can find extremely intimate connection between the lifestyle, the religions, and sometimes the political organization of the tribes in the land in which they live” (Deloria 223). They also have ties to traditional territorial lands they ceded in the time America was forming as a nation that is now part of the public domain.

The Blackfeet find themselves in a time of important decision making for their sacred landscape and reserved rights in their traditional territory explicitly stated in the Agreement of 1895 29 Stat. 353-4. The area of concern is known as the “ceded strip” particularly the area known as Glacier National Park (GNP) and Badger Two Medicine (BTM) of the Lewis and Clark Forest managed by the National Forest Service. The Blackfeet have abundant natural and cultural resources in the Rocky Mountains. Their reserved treaty rights in BTM and GNP are managed by federal agencies with rules and regulations for public land. GNP has neglected Blackfoot presence until the 1990s; whereas, BTM has acknowledged the Blackfoot at times.

“Legislation and policies from western perspectives may be incompatible with local cultural system”(Toupal 1). Preservation Laws have set some guidelines for managing federal lands and have given some voice to the Blackfoot Keepers of the Mountains. Yet, they are not always inclusive of Blackfoot uses and needs in the area of BTM and GNP. “Traditional Federal responses to cultural concerns have been public

participation, partnerships, a government to government consultation with American Indian Tribes”(Toupal 2). Toupal recognizes the weaknesses of this are:

1. Hegemonious decision that favor more powerful interest over others.
2. Public dissatisfaction with government dominance over local communities.
3. Lawsuits.

There has been extensive collaborative work as shown in *History is in the Land* by T. J. Ferguson between tribes to bridge the gaps of tribal interests and management by governmental agencies. As well as tribal initiatives like the Western Apache in *Wisdom Sits in Places* by Keith Basso to provide examples of how preservation of landscapes should be approached with tribes.

The interests of the public are often in opposition of Blackfoot culture and so the concept of utilization and preservation has been frustrating for the Blackfoot People:

The intimacy of their relationship to nature is far beyond our experience—the physical dependence and the intense emotional interplay with a world that cannot be directly altered to serve the needs of humanity...from this perspective the natural and supernatural worlds are inseparable (Nelson 15).

There is much at stake not only for resource utilization but also for the sacredness of the area that dates back to creation time of the Blackfoot worldview. “The traditional dichotomous approach to management and policies consider natural and cultural resources independent of each other” (Toupal 1). There have been management decisions—I.e. NPS let it burn policy — narrow preservation policy-- made that have jeopardized not only the natural resources but also the cultural resources in the ceded strip necessary for Blackfoot way of life.

“The Bush Administrations determination to drill for oil and gas, expedite coal mining and nuclear waste storage, and weaken regulations on hard rock mining is

intensifying the assault on sacred lands” ([Sacredland.org](http://Sacredland.org)). Land tenure for Native Americans in regard to sacred lands have been ignored by Western systems of knowledge, US government legislation and policies, and federal land managers. With the threat of sacred lands being desecrated, tribes have pleaded their case since the 1800s during the time of treaty making--where they reserved rights to sacred areas; to going underground when their ceremonies were outlawed; lawsuits in the Court of Claims; to filing claims with the Indian Claims Commission; to asking for protection based on the Free Exercise Clause of the US Constitution; to cooperating with Federal Land Managers for their various studies; as well as, depending on their trust relationship to protect their cultural and human rights through legislative statutes of Congress. Sacred lands will be defined from a tribal perspective to illustrate what types of sacred lands are important and vital to Blackfoot Confederacy. Lastly, tribal land tenure is not only the necessity to continue their culture but the foundation to exercising their sovereignty as a nation within the United States of America.

### **Tribal “organic” relationship v. “mechanistic materialistic”**

“Tribal knowledge systematically mixes facts and experiences that Western Science would separate by artificial categories”(Deloria 367). Western thinkers separate spiritual and material into two distinct aspects of reality. Indian people cannot make such distinctions. The major differences in spirituality are that non-Indians are individually oriented; educationally institutions are established to examine and sometimes radically change knowledge; they are exclusive; and are static. American Indians are communally oriented around the extended family. Spiritual knowledge is found in many generations being passed on through the oral tradition. “In a public forum, an Indian person might

state that the mountain is sacred, which non-Indian people hear as religion...the lack of understanding results from using one culture's term for another culture's concept"(Toupal 2). The group conscience is shaped by experiences and changes based on experiences. "If someone does not have the experience or belief in the sacredness of lands, he or she accord tradition the respect it deserves" (Deloria 1994:271). A person can be tied to a sacred place just based on their communal history as member of that tribe.

"Western Science is based on Roger Bacon's command to pry nature's secrets from her, by torture, if nothing else" (Deloria 2006:199) This ideology has led to a materialistic view of natural and cultural resources found on sacred lands. "The primitive holds the unity of experience in a continuum that transcends traditional western division of space and time" (Deloria 1999:362). The Blackfeet recognize "other-than-human persons" which can be animals, plants, rocks, and ecological processes. They refer to these beings as their "grandfathers" and "grandmothers". (Vest 461) This type of relationship in western mentality is "regarded as remnants of former days when our species had no scientific understandings of the natural world". (Deloria 1999:361) Place, people, animals, plants, and landscapes are physical attributes used to the categorize lands in western society. "Some sacred sites have very little evidence of use because they were considered of sufficient spiritual power that few individuals were allowed to go there. Consequently, the locations show very little evidence of Indian use"(Deloria 1999:77). *In Wisdom Sits in Places*, Western Apache are inhabitants of the landscape and are inhabited by it as well; meaning people and landscape are really one. The sense of place, the past, and self are intertwined. (Basso 1996)

Sacred lands entail a “web of relationships” (Ferguson 1). Indian people might state the mountain is sacred. Non-Indians hear this as religion and the lack of understanding results from using one culture’s term for another cultures’ concept (Toupal 2). “Western Science thus excludes a considerable amount of information that tribal peoples would feel to be a necessary part of understanding the phenomenon”(Deloria 1999:68). Only tangible resources are the only relevant sites western society can comprehend because they are detached and unconnected to the life tribes allude to for sacred sites. Plants, animals, ceremonies, and family seem tangible at first but soon reveal the web within which sacredness and the meaning of sacredness is held in a mountain (Toupal 2003:24).

“The land is always stalking people” (Basso 1996:38) Through association with sacred sites people can recall their history and are reminded of their cultural identity. “People live so intimately with their environment that they are in a relationship to the spirits that live in particular places. It is not an article of faith; it is part of the human experience” (Deloria 1999:224). When asked to identify what is sacred to his people, a Blackfoot man replied, “You have asked me to do the impossible!” (“Backbone of the World” video). The land manager prods for one site locality but the traditionalist suggests the listener try the sweat lodge. “Perhaps the grandfathers can explain”(Greiser 11). Another Indian responded—“Everything that needs to be said has been said. Why don’t you people listen?”(Ferguson 3). Yet, non-Indians are dumbfounded at such replies with no further insight or a tangible place. “Something’s that have utmost importance for primitive peoples can be found within the Western scheme of knowledge but perhaps in a differentiated form that make it difficult to identify properly”(Deloria 1999:356). Until

western society can open their minds to incorporate more than physical mechanistic material views of land, sacred sites will continue to be overlooked, desecrated, if not destroyed.

#### **Four levels of sacredness associated with Blackfoot Indian Territory**

Deloria has identified four categories of sacred that Indian people have identified with through their relationships with the land:

1. Land where events of great importance have taken place.
2. Sacred Event.
3. Land where higher powers have show themselves to human beings.
4. Future Based locations.

“Lands where events of great importance have taken place” predate non-Indian presence here on US soil. These lands help instill a sense of cohesion in the people and remind them of the passage of generations that have brought them into the present” (Deloria 1994:272). Often, these sites are related to human occupation and mark the people’s experiences in various lands. This could be a massacre site such as 1870 Massacre on the Blackfeet on the Maria's River. This event was a major event for the Blackfoot Confederacy where three bands of the tribe took refuge into Canada and that is why only one band the South Piegan (Blackfeet) remains under the jurisdiction of the United States. The Blackfeet began commemorating the event in the early 1970’s, which conjured up many issues in regards to Blackfeet culture to the site. Some elders recalled the memories of their ancestors and how they refused to go to the area. In recent years, the Blackfeet have visited the site, which is managed by the Bureau of Land Management to conduct ceremonies as well as educate their people about their survival. This event is

sponsored by the Blackfeet Community College programs and continues to be a vital part of Blackfeet tenure in Montana territory. Archeologists have disputed of the actually site locality but the Blackfeet have the memory of this event scarred into their collective soul.

The sacred or higher powers have appeared in the lives of human beings (Deloria). “Sacredness does not depend on human occupancy, but on the stories that describe the revelation that enabled human beings to experience the holiness there” (Deloria 1994:274). The central bundle of the Blackfoot Confederacy is the “Beaver Bundle”. This bundle alone encompasses up to 200 animals each with their own song and teaching to the Blackfeet People. “The Beaver Bundle was the most pretentious of the many sacred bundles of the Indian tribes of the Northwest. It overshadowed them all in size, and was surpassed by non in sacredness or importance” (McClintock 1). This bundle was given to Blackfeet from the chief Beaver to provide and protect them in daily living. This sacred event took place in one of the lakes now found in the mountain front known today as Glacier National Park and Badger Two Medicine of the Lewis and Clark Forest Service. The Blackfeet do not reveal the site and reluctant to articulate the elements of the ceremony. Discussing the nature would violate the integrity of their relationship with the animals and jeopardize the well being of the tribe. (Deloria 1994:274) The presence of the Blackfeet in the mountains is only a tidbit in the sacredness of animals dwelling in the area. They were the ones who taught the Blackfeet how to survive with them in the world of the Great Rocky Mountains.

“Land where higher powers have shown themselves to human beings.” There are places where the higher powers live—“sites that are holy in and of themselves” (Deloria 1994:274). People often visit these places to reconnect with their spirituality or be close

to the spirits. One of the main shrines for Blackfeet People is Chief Mountain. “They came here to fast, to pray for visions as they slept and brought these buffalo skulls for pillows” (Schultz 320). The people know that this is a spiritual area. “Eagle Head obtained the vision that enabled him to become the most powerful warrior and successful hunter that our tribe has ever had” (Schultz 332). The mountain is very steep and only the strongest warriors could make the hike to the top; therefore, they were rewarded with visions and powerful medicine. “In the earlier days, the mountains use to talk and reveal upcoming events. The mountains told of the white man coming” (Murray 2011). Going-to-the-sun road in Glacier National Park is part of the pathway to the higher powers, which is also adjacent to the spirits of Chief Mountain. Today, people still fast, pursue vision quests, and recognize Chief Mountain as sacred through offerings and ceremonies.

Then the last category: sacred lands ready to experience new revelations and new locations. Mainstream society irrationally and arbitrarily circumscribe this universal aspect of religion by insisting that traditional practices are restricted to their identification of sacred locations to places that were historically visited by Indians. “God is dead” (Deloria 1994:2770). Blackfeet still seek visions outside the reservation boundaries. Recent legislation has returned bundles to the Blackfeet Confederacy in the last decade. The keepers of these bundles seek knowledge and visions from the sacred landscape so they may continue their relationships with the animals, higher powers, and spiritual realm to take care of their people and all life on this earth.

“A great deal remains to be done to guarantee Indian people the right to practice their own religion” (Deloria 1994:279). Indian people cannot separate the secular from the sacred. Religion is not a realistic construct for Indian spirituality or connection to

sacred sites. Studies have been conducted for years by federal land managers in regards to seeking out sacred site localities “to prove the area in question is important enough to be protected from desecration.” (Greiser 10) Many methods have been suggested or even imposed on Indian people in western society in regards to their sacred lands but have fallen short of protecting and giving proper respect to the realm of spirituality lands possess.

AIRFA had no legal protection for sacred sites so tribes were subjected to work within the NHPA to protect their lands through nomination forms for eligibility for listing on the National Register of Historic Places as a Traditional Cultural Property (TCP). President Clinton issued *Executive Order 13007* (1996) that calls on agencies to develop policies and procedure to avoid physical damage to sacred sites or prevent Indigenous religious authorities from having access to them (Campbell 177). “An increased public awareness of Indian cultures and religions has reflected in the passage of AIRFA in 1978” (Reeves foreword). AIRFA allowed tribes to take initiative in asserting their reserved rights and opened up consultation in the “Ceded Strip”.

