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TRADING OFF THE BENEFITS AND BURDENS:  
COAL DEVELOPMENT IN THE TRANSBOUNDARY FLATHEAD RIVER  
VALLEY

By

NADIA ELISE SOUCEK

B.A. Politics and Government, University of Puget Sound, Tacoma, Washington, 2009

A Thesis

presented in partial fulfillment of the requirements  
for the degree of

Master of Science  
in Environmental Studies

The University of Montana  
Missoula, MT

May 2012

Approved by:

Sandy Ross, Associate Dean of The Graduate School  
Graduate School

Dr. Len Broberg, Chair  
Environmental Studies

Dr. Matthew McKinney  
Center for Natural Resources & Environmental Policy

Dr. Mike S. Quinn  
Environmental Design, University of Calgary

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Trading Off the Benefits and Burdens: Coal Development in the Transboundary Flathead River Valley

Chairperson: Dr. Len Broberg

The potential for coal development in the transboundary Flathead River Valley threatened the ecological integrity of the Crown of the Continent for more than thirty years. Economic benefits from coal mining in British Columbia were pitted against the environmental concerns of poor water quality, endangered species protection, and connectivity issues were of particular interest in Montana. This paper examines the course of coal development proposals in the transboundary valley through government statements, reports, and news sources to track changes in policies or actions that led to a resolution. Tensions between the benefits and burdens of coal development were resolved in 2010 by a Memorandum of Understanding between British Columbia and Montana, which removed coal, oil and gas development in the transboundary valley. The desire to trade-off economic interests and environmental concerns emerged from government documents and statements throughout the dispute. The emergence of tourism in British Columbia led to the resolution of lost economic opportunities through compensation and assumption of the lost economic and development opportunities by the U.S. and Montana in the Flathead watershed. Further protection of the Montana Flathead Valley is pending U.S. Senate approval.

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## Introduction

There have long been natural resource conflicts between Canada and the United States. Resources such as water, coal, and timber lay at the heart of many disputes between these two nations. Relations between the province of British Columbia and the state of Montana are comprised of many layers of actors involved with the regulation and management of natural resources: federal governments, state and provincial governments, municipal and county governments, Tribes and First Nations, non-profit organizations, landowners, business owners, community groups, and individual citizens of each country. Beginning in the early 1980s, friction between economic and environmental interests surrounding coal mine and coalbed methane development in the Flathead River Valley started to increase. British Columbia wanted to push a strong economic development plan, while Montana wanted to ensure clean water for future generations. These divergent interests were not easy to overcome; it took nearly thirty years for British Columbia and Montana to arrive at a cooperative agreement.

Economic and political factors are common threads that weave through transboundary environmental issues. In the case of Canada and the United States, there are major differences, as well as similarities, between both economic and political factors. In both British Columbia and Montana natural resources make up a large part of the economy. British Columbia is Canada's third largest generator of hydro electricity and second largest producer of natural gas.<sup>1</sup> The oil and gas industry, as well as forestry, mining, and agriculture are also important contributors to the provincial economy.<sup>2</sup> Similarly for Montana, timber, coal, oil, coal bed methane and minerals are important economic assets.<sup>3</sup> Softwood lumber and Milk River water allocation are long standing

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<sup>1</sup> B.C. Facts – Province of British Columbia. <http://www.gov.B.C..ca/B.C.facts/>

<sup>2</sup> Ibid.

<sup>3</sup> Welcome to the Governor's Office of Economic Development.  
<http://business.mt.gov/MontanaAdvantage/economic.asp>



natural resource issues between B.C. and Montana. Because these natural resources are so important to both economies, each government strives for control over resource use and regulation for economic gain.

Tensions over natural resource use, specifically between British Columbia and Montana in the North Fork of the Flathead watershed, were heightened when proposed mining within miles of the British Columbia and Montana international border came about as early as the 1980s and extended well into the 2000s.<sup>4</sup> Worries were voiced that detrimental effects of mining would be felt in the waters that flowed into the United States. Proposed mining, both hilltop removal and coal bed methane, was within a few kilometers of the border in the Flathead Valley in southeastern corner of B.C.,<sup>5</sup> sparking perceived threats to clean water for Montanans just south of the proposed mine site.

The issue of coal development between British Columbia and Montana is centered in the heart of the Rocky Mountains in an area known as the Crown of the Continent. Explorer George Bird Grinnell coined the term Crown of the Continent in 1901 to define the diverse ecosystem that stretches from southeast British Columbia, southwest Alberta, and large area of western Montana.<sup>6</sup> This region is world-renowned for its pristine watersheds, large-carnivore movement corridor, and the convergence of ecosystems that create a huge diversity of plant life, representing species from the boreal, grasslands, Pacific Northwest, and southern Rocky Mountain ecosystems.<sup>7</sup> The Crown of the Continent is recognized as a UNESCO Biosphere Reserve, a World Heritage Site, and is home to the first international peace park, Waterton-

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<sup>4</sup> Michael Jamison. Canadian mining plans pose threat to Flathead watersheds. *Missoulian*. March 17, 2004.

<sup>5</sup> Hernandez, Shiloh. 2008. Mountaintop removal at the crown of the continent: International law and energy development in the transboundary Flathead River basin. *Vermont Law Review* 32 (3): 547.

<sup>6</sup> Graetz, Rick, and Jerry Fetz. "Crown of the Continent - Introduction." *Crown of the Continent E-Magazine* Spring 2009: 3. Web. (See Map 1. "Crown of the Continent")

<sup>7</sup> Lesica, Peter. *A Flora and Fauna of Glacier National Park, Montana*. Corvallis: Oregon State UP, 2002. Print.

Glacier.<sup>8</sup> Because of the importance of tourism to Montana's economy, keeping this ecological region healthy is a top priority.<sup>9</sup>

Within the Crown of the Continent, Triple Divide Peak creates three distinct watershed flows; the Saskatchewan River travels north to Hudson Bay, the Mississippi River runs south to the Gulf of Mexico, and the Columbia River flows west to the Pacific Ocean.<sup>10</sup> The Flathead River, flowing into the Columbia River watershed is of particular concern in the case of the coal disputes between British Columbia and Montana. The Flathead River originates in southeastern British Columbia, drains through a largely undisturbed mountainous watershed south into Montana, and forms the western border of Glacier National Park.<sup>11</sup> Known as the North Fork of the Flathead River in Montana, the river is designated as a Wild and Scenic Recreational River under the Wild and Scenic Rivers Act.<sup>12</sup> The three main forks of the Flathead River empty into Flathead Lake in northwestern Montana, creating the largest freshwater lake west of the Mississippi River<sup>13</sup> (See Map 2).

In 1909, the Boundary Waters Treaty was created to provide mechanisms to resolve disputes over water issues between Canada and the United States.<sup>14</sup> The definition of boundary water in the treaty was simply any waterway along the Canadian and U.S. border.<sup>15</sup> Signatories maintained sovereignty over water within their own territories; however, neither side could

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<sup>8</sup> International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. 1988. Print.

<sup>9</sup> Germann, Denise. "National Parks Have Economic Impacts." *Glacier National Park - National Parks Have Economic Impacts*. National Park Service, 28 Feb. 2012. <<http://www.nps.gov/glac/parknews/media12-11.htm>>.

<sup>10</sup> International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. 15 December 1988. Print. pg. 6.

<sup>11</sup> Dalby, Charles. *Evaluation and Monitoring of the Hydrologic Impact of Cabin Creek, B.C. Coal Pit Mining on the North Fork of the Flathead River*. Rep. Bozeman: Water Resources Research Center, 1983. Print. pg. xi.

<sup>12</sup> *Impacts of a Proposed Coal Mine in the Flathead River Basin*. Print. pg. 6

<sup>13</sup> "Flathead Lake." *Montana | Official Travel Site*. <[http://visitmt.com/listing/categories\\_NET/MoreInfo.aspx?IDRRecordID=11891](http://visitmt.com/listing/categories_NET/MoreInfo.aspx?IDRRecordID=11891)>.

<sup>14</sup> International Joint Commission. Boundary Waters Treaty. <http://www.ijc.org/rel/agree/water.html#text>

<sup>15</sup> Ibid. Preliminary Article.

exclusively control water flowing across the international boundary.<sup>16</sup> The treaty created the International Joint Commission as an advisory board to review disputes over water issues.<sup>17</sup> Water quality, air quality, flow rates, sedimentation and regulation issues all fall under the responsibility of the Commission. This treaty is important for current natural resource issues in the Flathead because it set the tone for how Canada and the U.S. would approach natural resource decisions. Any issue of obstruction or diversion of boundary waters under Article VIII extended mandatory jurisdiction to the International Joint Commission.<sup>18</sup> Without the approval of the IJC neither Canada nor the United States could interrupt natural boundary water levels through use or any obstruction.<sup>19</sup> An important aspect of the treaty is that the border between Canada and the U.S. is comprised of 40% water.<sup>20</sup> Since the creation of the Boundary Waters Treaty, there have been a handful of additional cooperative treaties between Canada and the U.S. over environmental issues. These include the Migratory Birds Convention (1916), the Great Lakes Water Quality Agreement (1972), the Agreement on Conservation of the Porcupine Caribou Herd (1987), the Air Quality Agreement (1991) and Ozone Annex (2000), and the Binational Toxics Strategy (1997).<sup>21</sup>

Since the 1980s, when friction over a proposed coal mine began in the Flathead, the relationship between British Columbia and Montana on environmental issues experienced a significant shift. Movement towards cooperative agreements and sharing of the costs and benefits of environmental policy by Government actors has been clear. At the beginning of the dispute, B.C.'s main political party, the Social Credit Party, promoted vigorous energy

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<sup>16</sup> Ibid. art. II.

<sup>17</sup> Ibid. art. III.

<sup>18</sup> Ibid. art. VII

<sup>19</sup> Ibid. art. III.

<sup>20</sup> Environment Canada. Quick Facts: Water #100. <http://ec.gc.ca/eau-water/default.asp?lang=En&n=11A8CA33-1>

<sup>21</sup> Government of Canada. A Unique and Vital Relationship. <http://www.canadainternational.gc.ca/can-am/offices-bureaux/welcome-bienvenue.aspx?lang=eng&view=d#cn-tphp>

development initiatives.<sup>22</sup> This continued until 1991, when the Social Credit Party lost a provincial election to the New Democratic Party (NDP). The NDP was not focused on expansive energy development, and built extensive relationships with environmental organizations by promoting collaborative and large-scale resource management initiatives.<sup>23</sup> The NDP maintained control until the Liberal Party won the 2001 election by a landslide.<sup>24</sup> The Liberal Party reinvigorated energy development within the province with the goal of expanding trade to Asian markets.<sup>25</sup>

A move towards resolving the coal disputes began in 2003 when Montana Governor Judy Martz signed an Environmental Cooperation Agreement with British Columbia.<sup>26</sup> The next major step toward collaboration came to fruition seven years later with the 2010 Memorandum of Understanding (MOU) between British Columbia and Montana.<sup>27</sup> The 2010 MOU removed proposed coal bed methane, mountaintop-removal coal strip mining, and further oil and gas development from the Canadian Flathead.<sup>28</sup> Included in the MOU as witnesses were the Ktunaxa First Nation and Confederated Salish and Kootenai tribes, further illustrating the shift towards inclusion and cooperation between not only the state and provincial governments, but also First Nations.

In October 2011 the B.C. legislature introduced the Flathead Watershed Conservation Act.<sup>29</sup> The Act allows for logging, recreation, hunting, and guiding within the Flathead basin, but

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<sup>22</sup> "A Concise History of the British Columbia Social Credit Party." *British Columbia | Social Credit*. Web.

