

EFFECTS ON BLACKFEET RESERVED RIGHTS – THE CEDED STRIP.

1. EXISTING CONDITION

Tribal Relations and Treaty Rights

American Indians and Alaska Natives are recognized as people with distinct cultures and traditional values. They have a special and unique legal and political relationship with the Government of the United States as defined by history, treaties, statutes, executive orders, court decisions, and the U.S. Constitution. A selected listing of the authorities, policy, and direction that pertains all or in part to tribal relations and/or the review of reserved rights that may have a bearing on travel planning for the Rocky Mountain Ranger District can be found in the project files. A short explanation of their applicability is provided below. Definitions of terms and acronyms/abbreviations particular to tribal relations are included in the glossary.

Executive Orders and Memoranda define the policy of the U.S. Government as one to implement programs in ways that are knowledgeable and respectful of, and sensitive to Tribal sovereignty (Clinton 1994). The policy emphasizes government-to-government relationships with *federally-recognized* tribes and includes consultation in order to identify rights and concerns and consider them during the development of plans, projects, programs and activities. Forest Supervisors carry the responsibility for maintaining the government-to-government relationship, ensuring that Forest programs and activities honor Indian treaty rights, fulfill trust responsibilities, and are sensitive to traditional native religious beliefs, practices, and sacred lands. Forests should also seek to provide research, transfer of technology, and technical assistance to Indian governments (USDA Forest Service 1997).

Forests also consult with non-federally recognized tribes, organizations, and individuals. These groups may have many of the same concerns or issues as federally recognized groups, but do not enjoy the same legal status or required agency protocol.

Tribal governments have considerable powers that are usually separate from State and local governments. Individual treaties, statutes--such as the American Indian Religious Freedom Act (AIRFA), and executive orders—such as those addressing sacred sites or tribal consultation--often reserve specific rights and address traditional interests relative to the use of federal lands. Reserved rights and privileges associated with treaties and other Indian agreements might include activities such as hunting, fishing, grazing, subsistence, access to and the gathering of forest resources. In addition, land and resources hold a special and unique meaning in the spiritual and everyday lifeways of many Indians. National Forest lands and resources represent cultural and sometimes economic values to Indian people. Federally recognized Tribes and other **Indian groups** look to the **National** Forests for traditional and contemporary uses, and as part of their ancestral homeland.

a. Natural Characteristics

The Rocky Mountain Division is a landscape that is recognized by certain tribes as part of their aboriginal homeland and subsistence round. The natural characteristics are ethnographically important; they are tied to lifeway values that are inseparable from the culture. Many of these attributes have been recognized in the designation of a Blackfoot Traditional Cultural District in the Badger-Two Medicine area. (See “Heritage” section for additional information and analysis).

The Rocky Mountains are known as the “backbone of the world” to these people. The lands offered wildlife, plants, waters, travel ways, and other elements of aboriginal subsistence. Similar resources are also important in contemporary and traditional cultural use. Now, even a greater emphasis is placed on ‘natural’ character, solitude, and the spiritual retreat that these lands offer.

The Old North Trail is a legendary travel corridor along the foothills of the Rocky Mountain “Front”. Trans-montane travel ways followed by native people from the western forests to the buffalo-hunting lands of the Plains would have crossed the analysis area and intersected with the ONT in the eastern foothills.

American Indian people have occupied the Rocky Mountains in the analysis area for thousands of years. Archaeological evidence and historic and ethnographic accounts attest to the diversity, longevity, and importance that these groups have had here. For a discussion and analysis of archaeological and historical evidence, reference the “Heritage” section of the FEIS.

b. Human Influence

Table III-77 lists the federally recognized and non-federally recognized tribes that are within the sphere of influence for the Rocky Mountain Division. Some of these interest groups are identified in Forest-wide and site-specific ethnographic studies (Deaver 1995, p. 82, 88; Greiser and Greiser 1993, p. 2-3); others are known through past and current tribal consultation, review of the Indian Claims Commission findings (ICC 1978) and other literature searches (Malone et al. 1991).