### **Blackfoot Consultation in the Ceded Strip**

#### *Glacier National Park*

“Glacier National Park historian, C.W. Bucholtz in his 1976 work *Man in Glacier* denies emphatically that the Blackfeet had any long-standing cultural associations to the park” (Campbell and Foor 30). Yet, GNP called upon Blackfeet Indians to promote and market for Great Northern Railway to welcome tourists to the park off the train for decades until the late 1950s. Many families recall camping in glacier and dancing for tourists in the summer months and this still occurs at the St. Mary’s entrance visitor

center. For decades, limitations and denial of access was put on the Blackfoot under US management of their ceded mountain territory with explicit reserved treaty rights.( In a letter to Peter Red Horn(1957) of the Blackfeet from Washington DC law firm, Arthur J. Lazarus wrote the hunting right was still denied but there were recognition of timber and free entry right--see *Tulee v. Washington*. “The denial of the Blackfeet’s cultural association and regular use of the Glacier National Park Landscape especially its eastern portion for cultural and religious purposes however is now fully recognized by the National Park Service policy” (Campbell and Foor 31). This relationship has been strained by boundary issues and termination of reserved rights.

“Indian People are requesting access to public lands and resources important to their traditional and cultural practices” (Reeves vi). The NPS commissioned Dr. Brian Reeves and Dr. Sandra Peacock to study the natives who utilized GNP. Their report finalized in 2001 studied the Salish Kootenai and Pikuni connections to the area known as GNP extending up to the Waterton-Glacier International Peace Park. The Crown of the Continent was inhabited by the Blackfeet and was finally fully acknowledged through Reeve’s work. He found:

Glacier National Park is the only Rocky Mountain national park in North America to have a very long standing and on-going native tradition associated with it. Blackfoot play important ceremonial role at important events within the park (Reeves xiii).

The mountains are vital to the Blackfoot Confederacy’s Indigenous rights and Intellectual Property. “Often GNP is depicted as a relic of the once great American wilderness in which native Americans played little or no role” (Reeves 1). The study enlightened the Blackfoot relationship for thousands of years calling into question the suggested anthropological views of the Crown of the Continent. The research found ties

recognizing the Blackfoot as being the best beaver trappers throughout the fur trade extending their mountain resource utilization up past Rocky Mountain House in Canada clear to the Yellowstone River into the north section of what is currently Yellowstone National Park. “Blackfeet have played and continue to play a very important role in Glacier National Park’s image...as well as promoting and marketing the Great Northern Railway” (Reeves xii). The Blackfoot people from early 1900s to today welcome tourists from many nations of this world to their territory when called upon by park officials. The Ceded Strip “is the place where most sacred things began and continue to be sustained”(Reeves xiii). The study concluded that both GNP and Waterton-Glacier International Peace Park are cultural sites worthy of the National Registrar for Historic Places as well as international acknowledgement of world preservation.

“The Blackfoot continuing role is essential in their minds to the maintenance of this most special place” (Reeves 249). The Blackfoot have always been caretakers of the Rocky Mountains and only in recent years they are being asked for their traditional ecological knowledge from land managers. “Not all 22 bands of Piikani followed the buffalo eastward each summer; some traditionally spent the summers on the eastern slopes and adjacent foothills” (Reeves ix). The Blackfoot People survived, sustained, and interacted with the landscape long before it came into the hands of the US. Dr. Reeves suggested the Blackfoot should be a co-manager of GNP but that partnership has not been an opportunity mentioned to the Blackfeet Nation by the NPS.

In 2000, the tribe called upon the University of Montana Dr. Gregory R. Campbell and Thomas Foor to assist in identifying and documenting various tribal cultural resources within the boundaries of Glacier National Park that are significant to

the Blackfeet. (Background) The research was conducted to “identify and evaluate ethnographic values associated with 5 specific sites: located at Gunsight Lake, Lake of the Seven Winds, Oldman Lake, Pitmiakin Lake and Cobalt Lake.” (Campbell and Foor Intro) The sites not only had archeological value but were considered campsites for Blackfeet subsistence and ceremonial connections. “We recommend the NPS consider nominating the study area as an Ethnographic Landscape and study areas north of Going-to-the-Sun Highway also include BTM proposed cultural district”(Foreword). This study was not partnered by NPS or GNP officials but provided documentation by “expert witnesses” called upon by the Blackfeet. Lastly, Campbell found—Blackfeet traditionalists have passed on and continue to practice many of their traditional spiritual associations with the east slopes of the Northern Rocky Mountains. (34)

In 2009, the four Blackfoot bands of the Confederacy camped inside Glacier National Park on the St. Mary’s Lake to discuss their continuance as a Confederacy with highest regards to the landscape of the Rocky Mountains. This great encampment portrayed ceremonial rituals as a Confederacy through the four directions, painting of the rocks transfer, name giving’s, vows, society capturing new members, horsemanship, stories of bravery in this contemporary time, social singing and dancing, and sharing of the oral tradition to the younger and future leaders of the Confederacy. The fact the Blackfoot publicly returned to the park to gather, as a Confederacy is evidence how sacred the area is bringing 4 separate nations across the medicine line to reconnect internationally, socially, spiritually, and continue their intimate relationship with the Backbone of the World.

*BTM*

“Tribal ways represent a complete and logical alternative to Western Science” (Deloria 66). The recent laws are trying to include a more holistic view to protect cultural rights to lands managed by the federal government such as BTM managed by the Lewis and Clark Forest Service (LCFS). “Cultural resource preservation laws have gradually adopted an enhanced focus on American Indians, or Native Americans” (Wright 131). This can be found in recent Preservation Bulletins of the National Park Service--National Register Bulletin 38 and National Register Bulletin 36--that the forest service has utilized to document and study Blackfoot connection to BTM. “This area offers Blackfeet people the context, opportunity, and resources to renew religious institutions and practices associated with mountain environments that other areas, including Glacier National Park may no longer offer”(Zedeno 76). BTM is a sanctuary to the Blackfoot people today with recognition of reserved rights not as strained as GNP.

The Blackfeet have continued to assert rights on their traditional landscape and cooperated with federal land managers seeking information into their traditional ecological knowledge of the Rocky Mountains for years hoping to enlighten and acknowledge their relationship and reserved treaty rights to the area of the ceded strip. Consultation has been more frequent with the southern portion of the “Ceded Strip” in Badger Two Medicine giving some recognition to Blackfeet reserved rights. The reservation is the only access on the west side of BTM and there has never been a legal “right of way” given to the forest service but the tribe has allowed them access all these years. The initial intention laid out in the negotiation was the tribe would manage its reserved rights but as the US has made itself dominate through paternalistic legislation

and exploiting the “ceded strip” to its benefit the tribe was silent for years. Section 106 has acknowledged the tribe allowing some input but has no veto power. The tribe is not an equal partner to any decision made by the government agencies subjected to this process of consultation.

“Badger Two Medicine was a wilderness until the 1960’s when the trail system was expanded primarily as a result of seismic exploration thereafter opening pristine areas to public access” (Zedeno 3). The coalition to protect the Rocky Mountain Front has proposed BTM to be re-designated as a wilderness area. “The wilderness act of 1964 aimed to preserve where the earth and its community of life are untrammelled by man, and where man himself is a visitor who does not remain” (Nagle 2005). BTM was denied wilderness status based on Blackfeet reserved rights. “Wilderness Act did not specifically allow for subsistence uses in wilderness” (Watson 2). The Blackfeet continue to gather timber and hunt as stated in the Agreement of 1895 in this contemporary age of opening up of public lands for recreational use and resource exploitation. The Rocky Mountain Front coalition continues to lobby that BTM be declared wilderness.

In 1983, BTM had been opened up to oil and gas exploration (Zedeno 3). Lewis and Clark Forest Supervisor Gloria Flora put a moratorium on oil and gas development within BTM area that extended to 1996. “Forest Supervisor Gloria Flora issued a historic decision to remove all national forest lands within the Rocky Mountain Front from further oil and gas leasing for the next 10 to 15 years” (Zedeno 3). There have been protests on both sides of the issue since the 80’s but the 9<sup>th</sup> Court of appeals upheld Flora’s decision in 2001. BTM is also a recreation area in the public domain with many

vested interests in the mountain area. Stakeholders include recreation use, wilderness status for outfitters and hunters, government agenda for public lands, industry, land conservationists, and Blackfeet Reserved Rights.

The National Park Service has laid out a concept called “Traditional Cultural Property” (TCP) under the National Historic Preservation Act. In 1991, Greiser and Greiser did an applied anthropological study aimed at documenting traditional use, traditional values, and TCP defined in the National Register Bulletin 38;3-4. (Zedeno 4) Thirteen TCP’s were identified and included in a proposed Traditional Cultural District (TCD) for BTM. Lewis and Clark Forest Service states that 75 percent of BTM is eligible for listing in the National Register of Historic Places as a TCD. (Zedeno 1) The Blackfeet have been consulted on their history with the area of Badger Two Medicine (BTM) through archeological evidence and formal interview of tribal elders (Greiser Report done by the Lewis and Clark Forest). A specific area was defined and submitted to the Keeper of Historic Places to be eligible as a National Historic Property in the National Register. The Keeper indicated it was eligible upon tribal approval through a tribal resolution from the Blackfeet Tribal Business Council and signature of the Bureau of Indian Affairs.

The “ceded strip” is not only a national park but also a recreation area for the public domain. The Badger Two Medicine Unit (BTM) managed by the forest service develops travel plans that span a 10-year period. The Lewis and Clark Forest service proposed putting in new roads to allow for motorized vehicles into BTM in the 2004 plan. The coalition to Protect the Rocky Mountain Front took the forefront and responded adversely to the proposed travel plan. They made direct contact with the

Blackfeet tribe to notify them of the proposed plan and the tribe appointed a committee to address the issues in Badger Two Medicine. A partnership was created with the Coalition to Protect the Rocky Mountain Front. As a result, “In the fall of 2005, more than 37,000 Americans contacted the Forest service about proposed new travel plan for the Front and a resounding 97.95 percent urged the agency to support traditional recreation on the Front” ([Savethefront.org](http://Savethefront.org)). The tribe was against the proposed travel plan and pleaded their case to the Lewis and Clark forest officials with concerns of their livelihood and culture. A plan was released excluding the BTM area that the coalition states--“A travel plan that protects wildlife while emphasizing traditional uses on the Front.” It appears the Badger Two Medicine Unit was left out of the travel plan due to impeding issues of reserved rights, cultural sites, and mineral leases.

The Blackfeet Tribal Business Council created the Badger Two Medicine Committee to review the travel plan and the nomination by the forest service for the cultural district that was mapped out for the tribe to consider and support. The tribe immediately refused the nomination due to the fact a major area in the northern section of the Badger Two Medicine Unit was not included within the cultural district. The forest service indicated that by registering the area as a TCP the tribal culture would be gaining proper respect it had been lacking in previous years and in the management decisions for the BTM area. The tribe was reluctant due to their reserved rights being at stake with any compromise made with the US Government who had disregarded the provision laid out in the negotiations for access and utilization of the “ceded strip”--which includes the Glacier National Park and the Badger Two Medicine Unit of the Lewis and Clark Forest.

The rules and regulations have tried to be a mediator to restoring some partnership or at least acknowledge the territory's historical caretakers—the Blackfoot People. Section 106 has required consultation with all disturbances to the “ceded strip” but has also stated that regardless of tribal interests a decision will be made by the government official not the tribe. If the tribe dislikes the decision for management of the area the supervisor will meet with the tribe and write a memorandum explaining his/her decisions. The US Government will remain the powerhouse in this process as shown in the management plans for BTM. “Three archaeological studies have been conducted in 2003 and 2004, determine the Longwell Proposal may need an Environmental Impact Study and a survey was conducted at Elkalf Mountain summit and the vicinity” (Zedeno 6). In 2004, US Army Corp of Engineers paid for an ethnographic study to determine whether an amendment of the current district boundaries is warranted. The BTM committee participated in this study with visits to proposed drilling sites outside the proposed TCD.

“Results found a number of objects, places, and resources that are of historical and cultural significance to contemporary members of the Blackfoot Tribe of Montana. These resources are also culturally significant to the Blackfoot, Blood, and N. Piegan Nations of Alberta, Canada” (Zedeno 74). The BTM committee could not be satisfied with this TCD nomination being fully representative of their natural and cultural landscape. For the first time, LCFS included the 3 bands in Canada as a stakeholder in the traditional territory of the Rocky Mountains. The Blackfoot Tribe of Montana remains connected to their counterparts of the Blackfoot Confederacy in

regards to ceremony, knowledge, and cultural resources of the “Ceded strip”.

Knowledge is only gained through transfer and caretaking of the Blackfeet TEK and resources that stem from the Rocky Mountains:

Ongoing activity of hunting, plant and mineral collecting, animal and bird trapping, praying and making offerings, and purifying medicines, bundles and babies, vision-questing and retiring of a wide variety of religious items. All these traditions are being passed on to children who accompany their parents to visit the study area (Zedeno 74).