<sup>23</sup> "History | B.C. NDP." *British Columbia New Democratic Party*. Web.

<sup>24</sup> Laanela, Mike. "The B.C. Liberal Party." *CB.C.news*. CB.C./Radio Canada, 01 Apr. 2009. Web.  
<<http://www.cb.c.ca/canada/B.C.votes2009/story/2009/03/23/B.C.v-B.C.-liberal-party-profile.html>>.

<sup>25</sup> *Ibid.*

<sup>26</sup> 2003, Environmental Cooperation Arrangement between the Province of British Columbia and the State of Montana.

<sup>27</sup> Memorandum of Understanding and Cooperation between the Province of British Columbia and the State of Montana. February 18, 2010. Vancouver, B.C.

<sup>28</sup> *Ibid.*

<sup>29</sup> Flathead Watershed Area Conservation Act. [http://www.leg.B.C.ca/39th4th/1st\\_read/gov02-1.htm](http://www.leg.B.C.ca/39th4th/1st_read/gov02-1.htm)

it restricts oil and gas development in the Flathead watershed.<sup>30</sup> Montana Senator Max Baucus presented a parallel Act to Congress in fall of 2011, but it has yet to move past the Senate floor.<sup>31</sup>

The doctrine of equitable utilization of water resources maintains that interparty equity is key for resolving disputes over internationally shared water resources.<sup>32</sup> The Flathead coal mine development controversy provides an excellent case study for evaluation of the doctrine in the context of Canadian and United States relations<sup>33</sup>. By tracking the changing positions of the parties from onset to agreement we can determine whether the undertaking of formerly unassumed burdens and the leveling of benefits across the border provided a fulcrum for resolution of the dispute.

The dramatic shift in the Flathead controversy over a thirty-year period raises up many questions. Most notably: what caused the change and what are the implications?

## **Methods**

To answer these questions I analyzed written materials to develop a set of themes or issues based on government documents, statements made by politicians, and press releases from both British Columbia and Montana. Documents included every B.C. Speech from the Throne from 1980-2012, as well as the Montana State of the State Address for the same time period. Official government records such as press releases, official letters and e-mails when available were included. The nature of government documents and limited public access provided challenges for the research. Many times the public was not aware of behind-closed doors talks and negotiations until they were finalized and reported by the media. Media sources helped to

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<sup>30</sup> Ibid.

<sup>31</sup> "Time to hold up our end on the Flathead". November 21, 2011. *Missoulian*.  
[http://missoulian.com/news/opinion/editorial/time-to-hold-up-our-end-on-the-flathead/article\\_62b9412c-1452-11e1-a8f6-001cc4c03286.html](http://missoulian.com/news/opinion/editorial/time-to-hold-up-our-end-on-the-flathead/article_62b9412c-1452-11e1-a8f6-001cc4c03286.html)

<sup>32</sup> Paisley 2002. Etc.

<sup>33</sup> Locke, H. and M. McKinney 2012 etc (in press).

paint a more complete picture of the timeline of events regarding coal mining and coalbed methane development in the Flathead River Valley. The analysis of these documents focused on specific mentions of energy policy and/or development, the mining industry, coal or coalbed methane industry and or development, and transboundary relations with neighboring states or provinces. This issue-based framework will establish a reference for evolution of stated positions over time, so as to document shifts or persistence for the identified criteria consistently.

Following preliminary research of news sources, the issues include, but are not limited to: the 2010 Olympics, air quality, connectivity, fish populations, habitats, information gaps, jobs, mining revenue, recreation, resource development, tourism, water quality, and wildlife.

Figure 1 presents a matrix summarizing the evolution of state/provincial positions on various issues raised by the government parties as reported in the media. The values in the matrix refer to the position of the government on that theme or issue, i.e. in 1980 the B.C. government viewed coal development in the Flathead as having no impact on the ecosystem, while Montana saw this as action as degrading the watershed.

**Table 1.**<sup>34</sup>

Criteria	<i>Party Position Evolution, 1980 - 2012</i>									
	1980s		1990s		2000		2005		2010	
	B.C.	Montana	B.C.	Montana	B.C.	Montana	B.C.	Montana	B.C.	Montana
Air Quality	0	-	0	-	0	-	0	-	+	+
Connectivity	0	-	0	-	0	-	0	0	+	+
Fish Population	0	-	0	-	0	-	0	-	+	+
Habitat	0	-	0	-	0	-	0	-	+	+
Information Gap	0	-	0	-	0	-	0	-	0	0
Jobs	+	-	+	-	+	-	+	-	-	+
Mining Revenue	+	0	+	0	+	0	+	-	-	0
Recreation	0	-	0	-	0	-	0	-	+	+
Resource Development	+	-	+	-	+	-	+	-	-	-
Tourism/ 2010 Olympics	0	-	0	-	+	-	+	-	+	+
Water Quality	0	-	0	-	0	-	0	-	+	+
Wildlife	0	-	0	-	0	-	0	-	+	+

Key:  
 +                    *enhancement*  
 0                    *no change*  
 -                    *degradation*

<sup>34</sup> Created by analysis of news media coverage and government statements of Flathead River valley coal mine and coalbed methane development.

It should be noted that significant non-governmental organization campaigns played a prominent role in the ultimate outcome of the dispute. This analysis focuses on the decision-makers with authority to ultimately resolve the issue of development of the Flathead River Valley on public lands, but it would be a mistake to conclude that NGO actions were not very influential in shaping the positions of the governmental parties.

### **Coal Development in the Flathead River Valley**

From the 1980s to 2012 three distinct conflicts over coal development in the transboundary Flathead River Valley emerged. First, a proposed mine at Cabin Creek in the 1980s, followed by renewed interest for a coal mine in nearly the same location twenty years later, and finally proposed coalbed methane development in the late 2000s.

#### *Cabin Creek Mine: Sage Creek Coal Ltd.*

Beginning in the late 1960s, attempts to develop the significant coalfields present in the British Columbian portion of the Flathead River basin began when a private company obtained coal licenses near the intersection of Howell and Cabin Creek.<sup>35 36</sup> The coal reserves in this area were estimated at 152 million metric tones.<sup>37</sup> During this time period, coal production in the Crowsnest Pass in Alberta was rapidly expanding. The exploration phase of the project lasted from 1970 to 1975, which included mapping, trenching, drilling, and underground sampling.<sup>38</sup> In July of 1975 the proposal was submitted by the Sage Creek Coal Ltd. and by August of the same year it was under review by the Environment and Land Use Committee (ELUC) Guidelines for

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<sup>35</sup> *Flathead River International Study: Board Report*. Rep. Ottawa, Ont.; Washington, D.C.: Board: International Joint Commission. 1988. Print. pg. 74.

<sup>36</sup> See Map 3. Cabin Creek Mine: Sage Creek Coal Lt. Proposed Area of Development.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

Coal Development.<sup>39</sup> The project proposal moved into Stage I of the B.C. mine approval procedure in July 1976 with the submission of an environmental assessment and by October of the same year was approved.<sup>40</sup>

Stage II of the process began in late 1979 with a submission to the Mine Guidelines Steering Committee, but by July 1980 the company had withdrawn its proposal for revision.<sup>41</sup> Stage II of the mine approval process involved more details about the proposed project as well as a more in-depth analysis of alternatives for mitigating identified impacts.<sup>42</sup> Comments on the original Stage II proposal were sent to the Sage Creek Coal Ltd. in August of 1980 by the Provincial Ministries of Environment and Parks and the Ministry of Energy Mines and Petroleum Resources, which further spelled out the requirements the proposal would need to meet under the Stage II review process.<sup>43</sup> It took nearly two years before Sage Creek Coal Ltd. would submit revised reports to the Mine Guidelines Steering Committee and it was not until early 1984 that the Environment and Land Use Committee approved Stage II.<sup>44</sup> In December of the same year, the State of Montana requested that the International Joint Commission review the proposal and conduct a “reference study”.<sup>45</sup> Since the proposed Sage Creek Mine was located within a few miles of the B.C. and Montana International Border, Montana became concerned that water contamination resulting from dissolved solids would leach from the mine and would then flow into the Flathead River.<sup>46</sup> After Montana and the U.S. federal government requested a study on the proposed mine, a letter was sent to the IJC from the Canadian government echoing

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. pg. 78.

<sup>43</sup> Ibid. pg. 75.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> *Flathead River International Study: Board Supplementary Report*. Rep. Ottawa, Ont.; Washington, D.C.: Board: International Joint Commission. 1988. Print. pg. 11.



the call for a study.<sup>47</sup> After both sides had requested the IJC be involved, the IJC established the Flathead River International Study Board to carry out the reference study as requested by both B.C. and Montana. The board began its study in May of 1985.<sup>48</sup>

The investigation conducted by the binational working group took three years. In 1988 the IJC recommended against the Cabin Creek Coal mine as proposed by the Sage Coal Mine Ltd.<sup>49</sup> The IJC also recommended “the Governments consider, with the appropriate jurisdictions, opportunities for defining and implementing compatible, equitable and sustainable development activities and management strategies in the upper Flathead River Basin.”<sup>50</sup> The Canadian government never responded to the IJC recommendations, and because they were non-binding there was little more Montana could do. Sage Creek Coal Ltd. pulled out of the proposal due to economics, resulting in a pause of the dispute during the 1990s.

#### *Cabin Creek Mine: Cline Corporation*

In 2003 the Cline Mining Corporation applied for 12 coal exploration licenses through the B.C. Ministry of Energy and Mines.<sup>51</sup> These licenses were located in southeast B.C. in the Sage Creek area.<sup>52</sup> This development came after B.C. Lt. Governor Campagnolo’s Speech from the Throne in 2003, which called for British Columbia to open up every region and economic sector to development and investment.<sup>53</sup> The CEO of Cline Mining Company, Kenneth Bates,

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<sup>47</sup> *Flathead River International Study: Board Report*. pg. 75.

<sup>48</sup> *Ibid.*

<sup>49</sup> International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. 15 December 1988. Print.

<sup>50</sup> *Ibid.* pg. 11.

<sup>51</sup> Jordan, Geoffrey R. *Coal Geology and Resources of The Sage Creek Area Southeast British Columbia*. Rep. 2004. Print. pg. 12.

<sup>52</sup> *Ibid.*

<sup>53</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 4th Session, 37th Parliament. British Columbia, Victoria. 11 February 2003. Speech.

estimated that the mine would produce two million tons of coal each year for 20 years and generate up to \$2.5 billion in revenue.<sup>54</sup>

The same month that the Cline Mine Corp. applied for the licenses, B.C. Premier Gordon Campbell and Montana Governor Judy Martz signed an Environmental Cooperation Agreement.<sup>55</sup> The agreement articulated the environmental concerns that both states share and the benefits of cooperation on these issues.<sup>56</sup> The agreement established an Environmental Cooperation Initiative as a means to coordinate conservation efforts in the shared environment.<sup>57</sup> In response to the new interest in the leases, the Flathead River Commission appealed to U.S. Secretary of State Colin Powell to halt the proposed mine.<sup>58</sup> The same day, Montana Governor Judy Martz requested that the IJC and the B.C. government consider the impacts of the mine proposed by the Cline Mining Corporation.<sup>59</sup> British Columbia decided to give up on the Cabin Creek Mine due to the incompatibility with Waterton-Glacier International Peace Park and the special designations of the park.<sup>60</sup> This process was complicated and lengthy, taking years and involving the communication of many organizations and parties.