The Lewis and Clark National Forest manages land which is important to Tribes on Reservations in Montana, Idaho, and Wyoming. On the Rocky Mountain Division, the Blackfeet, Kootenai, Upper Pend O’Oreille (Salish), Flathead, Gros Ventre, River Crow, Shoshone, Chippewa-Cree, and Metis have all been identified as either having an interest in or some past association with the lands in the analysis area. (Deaver 1995:p 82, 88; ICC 1778, Malone et al. 1991). Historic literary sources identify these groups by various names; the tribes themselves may use other names; thus, the tracking of each from ancestral times to the present is somewhat problematic. The following table identifies each group (including sub-groups, if known), today’s name and legal status, level of interest regarding the Rocky Mountain Ranger District travel planning effort* and whether or not they have ceded lands or hold treaty rights that overlap with the project area.

Table III-77. Tribes within the Analysis Area’s Sphere of Influence

Group	Tribe	Reservation	Federal Recognition	Ceded lands	Reserved rights	Interest Level*
Siksika (Sarcee)	Siksika Tribe of the Blackfoot Confederacy	(Canada)	Not in U.S.	No	No	Low
Blood	Blood Tribe of the Blackfoot Confederacy	Blood Reservation (Canada)	Not in U.S.	No	No	Low
North Piegan/Piikuni	Piikuni Nation of the Blackfoot Confederacy	Reservation (Canada)	Not in U.S.	No	No	Low

Group	Tribe	Reservation	Federal Recognition	Ceded lands	Reserved rights	Interest Level*
South Piegan/Piikuni	Blackfeet Nation of the Blackfoot Confederacy	Blackfeet Reservation (Montana)	Yes	Yes	Yes	High
Kootenai (Kutenai)	Confederated Salish and Kootenai Tribes (CSKT)	Flathead Reservation	Yes	No (adjacent)	No	Low
Pend d'Oreille/Salish	Confederated Salish and Kootenai Tribes (CSKT)	Flathead Reservation	Yes	No	No	Low
Flatheads (of the Bitterroot Valley)	Confederated Salish and Kootenai Tribes	Flathead Reservation	Yes	No	No	Low
Gros Ventre	Gros Ventre	Ft. Belknap Reservation	Yes	Yes	No	Low
River Crow	Crow	Crow Reservation	Yes	No	No	Low
Shoshone	Shoshone-Bannack Tribes	Fort Hall Reservation	Yes	No	No	Low
Eastern Shoshone	Wind River Shoshone	Wind River Reservation	Yes	No	No	Low
Chippewa- Cree	Chippewa Cree	Rocky Boy Reservation	Yes	No	No	Low
Metis' (local group)	Mixed Blood - of White/Indian Ancestry	None	No	No	No	Moderate
Little Shell Band (of Chippewa-Cree)	Little Shell Tribe of Chippewa Indians	None	No	No	No	Low

*See “technical assumptions – indices of measure” below for how interest level was derived

Within this sphere of influence, one tribe stands out. The Blackfeet Nation of north central Montana shares a common Reservation-Forest boundary with the Lewis and Clark National Forest. The Blackfeet Tribe retains certain rights in the ceded land, known as the RM-1 Unit or Badger-Two Medicine area of National Forest. This group has been very interested and active in projects that may affect ceded lands. The Tribal Council has designated a special resource committee to address land and resource management in the Badger-Two Medicine area (St. Goddard 2004) in part to address the travel management analysis. They have specifically addressed the spiritual and sacred aspects of the Badger-Two Medicine in the Nation’s Tribal Historic Preservation Act (St. Goddard 2004).

There is a Memorandum of Understanding in place between the Lewis and Clark National Forest and the Blackfeet Tribe’s Natural Resources Department for collaboration and coordination “on activities affecting natural resources, especially in the Badger-Two Medicine Area....” (Flora 1998).

Initial contacts have been made with 21 tribal groups and individuals. Responses came only from the Blackfeet. It is not uncommon for tribes living a greater distance away to defer to tribes that are closer to the project area in addressing Indian issues. Likewise, where there are ceded lands, reserved rights and documented traditional use (such as the Badger-Two Medicine), other tribes may be hesitant to become involved unless (or until) insurmountable tribal issues or conflicts arise.

The local Metis' group have, in the past, demonstrated an interest in the Old North Trail and a group of (their) historic settlements along the front of the Rocky Mountains. These locations are in some places, very near the analysis area, to the east.