### **TCP v. Landscape for BTM**

“Several small studies were sporadically conducted by cultural resource contractors over a four year period, which resulted in a lack of cohesiveness and integration while trying to comply with Section 106”(Greiser 10). The forest service has come to the conclusion TCD is the best option for BTM. Stoffle states, “Land management agencies manage places” (232). Sites are cultural resources; therefore, the place can be managed. “Traditional Cultural Property has been offered as a tool for identifying and protecting places and objects that have special cultural significance to American Indian or other US ethnic groups”(Stoffle 230). Land managers have done extensive resource utilizing the concept of TCP. The general considerations for documenting traditional cultural properties (Preservation Brief 36) include the following:

#### *1. The problem of confidentiality*

- The guidelines state “one cannot protect a property if one does not know that it is there” (2). The tribe has many vision quest sites in the area but this information is not divulged or shared with the community. This ritual is not only for the well being of individuals but continuance of the tribe as a people as means of survival through knowledge sought in these

visions—whether it be for bundles, medicines, songs, or rituals. “People are being asked to disclose the foundations of their religious and cultural beliefs in order to prove that the are in question is important enough to be protected from desecration” (Greiser 11). Some of the ceremonies that have taken place have been shared which helped in identifying specific site localities. Insight into these ceremonies as necessity for a site protection has made the tribe skeptical in identifying specific sites. Tribes have seen many of their sacred areas desecrated and exploited—a lesson learned. The forest officer was asked, “What guarantees are you giving the tribe this site/area will be protected there is no legislation to protect sacred sites”. The officer replied “there are no guarantees but at least if it’s disturbed or lost, it will be recorded. There are no promises the area will be protected from future land use projects” (LCNF Meeting 2004). The tribe should take caution before giving any information to the government agencies with no guarantee of protection. Why sacrifice the well being of the tribe if you have no assurances by your exploiter? The only one benefiting is the researcher in gaining insight into Blackfeet worldview while jeopardizing the tribe and disrespecting the sites sacredness.

## 2. *Documenting visible and non-visible characteristics*

- Traditional cultural knowledge as laid out by the government want the evidence if not proof that creation, ceremonies, and sacredness took place through documentation. “Traditional management approach relies on

biophysical sciences to understand natural resources and on social sciences, such as history, archaeology, and sociology to understand cultural resources. Each provides understanding for a resource but often is restricted to material or man-made cultural items” (Toupal 2). This has been a major obstacle for tribes not only in preserving their culture but also in land claims against the United States Government. Another limitation of the TCP view of traditional knowledge is the concept of animals. Animals cannot be documented as pertinent to a cultural district although the animals are central to not only the survival of food and shelter but to the realm of the Blackfoot ceremonial bundles of the people. Animals tend to be viewed by scientists and land managers according to inherent criteria defined by Western scientific concepts without reference to their cultural resources. (Stoffle 230) While visiting the BTM called Hall Creek with forest officials and their “expert witnesses”, the Blackfoot representatives saw an eagle, elk, deer, and beaver dam. The animals are sacred—shouldn’t their habitats be a site recorded as part of the cultural district—they are part of Blackfeet culture. The eagle is a source of power for the tribe; the elk and deer provide clothing, meat, shelter from the environment, and guides the ceremonial year for the people; and the beaver is the main bundle that encompasses the well being of the tribe in the past, present, and future. The researcher was quick to take a picture of the dam yet the tribal members were at awe with the closeness they had to the “water beings”. The intruder blasts the power of the animals by

stating, the animals cannot be considered as traditional culture in a TCP. Yet, the Blackfeet received their power from this area represented in the animals found in the Beaver bundle—central bundle of the Blackfoot people. The bundle is still vital to the survival of Blackfeet knowledge and culture as shown through the ceremonies held throughout the year.

### 3. *Period of Significance*

- There are two types of periods involved in documenting cultural significance. First is when a “property gained its significance” (Guidelines 4). This time period would include the Creation times for the Blackfeet of humanity amongst the animals and before the mountains were formed. “Historic Preservation connotes the saving of tangible resources of the past. Some reports read as if the culture in question is part of the past—not the present or future” (Greiser 11). This has proven to be an intellectual challenge for inclusion in the National Register. “It is usually fruitless, and of little or no relevance to the eligibility of the property” (Guidelines 4). Although, the Blackfeet Indigenous knowledge predates cultural traditional knowledge, a property is only relevant in aspects of documented history as shown in the second period of significance—use for traditional purposes. The Blackfeet are asked to prove the usage of BTM although there are periods in time where the tribe was denied access to the areas by state rules and regulations, forest service, and Indian Affairs. Also, the tribe must have utilized the area within the last 10 years consistently to be nominated. Indigenous knowledge is not apparent one

year and gone the next which seems to be the only time marker in traditional cultural knowledge as set forth by the government. The site must show physical evidence of usage, which creates a dilemma not only for the traditional use but conflicts with the indigenous knowledge of the area. For example, an herbalist may gather at a specific locality in BTM then identify a new area for conservation purposes. Often times, this knowledge is passed through oral tradition through families who do not share the information with other tribal members especially non-tribal members. The Hutterites were quick to exploit Blackfoot gathering sites with machinery that has jeopardized the traditional gathering by the tribes (personal communication 2012). These areas of usage may have been revealed in visions or passed through the transfer of knowledge in ceremonies where this knowledge is not shared with all members of the tribe but still vital to Indigenous knowledge.

#### 4. *Boundaries*

- “Defining boundaries of a traditional cultural property can present considerable problems” (Guidelines 5). This case has been illustrated based on the indigenous knowledge of the Blackfeet as shown through the protesting of the boundaries drawn for the current traditional cultural district nominated by the Lewis and Clark Forest Service. The forest service contracted archeologists and historians (expert witnesses) who have done ethnographic studies and applied anthropological methodology on BTM through scholarly research and interviews. A cultural district was

drawn on the basis of specific sites located or mapped in the area with a buffer zone created one hundred feet to prevent damaging to the cultural or sacred site. Rarely did a tribe return to the same place for camp life or ceremonial life to allow resources utilized to replenish themselves and for sanitary reasons. The travel routes to a site or just the need to move for survival will lead to many places being vital to Blackfeet traditional ecological knowledge which eventually leads to change in boundaries but more sites necessary to the traditional utilization of the Ceded Strip by the tribe. The restrictions have restrained indigenous knowledge to a few sites often to pacify the “expert witness” and the colonizer hungry for the traditional resources of the Blackfeet People. The colonizer will assert its power to the detriment of Indigenous knowledge by restricting knowledge to be defined in the limitations of the traditional cultural knowledge laid out in the laws of preservation. The Forest Service approached the tribe three times with a different offer each time to get their letter of support for the traditional cultural district. The second offer came with a verbal promise that if the tribe would just support the nomination as sites are found and identified the forest service would add them to the district. The tribe weary of any verbal promise by the colonizer who bases its power on the written document refused. The final request promised the tribe a re-evaluation of the area that was not documented due to grazing permits and private landowners shed some light on the agenda of the forest service and the narrowness of traditional cultural knowledge as a basis for

preservation of Blackfeet Indigenous knowledge and culture. This was the basis for the study B2M Final Report 2005 by M.N. Zedeno of the University of Arizona Bureau of Applied Research Anthropology.

##### 5. *Describing the setting*

- “In the content of eligibility determination or nomination, such intrusions if severe enough may compromise the property’s integrity” (Guidelines 6). This is brought to light with the exploitations of the area’s resources of oil and gas exploration that will have adverse effects on the habitats of the plants, animals, and cultural integrity of BTM. The recent legislation halt leases encompass the desire to keep BTM pristine and protected. These are elements of Blackfeet Indigenous Knowledge and the basis for preserving the area for its resources and respecting the provisions as written in treaties for reserved rights by the US Government.

“While the sites under consideration are recorded primarily for their archaeological value, the importance to contemporary S. Piegan culture, their historical continuity in linking them to their archaeological past, and the cultural centrality of these sites of other continuance as a people remain unrecognized” (Campbell 16). Traditional Cultural Property has no direct protection for Blackfeet Reserved Rights or guarantees of acknowledging the holistic Indigenous knowledge including Traditional Ecological Knowledge of the Blackfeet in BTM. It has limited itself to archeological evidence, physical site locality, period of significance of traditional use with the last 10 years, and defining specific boundaries. “The legal framework for designating TCP’s requires that present-day traditional activities, including religious use be professionally documented”

(Campbell and Foor 14). The realm of acceptable and appropriate knowledge as defined by the TCP Guidelines has neglected many aspects of traditional Blackfeet knowledge and resource utilization, which has limited the tribe in exercising their reserved rights to the “ceded strip”.

“Some Indian people will not share sensitive cultural knowledge with Euro-American researchers” (Campbell and Foor 14). The “cultural divide” as stated by Campbell between cultural and religious philosophies of native Americans cannot be fully communicated as it does not translate adequately across and between Native American and Euro-American worldviews. The latest landscape initiative—Ethnographic Landscape—appears to be a more encompassing concept for the Blackfoot People in regards to BTM proposed TCD as well as GNP.

#### *Landscape Initiative*

The Cultural Landscape Initiative (NPS Bulletin 38) is a suggested alternative to TCP. “American Indian cultural resources are better protected as Cultural landscapes that as traditional cultural properties” (Stoffle 245). A cultural landscape is defined as "a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values." The Ethnographic Landscape guidelines seem more compatible with the access, reserved rights, and preservation of Blackfeet Indigenous knowledge and way of life in the Rocky Mountains of the ceded territory. “The TCP concept is too restricted by laws and regulations that created it to be used to protect larger, multiple –component American Indian cultural resources areas” (Stoffle 245). TCP rules are limiting with physical sites as the element taken into account when

documenting evidence of use.” TCPs are often documented in terms of easily identifiable, bounded places that land managers can recognize as kind of historic property”(Evans 54).

The Landscape guidelines state:

*Ethnographic Landscape*--a landscape containing a variety of natural and cultural resources that associated people define as heritage resources. Examples are contemporary settlements, religious sacred sites and massive geological structures. Small plant communities, animals, subsistence and ceremonial grounds are often components. (NPS Preservation Brief 36)

The guidelines are not limited to specific boundaries or the confines of TCP narrowness in what is pertinent to acceptable uses or resources by Indigenous knowledge and practice. “The only way to identify ethnographic landscapes is through the knowledge of the people who give them meaning in the first place” (Evans 55). The Blackfoot Culture encompasses not only the Blackfeet (Amaskapi Pikuni) but also three bands in Canada who have been left out of most research done in BTM and the Rocky Mountains.

“Native American landscapes, however, are much larger in geographic space than are those considered by the NPS guidelines” (Stoffle 234). The Blackfeet would not only state BTM as their “ethnographic landscape” but would incorporate Glacier National Park and the Rocky Mountains that extend into Canada. “Ethnographic Landscape is a social and cultural construction of the people who use them” (Evans 53). This context would not only extend boundaries but also include all nations of the Blackfoot People (Kainai, Abatso Piegan, and the Siksika). “Ethnographic Landscapes are identified and delineated by members of the cultural groups who are traditionally associated with them and whose histories and identities are tied to them”(Evans 54). The Canadian border has always been invisible when it comes to Blackfeet culture. The people continue to partake

in ceremonies on both sides of the border and visit areas vital to resource utilization along the mountains in their traditional territory.

Cultural resources are becoming more prevalent if not just as relevant as sustaining natural resources. “Cultural landscapes that require the continuation of traditional uses by those people whose life ways created and sustained them. Prohibiting their use, consequently, can result in degradation by means of protection” (Toupal 171). Preliminary studies have documented some physical and historical aspects of Blackfeet ethnography in both GNP and BTM as found in the previous reports. “Ethnographic landscapes do not correspond to material evidence of land and resource use as do archaeological or historic landscapes” (Toupal 172). This is a new concept land managers are hesitant to incorporate. “Many cultural resource managers are trained to deal with spots on the landscape, rather than the landscape itself” (Downer12). Blackfeet do not separate their culture into categories fitting western science. “Social, cultural, and natural environments are meshed and become part of the shared symbols and beliefs of members of the group” (Evans 53). These concepts were developed over hundreds of years of Blackfeet presence in the Rocky Mountains. Time is no longer a restriction under the landscape initiative: “May vary with periods of time and with sacred and secular contexts” (Evans 55). The Blackfeet believed their creation story took place near Going-to-the-sun road in one of the lakes in the Rocky Mountains. “Its significance derives from the roles they play in the associated communities own rational histories, not those criteria of national, stat, or local significance”(Evans 54). TCP had a limitation of use in the 10 years and only recorded sacred sites are pertinent to preservation.