### *Coalbed Methane Development*

In July of 2004, the British Columbian government put coalbed methane lease rights on the auction block.<sup>61</sup> The lease rights would grant a five-year right to explore and attached to the permit was an obligation to explore. However, the lease had the potential to be upgraded to a

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<sup>54</sup> Jamison, Michael. "Canadian Coal Mine Proposal Causes Stir." *Missoulian*. 25 April 2004. Print.

<sup>55</sup> *Environmental Cooperative Agreement between the Province of British Columbia and the State of Montana*. 2003. Print.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> Simpson, Scott. "U.S. Parks Body Seeks to Halt Fossil Fuel Projects: Montana Commission Wants Assessment of Threats a Coal Mine Could Impose." *The Vancouver Sun*. 7 May 2004. Print.

<sup>59</sup> State of Montana. Office of the Governor. *Governor Martz Expresses Environmental Concerns in Flathead*. *Mt.gov*. 7 May 2004. Web.

<sup>60</sup> "History on Achieving an Agreement for Cooperative Resource Management for the Flathead River Basin with British Columbia." *Office of the Governor*. Web.  
<[governor.mt.gov/news/docs/031510\\_FlatheadHistoricalTimeline.pdf](http://governor.mt.gov/news/docs/031510_FlatheadHistoricalTimeline.pdf)>.

<sup>61</sup> Jamison, Michael. "B.C. to Auction Coalbed Methane Rights." *Missoulian*. 10 July 2004. Print.

development permit.<sup>62</sup> The coalbed methane leases worried many parties including Montana Representative Denny Rehberg, former Canadian federal Environment Minister David Anderson, Montana Senators Max Baucus and Conrad Burns, as well as the Kalispell Chamber of Commerce and the Town Council of Fernie, B.C.<sup>63 64 65</sup> However, the auction ended without attracting any bids.<sup>66</sup> According to Richard Neufield, Minister of Energy and Mines, it was the industry that requested the leases go to auction in the first place, and if the leases went back to auction it would be for the same reason.<sup>67</sup> Later that fall, B.C. gave the Cline Mining group the green light to build roads and test drill 90 tons of coal, but failed to notify the state of Montana of the development.<sup>68 69</sup> Neufield was surprised by the controversy the exploration permit received, and stated in a letter to the Montana Governors office that they would be in contact with Montana if the mine moved into the development phase.<sup>70</sup>

In response to the uproar from south of the border, B.C. invited the State of Montana to be involved with discussions on the future of energy development in the Canadian Flathead.<sup>71</sup> The sticking point between the two sides was the issue of baseline data;<sup>72</sup> British Columbia believed that there was sufficient data to move forward on coalbed methane development, but Montana was concerned that there was not enough understanding about the existing quality of

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<sup>62</sup> Ibid.

<sup>63</sup> Jamison, Michael. "Rehberg Seeks Delay of B.C. Gas Project." *Missoulian* 11 August 2004. Print.

<sup>64</sup> Hume, Mark. "Coal-mining Plan Worries Ex-cabinet Minister." *Globe and Mail* [Toronto] 24 August 2004. Web.

<sup>65</sup> Jamison, Michael. "B.C. Coalbed Methane Leases Sold." *Missoulian*. 26 August 2004. Print.

<sup>66</sup> Jamison, 11 August 2004.

<sup>67</sup> Ibid.

<sup>68</sup> "History on Achieving an Agreement for Cooperative Resource Management for the Flathead River Basin with British Columbia."

<sup>69</sup> Jamison, Michael. "Canadian Company Quietly given Coal Mining Exploration Permit." *Missoulian* Print. 26 January 2005.

<sup>70</sup> Jamison, Michael. "Canadian Official 'surprised' over Coal Dig Response." *Missoulian*. 2 February 2005. Print.

<sup>71</sup> Jamison, Michael. "Montana to Sit B.C. Flathead Talks." *Missoulian*. 23 February 2006. Print.

<sup>72</sup> Whiteley, Don. "Fundamental Differences with Montana over Proposed Coal Mine May Erupt Again." *The Vancouver Sun*. 1 March 2006. Print.

water and without sufficient baseline data, the cumulative impacts could not be understood.<sup>73</sup> By inviting Montana to participate in B.C.'s environmental review, B.C. hoped there would be satisfaction with the Canadian environmental assessment process.<sup>74</sup> Montanans were also invited to submit comments to the draft of Terms of Reference (TOR) of the Cline Mine proposal.<sup>75</sup> Comments included the need for a more detailed description of the entire project, to include a full environmental assessment under Canadian federal review, address impacts to wildlife in the entire basin, to conduct a basin-wide comprehensive assessment to establish baseline data, and to quantify road impacts, etc.<sup>76</sup> Glacier National Park also submitted comments echoing concern for issues stated above.<sup>77</sup>

In early 2007 the Environmental Assessment Office of British Columbia held public meetings to collect input from citizens in the South Country and Elk Valley on how to minimize the environmental impact of the proposed mining projects.<sup>78</sup> While Canadian citizens were optimistic about the public meetings, it is unclear from the issue analysis whether they had an impact on the process.<sup>79</sup>

In May of 2007, the BP Canada Energy Co. wrote a letter to Governor Brian Schweitzer stating their interest in developing coalbed natural gas in the Crowsnest Coalfield.<sup>80</sup> The development would include an initial \$100 million in investments to drill test wells over a five-year period.<sup>81</sup> The Crowsnest Coalfield straddles the Elk River Valley and the Flathead River

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<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> State of Montana Comment: Draft Terms of Reference on Cline Mining Corporation Lodgepole Project. 12 April 2006. Print.

<sup>77</sup> Hayden, Brace. *Comments on Draft Terms of Reference - Lodgepole Mine Project* (Glacier National Park). 27 March 2006. Print.

<sup>78</sup> "Mine Proposal Stirs up Controversy." Kootenay News Advertiser [Cranbrook]. B.C. 19 January 2007. Print.

<sup>79</sup> Jamison, Michael. "Canadians Hopeful for Talks on Cline Mine." *Missoulian*. 21 January 2007. Print.

<sup>80</sup> Jamison, Michael. "Canadian Coal Exploration Worries Officials Again." *Missoulian*. 31 May 2007. Print.

<sup>81</sup> Ibid.

Valley, near the proposed Cabin Creek mine, and is believed to contain 27.7 million tons of coal and 12 trillion cubic feet of coalbed methane gas.<sup>82</sup> The Ministry of Energy and Mines commissioned a report to gather information on water quality in the area and concluded that there was not sufficient data, and would need at least three years before development could begin.<sup>83</sup> In December of 2008, the Ministry of Energy, Mines, and Petroleum Resources was given the okay by the Cabinet to enter into a tenure agreement with BP Canada Energy Co. and the Elk Valley Coal Partnership to explore coalbed gas in the Crowsnest Coalfield.<sup>84</sup> Tenure allows the applicant to apply to the Oil and Gas Commission to “access, explore and develop petroleum and natural gas in accordance with applicable statutory regulations.”<sup>85</sup>

In response to the proposed coalbed methane development, a 21-member committee of the United National Educational, Scientific, and Cultural Organization [UNESCO] unanimously voted to send an investigative team to Waterton-Glacier International Peace Park in the summer of 2009.<sup>86</sup> More than 53,000 people in Canada and the U.S. wrote in support of a petition for the UNESCO committee to protect the parks from upstream mining.<sup>87</sup> The committee conducted a World Heritage Centre mission to “evaluate and provide recommendations on the requirements for ensuring the protection” of Waterton-Glacier International Peace Park.<sup>88</sup> A few months later, Montana Senators Max Baucus and Jon Tester sent a letter to U.S. Secretary of State Hilary Clinton and the Department of the Interior Secretary Ken Salazar with the goal of prodding

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<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> *Coalbed Gas in the Crowsnest Coalfield*. The Province of British Columbia, Dec. 2008. Web. <[http://www.empr.gov.B.C..ca/OG/oilandgas/publications/Documents/Web%20QA%20Crowsnest%20Updated%20Dec%202008\\_rev.pdf](http://www.empr.gov.B.C..ca/OG/oilandgas/publications/Documents/Web%20QA%20Crowsnest%20Updated%20Dec%202008_rev.pdf)>. pg. 2.

<sup>85</sup> Ibid.

<sup>86</sup> Earth Justice. Press Room. *UNESCO to Investigate Threats to Waterton-Glacier International Peace Park on U.S.-Canadian Border*. Earth Justice. 26 June 2009. Web.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

Canada towards making an agreement with the U.S. over the protection of the Flathead River Basin from the threat of coal mining.<sup>89</sup>

The World Heritage Committee released its findings in late 2009, stating that coalbed methane development in British Columbia threatens “the Outstanding Universal Value” of Waterton-Glacier International Peace Park and the water supplies to the ecosystem.<sup>90</sup> The committee recommended to the government of Canada that a permit for the development of coalbed methane mining in the Flathead River Valley not be issued.<sup>91</sup> The committee suggested a monitoring mission to both British Columbia and Montana, as well as a request for British Columbia to submit a report of all proposed mining and energy developments in the Flathead Valley.<sup>92</sup>

Early in 2010, Lt. Governor Steven Point announced that the Flathead River Valley would be off limits to mining and energy extraction.<sup>93</sup> Lt. Governor Point announced a new partnership with Montana, highlighting the opportunity to create new avenues to work out transboundary environmental issues.<sup>94</sup> On the U.S. side, Montana Governors Max Baucus and Jon Tester worked to introduce similar legislation to the B.C. ban on energy development in the Flathead.<sup>95</sup> Shortly after the announcement from Lt. Governor Point, B.C. Premier Gordon Campbell and Montana Governor Brian Schweitzer signed a Memorandum of Understanding and Cooperation on Environmental Protection, Climate Action and Energy at the Olympic Media

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<sup>89</sup> *Senators: We Must Protect Flathead from Effects of Mining. News | Max Baucus | U.S. Senator from Montana.* Senator Max Baucus and Jon Tester. 10 December 2009. Web.

<sup>90</sup> *Report of Decision, World Heritage Committee: Waterton Glacier International Peace Park (Canada United States of America).* Decision: 33 COM 7B.22. Seville. 2009. Print.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> Point, Steven L. "Speech from the Throne." Opening of the 2nd Session, 39th Parliament. British Columbia, Victoria. 9 February 2010. Speech.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Senators Move to Protect Flathead Forever: Baucus, Tester Working with Canada to Halt Mining in the North Fork. News | Max Baucus | U.S. Senator from Montana.* Senator Max Baucus and Jon Tester. 12 February 2010. Web.

Center in Vancouver, B.C.<sup>96</sup> The MOU built on the 2003 MOU, which laid a foundation for conservation of shared environment.<sup>97</sup> Negotiations in regards to the retirement of oil and gas leases on the Montana side of the border and how to reimburse the existing coal and mining interests on both sides began at the signing.<sup>98</sup>

The issue of reimbursement for existing coal and mining interests was not split evenly; the majority of the burden fell on Montana.<sup>99</sup> More than 90% of the protected area is in Montana, including 100 dormant oil and gas leases.<sup>100</sup> Montana Senator Max Baucus stated that more than 90% of the land in question is federally owned, requiring Congress to pass legislation to take the leases off the table.<sup>101</sup> Governor Brian Schweitzer wrote to the Department of the Interior Secretary Ken Salazar requesting that leases in the Flathead National Forest be canceled.<sup>102</sup> Not long after, Montana Senators Baucus and Tester announced that ConocoPhillips, the largest leaseholder in the North Fork of the Flathead, voluntarily gave up its interest in 108 oil and gas leases covering more than 169,000 acres.<sup>103</sup>

Montana Senator Max Baucus introduced the Transboundary Flathead Basin Protection Act of 2012 to protect the North Fork of the Flathead,<sup>104</sup> which cleared the Energy and Natural

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<sup>96</sup> *B.C. and Montana Partner on Environment and Clean Energy. Montana Governor News Releases.* Governor Brian Schweitzer. 18 February 2010. Web.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> Fletcher, Tom. "B.C., Montana to Buy out Flathead Claims." *Quesnel Caribou Observer* [British Columbia, Canada]. 23 February 2010. Print.