Numerous consultation meetings and discussions have occurred with the Blackfeet in regard to the Travel Management Planning effort. The tribe has gone on record, through individual Council and Cultural Committee letters and formal Council Resolution(s) as supporting 'non-motorized' management for the ceded lands that make up the Badger-Two Medicine unit (Old Person 1984, St. Goddard 2004, Talks About 2004, and others). The Tribe considers this landscape sacred and worthy of protection, stating that it "is vital to the Blackfeet in oral history, creation stories, fasting and ceremonial sites, natural resources, game, timber, water rights, culture, and survival of the Blackfeet People..." (St. Goddard 2004). Numerous individuals responded to Travel Plan scoping as well; the issue(s) and concerns raised include a mix of treaty rights, sacred lands/landscape, and both contemporary and historic traditional use. These topics, inter-related in many ways, are addressed under the individual headings of 'Social' and 'Heritage' in the Travel Plan **FEIS**.

c. Past Events and Conditions (Treaties and Land Transfers)

The project file includes a listing of Treaties and Agreements that pertain to the Rocky Mountain Division of the Lewis and Clark National Forest. Literally all of these relate in some measure to the Blackfeet Tribe. The following chronological list provides an overview of the transactions which led to the land status as it exists today.

- The Fort Laramie Treaty of 1851 was one of the first to be negotiated regarding the country encompassed by the analysis area. Under this treaty, Blackfeet territory was defined as that bounded by the Canadian border on the north, the Musselshell River on the east and south, and the Continental Divide on the west. The Blackfeet were not present at the negotiations that led to this Treaty, however this territory was generally accepted by the others present, and early explorers and missionaries.
- The 1855 Stevens' Blackfoot Treaty defined the Blackfeet Reservation boundaries as the Continental Divide to the west, the Canadian border to the north, the mouth of the Milk River to the east and the Musselshell River to the south (encompassing all of the analysis area)
- In 1865 a Blackfoot Treaty was negotiated at Fort Benton. This treaty removed all the lands south of the Teton and Missouri Rivers from the Blackfeet Reservation. This treaty was never ratified or made law (Malone and Roeder 1991:119).
- The Fort Laramie Treaty of 1868 redefined the territories of the Blackfoot (and others). East of the Continental Divide, the Blackfoot territory was shown as extending from the Canadian line to the Sun River-Missouri River and as far west as the Bears Paw Mountains (not including the Little Rockies). The Gros Ventre were assigned the territory east of the Blackfoot.

- Treaty making ended about 1871; after this, Agreements and Executive Orders were the method used for addressing land issues with Indians and assigning federal recognition to Indian Tribes.
- In 1873, President Grant issued an Executive Order which set aside the lands north of the Missouri and Sun Rivers for the Blackfoot, Gros Ventre, Assiniboine and Sioux.
- In 1874, the southern boundary of the Blackfoot territory was moved northward from the Sun to the Marias River (Okey 1982:65, as cited by Deaver 1995, Malone et al. 1991; 120-121).
- The final Agreement with the Blackfeet came in 1896, with the Congressional approval of a land cession negotiated in 1895 between commissioners representing the United States and a number of Blackfoot chiefs representing the Tribe. This cession encompassed a strip of land (hence the label “ceded strip”), along the west side of the Blackfeet Reservation, from the crest of the Continental Divide east to the foothills, using the center high points of Chief Mountain and Heart Butte as key references for the north and south ends. By the terms of the cession agreement, the Blackfoot reserved the right to go upon any portion of the lands, to cut and remove wood and timber for agency, school, personal and domestic purposes, and to hunt on the lands, and to fish in the streams, in accordance with Montana fish and game laws, as long as the land remained part of the Public Domain.

Subsequent events have changed the patterns of land ownership and resulted in the current condition, including the following National Forest land transactions (after MacLean n.d., USFS 1968):

- In 1897, the Lewis and Clarke and Flathead Forest Reserves were established by Presidential Proclamation (Cleveland 1897). The ceded strip became part of the Flathead Forest Reserve and reserved rights were protected.
- In 1903, the Flathead and Lewis and Clarke Reserve were consolidated, assuming the Lewis and Clarke name (Roosevelt 1903).
- In 1907, the Lewis and Clark spelling was changed (‘e’ dropped) (Roosevelt 1907). By an Act of Congress that year, all Forest Reserves were changed to National Forests.
- In 1908, by Executive Order, the Blackfeet National Forest was established from the northern part of the Lewis and Clark (north half of ceded strip included), and the Flathead was re-established (1908, 1908a, 1908b).
- In 1910, portions of the Blackfeet Forest were transferred to Glacier Park and neighboring west-side Forests.