**Barriers recognizing Blackfoot Ethnographic Landscape**

“Park officials have systematically attempted to erase any Blackfeet historical and cultural association within GNP. Name changes are a conscious attempt to eliminate their oral traditions from the landscape” (Campbell 171). The Lewis and Clark Forest Service have not readily adapted the landscape bulletin for BTM nor has GNP in regards to the Blackfeet cultural rights. “Bulletin 38 was only a guideline, not a law, and that compliance with it was not mandatory and therefore, unnecessary” (Downer 12). Land managers continue to use TCP guidelines but are trying to combine studies when working with tribal cultural rights. “The concept of traditional cultural properties has neither the spatial scope nor the explanatory power to make significant contribution to ecosystems studies and managements” (Stoffle 254). Some land managers have tried to use NEPA along with TCP to encompass cultures in the landscape. “We realize that neither Section 106 nor NEPA compliance/planning process provide the ideal context for holistic landscape or ecosystem planning or management” (Downer 14). This process is based on individual undertakings to meet specific criteria as laid out in guidelines for natural and cultural resources on federal lands and still lacks meeting the needs for protecting the context of tribal landscapes.

“American Indians have great difficulty in dividing up the physical world in a way that is most comfortable and convenient for cultural resource managers” (Downer 12). The Blackfeet worldview of their culture engrained in the Rocky Mountains cannot be fully understood with the confinements of current concepts of land managers. “It is difficult for resource managers to grasp the potentially complex and layered nature of ethnographic landscapes and even harder to define and document them within NRHP”

(Evans 55). Section 106 has given the Blackfeet tribe a presence in some undertakings in BTM and GNP regarding their ties to the Rocky Mountains. Ethnographic landscape research has the potential for providing useful management tools for a variety of federal land management situations creating a cross-cultural appreciation for the heritage of tribes and the local communities. (Toupal 182) The US Forest service and National Park Service have potential for preserving cultural landscapes:

Landscapes provide scenic, economic, ecological, social, recreational and educational opportunities that help us understand ourselves, communities and as a nation. Their ongoing preservation can yield an improved quality of life for all and above all, a sense of place or identity for future generations. (NPS Bulletin 36, p. 25)

This would have to be a new direction for resource and land managers. Land Managers are hindered by “research problem”:

1. Lack of knowledge and understanding cultural issues that would allow them to do a better job.
2. Staff lacks skills, patience, and tolerance to work with local people or groups of diverse people.
3. Manager’s lack of a consistently effective way including quantifiable methods to combine multicultural values and concerns with current management tools and concepts for decision-making.
4. Personnel may consult but find it difficult with their current level of understanding to incorporate Native American concerns, issues, and needs into decision-making.
5. Lack of knowledge and understanding the unique federal relationships of tribes and federal agencies of sovereignty, government-to-government relationships and trust responsibilities. (Toupal 25)

Tribes have worked with federal agencies for decades but there continues to be lack of shared partnership and acknowledgement when it comes to natural and cultural resources.

“Blackfoot Nation long asserted that is has never relinquished its treaty-reserved hunting, fishing, and gathering rights within the original western range of its reservations

lands” (Sholar 151). Through land claims(1924, 1935), agreements under Section 106 (Blackfeet Proposed Agreement 1974), leases for oil and gas exploration, and protests(1924 Little Chief Petition; NARF Petition 1975)the Blackfoot have asserted their rights. “Traditional management approach relies on biophysical sciences to understand natural resources and on social sciences, such as history, archeology, and sociology to understand cultural resources. Each provides understanding for a resource but often is restricted to material or man-made cultural items”(Toupal 24). Yet, the Blackfoot view of resource encompasses natural and cultural resources as necessity to their survival and collective history of existence in the Rocky Mountains.

“US must involve tribes in the procedural process, ‘not merely as commentators’ but as sovereign governments with power sharing capacity” (Sholar 169). The Blackfeet appreciation to Glacier National Park and Badger Two Medicine is far more reaching than the federal government, park service, general public, or state of Montana can ever comprehend or understand. “Under consultation, federal agencies do not have to implement any management strategies based on Indigenous information or concerns” (Campbell 88). In the recent collaboration of the BTM TCD, the Blackfeet were still dissatisfied with the proposed nomination arguing for the animals, the plants, and the other areas with no physical archeological evidence suitable for TCP status. The NFS made a decision and initiated another ethnographic study to add some sites into the TCD but the Blackfeet must live with that decision regardless.

### **Co-management for Treaty Rights?**

“Co-management can be examined as a problem solving process involving negotiation, deliberation, knowledge generation, and joint learning”(Berkes 1692). The

Blackfoot People have shared the vast resources of the ceded strip with United States and Canadian governments and citizens through a trust relationship. “US is obligated to ensure that tribal resources are protected and should include the obligation to enter into ‘meaningful tribal participation’ with tribes when tribal reserved rights are at issue” (Sholar 169). The Indian Education and Self-Determination Act opens the door for co-management and recent conservation efforts on government lands supports co-management when it comes to tribal resources off the reservation. The tribe has cooperated with GNP and Lewis & Clark Forest officials in their various studies done by non-Blackfoot People for decades (Blackfoot Resolutions 89-93 and 53-2000). Sharing their collective history and ties to the Rocky Mountains despite limited access and denial of treaty rights and rights to their traditional territory.

Today, many Blackfeet contend that they have never given up their rights reserved in their treaty of 1895 (Reeves xii). They continue to maintain their relationship with their traditional landscape in private and in public when allowed because it is part of their survival as a Blackfoot with obligations to the animals, water beings, rocks, spirits, and plants of the Great Rocky Mountains. “While elders recognize and appreciate the role that the park has played in protecting the plants, many are frustrated and concerned about having to “sneak in” to obtain plants” (Reeves 1). The oppressive history of the park still flows through the collective history to contemporary Blackfeet who fear being shot at when they go to gather in their traditional gathering areas in the “Ceded Strip”. “They make me feel I do not belong there,” stated a Blackfoot elder to Dr. Campbell in documenting Blackfoot ethnography.

“Tribes have the ability to protect off-reservation natural resources that impact their reserve rights, the Blackfeet should have a right to co-manage” (Sholar 168). In 1895, the leaders stated the mountains have provided for their people and the US was only after the minerals of copper and gold. Oral history is now being recognized and taken into account by the court system and government as documentation of uses on traditional lands. “Western science is beginning to understand that the oral traditions of native peoples contain much of value in managing natural resources and conserving biodiversity” (Reeves 2). The Blackfeet “expert witnesses” have done extensive work documenting Blackfoot natural and cultural resources in the Rocky Mountain landscape. “Mythology is a kind of history and they accept it as reality in much the same way that we accept historical documents” (Campbell 166). When reviewing the GNP and BTM documentation by historians, archeologists, anthropologists, geologists, and lawyers on the “Ceded Strip”, you get only a glimpse of the Blackfoot connection and relationship to the Rocky Mountains.

Blackfoot knowledge and use of the mountains is not only a US Blackfeet concern but also a concern of all Blackfoot including the three bands in Canada. There is no international border when it comes to Blackfeet ceremonies or resource utilization amongst the people. “NPS and GNP have been unwilling to recognize that the Blackfoot Nation should have more than a cursory role in protecting and exercising their reserved rights within the eastern portion of the park” (Sholar 151). The Blackfeet need to stand their ground in asserting their rights in the “Backbone of the World”. The Blackfeet have claim to the ceded strip before it became Glacier National Park in 1910. “*Provided that nothing herein contained shall affect any valid existing claim, location, or entry under the*

land laws of the United States or the rights of any such claimant, locator, or entry man to the full use and enjoyment of this land” (36 Stat. 354). In 1932, the Glacier National Park became an international peace park stating the Blackfeet would control the use of its rights by its members. Dr. Campbell states:

GNP cannot achieve its management goals without cooperation with the surrounding government agencies, including the Blackfeet Nation. Piikani cultural mandates they hold for the land are central to implementing sound policy decisions inside the boundaries of GNP. (24)

Traditional canons of treaty construction, the language of treaties, and court decisions support a tribal participatory role in the co-management of certain natural resources within the ceded mountain area is strengthened when the 1896 treaty is interpreted as Blackfeet would have understood (Sholar 168). An argument can be made that the tribe took the 1896 Agreement ratified by Congress to be a “treaty not a statute” based on the use of signatures with no explicit statement to abrogate their treaty rights granted to the US from the Blackfeet. Also, the statement by the Court of Claims in 1935 “The Blackfeet have not appreciated the ceded strip in Glacier National Park or exercised their rights” has no validity when the Blackfoot have used the area for ceremonies, attempted gaining recognition of their reserved rights for the last 100 years, and gathered secretly to avoid exploitation or prosecution by the park service or state officials.

“Co-management can foster a sense of community empowerment as local stakeholders participate in decision making and benefit sharing”(Yasmi 38). The reality of co-management is grim because of the bureaucracy of land conservation. NPS and LCFS allow the Blackfeet comments into their plans to an extent but ultimately they have never gained equality when it comes to conservation or managing resources in the ceded Rocky Mountains. In 2009, at Lincoln Institute of Land Policy, when discussing the

Crown of the Continent conservation it was stated Ethnographic Landscape is overwhelming because it requires management practices that transcend jurisdiction, regions within regions, ecosystems, wildlife management, mining issues, environmental impacts, watersheds, fire ecology, and people. Then you add Indigenous Intellectual Property rights and reserved treaty rights to the area, it really requires collaboration and cooperation across disciplines. Then you look at the Blackfoot people who have lived within the various ecosystems, gathered, planted, did winter burning, and interacted with the mountains for generations. Yet, they have not earned the title of “expert witness” to their own landscape but can tell you the Creation story originated in the waters, the mountains where the spirits live, sacred sites, campsites, ceremonial sites, seasons, how the animals behave and shared their knowledge of survival, what plants are edible and medicinal, how to navigate within the landscape, and protocols to abide by in times of unbalance within the Ceded Strip.

Euro-Americans interpretations will never fully be enough to protect the resources necessary for the Blackfoot People as “Keepers of the Rocky Mountains”. As a “keeper” you do not own but you are the caretaker in Nitsitapii worldview of their landscape. “We are not sure anymore. Our whole concern is to make sure that we maintain that cultural tradition to practice our religion. Whatever it takes we will have to do that” (Campbell 176). In the recent 75<sup>th</sup> Anniversary of the International Peace Park of Waterston and Glacier, ceremonial leaders from the Kainai, Abotsa Pikuni, and the Amaskapi Pikuni transferred two straight-up Blackfeet headdresses to the current superintendent of Waterton and the former superintendent of Glacier National Park in September 2007. Despite the denial of Blackfeet reserved rights and traditional use of both parks, the

Blackfeet still continue to uphold their promises of sharing resources with the government officials of the NPS and Parks Canada. “Once the headdresses were placed upon the superintendents tears began to roll down their cheeks and words could not express their emotions and gratitude” (Beaver Woman personal communication 2008). Emotions are high in regards to the “Backbone of the World”. The hope is with the transferring of the headdresses they come to realize the importance of maintaining good relations with not only the Blackfeet but also the animals who have sacrificed for those headdresses. This brings the story full circle nearly 100 years ago White Calf spoke his emotions--“Chief Mountain is my head. Now my head is cut off. The mountains have been my last refuge” (1895). The mountains are still there; the Blackfeet are still there; the waters are still there; the animals are still there; the plants are still there; the spirits are still there; the sites are still there; but the gold is gone.

“They (mountains) were there when your grandfathers lived. They never furnished you houses, never fed your cattle or fed you and clothed you. You must know that you can keep those mountains forever and not realize anything from them” (Polluck, 1895 Minutes 7). The U.S. tried to convince the Blackfeet the mountains were no benefit to the tribe but the oral history and the fact the people have survived is evidence the *mistakis* are a vital part of their existence today. The mountains provided animal skins used for clothing and to make lodges along with timber for tipi poles to set up their homes and warm their fires. The animals provided food when buffalo were scarce and the tribe was near starvation. The Blackfeet are facing many issues in regards to health and are seeking their traditional diet to overcome the sicknesses that are claiming the community. The animals and plants have provided medicine for the Blackfeet. The

Blackfeet have grazed their cattle on the land, which has helped sustain the main economic venue for tribal members since the time stock raising was imposed upon them in the 1880's. The continuation of Blackfeet culture and ceremony is evidence that the mountains are sacred and used in the beginning of Blackfeet life origins, present day ceremonies, and a necessity to the future of the tribe.