<sup>100</sup> *Ibid.*

<sup>101</sup> Baucus Bill to Protect the North Fork - Once and For All: Senator Working with Canada to Halt Mining in the North Fork. News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester. 4 March 2010. Web.

<sup>102</sup> *Governor Asks Interior to Cancel Leases in Flathead - DEQ Not to Issue New Permits. Montana Governor News Releases.* Governor Brian Schweitzer. 15 March 2010. Web.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Senate Panel Approves Baucus Move to Protect North Fork. News | Max Baucus | U.S. Senator from Montana.* Senator Max Baucus and Jon Tester. 30 June 2010. Web.

Resources committee in August of 2010.<sup>105</sup> More leases were voluntarily relinquished by energy company Allen and Kirmse, Ltd. and Anadarko.<sup>106</sup> Allen and Kirmse, Ltd. held development rights to more than 50,000 acres of land that bordered Glacier National Park. Anadarko released its interest in leases it partially owned with ConocoPhillips. With this announcement, 76% (or 180,000 acres) of the North Fork watershed was protected from oil and gas development.<sup>107</sup> The next energy company to relinquish its leases was XTO Energy with 21,000 acres, bringing the total acres in protection up to 200,000.<sup>108</sup> Two months later, BP announced that it would give up its claim on the leases it owned near Glacier National Park covering 1,853 acres including a lease held near the entrance of the park.<sup>109</sup>

In early 2011 a formalized commitment between British Columbia and Montana was announced that would structure North Fork protections on the B.C. side of the border.<sup>110</sup> Canadian Ambassador Gary Doer, along with representatives from The Nature Conservancy of Canada signed the agreement with Montana Senators Max Baucus and Jon Tester, and the Department of the Interior Secretary Ken Salazar.<sup>111</sup> The Nature Conservancy of Canada and the United States have both pledged to provide funding (up to \$9.4 million) to retire oil gas leases on

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<sup>105</sup> *Montana Senators' North Fork Bill Passes Committee The North Fork Protection Act Would Prevent Any New Leases In The Watershed.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester. 5 August 2010. Web.

<sup>106</sup> *Baucus, Test, Announce More Lease Retirements in the North Fork: Companies Agree to Relinquish Leases at No Cost to U.S. Taxpayers.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester. 14 July 2010. Web.

<sup>107</sup> Ibid.

<sup>108</sup> *Baucus and Tester Announce Exxon Subsidiary to Retire Leases near North Fork of Flathead River Energy Company Is Latest to Retire Oil and Gas Leases in Region at No Cost to U.S. Taxpayers.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester. 10 September 2010. Web.

<sup>109</sup> *Baucus, Tester Announce BP to Retire Leases Near North Fork of Flathead River Senators Have Helped Secure the Return of 80 Percent of Leased Acreage at No Cost to Taxpayers.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester. 19 November 2010. Web.

<sup>110</sup> *Baucus, Tester Announce Formal Commitment from British Columbia to Protect the North Fork through New Legislation, Existing Lease Retirements Senators Praise Agreement to Retire Canadian Oil and Gas Leases at No Cost to American Taxpayers.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester. 15 February 2011. Web.

<sup>111</sup> Ibid.



the Canadian side of the border.<sup>112</sup> Only a few days after the announcement, four more energy companies voluntarily agreed to give up their claims on oil and gas leases in the Flathead, adding another 15,000 acres to the protected area.<sup>113</sup>

On September 16, 2011 the Flathead Watershed Area Conservation Act passed in the British Columbia Legislature.<sup>114</sup> The legislation to protect the Flathead River Basin from energy development solidified the agreement between B.C. and Montana to protect its shared environment. Legislation on the U.S. side, Senate Bill 233, has not yet passed the Senate.<sup>115</sup>

These three main disputes over coal development in the Flathead River Valley held similar fates. None of the proposed mines were ever fully approved to. Perseverance from Montana's leaders, the federal Canadian government, Canadian and U.S. non-profits, and international organizations to maintain the environmental quality of the Crown of the Continent region ultimately won out over British Columbia's economic interests.

### **Evolution of Party Positions**

Party positions on both sides of the border fluctuated over the thirty-year time span of the coal development disputes. This section delves deeper into the political rhetoric from each side to better understand the outcome of protecting the Flathead River Basin over the thirty-year process. It should be noted that there were gaps in information from relying solely on government documents to show change in position over time so additional news resources were used to fill in missing information. The shortcomings of using news sources to analyze political shifts should be acknowledged; however, it would be difficult to illustrate the evolution of the

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<sup>112</sup> Ibid.

<sup>113</sup> *Baucus, Tester Announce Additional Lease Retirements near North Fork of Flathead River Senators Have Helped Secure the Return of 80 Percent of Leased Acreage on Montana Side at No Cost to Taxpayers.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester. 17 February 2011. Web.

<sup>114</sup> Chaney, Rob. "British Columbia OKs Law Protecting Flathead Basin." *Missoulian*. 16 September 2011. Print.

<sup>115</sup> Ibid.

dispute without these resources because negotiations or conversations within government are not necessarily published before a deal is made.

### Resource Development

#### *British Columbia*

Throughout the period of the B.C. Flathead dispute, the B.C. government continued to emphasize energy resource development as a key to B.C.'s economy. The early attitude of B.C. was decidedly pro-development. For example, during the 1980 Speech from the Throne, Lt.-Governor Hon. Henry Bell-Irving acknowledged B.C.'s wide range of energy sources available to the province and the B.C. government commitments to monitor, harvest, and convert "when necessary and practicable"<sup>116</sup> these natural resources. Mr. Bell-Irving also stated that only "moderate reserves of natural oil" had been discovered, spurring conversation around potential to convert "enormous quantities of coal into gasoline"<sup>117</sup>. A favorable position in world coal markets, according to Mr. Bell-Irving, would be a "high-priority of my government in the coming year".<sup>118</sup> It is clear that B.C. government, at that time led by the right-leaning Social Credit Party, was seeking to aggressively expand mineral extraction as part of an economic development strategy.<sup>119</sup>

Only a few months later, the third session of the thirty-second Legislative Assembly convened, and was again addressed by the Hon. Henry Bell-Irving.<sup>120</sup> The speech included the announcement of the creation of the Energy Development Agency, which would be under the

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<sup>116</sup> Bell-Irving, Henry. "Speech from the Throne." Opening of the 2nd Session, 32nd Parliament. British Columbia, Victoria. 29 February 1980. Speech. pg. 2.

<sup>117</sup> Ibid. pg. 3.

<sup>118</sup> Ibid. pg. 5.

<sup>119</sup> "A Concise History of the British Columbia Social Credit Party." *British Columbia | Social Credit*. Web.

<sup>120</sup> Bell-Irving, Henry. "Speech from the Throne." Opening of the 3rd Session, 32nd Legislative Assembly. British Columbia, Victoria. 4 December 1980. Speech.

direction of the Minister of Energy, Mines, and Petroleum.<sup>121</sup> The Energy Development Agency would set out to identify areas of new energy technology to research.<sup>122</sup> Examples of new energy technologies include coal liquefaction, as well as energy alternatives.<sup>123</sup>

In the 1985 Speech from the Throne, Robert G. Rogers boasted that coal shipments from the province increased by 68 percent with 19 million metric tonnes of coal going to European and Pacific Rim markets. Critical industries, i.e. mining and forestry, were adversely impacted by the recession, which concerned Mr. Rogers and the Legislative Assembly. As a result, an independent commissioner would be appointed to provide an opportunity for interested parties from these critical industries to work together;<sup>124</sup> this commission was mandated to recommend measures to develop partnerships, and as a result the government would negotiate “relief measures” such as tax breaks, and reduced transportation and energy costs. Coal extraction continued to be a major theme in provincial economic development.

Reference to mining and coal extraction dropped out of the speeches from the throne following the change to a leftist New Democratic Party leadership in the 1991 election. The conservative Liberal Party of British Columbia regained the leadership in 2001 following provincial economic recession, coincident with the revival of mining proposals in the B.C. Flathead. Perhaps sensing the changes in political winds the speeches from the throne in 1990 by Lt. Governor Lam began to reference the need for environmental controls on resource extraction and the need for a sustainable development approach. In order to provide feedback from the community on economic and social policies, and to provide balance, the B.C. government

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<sup>121</sup> Ibid. pg. 6.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

established the British Columbia Round Table on Environment and Economy.<sup>125</sup> Lt. Gov. Lam discussed the B.C. mine review process, highlighting the international recognition for “integrating environmental and economic factors in approving proposals for new mining operations”.<sup>126</sup> To strengthen the process even further, Lam stated that a mine development review act would be introduced to the legislative assembly.<sup>127</sup> A plan entitled “Vision 2001” was then tabled by the Ministry of Environment to encourage citizens of the province to help frame environmental policy for the next decade.<sup>128</sup> Lt. Gov. Lam declared that the Ministry of Environment will “continue building partnerships with federal, local, and neighbouring jurisdictions to protect the environment.”<sup>129</sup>

The Liberal government of British Columbia continued to prioritize mineral extraction from the B.C. Flathead. The 2001 management plan for crown lands in the region, while specifying grizzly habitat protection and old growth forest reserves, opened the entire basin to coal and other mining despite such ecosystem management direction set forth by the New Democratic Party.<sup>130</sup> Representatives of the government were reported to make many statements in support of the development path. For instance, Lt. Governor Campagnolo stated “measures will be introduced this Session to boost investment and job creation in both energy and mining sectors” in the 2002 Speech from the Throne.<sup>131</sup> As late as 2008, the B.C. government was still prioritizing mining of the watershed in response to the World Heritage mission to investigate potential endangerment of Waterton-Glacier National Park. In the final report from the World Heritage mission, it was noted that the B.C. and federal Canadian government assured the

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<sup>125</sup> Ibid. pg. 1.

<sup>126</sup> Ibid. pg. 4.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> "Kootenay Boundary Higher Level Plan." *Ministry of Forests and Natural Resources Operations*. Web.

<sup>131</sup> . Campagnolo, Iona. "Speech from the Throne." Opening of the 3rd Session, 37th Parliament. British Columbia, Victoria. 12 February 2002Speech.

mission that comprehensive environmental assessments would make certain that energy development projects would not be approved in the area if “assessed as having unacceptable environmental consequences”.<sup>132</sup>

Despite direction from the 1988 bi-national IJC impacts report calling for “defining and implementing compatible equitable and sustainable development activities and management strategies” between governments and jurisdictions,<sup>133</sup> cooperative environmental management would not begin to be considered until the 2005 environmental cooperation agreement, and would not fully come to fruition until 2010. This delay likely underscores the B.C. attachment to coal mining and mineral extraction as a base for its economy and the perception of the government that such an important fixture in the economic life of the province would not be limited without some substantial benefit in return.