Of note: The Blackfeet National Forest never overlapped with lands that are *currently* managed by the Lewis and Clark National Forest (e.g. the southern **third** of the ceded strip; **see map at the end of this section**). Other portions of the analysis area (those south of the Badger-Two Medicine) underwent similar administrative changes.

Homestead Entries and other land adjustments further reduced the National Forest Lands. Private in-holdings are located on the northern and eastern boundaries of the Badger-Two Medicine Unit. There are no isolated parcels of private land within this unit. The current National Forest-managed lands in the Forest Plan RM-1 unit (Badger-Two Medicine) is **estimated at** 129,500 acres.

Forest-managed natural resources important under the 1896 Blackfeet Agreement include: timber, wildlife, fisheries, and water. Wood and timber removal, hunting, and fishing are specifically mentioned in the Agreement. Water is an ‘implied right’ (USDA 1997:57). The right to “go upon the land” is less tangible, but never-the-less important; especially, in **the context** of travel-management planning.

d. Future Trends

The Blackfeet **Tribe** wishes to see the Badger-Two Medicine unit managed as an ethnographic/cultural landscape (St. Goddard 2004, Talks About 2004), which respects (but does not limit) ‘treaty rights.’ The status as “Traditional Cultural District” with protective measures under the National Historic Preservation Act furthers this vision. Additionally the Tribe wishes to participate in the natural resource management of this unit. The existing MOU encourages this participation, especially with regard to collaboration, technology and resource issues, training and development opportunities, and information sharing. Blackfeet ties to the Badger-Two Medicine landscape are well-documented. The proliferation of Agency policy, Executive Orders, Statutes and other direction relative to tribal consultation and the protection of sacred lands indicate(s) that future trends in federal land management will increasingly seek to incorporate Tribal views.

e. Desired Condition

The desired condition for the management of ceded lands would reflect tribal consultation. It would incorporate research, transfer of technology and other collaborative efforts regarding natural and cultural resources. This management and interaction could be outlined in a formal protocol and/or management plan (e.g. Forest Plan). It would be maintained by a continued government-to-government relationship.

2. ENVIRONMENTAL CONSEQUENCES

Under the 1896 Agreement the Blackfeet Tribe was granted the rights to access or “go upon the land,” to hunt and fish according to Montana regulation, and to harvest timber for domestic use. Methods of travel and access by Blackfeet to conduct these activities and practices could be altered by changes in travel management regulations. Travel restrictions for motorized wheeled vehicles and motorized over-snow vehicles are intended to apply to everyone, including Blackfeet tribal members.

Nothing proposed under travel management will affect the existence of rights reserved under the 1896 Blackfeet Agreement. These rights are an encumbrance on the land and will continue as long as the land is in Public Domain (e.g. National Forest). There are, however, activities associated with travel management which may affect the *way* in which today’s tribal members can carry out their reserved rights, particularly, with respect to the use of motorized vehicles. These modern modes of transportation could not be foreseen at the time of the 1896 Agreement; hence, it is not surprising that the Agreement language does nothing to mention types of access or *motorized* access. There may also be activities associated with travel management, which could indirectly affect wildlife or fisheries (or their habitats) or timber resources reserved under the Agreement. For specific resource analyses, see pertinent sections of the **FEIS**.

Interpreting Treaty language, where specifics are lacking, generally comes from court interpretations or through confirmation by the Secretary of the Interior; or, may be addressed by Congressional action (GMU 1996, Ch. 2). Agencies do not interpret treaties and may not take actions that directly affect treaty rights. According to a university course-book on American Indian Rights and Claims that was designed for National Forest Lands Management (GMU 1996; p 2-9):

The exercise of treaty rights is a subject of complex discussions due in part to a lack of specific and uniform definition for the terminology used. Congress, federal agencies, federal courts, and Indian tribes have historically used different terms to describe various aspects of treaty or executive order documents and the rights identified in them. In a broad sense, the fundamental right has three elements that should be considered as a whole. 1) The activity (e.g. taking, hunting, gathering, grazing, trapping) 2) The resource (e.g. fish, deer, whale, plant, berry, grass, water) 3) The location (e.g. habitat or site; federal land or water) All three elements must exist together for the treaty right to have real meaning. Treaty rights are a special type of property right that only Congress can alter or affect directly.