**Chapter 6: Blackfoot protecting the *Mistakis***

Although the Blackfoot People were unaware to the possible confrontations regarding their rights, they have strong connections to Glacier National Park and Badger Two Medicine *mistakis*. “The lands are essential to the recovery of traditional Blackfoot culture from decades of oppression”(Vest 36). The tie to the land is sacred and has been a part of *Nitsitapii* since Creation Time, Fur Trade Era, Treaty Period, Assimilation, Termination, and Self-Determination Eras. “They were there when your grandfathers lived. They never furnished you houses, never fed your cattle or fed you and clothed you. You must know that you can keep those mountains forever and not realize anything from them”(Polluck, 1895 Minutes 7). The U.S. tried to convince the Blackfeet the mountains were no benefit to the tribe but the oral history and the fact the people have survived is evidence the ceded strip is a vital part of their existence today. The mountains provided animal skins used for clothing and to make lodges along with timber for tipi poles to set up their homes and warm their fires. The animals provided food when buffalo were scarce and the tribe was near starvation. The animals and plants provided medicine for the Blackfeet. The Blackfeet have grazed their cattle on the land, which has helped sustain the main economic venue for tribal members since the time stock raising was imposed upon them in the 1880s. The continuation of *Nitsitapii* culture and ceremony is evidence that the *mistakis* are sacred and used in the beginning of Blackfoot life origins, present day ceremonies, and a necessity to the future of the tribe.

The Blackfeet oral tradition has stated, “We did not sell the mountains! It was a 50 year lease and now the US government tells the story different.” The United States government has restricted the Blackfoot People (Siksika, Kainai, Abotsa Pikuni, and

Amaskapi Pikuni) in their access and use of “Backbone of the World”. This area called the “Ceded Strip” was ceded to the United States in an agreement held in 1895(29 Stat. 353-4). The basis for denying the people of their rights is reflected in the laws and policies of the Great Father. Blackfeet reserved treaty rights began in 1895 only to have their access and hunting rights be violated in 1910 by the establishment of Glacier National Park. Yet, those same reserved rights in *Agreement of 1895* 29 Stat. 353-4 are still recognized in the Badger Two Medicine Unit of the Lewis and Clark Forest managed by the National Forest Service.

The Blackfeet wrote letters(Little Chief 1924, Roy 1956, Old Person 1973,1986, and 1993), made claims(Court of Claims 1935), and protested(Petitions 1924, 1975, 1985, 1997Blackfeet Resolutions 89-93, 53-2000) the denial of their reserved treaty rights over the last century. Today, the tribe is wrestling with the State of Montana in a compact agreement in regards to settling their water rights. Their sacred sites are being threatened by recreational use and plans set forth by land managers in the area known as the “ceded strip”. “We try to take care of our water and our timber and everything wildlife but there’s some people that don’t care about it” (Greiser and Greiser 3-5). The boundaries are being redefined and moved for various reasons and right-away access is unclear. There is much confusion and resentment amongst the Blackfoot People in regards to the *mistakis* (Rocky Mountains). Through analysis of the written record and oral history, the Blackfeet perspective begins to appear and the story of the “ceded strip” begins to unfold.

The Blackfeet have discussed filing a claim in regards to their sacred lands--the mountains taken in 1895. “The question that must be addressed in the issues of sacred

lands is the extent to which the tribal religions can be maintained if sacred lands are restored” (Deloria 280). The culture of the *Nitsitapii* is dependent on the natural and cultural resources of the mountains not only for recounting their history but also invoking the spiritual realm that has been neglected for many years. The people struggle with today’s demands of the separatism of there—*Two Views of the World*. “Young people are starting to seek their traditional knowledge but the rate at which tribal elders who have this knowledge are passing away. This is leaving tribes considerably poorer in their ability to deal adequately with their natural resources and to continue their ceremonial life” (Deloria 65). There is obvious unclear title to the Blackfoot mountain territory with the whole concept of leases under allotment(1985 *Montana v. Blackfeet Tribe*471 US 759), treaties(1888 ad 1895), agreements(1974 Proposed Agreement and concession 100 year leases in GNP), reserved rights(*Winters, Winans, US v. Washington*), public lands(*Swim v. Bergland*), access(*Tulee v. Washington*), encampments(2009), ceremonies, moving of the western boundary from Cut Bank Creek to the east side of the St. Mary’s lake to the west side of St. Mary’s lake (Jamison 1999), and lot leases on the border of the reservation and park boundary that have been returned to the tribe(27 IBIA 261).

#### **Validity of Agreement of 1895 29 Stat. 353-4.**

“We said it wasn’t true but they said it was in writing but we know what we agreed to. In disregarding our protest they moved the boundary line three times. They can’t make up their mind to what agreement they made!” (Greiser and Greiser 3-4). The oral history accounts of the proceedings in 1895 do not agree with many of the provisions laid out in the Agreement of 1896. Many of the elders thought the tribe had leased only the rocky ridges to the United States so they could get the rich rock. “We never gave up

anything only a lease” (Greiser and Greiser 1). The claim that the land was only leased still echoes throughout the oral accounts of the Blackfeet People today. The Blackfeet elders contend that the mountains were only leased to the US government for 50 years not sold as stated in the US statute known to the Blackfoot as the Treaty of 1895. “The Piikani leaders in response publicly announced their suspicion of the negotiation” (Campbell 70). The entire agreement is fraudulent in many ways but the tribe refused to break the teachings and did not document their version of the negotiations because of the collective history and the “power of word” is far stronger than a formal agreement the Blackfeet did not write. “Lease settlement for only the mountain rocks” (Greiser and Greiser 3-3). So why did Big Brave state, “I hope we will have no more talk with commissioner for fifty years” if the Blackfeet did not lease the mountains? (Minutes 19) During the Allotment era, tribes were given the opportunity to lease their lands for 25 or 50 years to non-Indians but they still retained the ownership of the allotment. Currently, the 100-year leases between the Blackfeet Nation and the Park Service for grazing and concessionaires are up for renegotiation.

In 1895, the Blackfeet met with the US Commission to make an agreement in regards to land. The tribe struggled with the idea of selling their provider—the mountains:

Three Suns:	We are to sell some land that you say is of little use to us.
White Calf:	You are supposed to be fair, unlike the commissioners in the last treaty of 1888 Sweet Grass Hills. We have decided by council upon the amount of land that we will sell.
Chief Little Dog:	We do not want to sell the mountains.
US Commissioner:	These mountains never furnished you houses; never fed your cattle nor fed you and clothed you...you can keep those mountains forever and not realize anything from them.
Little Dog:	I know that they are of some benefit to us.

Little Plume:	On your trip to the mountains we have learned you found some very rich rock.
White Grass:	There are three large veins of minerals through the mountains.
Little Plume:	If we are hungry we go up to the mountains and get game.
Three Suns:	You have said the mountains are poor. No, they are rich. No one man owns this land.
Wolf Tail:	You wanted to see if there was mineral in the mountains. If there was you wanted to buy it; if there weren't any minerals you did not want it. (1895 Minutes of Negotiation)

The *Amaskapi Pikuni* leaders know the value of the land and were willing to share the shiny metals the US Commissioners were anxious to gain access to as long as the mountains were kept within Blackfoot hands—explicitly stated Reserved Rights 29 Stat. 353-354. “The mountains were the most valuable of all their lands” (Campbell 71). The concept of a lease is restated in the collective history of the *Nisitapii* even though the agreement lacks respect for the landscape due to the policy of denying tribes their rights to acknowledge the mountains as vital to ceremonies and subsistence of the *Siksikaitstipiwa*. The negotiation was stopped when the Blackfoot refused to sell the mountains putting a price higher than the US would have paid at the time. “Little Dog said they could not agree, and there was no use having another meeting, so dismissed all the Indians” (Minutes 17). Many chiefs went home but through coercion and other means the US commission was able to entreat with those “hang around the fort” Indians to obtain the mountains. In the days after, there was talk about only leasing not selling the mountains just so the US could get the shiny rocks so they agreed to meet again with only 4 of the 35 leaders who remained.

### **Problems facing the Blackfeet in recognition of their reserved rights**

In the premature years, the Blackfeet were never consulted and the park rangers tried to deny the Blackfeet any rights to the park. “Although the service’s first two

directors...plus many of the superintendents had a genuine interest in archaeology and native artifacts, their knowledge of living Indians was superficial and naïve”(Turek and Keller 28). This led to conflict between the Blackfoot people and park officials. “The Indians protested renaming lakes, mountains, glaciers, and rivers in the park. The Indians wanted Blackfeet names to remain” (Keller and Turek 51). But their efforts failed due to many other elements the tribe was dealing with at this time period. The Blackfeet had more pressing issues like accepting the Indian Reorganization Act and oppression.

There have been barriers to progress in following up the recent recommendations and support from the Department of Interior. The western boundary of the Blackfeet Reservation is still disputed and being discussed between the tribe and Glacier National Park. The tribe is looking into litigation over the boundary problem at this time. Secondly, the Blackfeet tribe has a 90% turn over rate in tribal councilmen every two years. The research indicates that the issue regarding reserved rights in the “ceded strip” is not consistent with every council. As a result, there has been progress with one term of officials only to be set aside or ignored with the incoming council. The legal department has had no stability being they are also appointed by tribal council agendas and the staff changes with council members too. Lastly, there is no central repository for keeping track of all documents regarding reserved rights in the “ceded strip”. The sources used in this research came from various departments of the tribe—legal, culture, fish and wildlife, natural resources, and council correspondence.

Most importantly, the main problem facing the tribe is the lack of understanding of reserved rights manipulated by federal laws, state power, the Department of Interior, National Park Service, Glacier National Park, and the political relations in tribal

government. The Blackfoot have been told by outsiders what rights they have or don't have in the park for many years. It is a major commitment to take on when the tribe has had little success in litigation regarding their reserved rights. Most tribal members have no higher education or understanding of federal law—this includes the majority of the tribal members elected to the business council every two years.

### *Water Rights*

The tribe is currently in a standoff with the State of Montana in regards to their water rights. Water Rights have been the only right the tribe has had success in retaining with no limitations. The U.S. Park Service and the state of Montana made compacts to address specific rights to water in the various parks in Montana. The compacts were put into effect on May 12, 1993—“To settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana”(1). The compacts will have no effect on tribal rights; water right shall be determined by rule of priority; and nothing in the compacts is intended to conflict with or abrogate a right or claim of and Indian tribe. In 1979, the District Court of Montana adjudicated rights to water with respect to Glacier National Park. The U.S. priority date for Glacier National Park was May 11, 1910. “This date is junior to Confederated Salish and Kootnai Tribes of the Flathead Indian Reservation and the Blackfeet Tribe of the Blackfeet Indian Reservation”(1993 Water Compacts 17). The priority date originates out of the *Winters Doctrine* (1908 *Winters v. U.S* **207 U.S. 564**), which establishes a priority date with the first treaty to establish a reservation. “First in time, first in right” is the law for Western States right to water. The Blackfeet have been able to establish the right to water in the park. “Water right is protected. Water must stay in stream until it leaves the park. No

water resource diminishes by the time it reaches the reservation” (Tatsey personal communication 2001). This is the only right that is secure for the tribe in the ceded strip.

Water is a necessity not only for Blackfoot subsistence but *Nitsitapii* culture. The idea of compacting water with the federal government does not encompass nor understand the importance of water to the Blackfoot People. The *Siksikaitstipiwa* have always maintained their connection to water through use and ceremonial purpose. The Blackfeet have made connection with the water beings for centuries for protection and survival in times of famine and hardship through their bundles such as the Beaver and Thunder Medicine Pipe still in use today. “When the waters are high and the Thunder crashes on the mountains” it is time to renew the ceremonial cycle and open the sacred bundles for the continuance of all beings.

Water has been vital to *Nitsitapii* since creation. The Blackfoot Creation story is believed to have taken place in one of the lakes found in “ceded strip”. The Beaver Bundle is believed to originate in St. Mary’s Inside Lake. The Thunder Medicine Pipe has origin connections of the Waters in Badger Two Medicine. Many of the lakes and mountains are significant to Blackfoot spirituality and their unique culture, because of this association. All the mountains, lakes, rivers, and culture areas had original *Nitsitapii* names.

Most importantly, the main problem facing the tribe is their lack of understanding reserved rights manipulated by federal laws, state power, the Department of Interior, National Park Service, Glacier National Park, and the effects of tribal government agendas. The Blackfeet have been told by outsiders what rights they have or don’t have in the park for many years. It is a major commitment to take on when the tribe has had

little success in litigation regarding their reserved rights. Most tribal members have no higher education or understanding of federal law—this includes the majority of the tribal members elected to the business council every two years.