A final shift in B.C.’s position is found in Lt. Governor Steven Point’s call for amendments to the Canadian Environmental Assessment Act in order to create a unified federal-provincial process in 2010.<sup>134</sup> Point mentioned B.C.’s relationship with Montana over the Flathead River basin environmental issues, stating that a collaborative approach to transboundary issues would be a commitment by the B.C. government.<sup>135</sup> Point’s biggest announcement was that mining, oil and gas development and coalbed methane gas extraction would no longer be permitted in the Flathead Valley on the Canadian side of the border.<sup>136</sup> Finally, Point touched on the idea that clean energy would be central to the government’s Climate Action Plan.<sup>137</sup>

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<sup>132</sup> Dingwall, Paul R., and Kishore Rao. *WATERTON-GLACIER INTERNATIONAL PEACE PARK (Canada and USA) REPORT OF THE REACTIVE MONITORING MISSION*. Rep. 2009. Print.

<sup>133</sup> International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. 15 December 1988. Print. pg. 11.

<sup>134</sup> Point, Steven L. "Speech from the Throne." Opening of the 2nd Session, 39th Parliament. British Columbia, Victoria. 9 February 2010. Speech. pg 4.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid. pg. 7.

## *Montana*

Throughout the coal development disputes, Montana was pro-development in the energy sector, with the exception of the Flathead. Governor Ted Schwinden addressed the instability of natural resource industries in Montana during the 1981 State of the State address.<sup>138</sup> Governor Schwinden also stated “effective economic development must go hand-in-hand with environmental survival... I will not turn my back on the record of environmental progress”.<sup>139</sup> Governor Schwinden emphasized the importance of utilizing natural resources conscientiously to create economic opportunities.<sup>140</sup>

In the 1983 State of the State address, Governor Ted Schwinden discussed the process of allocating scarce resources as “painful”.<sup>141</sup> Gov. Schwinden only briefly mentioned environmental concerns, stating that the government had been working for the past two years to reorganize itself to “strengthen commitment to economic development” as well as a “commitment to preserve and improve Montana’s environment”.<sup>142</sup> The legislature created the Flathead Basin Commission during the 1983 session to address the environmental threats in the Flathead River Basin,<sup>143</sup> illustrating the deep concern the state had over water quality in the Flathead.

Montana requested that the IJC study cumulative impacts from coal mines in the Flathead. The 1988 report included a recommendation which called for “defining and implementing compatible equitable and sustainable development activities and management

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<sup>138</sup> Schwinden, Ted. "State of the State Message." 47th Legislature. Montana, Helena. 9 January 1981. pg. 3.

<sup>139</sup> Ibid. pg. 5.

<sup>140</sup> Ibid.

<sup>141</sup> Schwinden, Ted. "State of the State Message." 48th Legislature. Montana, Helena. 7 January 1983. pg. 7.

<sup>142</sup> Ibid.

<sup>143</sup> "History on Achieving an Agreement for Cooperative Resource Management for the Flathead River Basin with British Columbia." *Office of the Governor*. Web.  
<[governor.mt.gov/news/docs/031510\\_FlatheadHistoricalTimeline.pdf](http://governor.mt.gov/news/docs/031510_FlatheadHistoricalTimeline.pdf)>.

strategies” between governments and jurisdictions.<sup>144</sup> Echoing the call from the IJC report, the 1989 legislative session passed House Joint Resolution no. 9 which requested “the governments of Montana, B.C., the U.S. and Canada to establish a cooperative structure to achieve conservation goals in the drainage while maintaining appropriate resource development options”.<sup>145</sup> This call for cooperative environmental management would not come to fruition until 2010.

With reduced pressure on energy development during the 1990s, it was not until the 2000s that resource development in the Flathead reappeared in Montana’s political speeches. In 2001 Governor Judy Martz outlined the main goals of her administration in her first State of the State address.<sup>146</sup> These goals included creating jobs and diversifying the economy while keeping within Montana’s environmental standards.<sup>147</sup> Gov. Martz stated that she would work “diligently” to strengthen relations with our Canadian neighbors as the co-chair on the Montana-Alberta Boundary Advisory Committee.<sup>148</sup> Gov. Martz nodded to the industries that built Montana (mining, timber, and agriculture) and gave her support for environmentally safe development of these industries.<sup>149</sup>

Governor Martz stated her approval for the “responsible development” of coalbed methane gas in the 2003 State of the State address,<sup>150</sup> further illustrating Montana’s pro-development stance, while maintaining protection and conservation measures in the Flathead. Two years later, newly elected Governor Brian Schweitzer made it clear in the 2005 State of the

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<sup>144</sup> International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. 15 December 1988. Print. pg. 11.

<sup>145</sup> "History on Achieving an Agreement for Cooperative Resource Management for the Flathead River Basin with British Columbia." *Office of the Governor*. Web. <[governor.mt.gov/news/docs/031510\\_FlatheadHistoricalTimeline.pdf](http://governor.mt.gov/news/docs/031510_FlatheadHistoricalTimeline.pdf)>.

<sup>146</sup> Martz, Judy. "State of State Address." Helena. Speech. 25 January 2001. pg. 1.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid. pg. 5.

<sup>149</sup> Ibid. pg. 4.

<sup>150</sup> Martz, Judy. "State of State Address." Helena. 21 January 2003. Speech. pg. 5.

State address that long-term energy solutions and policy were needed.<sup>151</sup> Governor Schweitzer acknowledged Montana's abundant natural resources but emphasized that long term planning is needed in order for Montana to become a leader in energy production.<sup>152</sup>

In the 2009 State of the State address, Governor Brian Schweitzer stressed the importance of the energy sector to the state of Montana.<sup>153</sup> From 2005-2009 Montana's oil production increased by 38% and gas production rose 34%.<sup>154</sup> In 2008, the Crow Nation of southeastern Montana and the Australian-American Energy Company LLC announced the Many Stars Project, a coal-to-liquids energy project on the Crow Reservation.<sup>155</sup> The Many Stars Project initially estimated 38,000 tons of coal would be converted into 50,000 barrels per day of fuel (diesel, jet, and naphtha) and the creation of 4,000 construction jobs and 900 permanent jobs.<sup>156</sup> Schweitzer applauded the first new coal mine built in 20 years, as well as the American engineering and labor that went into the mine.<sup>157</sup> Schweitzer praised the Many Stars Program and emphasized the Montana's role in creating a new energy system.<sup>158</sup> He also suggested that taxes from oil and gas production should go towards raising teachers' salaries.<sup>159</sup>

During the same period of time, Governor Brian Schweitzer sent the Department of Interior Secretary Ken Salazar a letter requesting the cancellation of oil and gas leases in the

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<sup>151</sup> Schweitzer, Brian. "State of State Address." Helena. 19 January 2005. Speech. pg. 3.

<sup>152</sup> Ibid.

<sup>153</sup> Schweitzer, Brian. "State of State Address." Helena. 28 January 2009. Speech.

<sup>154</sup> Ibid. pg. 3.

<sup>155</sup> Many Stars CTL. *Crow Nation and Australian-American Energy Company Sign Agreement for Montana Energy Project. Many Stars Project.* 8 Aug. 2008. Web.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Schweitzer, Brian. "State of State Address." Helena. 28 January 2009. Speech.

<sup>159</sup> Ibid. pg. 7.



Flathead National Forest.<sup>160</sup> The leases in question were improperly issued under then-Secretary of the Interior James Watt.<sup>161</sup> An excerpt from the letter:

In the case of *Conner v. Burford*, the Ninth Circuit Court of Appeals in 1988 determined a significant number of the existing mineral leases on the Flathead National Forest to have been issued in violation of the National Environmental Policy Act and the Endangered Species Act. As a result of the litigation, the Department of Interior issued a Decision suspending the leases in question, effective March 1, 1985”.<sup>162</sup>

When appeals failed, Montana Senators Max Baucus and Jon Tester secured the retirement of nearly 170,000 acres of oil and gas leases in the Flathead River basin.<sup>163</sup> These lease retirements both came after the announced restrictions in the B.C. Flathead, showing that a shared attitude came only after the deal was made. The largest lease holder, ConocoPhillips, voluntarily turned over 108 leases totaling 169,000 acres.<sup>164</sup> Many other companies came forth and released their interests on leases on the Montana side of the border, ultimately taking 200,000 acres out of development.<sup>165</sup> Governor Brian Schweitzer announced the decision of the Montana State Land Board to protect the 17,000 acres of School Trust Land in the North Fork, furthering the transboundary efforts to protect the Flathead River basin.<sup>166</sup> These moves signaled the first

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<sup>160</sup> *Governor Asks Interior to Cancel Leases in Flathead - DEQ Not to Issue New Permits. Montana Governor News Releases.* Governor Brian Schweitzer. 15 March 2010. Web.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> *Senators Announce Major Lease Retirements in the Flathead Watershed: ConocoPhillips Joins Baucus and Tester to Protect North Fork Forever. News | Max Baucus | U.S. Senator from Montana.* Senator Max Baucus and Jon Tester. 28 April 2010. Web.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Baucus, Tester Return More than 80 Percent of Leased Acreage Near North Fork Of Flathead River at No Cost to Taxpayers Senators Vow to Continue Efforts, Reinroduce North Fork Protection Bill Next Congress. News | Max Baucus | U.S. Senator from Montana.* Senator Max Baucus and Jon Tester. 22 December 2010. Web.

<sup>166</sup> *Governor Schweitzer, Land Board Vote in Favor of North Fork Resolution. Montana Governor News Releases.* Governor Brian Schweitzer. 18 March 2010. Web.

concrete assumption of burdens on economic development opportunities in the Flathead by Montana and, therefore marks a major shift in the Montana position.

In late 2010, after British Columbia's withdraw of oil, gas, and mine development in the Canadian Flathead, Baucus and Tester introduced legislation that would protect the Flathead River Valley in Montana.

### *Mining Revenue*

#### *British Columbia*

Motivation to expand energy development in British Columbia increased in conjunction with energy security worries in the late 1970s and extended into the 1980s. This climate spurred the Social Credit Party to facilitate an increase investment in energy sectors in British Columbia. Lt. Governor Henry Bell-Irving focused on the mining industry as British Columbia's economic backbone in the 1983 Speech from the Throne.<sup>167</sup> Depressed markets during this time affected investment; however Mr. Bell-Irving credited the recent elections in B.C. for providing a more stable "investment climate", which would in turn lead to expanded exploration efforts.<sup>168</sup>

In the 1984 Speech from the Throne, Lt. Governor Rogers praised the resource development project in the coalfields of northeast B.C. as stimulating "tremendous economic activity during the recession".<sup>169</sup> New coalfields in southeast B.C. were announced to have begun shipping metallurgical coal through the Crowsnest Pass to Scandinavian and Far Eastern countries creating new jobs and an "adequate transportation system" according to Mr. Rogers. This development reflects the increased demand from Japanese markets in 1980 and B.C.'s goal to expand development and export of energy. Lt. Governor Robert G. Rogers announced in his

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<sup>167</sup> Bell-Irving, Henry. "Speech from the Throne." Opening of the 1st Session, 33rd Parliament. British Columbia, Victoria. 23 June 1983. Speech. pg 5.

<sup>168</sup> Ibid.

<sup>169</sup> Rogers, Robert G. "Speech from the Throne." Opening of the 2nd Session, 33rd Parliament. British Columbia, Victoria. 13 February 1984. Speech. pg. 4.

1986 Speech from the Throne that B.C.'s mining industry produced \$3.5 billion worth of mineral product in 1985.<sup>170</sup> He went on to say that world market improvements were anticipated for 1987 and beyond.<sup>171</sup> Lt. Governor Rogers illustrates the Social Credit Party's goal of expanding B.C.'s energy markets from the Atlantic to the Pacific and the economic benefits that they hoped for.