The Forest Service has carried out government-to-government consultation with the Blackfeet Tribe, as well as public meetings and scoping with individuals for the purposes of NEPA. The Tribal Council has gone on record to oppose motorized use in the ceded strip, with the possible exception of very short segments of existing, peripheral roads (St. Goddard 2004, Talks About 2004). This has historically been their position as well (Old Person 1984). The position is recommended in part, because of concern for wildlife. It is also made with regard to appropriate traditional and historic methods of use in sacred lands as well as with respect and concern for the environment. The responses to scoping, input at public meetings, and **comments on the DEIS** were not entirely unanimous in regard to motorized use. Some individuals believe that travel restrictions would be a violation of treaty rights and that motorized methods of transportation should be allowed for tribal members. Government-to-government consultation honors the position of the Tribal Council as the elected representatives of the people. The development of Alternative 5, which eliminates motorized use in the Badger-Two Medicine was formulated in response to tribal and cultural resource issues.

Technical assumptions:

- There are no direct effects to existence of reserved rights as a result of travel management planning.
- Site-specific data and legal means to *fully* interpret and analyze treaty rights are unavailable. This analysis is based on the best available information from parties involved and is in no way offered as a ‘legal opinion.’
- Area of potential effect (APE): For the purposes of this analysis, the Area of Potential Effect (APE) for indirect effects regarding treaty rights is the entire extent of the RM-1 Unit where such rights exist (e.g. the 1896 ceded lands; a.k.a. Badger-Two Medicine).
- Cumulative APE. The cumulative APE is drawn the same as that for indirect effects; however, due to the nature of reserved rights, cumulative effects, if any are found, could reach throughout the Blackfeet culture and be associated with unknown locations, primarily within the Blackfeet Indian Reservation.

Analysis methodology and intensity:

- Documentary analysis was conducted to determine which tribes should be contacted, what their level of interest was, which tribes had reserved rights, and what those rights were.

- Map analyses regarding specific alternatives and travel management allowances were made using a GIS map overlay of the Ceded land (RM-1 Unit) and by electronically querying the database to determine areas and distances (McCartney 2004).

Initial Indices of Measure = for “Tribal Status and Interest” Table. Indices which are important for the purposes of judging tribal interest and concern, and comparing the effects to reserved/treaty rights are listed below. Tribal status and interest are summarized in Table III-77 and further integrated into the Alternative Comparison Table in Chapter 2.

- **Tribal Interest (per tribe):* A High/Moderate/Low ranking is assigned based on the number of contacts, letters, or meetings where the Council, committees, or individual tribal members responded with issues, concerns, or comments *regarding travel management on the Rocky Mountain Ranger District.*
- *Tribal rights present/status:* A Y/N assignment is made for this measure as it applies within the travel management planning area, based on available research, literature searches, and tribal consultation.

Indices of Measure for Alternative Comparison. Two types of measurements are used to illustrate and compare the impacts relative to the exercise of treaty rights and tribal concerns/consultation. The first is displayed in two parts and relates specifically to motorized use in Blackfeet ceded lands. The second is reflective of not only of the amount and level of tribal consultation, but also of the strong Blackfeet ties to the analysis-area.

- *Motorized use in Badger-Two Medicine Unit: The unit of measure used to illustrate potential impacts to Blackfeet reserved rights is displayed as a percentage. A figure was calculated for both (winter and other) seasons of use under each alternative. The winter percentage is reflective of the acres open to motorized travel relative to the entire acreage of 1896 ceded lands. The motorized trail use is displayed as a percentage of total trails in the ceded land on which motorized use would be allowed. For the FEIS, numbers of mile, acreages, and percentages were rounded to the nearest whole number. No decimals were used.*
- *Tribal voice/support as a result of government to government consultation with the Blackfeet:* A Y/N assignment is made for each Alternative as to whether or not it is compatible with or supported by the tribal position regarding land management for ceded lands with reserved rights. The assignment is based on a relative combination of tribal ‘interest’ and status (depicted in Table III-77), review of subject matter addressed in Executive Orders (e.g. Sacred sites, Tribal Consultation) and laws (e.g. AIRFA) and the official ‘position’ as defined in tribal resolutions and correspondence.