The tribe would need a strong case to litigate but with the lack of understanding by tribal members—reserved rights have been used in court cases not fully representative of tribal protocol. As a result, the Blackfeet reserved rights have been slowly defined to be narrower and at times non-existent. The Blackfeet need to educate themselves on Federal Indian Law, State law and regulations, their status as tribal members, and protocol in exercising their rights to the fullest. Rather than, testing their rights not knowing they are violating the *Lacey Act of 1900* 16 USC 3371-3378 , *the Endangered Species Act* 7 USC 136, 16 USC 1531 (1973), cooperative agreements (1973, 1985) between the tribe and park service/forest service, and limiting reserved rights for the tribe entirely.

Water Rights have not been tended to due to the current Blackfeet Tribal Business Council turmoil in the past year. Two councilmen were removed for violating hunting rules and regulations of the tribal code along with the Fish and Game Director. At the same time, the push to bring in revenue through the oil and gas boom leases was opened up near Chief Mountain. “Chief Mountain, arguably the most sacred site on the Blackfeet Reservation, has been leased for oil and gas development. Nine leases were signed at the base of Chief Mountain according to BIA records in May 2013” ([Indigenouspeoples.com](http://Indigenouspeoples.com)) This created an uprising of *Nitsitapii* from the US and Canada who publicly protested and marched onto the tribal headquarters on August 16, 2013. The tribe’s governing council released a statement that said, “The leases with Nations

Energy had been canceled because the company had not paid. The Blackfeet Tribal Business Council has always considered Chief Mountain as one of the most sacred sites on the Blackfeet Reservation,” the council said. This area was for spiritual use of the Blackfeet people only. This protection continues to this day and nothing has or will disturb this area, including any oil and gas development (Great Falls Tribune 2013). The people have spoken and defended, “those who do not know,” the responsibility to the *mistakis*.

#### *Traditional Nitsitapii v. Assimilation*

There is a great divide in traditional ceremonial leaders with the acculturated ethnocentric state of being in tribal council. The council is currently operating with only 6 out of 9 constitutionally recognized representatives that has divided and set up a new headquarters for 4 of the council. The US Indian Reorganization Act of 1934 has failed the needs of the Blackfeet Nation and they are currently working on a constitutional reform that recognizes their needs to incorporate their traditional values and forms of leadership to prevent ethnocentric non-Blackfoot ways of life. Chief on Both Sides (former BTBC) said he goes to the mountains when the job has tested his abilities to focus and ask for guidance to provide for his people. He goes to the sweat lodge at least twice a week to stay sane and mind healthy. The mountains are the last refuge for Blackfoot well being in this crucial time of uncertainty.

Although Chief Mountain has a buffer zone set up through park service, it only prohibits incursions of nontribal people. “I have gone to fast and pray on Chief Mountain. There is no privacy on Chief Mountain anymore. Hikers and tourists disturb me when I fast and pray. When I leave my offering to the spirits people take them and destroy them.

I cannot go to Chief Mountain to practice my religion any more” (Greiser and Greiser 3-25). Many walks and sleeps still take place despite the encroachment and disrespect of non-practitioners. “Chief Mountain is important to all Pikuni as evidenced by the fact that medicine men from both sides—US and Canada—gather there”(Greiser and Greiser 3-29). The recent *Siksikaitstipiwa* encampment on St. Mary’s Lake in 2009 revitalized their intimate relationship to help those with a lack of understanding of *Nitsitapii* obligations to the *mistakis*. This is a difficult task, as “transfer” protocols must be exploited to bring understanding to non-Blackfoot.

Land managers of the Rockies struggle to comprehend the intimacy of the *Nitsitapii* relationship with the *mistakis*. They manipulate the landscape in many ways through recreational use saying they are preserving the area known as public lands. No matter how much has been interpreted by non-Blackfoot--unless you follow the teachings of the animals, know the oral history of the Confederacy, and interact with the landscape naturally and culturally—the Blackfoot existence began and has continued through practices of subsistence and cultural utilization to the greatest landscape known as the “Backbone of the World”. The *Sisikaitstipiwa* have honored, respected, fought, shed many tears of frustration, regrouped, and share their story as Keeper of the Great Rocky Mountains. No matter what policy the Blackfoot have been subjected to in regards to their mountain territory, they have practiced their way of life in secret and in recent years publicly to maintain. Persistence of the *Nitsitapii* to stand their ground despite a century old battle for their rights and obligations to the *mistakis* clearly shows how committed the Blackfoot are to their mountain landscape.

## Recognition of Blackfeet Reserved Rights

The tribe may have a strong case when looking at the concept of treaties and U.S. Supreme Court decisions. The Blackfeet believe that the 1896 Agreement 29 Stat. 353 was a treaty and not just an act of Congress known as a statute. Treaties recognize the Blackfoot Confederacy as a distinct nation with control within their territory—self-government--that ceded land to the U.S setting up a trust relationship. At the time of treaties, the Blackfeet were ignorant to land ownership so the Canons of Construction must be utilized in treaties:

- *Ambiguities in favor of Indians.*

The word “public lands” is one of the main discrepancies for the tribe.

Glacier National Park is a “public park”. The word public has been used by the Department of Interior and National Park Service to promote their agenda and deny the Blackfeet Reserved Rights. Yet, the U.S. Supreme Court found in *Swim v. Bergland* that national parks and forestlands are to be considered public lands for the narrow purpose of interpreting Indian treaties and “agreements”.

- *Understood as Indians would have understood.*

1) “In accordance and regulation with state law”—there is no mention of state power in the negotiations between the tribe and U.S. Commissioners.

Montana was a new state still in its development years. How can a tribe be self governing and exercise their sovereignty with state power controlling their treaty provisions and reserved rights? The government recognizes tribal jurisdiction over their tribal members but at the same time takes away those

rights on traditional lands—ceded strip in Glacier National Park. The Supreme Court found in *U.S. v. Washington* that tribal control over their activities would not be in any way be restricted or impaired by the treaty in “usual and accustomed places”.

- 2) The Blackfeet believed they were negotiating the “1895 Treaty”. But there were no more treaties after 1871 under Title 25. In the 1895 Minutes, the Blackfeet leaders referred to the negotiations as making a “treaty” 37 times throughout the meeting in 1895. The United States Commissioners used the word “treaty” 12 times. “Now in this treaty we will leave you all the wood and take only the rocky ridges”(1895 Minutes 19). Agreements and Executive Orders are easier to abrogate and do not have the same status as a treaty. The Blackfeet understood this was a “treaty” not something that could easily be abrogated or denied. Supreme Court has held “treaty rights are a form of private property protected by Just Compensation Clause.” The United States has benefited from the agreement far more than the Blackfeet Confederacy. Why? The Blackfeet did not fully understand the terminology of the Great White Father. “Indians may testify of the understanding of their elders, and they in turn of their elder’s understandings of dealings with the white man over reserved rights”(Pitt 28). Another factor is the translation between Blackfeet and English. “The park resulted from fraud”(personal communication 2001). The Agreement of 1896 was not a treaty but an act of Congress 29 Stat. 353-354. The government and translators misled the Blackfeet People. The signatures are debated throughout the Blackfeet

Reservation to this day. “In previous treaties, the government used thumbprints for accuracy. But in the 1896 Agreement only the letter “X” was used to verify a signature at the Blackfeet Agency”(Doore personal communication 2001). The signatures or “X’s” are all the same in the original document as shown on “Backbone of the World” video production of the Badger Two Medicine Unit. If this was only an act of Congress not a treaty then why did they need signatures from the majority of adult Blackfeet men? Signatures are not needed for a statute of Congress. The entire negotiation was tedious and drawn out. Only 4 of the original 35 Blackfoot representatives spoke in the final day of the negotiation. The commissioners had no luck in making an agreement with the original 35 men but in one day were able to convince 4 to continue negotiations and write the treaty that same day. This was not a treaty; therefore, the Blackfeet should have some form of renegotiation or format to clarify the entire agreement. The United States Commission followed the treaty format with the preamble, provisions, revisions, signatures, and ratification by Congress.

- *Liberally construed not narrowly.*

The Department of Interior has used the *Agreement of 1896* 29 Stat. 353, the establishment of Glacier National Park 36 Stat. 354, *Act of August 22, 1914* 16 USCS 170, *Blackfeet...v. U.S.* in 1935 Court of Claims decision, *Kipp* decision in 1974, *Momberg* 1974, and state power in narrow legalistic ways to deny the Blackfeet any recognition of their rights or format to voice their concerns regarding the 1896 Agreement. This raises the “Political Question Doctrine” in

regards to the statutes used against the tribe in denying their claims to the ceded strip in Glacier National Park. Did Congress “speak explicitly” to Blackfeet treaty rights? The National Park Service and some solicitors believe they did when passing legislation regarding the park. But the National Forestry has recognized Blackfeet Treaty rights on the southern portion of the ceded strip—Badger Two Medicine. Recent solicitor opinions in 1974, 1984, and 1997 have recognized hunting, fishing and gathering of timber rights where they have been denied for years. “Tribes have exclusive rights to hunt, fish and boat, and right to govern ‘national recreation areas’”(NARF 9). The Blackfeet have been at the mercy of inconsistency within the Department of Interior solicitor’s and conflicting agendas within the various agencies.

- Reserved Rights Doctrine—which what has not been taken away remains. (See also *Winans* and *Worcester v. Georgia* 31 US 515)
  - 1) “The power to regulate the exercise of reserved rights is derived from the tribe’s inherent powers of self-government”(NARF 8). This has not been the case for the Blackfeet. Their reserved rights have been ignored and prohibited by Glacier National Park, the National Park Service, the department of Interior, and the state of Montana. None of these parties were a part of the 1896 Agreement that outlined Blackfeet reserved rights in the land ceded to the United States. The tribe has no power over the exercise of their reserved rights in the ceded strip because the minute they exercise those rights they are prosecuted, fined, and denied access to their traditional lands.
  - 2) Water rights are the only right fully recognized by the U.S. Park Service, Glacier National Park, the Department of Interior, and the State of Montana.

This right came out of the *Winters Doctrine* regarding rights to water to sustain the reservation.

- 3) Reserved Rights have been recognized in the southern portion of the ceded strip that is part of the Badger Two Medicine unit in the Lewis and Clark Forest. It was denied wilderness status because it violated the 1896 Agreement Reserved Rights of the Blackfeet. The forest service has been considerate and cooperative in consulting the tribe on major developments and legislation affecting the tribal rights to the ceded portion of the Lewis and Clark Forest land holdings.
- 4) Depending on the mood of the Interior, some timber rights have been recognized but still cause friction within the various agencies. “Possible confrontation still exists over reserved rights within the park”(Pitt 3). Obviously, there is a lack of misunderstanding between the tribe and agencies regarding reserved rights for this issue to have continued for 105 years. “Congress exhibited no clear intent to extinguish the reservation or its’ incident rights”(Pitt 32). The Department of Interior has manipulated and interpreted the various statutes to deny Blackfeet Reserved Rights.
- 5) “Silence on a topic—Indians still has those rights.”
  - The Blackfeet have maintained stock raising as the main economic venture for self-sufficiency within the reservation. Grazing lands were discussed in the 1896 agreement but no provisions were laid out. The right to graze livestock was not given up on the ceded strip.

- The right to gather plants and herbs was not part of the negotiations. The Blackfeet are dependent on many of the plants found in Glacier National Park for medicinal and food purposes. Herbalists from the Blackfoot Confederacy gather but have continued to fear prosecution or “getting shot”. These plants were given to the Blackfeet by the first beings and animals. Many of the ethno botany has contributed to mainstream society and been exploited for monetary gain; whereas, the Blackfeet have used the plants to survive.
- The right to minerals except gold has been a question to be debated. Oil and gas were not considered minerals at the time of the agreement but have come of value today. The purpose was to allow the white man to get the shiny metal out of the mountains.
- The right to preserve cultural and sacred sites was denied for many years but since the passage of the *American Indian Religious Freedom Act of 1978* the Blackfoot are gaining support. They have gained access and the park service has been cooperative in working with the tribe in identifying specific sites to help preserve them. Some tribal members have continued to fast and hold ceremonies in the ceded strip at traditional sites but did so privately. The mountains are the connection to Blackfeet origin stories, ceremonies, and culture. The Blackfeet knew the mountains would last forever so when they reserved their rights it was a way of keeping connected to their beginnings and spirituality.

The Blackfeet need to stand their ground in asserting their rights on traditional lands.

The Blackfeet have claim to the ceded strip before it became Glacier National Park in 1910. “Provided that nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entry man to the full use and enjoyment of this land”(36 Stat. 354).

In 1932, the Glacier National Park became an international peace park stating the Blackfeet would control the use of its rights by its members.