Mining revenue from energy development in the Flathead did not surface again until the 1998 Speech from the Throne. The New Democratic Party replaced the Social Credit Party in 1991 and energy development abated as a result. Lt. Gov. Gardom Garde stressed job creation and strengthening the economy as provincial goals.<sup>172</sup> Lt. Gov. Garde commended the newly created Ministry of Energy and Mines on their work on the "Mineral Exploration Code" among others to spur development and investment in the energy sector.<sup>173</sup> This expansion of energy development came just a few years before the bid to host the 2010 Winter Olympics.

Shortly after the Liberal party replaced the New Democratic Party in 2001, focus returned to rapidly expanding energy development. Specifically, changes to the *Environmental Assessment Act* were announced during the 2002 Speech from the Throne that would streamline the assessment process and eliminate overlaps between the federal and provincial reviews.<sup>174</sup> Changes would also be made to provide further access to Crown lands and resources, cut red tape, and increase competitiveness.<sup>175</sup> These changes would also encourage the development of

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<sup>170</sup> Rogers, Robert G. "Speech from the Throne." Opening of the 4th Session, 33rd Parliament. British Columbia, Victoria. 11 March 1986. Speech. pg. 5.

<sup>171</sup> Ibid. pg. 8.

<sup>172</sup> Gardom, Garde B. "Speech from the Throne." Opening of the 3rd Session, 36th Parliament. British Columbia, Victoria. 26 March 1998. Speech. pg. 3.

<sup>173</sup> Ibid.

<sup>174</sup> Campagnolo, Iona. "Speech from the Throne." 12 February 2002. Speech. pg. 4.

<sup>175</sup> Ibid.

coalbed methane extraction.<sup>176</sup> During the same speech, Lt. Governor Campagnolo announced British Columbia's bid to host the 2010 Olympics.<sup>177</sup>

The 2003 Speech from the Throne focused heavily on the benefits of energy development and what the Olympics would bring to B.C.<sup>178</sup> Coalbed methane development, especially in the Kootenays (southeast B.C.) has great potential according to Lt. Governor Campagnolo.<sup>179</sup> She announced changes to the *Coal Act*, *Mineral Tenure Act*, *Mines Act*, and *Petroleum and Natural Gas Act* that would help to stimulate investment and streamline administrative processes for approval and management.<sup>180</sup> The push for energy development during this time generated funds that B.C. needed to cover the extensive costs surrounding the Olympic bid.

In addition to the funds initially committed by the province, an increase in tax revenue was needed in order to fund B.C.'s Olympic bid. BP's proposed coalbed methane development in the Flathead and Elk Valley would have garnered the B.C. government more than \$2 billion in corporate taxes over the life of the project.<sup>181</sup> Reflecting the Liberal Party's energy development policies, 2003 profits in the mining sector rose \$285 million compared to \$107 million in 2002 and \$61 million in 2001.<sup>182</sup> Return on shareholder investment was 10.9 percent in 2003 compared to 4.1 percent in 2002.<sup>183</sup> This increase in profits and revenue for the mining companies translates into increased tax revenue for B.C., which it desperately needed to fund the 2010 Winter Olympic Games.

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<sup>176</sup> Ibid. pg. 5.

<sup>177</sup> Ibid.

<sup>178</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 4th Session, 37th Parliament. British Columbia, Victoria. 11 February 2003. Speech.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid. pg. 14.

<sup>181</sup> Willcocks, Paul. "Obama Takes Aim at B.C. over Coalbed Methane." *Times Colonist* [Victoria, British Columbia]. 19 June 2008. Print.

<sup>182</sup> Mertl, Steve. "Mining Sector Poised for Boom." *Times Colonist* [Victoria, B.C.] 20 May 2004. Print.

<sup>183</sup> Ibid.

Government support of mining did not wane in concert with the restrictions on the Flathead, nor would it necessarily be required to – British Columbia carried out successful mining operations in other regions of the province despite the cancellation of leases in the Flathead River Valley. The 2010 resolution of coal development in the Flathead River Valley included a request by the B.C. government for compensation to the energy companies who owned the retired leases.<sup>184</sup> This request reflects B.C.'s desire for the energy companies to be compensated for giving up potential revenue for environmental protection. In the end, the Nature Conservancy of Canada and The Nature Conservancy of the U.S. raised the funds to buy out the leases in question. Thus, B.C.'s historic and current support of mining as a key industry did not depend on the Flathead and could be satisfied by other opportunities elsewhere, such as in northwestern B.C.

### *Montana*

The mining industry is historically an important sector in Montana's economy. Mining revenue in Montana has long funded public services and projects within the state. Montana Governor Ted Schwinden's 1985 State of the State address focused on Montana's coal industry.<sup>185</sup> Of particular concern was the coal severance tax; Schwinden wanted to keep the 30 percent tax on all current and new contracts in place; however he wanted to rebate a portion of the tax to the producers in order to spur further investment and development in the state.<sup>186</sup> He also proposed to use the interest from the Resource Indemnity Trust Fund, recommended by

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<sup>184</sup> Jamison, Michael. "British Columbia Formalizes Order Banning Canadian Flathead Mining, Energy Development." *Missoulian* 11 Feb. 2010. Print.

<sup>185</sup> 11 January 1985. Schwinden, Ted. "State of the State Message." 49th Legislature. Montana, Helena. Speech.

<sup>186</sup> *Ibid.* pg. 4.

Gov. Judge in 1973, to “help mitigate damage caused by past resource extraction and to address other problems that current laws do not cover”.<sup>187</sup>

In the 1997 State of the State address, Governor Marc Racicot announced an innovative program called “Today and Tomorrow” that would invest a portion of the state’s coal severance tax back into the State.<sup>188</sup> Stewardship measures were included in the program, allowing the state to buy easements on private land “to keep them forever open, productive, and clean”.<sup>189</sup> Racicot noted that tourism is Montana’s second largest economic sector, although far behind agriculture.<sup>190</sup>

State and provincial taxes on coal in both British Columbia and Montana contribute to conservation and public projects through legislation passed during the thirty-year dispute. Energy developments in each respective government are the industries that built the regions and continue to be a source of pride for the local residents.

### Information Gap

Throughout the coal development dispute in the Flathead River Valley, the most contested issue was the general lack of information about the basin as a whole. British Columbia felt confident in the provincial mine review process and environmental assessment while Montana wanted to assemble as many research groups and studies as possible to establish baseline data to understand the ecosystem *before* any development began.

### *British Columbia*

While the focus of the governing party of B.C. during the 1980s, the Social Credit Party, was strengthening the provincial economy, there were few environmental initiatives proposed.

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<sup>187</sup> Ibid.

<sup>188</sup> Racicot, Marc. "State of the State Address to the People of Montana." Helena. 16 January 1997. Speech. pg. 3.

<sup>189</sup> Ibid. pg. 4.

<sup>190</sup> Ibid.

To address environmental concerns, Lt. Governor Henry Bell-Irving mentioned a new Ministry of Environment Act in the 1980 Speech from the Throne. The Act would be the “first step toward a full review of environmental legislation” and would allow for more immediate response to pollution emergencies by the Minister of Environment.<sup>191</sup>

B.C. showed little interest in collecting baseline data about the Flathead River Valley when compared to Montana throughout the dispute. The Social Credit Party argued that the amount of time and money needed to conduct further studies was unnecessary because they were confident that the provincial environmental assessment process was sufficient.

Following renewed interest in energy development by the Liberal Party in the 2000s, the issue of environmental assessment came back into play. In 2006 British Columbia decided to include Montana in the environmental review process as a means to boost confidence in the provincial-federal process.<sup>192</sup> The decision came after Montana Governor Schweitzer and B.C. Intergovernmental Affairs Minister John van Dongen conveyed commitment to a collaborative approach to the issue of coal development in the Flathead.<sup>193</sup> Van Dongen expressed his belief that the provincial-federal environmental review would put an end to American worries and that the B.C. government, not the IJC, would make the decision.<sup>194</sup>

The former Canadian Minister of Environment, Mr. Anderson, penned a letter to the current federal Minister of Environment advising him to that the coalbed methane issue should either go through the federal Canadian Environmental Assessment Act or be reviewed by the IJC.<sup>195</sup> Montanans agreed with this point, emphasizing that the CEAA was more comprehensive

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<sup>191</sup> Bell-Irving, Henry. "Speech from the Throne." 29 February 1980. Page 3.

<sup>192</sup> Whiteley, Don. "Fundamental Differences with Montana over Proposed Coal Mine May Erupt Again." *The Vancouver Sun*. 1 March 2006. Print.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Hume, Mark. "Coal-mining Plan Worries Ex-cabinet Minister." *Globe and Mail* [Toronto]. 24 August 2004. Web.

and included cumulative impacts and basin wide impacts.<sup>196</sup> This echoed concerns from the disputes in the 1980s, illustrating the lack of change from British Columbia on this issue.

### *Montana*

Worry over the threat of coal development in the Flathead in the early 1980s spurred Montana into collecting as much data about the region as it could. The notion was that without ample baseline data, potential cumulative impacts could not be fully understood or mitigated.

In 1984 a study conducted by Noble, Van Voast and Sonderegger from the Montana University Joint Water Resources Research Center sought to catalogue baseline water quality in the Flathead.<sup>197</sup> The study found that dissolved solids in the water had the potential to adversely impact water quality specifically in Howell Creek, which ran right past the proposed mine site.

To further address gaps in information on water quality and quantity, the Flathead River International Study Board was appointed by the IJC in April of 1985 with the mandate to address concerns communicated by Montana and the U.S. federal government in response to the proposed Sage Creek mine.<sup>198</sup> Technical committees were appointed to investigate the potential cumulative impacts caused by the mine.<sup>199</sup> Baseline data and information gaps were identified and the concern over adequate data from the proposed mine was emphasized;<sup>200</sup> deficiencies in water-quality, water-quantity, and biological resource impact studies would need to be addressed, as suggested by the IJC, before any socio-economic impacts would be reviewed.<sup>201</sup>

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<sup>196</sup> *State of Montana Comment: Draft Terms of Reference on Cline Mining Corporation Lodgepole Project*. 12 April 2006. Print.

<sup>197</sup> Noble, Roger A., Wayne A. Van Voast, and John L. Sonderegger. *Some Hydrologic Aspects of Proposed Coal Mining in the North Fork of the Flathead River Headwaters Area, Northwest Montana and Southeast British Columbia*. Rep. no. G-853-05. Bozeman, MT: Montana University Joint Water Resources Research Center, 1984. Print.

<sup>198</sup> *Flathead River International Study: Board Supplementary Report*. Rep. Ottawa, Ont.; Washington, D.C: Board: International Joint Commission. 1988. Print. pg. 1.

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.* pg. 3.