Resource Protection Measures: Applicable laws, policy, and direction provide the basis for tribal relations and treaty rights issues. Protection measures built into the Travel Plan analysis for wildlife, fisheries, and water will address those aspects of reserved or implied rights.

a. Alternative 1 - No Action Alternative

1. Direct and Indirect Effects

Indirect effects to Blackfeet reserved/treaty rights as a result of the no action alternative include those perceived by the Tribe as detrimental to the environment and landscape as a

result of motorized use. These include wildlife displacement (especially winter and elk calving season), recreation trends that move away from and conflict with traditional/historic types of use (e.g. horseback and foot travel), potential water quality and erosion issues caused by motorized vehicles, etc. The Tribe views motorized use of the ceded lands as **unacceptable** and believes that it will continue to increase, resulting in additional environmental damage and effects to reserved rights.

The existing condition allows for motorized use on certain trails, particularly in the northern end of the Badger-Two Medicine unit. Tribal members (as well as the general public) currently have the ability to access these lands by motorized methods to reach hunting, fishing and wood-cutting destinations. Roughly 82% of trails are currently open to motorized use at some time during the year, and about 40% of the lands are open to snowmobile use during the winter season.

2. Cumulative Effects

The potential cumulative effects to Blackfeet reserved/treaty rights as a result of the no action alternative might include certain aspects of the following past, present and foreseeable actions from the list in Appendix M: Fina/Longwell and Chevron Drilling proposals, undetermined roads and trails, NW Energy pipeline, National OHV Policy and 3-State OHV rule. A short discussion of their applicability follows: These are in addition to cumulative effects described under “common to all alternatives.”

Oil and Gas drilling and the ‘clearing’ for additional roads, well-pads and staging areas could increase the system of open corridors and areas available for ‘over the snow’ travel, an activity that the tribe perceives as disruptive to wildlife and wildlife habitat. Similarly, the incremental right-of-way opening to install the NW pipeline loop adds to the number of acres (and accessible places) where over-the-snow motorized travel could occur or increase.

The existing ‘undetermined’ roads and trails offer an opening for motorized use that is above and beyond that allowed on Forest system routes. Since these ‘existing’ routes were accepted in the 3-State rule, they will continue to be open for motorized use, unless closed by a subsequent decision. The open corridors related to these routes could also be used by winter-travel, thus increasing the network and area for potential snowmobile use.

The 3-State ‘rule’ limited off-road/trail motorized use of the land (exclusive of snow-season), thus reducing the method and type of access that Tribal members have to exercise treaty activities. The OHV policy may further define activities associated with motorized use on federal lands and prescribe uniform methods of enforcement, etc. These policies could necessitate additional (personal), education, planning and preparation in order for tribal members to exercise reserved rights in a manner that is ‘legal.’

In summary, the cumulative effects that may result from the incremental addition of past, present and reasonably foreseeable actions to the current condition are: a moderate increase in the amount of openings available for over-the-snow motorized use, a moderate increase in the amount of trails and roads available for motorized use, a substantial decrease in the amount of off-trail motorized use (excluding winter), and a slight-to moderate increase in ‘preparation’ and logistics needed to conduct activities associated with reserved rights. Associated with these cumulative effects are any relative, indirect or cumulative effects to water, wildlife and fisheries as a result of these actions *and* a potential erosion of Tribal confidence in the consultation process and in the federal protection of tribal values and rights.

The net result of cumulative effects on treaty resources and tribal values, if the existing condition continues is an increased and continued conflict with motorized use (any season) and the associated (or perceived) trend toward degradation of the environment and of Tribal confidence in consultation.

b. Action Alternatives 2-5

1. Direct and Indirect Effects

The action alternatives are very diverse in the ways they relate to tribal values and treaty rights. Because motorized use in the ceded lands is the action under analysis identified as most disruptive to tribal values and most representative of effects to treaty resources (see discussion above), alternatives with the greatest percentage of motorized use are least desirable.

Alternatives 2 and 4: Action alternatives 2 and 4 are most similar, because they both allow for motorized use. Using the percentage method (described in ‘indices’ above), motorized winter use in the APE under Alternative 2 is about 34% and under Alternative 4 is about 24%. Motorized use of trails is about 66% under Alt. 2 and about 31% under Alt 4. Based on the outcome of tribal consultation (discussed above), Alternative 4 would be preferred over Alt 2, but neither would meet the Tribe’s desired travel management for the Badger-Two Medicine.