The Blackfeet appreciation to Glacier National Park and Badger Two Medicine is far more reaching than the federal government, park service, general public, or state of Montana can ever comprehend or understand. Translating the ties to the mountains from the collective history to evidence accepted in the court of law is the task necessary to retain reserved rights on traditional lands. Oral history is now being recognized and taken into account by the court system and government as documentation of uses on traditional lands. The argument can be made that the tribe took the 1896 Agreement ratified by Congress to be a “treaty not a statute” based on the use of signatures. Also, the statement by the Court of Claims in 1935 “The Blackfeet have not appreciated the ceded strip in Glacier National Park or exercised their rights” has no validity when the Blackfeet have used the area for ceremonies, attempted gaining recognition of their reserved rights, and gathered secretly to avoid exploitation or prosecution by the park service or state officials. The *Kipp* decision has never been repealed so reserved rights do exist in Glacier National Park for the tribe.

“Glacier National Park cannot achieve its management goals without cooperation with the surrounding government agencies including the Blackfeet nation. Pikanii

cultural mandates they hold for the land are central to implementing sound policy decision inside the boundaries of Glacier National Park” (Campbell 24). There are some tribes that have been granted the return of their sacred lands through Congressional action. “Congress returned the Taos Indians sacred Blue Lake and environs to the tribe” (Vest 459). Many tribes filed claims during the Indian Claims Commission in the 1950s for violations of treaties, executive orders, and agreements for the return of their sacred lands along with their other land claims. Santa Clara Pueblo requested 20,000 acres of their sacred lands be given back that are now managed by the National Forest Service and Atomic Energy Commission. (Deloria 279). Eleven sites have acquired some form of protection but there are thousands that are threatened ([Sacredland.org](http://Sacredland.org)). Great native scholar and lawyer Vine Deloria states:

There is not sufficient time for the non-Indian populations to understand the meaning of sacred lands and incorporate the idea into their lives and practices. We can hope that some protection can be afforded these sacred places before the world becomes wholly secular and is destroyed. (Deloria 282)

The Navajo Nation have a limited shared decision making in Canyon de Chelly National Monument which is Navajo Tribal Trust Land managed by NPS. The Navajo Nation retain ownership and have a joint partnership for management ([Roundriver.info](http://Roundriver.info)).

“These lands must be returned to the respective Indian tribes for their ceremonial purposes” (Deloria 279). The Zuni tribe was able to protect their sacred sites through the historic preservation process having their own archaeology program as well as through means of legislation and litigation (Mills 30). Tribes are starting to take part in public participation, partnerships, and a government-to-government consultation with federal agencies in regards to land tenure. The weaknesses of those processes are the decisions

often favor more powerful interest over tribes, public dissatisfaction with western paternalism over Indians, and lawsuits. (Toupal 1) Tribes must take on a stance to fight for their sacred areas because cooperation, consultation, and the trust relationship have not granted protection of their sacred lands.

The first change of perspective for Blackfeet reserved rights came from the Department of Interior Secretary in 1984 that stated in a letter to the tribe “certain rights have been retained by the tribe. The Tribe should pursue and use these rights.” This came shortly after *Swim v. Bergland (1983)* where grazing rights on federal lands were awarded to the Shoshone Bannock. The Blackfeet had also gained status with their water right being seniority to other claims. In 1997, the Department of Interior Solicitor recognized the water right and also “believes that a credible argument can be made that the rights reserved in the 1895 Agreement have not been abrogated”(Solicitor 1997). The shift in the Department of Interior is a new hope for the Blackfeet in recognizing their 1895 reserved rights.

### **Statement of Treaty Issues**

Another tool that is worth reviewing is the “Statement of Treaty Issues: Treaties as a Bridge to the Future” utilized in Canada. The Statement on Treaty Issues is a reference guideline by the First Nations of Canada along with the Canadian government to review treaties made with Aboriginal people. Being that part of the Blackfoot Confederacy is located in Canada, it is an instrument worth evaluating. The bands of the Blackfoot have been meeting in the last 2 years to reunite the Confederacy for purposes of language, culture, self-governance, rights, and other issues. There are some major differences in Canadian policy from the United States but there are similarities to

consider when dealing with the Blackfoot People. The Canadian Government has recognized in this statement of treaty issues that “policies that sought to assimilate Aboriginal people were not the way to build a country”. The relationship between the government and First Nations must be renewed as a partnership allowing tribe’s self-governance and respecting each other’s views of the treaty requirements and implementations.

The First Nations view of treaties is in conflict with Western historical accounts of treaties—the written record. “Western history is not simply a mutual description of a series of events. It is influenced by the values and ideas of the era in which it was written”(Chapter 2: 14). Tribes never had much of a written record but relied heavily on the oral tradition, which began long before the treaties made with the foreign nations. The government must have some understanding of the First Nations spiritual traditions because, “the world-views, customs, and laws that are reflected in and are a fundamental component of the treaties and treaty relationship”(Chapter 2: 15). Native People co-existed with the eco-systems on the land. The principle of good relations was regarded as unalterable arrangements in the highest order when the treaties were made. The First Nations understand the treaties to mean as follows:

- Governance—self-government was accepted.
- Livelihood—continuous even into the future.
- Brother to Brother—partnership to live in peace, help each other, both parties would benefit, both would be involved in decision making, and consultation would take place between parties for future needs.

The First Nations applied these concepts to child welfare, education, shelter, health, justice, treaty annuities, and hunting, trapping, fishing, and gathering under treaty

provisions. The tribes had discussions on the topics with numerous elders from the various tribes throughout Canada.

The purpose of the Statement of Treaty Issues was to:

1. Build on Treaty Relationships: This was a guide to a shared future, sharing jurisdiction in caring for the land, partners, mutual recognition and respect of both parties, and a “Statement of Reconciliation” of the treaty relationship.
2. Public Respect for Treaty Relationship: The community must be educated about the relationship. There must be an accurate and comprehensive history for future knowledge. Treaties should be taught in the schools. Lastly, there must be a renewal of treaty relationship as solemn commitments found in the oral traditions.
3. Public Acts of Renewal: The provincial governments must know what is going on with the renewal of the treaty relationship of reconciliation and recognition of partnership. There should be commemoration and celebration of treaties as honoring the treaty relationship. Monuments should be set up where treaties were made and signed. Lastly, annual treaty gatherings should take place to discuss treaty issues.
4. Process of Evolving Treaty Relationship: There must be an integrative process of governments—federal, tribal, and provincial. First Nations must incorporate a new form of government inspired by traditional ideas regarding governance and democracy. (chapter 6)

The Canadian Government and First Nations have worked together in issuing this Statement on Treaty Issues. The tribes are viewed as partners and not as wards of the government. The partnership created through the “Statement on Treaty Issues” has been historical and renewed to provide for better understanding and cooperation between tribes and the federal government.

In looking at the treaty relationship for the future, the objectives are set forth—

- Resolve differences through mutual discussion and decision.
- Partnership that can address the well being of both parties in a respectful and supportive way.
- Self-governance for First Nations along with the implementation of treaty partnerships.
- Provincial participation for implementing tribal jurisdiction and governance.

The tribes seem to be on equal ground with the Canadian Government. They are able to have input and a partnership with the government rather than being a ward of the government facing numerous policy changes. The Canadian government has empowered the tribes to have faith in treaties as the binding agreement of their relationship.

The Statement of Treaty Issues does not give any perspective on the failure to follow treaty provisions nor compensation to the tribes. The U.S. government tries to set precedence through court cases and legislation when dealing with treaty issues of land and rights. Tribes are at the mercy of the federal court system in the U.S and must rely on Congress to pass legislation in good faith for tribes dating back to the treaty relationship. Many tribes no longer have faith in the treaties made with the United States.

Recently, the Blackfoot Confederacy are taking time to review treaties through discussions, commemoration, and acknowledging the date of the treaty. The Treaty of 1855 included the entire Blackfoot Confederacy because it was made before the Blackfoot, N. Peigan, and Blood moved to Canada. The Court of Claims recognized the Blackfoot Confederacy up to 1935 as a unit to make claims on behalf of the Blackfoot People. One of the claims is traditional land as used by all bands of the Blackfoot in Canada and the United States.

### **Conclusion: Transfer of Knowledge re-establishing US Kin Relations**

The Creation story is believed to have taken place in one of the lakes of the “ceded strip”. “In the beginning Napi, old man of the Blackfeet, created the rocks and forests, the rivers, mountains, and prairie. He then made the animals and birds and fish. Then Napi molded a clay man and woman and gave them the breath of life, giving them dominion over all the creatures of the earth. For a long time Napi dwelt among men,

teaching them to fashion bows and arrows, tan hides, make shelters, use herbs, and know the magic of sacred objects. When man learned how to take care of himself, Napi bade farewell to his beloved children. He then returned to his home, the Sun, going by way of the Going-to-the-Sun Mountain (in Glacier National Park)”(NPS 1). Many of the lakes and mountains are significant to *Nitsitapii* spirituality and their unique culture, because of this association.

The *Siksikaitstipiwa* have a number of bundles that have origins in the mountains and waters of Glacier National Park and Badger Two Medicine. The bundles are important to the well being of the tribe and their obligations to the *mistakis*. “There are different bundles that are associated with the beliefs in the Blackfeet religion or way of life that reflect the Blackfoot Confederacy’s beliefs. The bundles are a result of a vision or life experience of the first beings” (Many Bundle Holder personal communication 2011). Many of the bundles sacred to Blackfeet originated somewhere in or near the mountains. Many of the bundles repatriated are incomplete so the *Siksikaitstipiwa* must replace the birds, animals, and items missing to complete the bundle. All the sacred items are found in the *mistakis* today commonly referred to “Backbone of the World”.

The *mistakis* are vital to the *Siksikaitstipiwa* not only for recognizing their reserved rights but also for the continuation of their ceremonies, spirituality, survival, and obligations to the true owners of the Great Rocky Mountains—animals, rocks, plants, water, and other-than-human beings. During the 2009 encampment, the bear was highly respected to the surprise of the park rangers. “The reason you don’t get bear maulings in Badger Two Medicine is that the Blackfeet respect for animals is illustrated through their encounters. The People in GNP look at the park as their not the animals habitat” (Greiser

and Greiser 3-31). Chief on Both Sides states the Bear is his guide and tells him where to go when in the *mistakis*.

The Blackfoot People willingly shared their resources with their brothers from the east and made sure they never left empty handed(1895 Minutes). Generosity and sharing is a value among the *Nitsitapii* to take care of those who come into your home. “We still bring food to our family and bring meat back to the people” (Greiser and Greiser 3-13). The Blackfoot have honored their agreement in respect to their explicit reserved rights by managing their tribal use of the area in regards to hunting, fishing and gathering timber as stated in the 1895 Treaty 29 Stat. 353-354. “We get firewood and logs for personal use” (Greiser and Greiser 3-16). As stated by the Reserved Rights Doctrine, “Those rights that have not been explicitly given up they still retain”. The Blackfoot rights to gather plants, dig roots, graze cattle, practice their way of life in the mountain landscape, fast, sleep, traditional walks, naming of Blackfoot children, have sweat lodges, healing sick children, and provide for their people in their sacred landscape still remain and have never been given up in any treaty or terminated by Congress. Treaties are the Supreme Law of the Land according to the US Constitution that only the Supreme Court can rule on violations. The legislative history speaks nothing to terminating Blackfeet Reserved Rights in the establishment clauses of Yellowstone National Park 1905, Glacier National Park 1910, Lewis and Clark National Forest, National Park Service of 1914, and the Waterton-Glacier International Peace Park of 1932 that specifically stated would be managed by the US, Canada, and the Blackfeet Nation.

The *Siksikaitstipiwa* have cooperated with land managers in many studies initiated by the National Park Service, Forest Service, Army Corp. of Engineers, Bureau of Land

Management, Wilderness Studies, Fish and Game management, Oil and Gas exploration, Rocky Mountain Front Coalition to save the Front, Glacier National Park Tourist Programs, and Section 106 Consultation under the National Historic Preservation Act. Some studies revealed the most sacred privileged knowledge of the Blackfoot ceremonial “Transfer” or “coming to know” jeopardizing the caretakers of the sacred bundles in hopes to secure their landscape from development to preserve and maintain their intimate relationship with the *mistakis*.