The technical report from the Mine Development Committee also ran across the same data issues noting, “[i]n many cases it was not possible to provide precise or detailed quantitative estimates of mining effects because the baseline data was too weak”.<sup>202</sup>

The IJC compiled all of the technical reports from the Flathead International Study Board and published a report in December of 1988.<sup>203</sup> The concluding recommendations from the report emphasized “the data limitations concerning this site were substantial, and much inference had to be drawn from experience with similar types of mine in the neighboring Elk Valley basin... Extensive additional studies would be needed to alleviate these uncertainties”.<sup>204</sup> Montana backed the IJC’s findings while British Columbia viewed the recommendations as non-binding. After these findings, conflict again died down during the 1990s with improved relations with the New Democratic Party over collaborative environmental management.<sup>205</sup>

In 2004, after the coal mine at Cabin Creek was proposed by the Cline Mine Co., Montana Governor Judy Martz again requested the International Joint Commission to review the environmental impacts of the operation.<sup>206</sup> The Flathead Basin Commission was requested to conduct a study on the cumulative environmental impacts of coal-bed methane development.<sup>207</sup> Montana Rep. Denny Rehberg supported the efforts towards conducting a study stating, “a completed environmental assessment statement will identify the risks, if any, these proposed coal

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<sup>202</sup> *Flathead River International Study: Mine Development Committee Technical Report*. Rep. Ottawa, Ont.; Washington, D.C.: Board: International Joint Commission. 1988. Print. pg. xi.

<sup>203</sup> International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. 15 December 1988. Print.

<sup>204</sup> *Ibid.* pg. 5.

<sup>205</sup> "History | B.C. NDP." *British Columbia New Democratic Party*. Web.

<sup>206</sup> State of Montana. Office of the Governor. Governor Martz Expresses Environmental Concerns in Flathead. Mt.gov. 7 May 2004. Web.

<sup>207</sup> Gallagher, Susan. "Debate Surrounds Potential Methane Work in Canadian Province." *AP* [Fernie, British Columbia]. 22 June 2004. Print.

bed methane leases pose to Flathead and Kootenai watersheds, downstream waters, wildlife, and Montana communities”.<sup>208</sup>

Sufficient information proved to be a major issue for Montana up until the 2010 resolution. Montana’s multiple requests to the IJC to conduct cumulative impact reports on proposed coal development in the Flathead illustrates the desire the State expressed throughout the dispute for a more thorough understanding of the Flathead River ecosystem.

### Tourism and Recreation

#### *British Columbia*

For British Columbia, the issue of coal mines impacting tourism and recreation was less important due to the wild, remote, and rugged landscape of the region, however tourism comprises a large sector of the economy. Ski towns in southeast British Columbia attracted visitors from around the world, capitalizing on geographic location in the northern Rockies. In the 1983 Speech from the Throne, Lt. Governor Bell-Irving credited tourism as a vital contributor to the provincial economy, especially during tough economic times.<sup>209</sup> 1986 marked the 75<sup>th</sup> anniversary for the B.C. Provincial Park System with an estimated 16 million visitors in 1985 and expected to grow for 1986, highlighting the importance of tourism dollars for the B.C. government.<sup>210</sup>

Provincial parks and protected areas were highlighted during Lt. Gov. Garde Gardom’s 2000 Speech from the Throne.<sup>211</sup> Mr. Gardom presented the Parks and Protected Areas Act that would “enshrine in law the protection of B.C.’s 550 parks, 141 ecological reserves and 12 special

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<sup>208</sup> Jamison, Michael. "Rehberg Seeks Delay of B.C. Gas Project." *Missoulian* 11 August 2004. Print.

<sup>209</sup> Ibid.

<sup>210</sup> Rogers, Robert G. "Speech from the Throne." Opening of the 4th Session, 33rd Parliament. British Columbia, Victoria. 11 March 1986. Speech.

<sup>211</sup> Gardom, Garde B. "Speech from the Throne." Opening of the 4th Session, 36th Parliament. British Columbia, Victoria. 15 March 2000. Speech. pg. 6.

areas”.<sup>212</sup> Due to the wild nature of the Flathead River Valley, recreation is not as popular in this region of the province compared to the western coast in terms of visitation numbers. Recreation in the region includes hunting, fishing, camping, and world-renowned skiing in Fernie in the Elk River Valley.

The main area of recreation in the Flathead River Valley is Akamina-Kishinena Provincial Park in the southeast corner of B.C. The park offers fishing, cycling, horseback riding, hunting, and winter recreation opportunities for visitors.<sup>213</sup> One important note about Akamina-Kishinena Park is that it is a wilderness area, or in other words a primitive area that does not offer the same amenities as Waterton-Glacier International Peace Park.

British Columbia’s bid to host the 2010 Winter Olympic Games stemmed from the desire to showcase the Province on a global scale.<sup>214</sup> The B.C. government sought to spotlight its high environmental standards, vast natural resources, unique communities, and technical innovations and expertise.<sup>215</sup> The opportunity to promote B.C. as the “best place to invest, visit and live”<sup>216</sup> to the world was too great to pass up. The bid itself came just after the 2001 political election and the Liberal party victory by Premier Gordon Campbell.<sup>217</sup>

The 2002 Speech from the Throne was the first mention of British Columbia’s bid for the 2010 Olympics.<sup>218</sup> Lt. Governor Iona Campagnolo emphasized the economic boost that hosting the Olympics would bring to British Columbia.<sup>219</sup> She specified that the Olympics would

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<sup>212</sup> Ibid. pg. 6.

<sup>213</sup> "Akamina-Kishinena Provincial Park." *B.C. Parks*. Web.

<sup>214</sup> Canada. B.C. Olympic and Paralympic Winter Games Secretariat. *British Columbia's Investment in the 2010 Olympic and Paralympic Winter Games and Related Activities*. 2010. Print. pg. 1.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid. pg. 5.

<sup>217</sup> Crawford, Mark. "Pluralism, Institutionalism, and the Theories of B.C. Politics." *B.C. Studies* 172 (2011): 77. Web.

<sup>218</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 3rd Session, 37th Parliament. British Columbia, Victoria. 12 February 2002. Speech. pg. 4.

<sup>219</sup> Ibid.

“generate up to \$10 billion in economic activity for our province, 228,000 jobs, and \$2.5 billion in total revenues for all levels of government”.<sup>220</sup> Campagnolo went on to say that the tourism industry would help every community in B.C.<sup>221</sup> In the 2002 bid, B.C. committed \$600 million towards venue construction and operating costs, security and medical services, Paralympic Games costs, and grants for First Nations and communities during the Games.<sup>222</sup>

The Olympics continued to be a theme in the 2003 Speech from the Throne delivered by Lt. Gov. Campagnolo.<sup>223</sup> The goal of the B.C. government was to open up the province to foreign investment and development in all economic sectors, especially in efforts to solidify the Olympic 2010 bid.<sup>224</sup> Lt. Gov. Campagnolo emphasized the opportunity to open B.C. for the entire world to see and the economic benefits the province would reap.<sup>225</sup> Campagnolo disclosed “[t]he economic benefits of hosting the Olympics are undeniable. They will attract billions of new investment and economic activity into our province and create thousands of new jobs.”<sup>226</sup> Hosting the Olympics would boost the economy, create jobs, and spur investment.<sup>227</sup>

In 2003 British Columbia was chosen to host the 2010 Winter Olympic Games.<sup>228</sup> Lt. Governor Campagnolo announced that British Columbia would host the 2010 Olympic Games in

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<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Canada. B.C. Olympic and Paralympic Winter Games Secretariat. *British Columbia's Investment in the 2010 Olympic and Paralympic Winter Games and Related Activities*. 2010. Print. pg. 2.

<sup>223</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 4th Session, 37th Parliament. British Columbia, Victoria. 11 February 2003. Speech.

<sup>224</sup> Ibid. pg. 2.

<sup>225</sup> Ibid. pg. 3.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid. pg. 13.

<sup>228</sup> Canada. B.C. Olympic and Paralympic Winter Games Secretariat. *British Columbia's Investment in the 2010 Olympic and Paralympic Winter Games and Related Activities*. 2010. Print. pg. 2.

the 2004 Speech from the Throne.<sup>229</sup> Along with the announcement, Campagnolo highlighted the spirit of 2010 as a unifying and driving force for all British Columbians.<sup>230</sup>

Leading up to the Games, B.C. developed a multi-year strategy to promote the province and to establish business linkages.<sup>231</sup> The business linkages turned into corporate sponsorships for the 2010 Winter Games. British Columbia Hydro and Power Authority provided clean energy and reduced emissions by 10% compared to the previous winter games.<sup>232</sup> From 2007 to 2010 B.C. coordinated venue construction, community engagement programs, hosting programs, game celebration planning, and marketing campaigns.<sup>233</sup>

The provincial government in 2009 increased the 2010 Olympic budget by \$165 million with the specific focus to provide ample security during the games.<sup>234</sup> The final financial commitment from B.C. to host the games was estimated at \$765 million. On marketing campaigns alone the province spent \$108.5 million.<sup>235</sup> Tourism B.C. and the Ministry of Tourism, Culture and the Arts invested \$38 million in promoting provincial tourism.<sup>236</sup> A television campaign was a major component of tourism promotion and cost the province \$31.3 million in development, testing, ad production, and media costs.<sup>237</sup> The television ad campaign included a commercial that highlighted celebrity British Columbians in various natural wonders located in B.C.

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<sup>229</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 5th Session, 37th Parliament. British Columbia, Victoria. 10 February 2004. Speech.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid. pg. 5.

<sup>232</sup> Ibid. pg. 9.

<sup>233</sup> Ibid. pg. 6. Table 3.

<sup>234</sup> Canada. B.C. Olympic and Paralympic Winter Games Secretariat. *British Columbia's Investment in the 2010 Olympic and Paralympic Winter Games and Related Activities*. 2010. Print. pg. 2.

<sup>235</sup> Ibid. "Table 3: Summary of marketing, Hosting, Celebration, and Community Engagement Activities." pg. 6.

<sup>236</sup> Ibid. pg. 8.

<sup>237</sup> Ibid. Table 3: Further Program Details and Statistics. pg. 17.

Lt. Governor Steven Point's 2010 Speech from the Throne was infused with enthusiasm regarding the opening of the 2010 Olympics in British Columbia.<sup>238</sup> Point stated, "[i]n just three days, we will host the XXIst Winter Olympiad... This is an incredible opportunity to showcase our province and our country in all its diversity and grandeur. Our province will be centre stage as over three billion people around the world watch us host the Games."<sup>239</sup>

According to the PriceWaterhouseCooper report of the economic impacts of hosting the 2010 Winter Olympics, an estimated 325,000 people visited the games, of which 270,000 people were international tourists.<sup>240</sup> The media campaign reached roughly 3.8 billion viewers in 220 territories, making it one of the most watched Winter Olympic Games.<sup>241</sup> Tourism and related spending in B.C. from 2003 to March 2010 was evaluated at \$463 billion.<sup>242</sup> The report also estimated the GDP (gross domestic product) impacts from 2003 to March 2010 to be at \$2.3 billion.<sup>243</sup> Venue construction, transportation framework improvements, legacy projects, and third-party investments also added to economic growth in B.C. from 2003 to March 2010 as specified in the report.<sup>244</sup>

After the conclusion of the Games, Canada and China signed a formal agreement that established an Approved Destination Status between the two nations.<sup>245</sup> According to government projections, the increase of Chinese visitors to British Columbia was projected to be

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<sup>238</sup> Point, Steven L. "Speech from the Throne." Opening of the 2nd Session, 39th Parliament. British Columbia, Victoria. 9 February 2010. Speech.

<sup>239</sup> Point, Steven L. "Speech from the Throne." 9 February 2010. pg. 1.

<sup>240</sup> PriceWaterhouseCooper. *Economic Impact of the 2010 Olympic and Paralympic Winter Games on British Columbia and Canada: 2010*. Rep. no. 6. British Columbia, 2010. Print. pg. 7.

<sup>241</sup> Ibid. pg. 17.

<sup>242</sup> Ibid.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid. pg. 15-16.

<sup>245</sup> Canada. B.C. Olympic and Paralympic Winter Games Secretariat. *British Columbia's Investment in the 2010 Olympic and Paralympic Winter Games and Related Activities*. 2010. Print. pg. 13.