Alternatives 3 and 5: These two Alternatives are very similar for travel management within the APE. There is a small difference in the way they treat public use of existing roads. Alternative 3 allows for short segments (17.4 miles) of motorized use on a few existing roads (e.g. Pike Creek, White Rock, Mowitch Basin, Summit campground, etc.) and just over 4 miles of motorized winter trail (on and near the Pike Creek Road); under Alternative 5 these roads are used as non-motorized trails and no motorized winter travel would be allowed. Under these alternatives, negative impacts to tribal values and treaty rights identified in the existing condition (Alt 1) would be much improved. The increasing trend toward motorized use would be curbed, and some long-term benefits to the environment may be realized. Likewise, Alternatives 3 and 5 would be relative improvements over Alternatives 2 and 4. Within the APE, Alternative 3 comes close to achieving the desires of the Tribe; however, Alternative 5, *best* articulates the Tribal perspective and is their preferred Alternative. Outside of the ceded lands APE, these two alternatives are quite different.

2. Cumulative Effects

The potential cumulative effects to Blackfeet values and reserved/treaty rights as a result of the differing action alternatives might include certain aspects of the following past, present and foreseeable actions from the list in Appendix M: Fina/Longwell and Chevron Drilling proposals, undetermined roads and trails, wildfire, past timber harvest, NW Energy pipeline, National OHV Policy and 3-State OHV rule. A short discussion of their applicability follows: These are in addition to cumulative effects described under “common to all alternatives” and “common to all action alternatives.”

Alternatives 2 and 4: Oil and Gas drilling and the NWE pipeline have associated access roads and right-of-way clearings including the use of heavy equipment to construct them. Under Alternatives 2 and 4 these could add to the system of open corridors and areas potentially used for ‘over the snow’ travel; corridors of undetermined routes could likewise be

used. This activity would be governed by travel management regulations adopted under either of these alternatives and overall cumulative effects would be negligible.

Alternatives 3 and 5: Under alternatives 3 and 5, cumulative effects in addition to those listed under “common to all” and “common to all action alternatives,” would be the residual motorized use on two existing roads in under alternative 3. The overall effect on treaty resources and tribal values would be perceived as beneficial by the Blackfeet Nation under these Alternatives. The Tribe would view the trend toward environmental degradation as a result of motorized use as curbed or eliminated, and the important landscape values retained. Tribal confidence in the consultation process and in the federal protection of tribal values and rights may also benefit.

c. Effects Common To All Alternatives

1. Direct and Indirect Effects

There are no direct effects to treaty/reserved rights under any alternative. There are no indirect effects to Blackfeet values and reserved rights that area common to all alternatives.

2. Cumulative Effects

The potential cumulative effects to Blackfeet values and reserved/treaty rights resulting from all alternatives might include certain aspects of the following past, present and foreseeable actions from the list in Appendix M: Fina/Longwell and Chevron Drilling proposals, undetermined roads and trails, NW Energy pipeline, past timber harvest, wildfire, National OHV Policy and 3-State OHV rule. A short discussion of their applicability follows:

Cumulative effects relative to tribal views and reserved rights as a result of oil and gas drilling would be similar under all alternatives. The ‘development’ of ceded lands is in direct opposition to tribal views for land management. In addition to the mechanized clearing for roads, well-pads, and staging areas, the drilling activities themselves would also introduce potential for chemical spills, emissions, smells, and noise and other intrusions that are disruptive to wildlife, tribal hunting or fishing opportunity, and tribal access to certain portions of the land for carrying out these activities. Most of the disruptions and access restrictions would be temporary (up to a year), and localized to the areas around the well sites and along road corridors. The visual effects caused by opening road corridors, well pads, and other areas would be longer-lived and carry a greater chance of overlap with other effects. Some earth-altering effects, such definition of road prisms etc, could remain in long term. These activities in and of themselves could require large amounts of mitigation (if any acceptable method could be identified); and, if mitigated, would likely maximize the cumulative effects that the tribe is willing to **accept** with regard to the ceded lands. Development of this sort, if approved by the Agency without the consensus of the tribe, could severely deteriorate Tribal relations and result in the loss of trust. It would most likely result in legal action by the Tribe and others.