“You can’t just sit down and learn these things in a week. You have to feel and live it. It is a way of life”(Greiser and Greiser 3-33). The ties to the landscape are taught from naming as a toddler; to gathering and hunting as a child with your parents and grandparents; to fasting and sleeping in the mountains; “coming to know” your spiritual advisor whether it be Sun, Moon, Scarface, Thunder, the Beaver, Elk, Bear, other animals, plants, water, or the rocks found in the mountains; to coming of age to be captured and learn the songs and protocols of the many social and ceremonial societies with specific obligations throughout the year to the *mistakis*; making a vow becoming a bundle caretaker—keeper—not owner; becoming a tribal leader and/or chief; to becoming an elder through years of being a caretaker through “transfer” which can take 8 to 20 years in one society alone; to replenishing a bundle that has been lost and come home missing some vital animals, plants, or rocks so it can be renewed at the first thunder or when the waters are high; hunting with the highest respect for the animals for their sacrifice for providing food and clothing to your family; gathering wood to keep your family warm, build your lodges/houses; and the many other uses of being a Blackfoot person. “It’s been a hindrance to us Indian people to try to relate to the Western mind the

value of the mountain area” (Greiser and Greiser 3-35). Traditional practitioners know the protocols of transfer and well being that takes precedence over a non-Blackfoot who needs information to limit or deny their obligations to the animals, plants, spirits, and protocols to respect the Rocky Mountains. “Often Glacier National Park depicted as a relic of this once great American Wilderness in which Native Americans played little or no role” (Reeves 1). The denial of Blackfoot access and relationship to the mountains caused many to gather in secret. “Yes we secretly gather” (personal communication 2011). *Nitsitapii* have always and continue use the *mistakis*.

“In these mountains there are no places that can be singled out as more important than any others” (Greiser and Greiser 3-29). *American Indian Religious Freedom Act* allowed access to sacred lands and it also increased consultation with the Blackfoot Nation in recreation plans and development in their mountain landscape. Traditional Cultural Properties have been located, designated, and filed on behalf of the Blackfoot by the National Park Service and Lewis and Clark National Forest that meet the guidelines for the National Registrar of Historic Places. The “Keeper” makes the decision based on the nomination of each property with supportive evidence of archeology, ethnography, and use of specific sites. This creates a buffer zone for each site that has evolved to a Traditional Cultural District for the *Nitsitapii* in the area of Badger Two Medicine. The Blackfoot Nation has not given their letter of support as research has identified more sites and uses of the area with the few practitioners willing to speak. The latest Landscape Initiative may be a more encompassing concept the tribe could consider if Glacier National Park, Waterton-Glacier International Peace Park, Badger Two Medicine, the Old North Trail, the Bob Marshall Wilderness could be incorporated as one landscape

necessary for Blackfeet use of natural and cultural resources. “Their continuing role is essential in their minds to maintenance of this most special place” (Reeves 249) The Blackfoot have asserted their rights that have been denied, recognized, terminated, revisited, and limited over the last 100 years.

“Glacier National Park and Blackfeet need to come to an agreement” (Kipp personal communication 2001). Co-management would make the most sense but the rules and regulations do not allow anyone to be the decisions maker but the entity managing on behalf US authority. There are no true management agreements but many cooperative agreements with Fish and Game Wildlife Management(Washington, Idaho, Montana) across the nation and in the Alaska Native Partnerships. “It is a systems problem when trying to administer the tribal rights and management of their mountains. There is no continuity in council agenda change every two years. I do believe the tribe can administer better than they can in Badger Two Medicine” (personal communication 2004). For years, the park made sure the elk herd never crossed onto the Blackfeet Reservation causing distress on the natural habitat and plants in the area. Eventually, they had to allow the herd onto the reservation to have a manageable herd that could survive and remain healthy. This also allowed the elk to make their way back to the Sweet Grass Hills that had been disturbed through development wiping out many animals and plants native to the area.

Beaver Man--a past tribal councilman, Horns Society, Thunder Pipe Caretaker, Medicine Lodge—states, “We have never been able to build a strong case for our reserved rights of 1895 or the misinterpretation the fact we only leased the rocky ridges for 99 years. We have no western boundary fence due to the misinterpretation and the

Park Service keeps moving it.” Many elders in the park and forest studies wanted to talk about the collective history of this lease not sale of the mountains. “You wouldn’t sell sacred land. We consider ourselves the holders of what’s sacred”(Greiser and Greiser 3-26). The *Treaty Canons* were not interpreted in a favor of the Indians in Court of Claims in 1925 but the Blackfeet cases of *Momberg, Kipp, and Peterson* all acknowledge the facts that the Indians believed their rights would never be terminated just because the land status changed over time. Specific rights to go upon the land and gather timber have been recognized as well as the Blackfeet water right is priority of the state and park service.

### *Research Findings*

The research findings are as follows:

1. The Blackfoot People have utilized the Rocky Mountains from time immemorial and continue to use the mountains. Although, the land status has changed through agreements, statutes, land designation, and recreational use, the *Nitsitapii* have the upmost respect and connection to the mountain territory.
2. Legislation has played a major role in the denial as well as some recognition of Blackfeet Reserved Rights in the Agreement with the Blackfeet Indians of 1895 29 Stat. 353-354.
3. National Park Service Bulletins 36 and 38 have tried to reconnect the Blackfoot to their mountains through archeological evidence through site locations and ethnographic studies but with limited support from the Blackfeet Nation and Blackfoot Confederacy. Traditional Cultural

Properties limit the connection and relationship the Blackfoot people have with the mountains. Landscape designation offers a broader scope but it is only a guideline not a law.

4. The Blackfeet People have protested the abrogation of their treaty rights through petitions(1924, 1957, 1973), letters (Little chief 1924, Redhorn 1956, Old Person--1973, 1986, 1993), and in the Court of Law (*Blackfeet, Blood, Piegan, and Gros Ventres, Nez Perce v. United States* 81 Ct. Cl. 101; *US v. Kipp* 369 F. Supp. 774, *US v. Momberg* 378 F. Supp. 1152; *US v Bailey D. Peterson* 121 F. Supp. 2d 1309) with inconsistent recognition of their explicitly stated reserved rights.
5. The Blackfoot collective history of the 1895 Agreement does not support the US written statute of a land cession. “We only leased the rocky ridges!” echoes in all the ethnographic studies done by Glacier National Park and the Lewis and Clark Forest Service. The General Allotment Act of 1887 allowed the leasing of Indian land held in trust for periods of 25, 50, and 100 years. In 1895, Big Brave stated on the day the US commission wrote 29 Stat. 353-354, “Let’s have no talk now for 50 years!” Major Blackfeet chiefs did not sign the Agreement of 1895.
6. The Judicial Rules of Construction are very important to understanding Blackfeet Reserved Rights dating back to 1895. The courts, land managing agencies, and Department of Interior Secretary and Solicitor

Opinions are inconsistent. This is a “political question” as outlined by the US Supreme court (See *Marbury v. Madison* 1803).

7. Cooperative Agreements between the Blackfoot Nation, Glacier National Park, and the Lewis and Clark Forest Service have been frustrating for the tribe (BIA 1984, 1997, 1973). Often times, not recognized due to the policy of consultation only rather than a co-management relationship.
8. The *Siksikaitstitapi* have asserted their rights to their traditional territory through annual conferences held at the borders of their landscape (Blackfoot Confederacy Conference 2008-2014). Ceremonies have continued yearly secretly and publicly to guide the Confederacy through subsistence and cultural use in the Rocky Mountains.
9. Lastly, the animals are speaking not only to the *Nitsitapii* but also to the non-Blackfoot caretakers who have come into possession of the sacred bundles. The tears of loss and oppression have now become tears of joy and happiness for many of the caretakers of the bundles calling upon the animals, plants, rocks, spirits, and past bundle and society members to sing, dance, and feast. “Don’t call it a Comeback: We’ve been here for years!” Beaver Woman humbly explains:

The Beaver Bundle includes the entire universe inside it. The celestial beings, the earth beings, and the water beings all interact in it. That isn’t the case with the Medicine Pipe Bundle. That’s more exclusively about birds...I truly believe that there are Blackfoot People who will pass through life without ever knowing the happiness of being a Blackfoot Indian. We went through an ear

of Indian self-hate. People didn't want to acknowledge being Indian. They had a lot of shame and a lot of internal sadness and they didn't know why... People need to know that we are on the bridge toward allowing spirituality back to the Blackfeet.

*Recommendations for future of the relationship with the mistakis*

The recommendations are as follows:

1. Document the oral history of the mountains in a central repository for the Confederacy. For example, the Navajo Nation owns all research data collected on the reservation through their Institutional Review Board and Policies. Each project must produce an educational tool for the schools and public.
2. Educate tribal leaders and people about reserved rights that have been denied, tested, manipulated, and recognized to assert explicit reserved rights through public forums, community presentations, media, Blackfeet Community College, and tribal leadership seminars. There is a lot of mistrust by tribal practitioners in traditional gathering and right to go upon the mountain landscape.
3. Talk to the traditional practitioners and society leaders on protocols to protect intellectual property and sacred sites but also maintain recognition of Blackfoot rights to their mountain landscape. This knowledge can then be shared with tribal leaders who make cooperative agreements for resource management and protecting sacred areas for continued use and preservation.
4. The fight for recognition of reserved rights has been ongoing since 1895. The inconsistency of recognition and acknowledgement of rights has been a hit and miss with Blackfeet Tribal Business Council. Appoint a department through resolution to collect all data that documents the issues in regards to the ceded strip as well as inform all incoming tribal council and specified directors for resource

utilization and understanding of Federal Indian Law and Policy in regards to their management decisions.

Chief Little Dog in 1895 was a strategic thinker in regards to not only his people's needs but their well being for the sake of future generations:

Those mountains will never disappear. We will see them as long as we live; our children will see them all their life and when we are dead they will still be there. This money will not last forever. We don't want to sell the Mountains! (1895 Minutes)

In the worldview of the *Nitsitapii*, the mountains are the most sacred part of Blackfoot survival not only for subsistence but culturally. The United Nations Declaration on the Rights of Indigenous Peoples offers some hope to the recognition of human rights on an international level:

Recognizing the urgent need to respect and promote inherent rights of Indigenous peoples which derive from their political, economic and social structures and form their cultures, spiritual traditions, histories, philosophies, especially their rights to their lands, territories, and resources... Recognizing also the urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States. (Un.org)

*Napi* gave the land to the people to protect and no matter what non-Blackfoot say, deny, or recognize—the *Siksikaitstapi* will maintain their relationship as Keepers of the Rocky Mountains.

The *Nitsitapii* way of life was about survival and adapting through guidance by the mountain spirits, animals, plants, rocks, water, and other beings to find food, heal sickness, and provide for the well being of the *Siksikaitstapi*. Recently, the Brave Dog Society participated in a music video about the drug problem facing the Blackfeet Nation as a message to their younger people through new age communication showing they are

there to protect and take care of them. Sweat lodges are utilized to purify and cleanse in many treatment programs throughout the confederacy as well as combat sickness the people are facing in a western way of life.

The Blackfoot Confederacy intimate relationship as “Keepers of the Rocky Mountains” is centuries old and continues to direct the *Siksikaitstapi* in their protocols and rites in sharing the natural and cultural resources of the *mistakis*. This perspective and glimpse into Blackfoot connection to their mountains, the animals, plants, spirits, and the universe provides the first treaty and trust relationship between the *mistakis* and the *Nitsitapii*. Their relationship to their mountains is illustrated in their collective history and practices that are renewed and held in high regards like the written record of their Great Father’s executive orders/agreement, co-management compacts with land managers.

The *Siksikaitstipiwa* historical record is dated since time immemorial through their ties to their most sacred lands—*mistakis*--with the most important beings who cannot speak but have spoken through the Transfer or “coming to know”, traditional ecological knowledge, ceremony, subsistence, and cultural resources of the Great Rocky Mountains. All animals, plants, rocks and spirits play a vital role in the well being of the *Nitsitapii*. “What you want to do in singing the sacred songs and praying with the pipe (bundles) is maintain a certain kind of balance with nature with the world” (Pringle 5). It is difficult to express in words what the bundles mean and how traditional people feel about them. Suffice to say, that the bundles are a fundamental aspect of Blackfoot life. They are necessary for the continuance of life and Blackfoot survival. In 2008, Holy

Beaver Woman opened up the Think Tank at Harvard University with this statement that orders the Blackfoot world and view of the Great Rocky Mountains:

When we begin the ceremony, we call upon the water and the water animals, the sky people, the animals of the land, the plants, the rocks and so forth with the humans being the last to be called upon until all have arrived and taken their place in the lodge. Without the environment and its beings, we could not have this ceremony. (Beaver Woman personal communication 2008)

The Blackfoot People will continue to maintain their relationship as long as there is water, animals, plants, rocks, and life to renew the seasons and well-being of the *Nitsitapii*. The Blackfoot Confederacy are Keepers of the Great Rocky Mountains given through transfer of knowledge, bundle caretakers, spirit helpers, Blackfoot names, and the animals speaking loudly throughout the world to help the *Nitsitapii* in their mountain landscape in order to survive, provide, and interact within their traditional landscape now known as Crown of the Continent--which encompasses the mountains from Canada, Waterton-Glacier International Peace Park, Glacier National Park, Lewis and Clark National Forest, Bob Marshall Wilderness, the common hunting ground, and continuing south down to Yellowstone National Park.

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