Regarding cumulative effects to the timber-resource that is available to the Tribe for domestic purposes: clearing and corridor openings necessary to complete well-drilling and install the NW pipeline would slightly diminish the number of acres available. In case of timber loss to wildfire, additional acreage could be removed from the base. To date, the amount of timber available to the Tribe for domestic purposes has not been an issue.

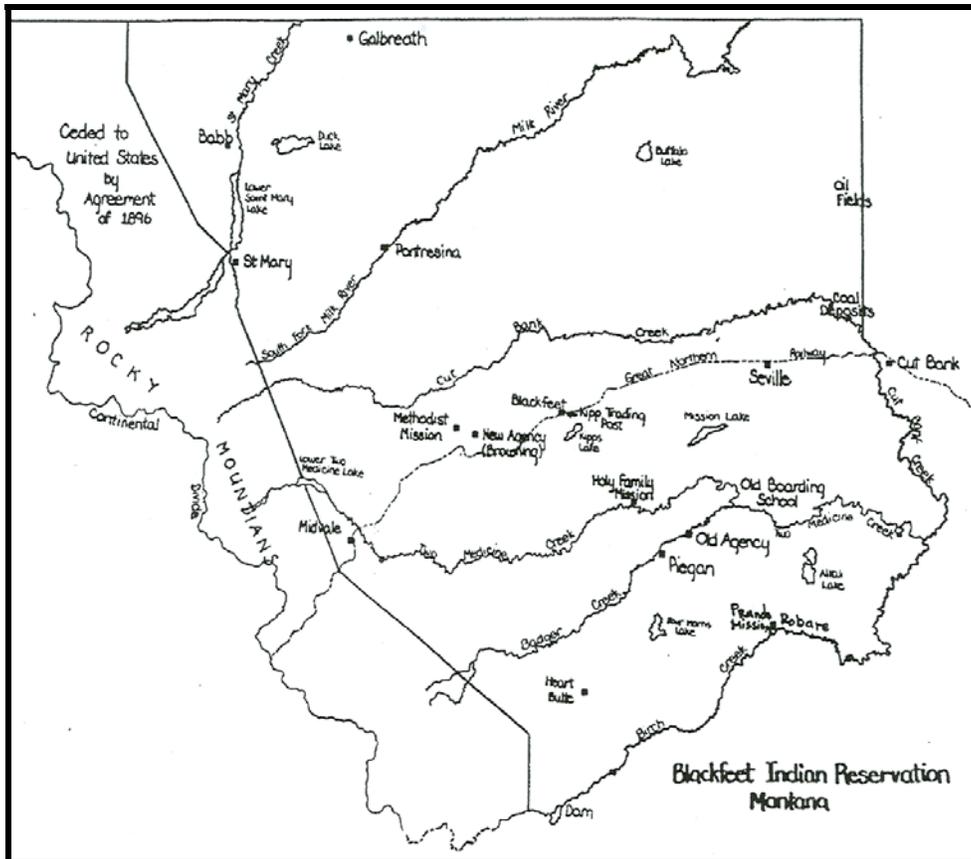
d. Effects Common To All Action Alternatives

1. Direct and Indirect Effects

All action alternatives call for a relatively similar number of miles of road and trail decommissioning (between 36 miles and 41 miles) and similar distances of un-designated trails that will be accepted into the system in lieu of routes that are less environmentally-friendly (between 45 miles and 50 miles). Based on tribal consultation, decommissioning and ‘in lieu’ routes to prevent natural resource damage are desirable avenues of addressing these issues. Thus, all of the action alternatives are more compatible with Tribal views than the “no action” alternative. The methods of decommissioning are not being addressed in travel planning; however, the tribe has expressed a desire that routes be ‘closed,’ but not obliterated in most cases. This avenue would allow for some timber removal and access to treaty resources by horse, wagon or hand-cart.

2. Cumulative Effects

Treaty rights are part of the land, as long as it remains in public domain. Historic actions that have shaped the landscape within which these rights are carried out, are described above and in the cumulative effects section as ‘common to all alternatives’. Past, present and reasonably foreseeable actions outlined in Appendix M, which either have or could alter the exercise of reserved rights or continued government-to-government relationship with the tribe(s) in similar ways under all action alternatives have been covered in the “common to all” and individual descriptions above.



Zedono and Murray, 2007. After Foley (nd) Indian Claims Commission Docket Number 279-D