10% by 2010, 15% in 2011, and an additional 15% in 2012.<sup>246</sup> Along with this announcement, Air Canada stated that it planned to double flights between Canada and China.<sup>247</sup> The relations developed as a result of the Olympics extending into business and investment sectors, just as the province had initially hoped.

Tourism concerns heightened in relation to the 2010 Winter Olympic Games, especially for British Columbia. B.C.'s tourism sector grew by 4.3% in 2010 and generated \$6.5 billion of the real GDP, roughly 4% of the province's total GDP, and contributed \$13.4 billion in revenue.<sup>248</sup> However, this increase in tourism for B.C. was not focused in the Flathead River Valley.

Hosting the 2010 Olympic Games certainly impacted the cooperative outcome in the Flathead River Valley. From increased attention focused on the Province, a push to promote tourism, to ultimately a shift of economic interest from energy to tourism all contributed to the end result of protection for the region. The promotion of B.C. as a "recreational paradise" did not harmonize with mountain-top coal mining as promoted in the Flathead, further illustrating the impact hosting the Olympics had on the 2010 resolution of the coal development disputes.

### *Montana*

Economic benefits of the Crown of the Continent region are not limited to mining revenue. Tourism and recreation are important economic drivers for communities north and south of the international border. The Flathead National Forest, the Great Bear, Scapegoat, and Bob Marshall Wilderness areas, Glacier National Park, and Flathead Lake provide ample recreation opportunities in the region. Hunting, fishing, boating, camping, skiing, mountain biking, snowmobiling, and hiking are all popular attractions for visitors to the area. During the

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<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> Canada. *Tourism Sector Recovers in 2010*. By Peter Lomas. British Columbia, Oct. 2011. Web. pg. 1 and 3.

coal development disputes, Montana voiced concerns that negative impacts resulting from coal mining had the potential to cause significant economic repercussions for communities dependent on tourism dollars.

After Montana requested the IJC's involvement in the Cabin Creek coal proposal in the 1980s, the Water Uses Committee Technical Report, analyzed potential lost revenue if fisheries were negatively impacted by the proposed Cabin Creek mine.<sup>249</sup> They found that anglers in B.C. generated an estimated \$25.4 million in 1981, and in Montana the net economic value of recreational fishing was placed at \$788,000 in 1984 in the Swan Valley (a sub-basin of the Flathead River).<sup>250</sup> Sport fishing for both British Columbia and Montana remain important sectors of tourism.

Tourism was not threatened again until the Liberal Party took over government in 2001. Concerns over negative impacts to socioeconomic sectors on the Montana side of the border reemerged. Comments on the draft Terms of Reference (TOR) from Glacier National Park, representing the U.S. government, called attention to the wild and remote characteristics of the Flathead Valley, which contribute to the economic well being of the region and need to be thoroughly discussed in the TOR.<sup>251</sup> Socioeconomic impacts would not be limited to Montana; rather they would extend to Waterton Lakes National Park and surrounding Canadian communities.<sup>252</sup>

For Montana, the risk of impact from coal development on the stability of the regional economy was too great. The state estimates that more than 2 million people visit the Flathead

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<sup>249</sup> *Flathead River International Study: Water Uses Committee Technical Report*. Rep. Ottawa, Ont.; Washington, D.C.: Board: International Joint Commission. 1988. Print. pg. 179.

<sup>250</sup> Ibid.

<sup>251</sup> Hayden, Brace. *Comments on Draft Terms of Reference - Lodgepole Mine Project (Glacier National Park)*. 27 March 2006. Print.

<sup>252</sup> Ibid.



Valley annually and contribute \$150 million to local economies.<sup>253</sup> In 2010, 10.4 million people visited Montana and generated \$2.4 billion in revenue.<sup>254</sup> Local Chambers of Commerce in Montana voiced anxiety over coal development and the impacts such development would have on downstream communities. The ecological integrity of Flathead Lake, the North Fork of the Flathead River, Glacier National Park, and surrounding recreational areas are vital to the economic stability of the region's communities. The North Fork Watershed Protection Act, introduced by Montana Senators Max Baucus and Jon Tester in 2010, emphasized the value of the North Fork as a "pillar of Montana's outdoor heritage", as well as an economic driver within the State.<sup>255</sup>

### Jobs

#### *British Columbia*

Job creation through coal development in the Flathead River Valley was an important theme throughout the entire coal development dispute. Through economic recessions and energy security issues, job creation was a key motivation for British Columbia's push to develop coal in the Flathead by the Social Credit Party. For example, in the 1981 Speech from the Throne, Lt. Governor Henry Bell-Irving praised the progress made in diversifying the economy and job growth, emphasizing the expansion of coal mining in southeast B.C. resulting in 1,500 new jobs.<sup>256</sup> The theme of energy security was woven throughout the speech, with particular attention focused on the continued exploration and development of new supplies of natural gas and oil in

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<sup>253</sup> *Baucus Bill to Protect the North Fork - Once and For All: Senator Working with Canada to Halt Mining in the North Fork.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester, 4 Mar. 2010. Web.

<sup>254</sup> United States. Montana Department of Commerce. Tourism. *MONTANA'S TOURISM & RECREATION INDUSTRY FAST FACTS*. 2012. Print.

<sup>255</sup> *Baucus, Tester Continue Fight for Permanent Protection of the North Fork and Tourism Jobs Senators Push Legislation Toward Finish Line, Continue Fight for Montana's Outdoor Heritage.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester, 25 May 2011. Web.

<sup>256</sup> Bell-Irving, Henry. "Speech from the Throne." Opening of the 4th Session, 32nd Legislative Assembly. British Columbia, Victoria. 23 November 1981. Speech. pg. 2.

order to stabilize the economy. Bell-Irving stated, “[t]he goal of energy security is a vital part of building a secure economic future for all British Columbians. My government is committed to encouraging exploration for and the development of new supplies of natural gas and oil in order to expand our domestic base.” During the same time period, energy demand from Japanese markets spurred the B.C. government to capitalize on its vast natural resources.<sup>257</sup>

For the New Democratic Party, job creation was also important. Lt. Governor Garde Gardom’s message was that of job creation in a range of economic sectors, such as tourism, energy, mining, and advanced technologies in the 1996 Speech from the Throne.<sup>258</sup> In 1998, Lt. Governor Gardom further emphasized the focus of the province to create jobs, especially in the energy sector through new policy initiatives.<sup>259</sup> One such initiative was the *Power for Jobs Plan*, which would establish in an effort to draw in foreign investment by offering low-cost hydroelectric power to energy intensive industries.<sup>260</sup> Gardom spotlighted the oil and gas industry as providing “almost 40,000 direct and indirect jobs in B.C.”<sup>261</sup> By offering cut-rate energy prices to energy-intensive industries, British Columbia was passing legislation to promote a streamlined mining development process to spur job creation and tax revenues. The softwood lumber industry in Canada was declining during this time, adding pressure to the B.C. government to spur development in other industries.

The Liberal Party elected in 2001 sought to expand economic growth and job creation was an important piece of the puzzle. Lt. Governor Campagnolo touched on measures during the 2002 Speech from the Throne that would be taken to “boost investment and job creation in both

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<sup>257</sup> Sigurdson, Albert. "B.C. Looking to Coal and Fuel Investment and Create Jobs." *The Globe and Mail* [Vancouver] 11 July 1980. Print.

<sup>258</sup> Gardom, Garde. "Speech from the Throne." Opening of the 1st Session, 36th Parliament. British Columbia, Victoria. 25 June 1996. Speech.

<sup>259</sup> Gardom, Garde B. "Speech from the Throne." Opening of the 3rd Session, 36th Parliament. British Columbia, Victoria. 26 March 1998. Speech. pg 3.

<sup>260</sup> Ibid. pg. 4.

<sup>261</sup> Ibid. pg. 5.

energy and mining sectors” as well as to ensure the Oil and Gas Commission were as effective as possible.<sup>262</sup> Campagnolo stated that B.C. led the country in job creation from 2002-2004 during the 2004 Speech from the Throne.<sup>263</sup> Campagnolo noted that much of the job creation came from the energy sector<sup>264</sup>, reflecting the expanded development push in 2002. She boasted that B.C. was North America’s “new energy powerhouse”.<sup>265</sup> The vast natural gas and coal reserves across the province were spotlighted, as well as the efforts to expand development and production of these economic sectors.<sup>266</sup> A few short months after these announcements were made, the Cline Mining Company took over coal leases just north of Glacier National Park on the Canadian side of the international border.<sup>267</sup> The CEO of Cline Mining Company, Kenneth Bates, estimated annual production of two million tons annually for 20 years, with the potential to generate \$2.5 billion in income along with the creation of hundreds of jobs.<sup>268</sup>

After 2002, the push for expanded energy development occurred in tandem with British Columbia’s bid to host the 2010 Winter Olympic Games. Expanded energy development would garner the province with increased tax revenue that it would need to fund legacy projects and venue constriction.<sup>269</sup> However, during the 2010 Winter Olympic Games B.C. Premier Campbell announced that the Canadian Flathead would be closed from future coal, oil and gas development.<sup>270</sup> In response to the decision to end energy development in the Canadian Flathead,

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<sup>262</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 3rd Session, 37th Parliament. British Columbia, Victoria. 12 February 2002. Speech. pg. 4.

<sup>263</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 5th Session, 37th Parliament. British Columbia, Victoria. 10 February 2004. Speech. pg 3.

<sup>264</sup> Ibid.

<sup>265</sup> Ibid. pg. 6.

<sup>266</sup> Ibid. pg. 7.

<sup>267</sup> Jamison, Michael. "Canadian Mining Plans Pose Threat to Flathead Watersheds." *Missoulian*. 17 March 2004. Print.

<sup>268</sup> Jamison, Michael. "Canadian Coal Mine Proposal Causes Stir." *Missoulian*. 25 April 2004. Print.

<sup>269</sup> Sax, Joseph L., and Robert B. Keiter. "The Realities of Regional Resource Management: Glacier National Park and Its Neighbors Revisited." *Ecology Law Quarterly* (2006). Print. pg. 19.

<sup>270</sup> Chaney, Rob. "British Columbia Declares Canadian North Fork off Limits to Mining, Energy Development." *Missoulian* 10 Feb. 2010. Print.

the East Kootenay Chamber of Mines president Ross Stanfield expressed his surprise, citing the mining sector as the main employer in southeastern B.C.<sup>271</sup> Perhaps the compensation package requested by the B.C. government was a means to fix a budget shortfall created by the government's spending on hosting the Olympics.

Job creation in the southeastern coalfields of British Columbia was a priority for the province throughout the coal development dispute in the Flathead. While oil and gas development might be off the table in the region, timber and hunting industries would still be allowed to operate.

### *Montana*

For Montana, job creation was also critical to the overall economic health of the state. In the Flathead River Valley, focus on maintaining jobs in the tourism sector was more important than creating jobs in the mining industry. For example, the state estimates that more than 2 million people visit the Flathead Valley annually and contribute \$150 million to local economies.<sup>272</sup> Coal development in the Flathead Valley directly threatened jobs in the region that depend on the pristine landscape. Pushback from the tourism industry in Montana on coal development was seen, as illustrated with the involvement of local Chambers of Commerce, Glacier National Park, and many community members representing a wide range of businesses also dependent on regional tourism. This pushback was not present in other coal development projects within the state of Montana during the same time period. For instance, the Otter Creek coal development project in southeastern Montana was embraced by the surrounding Crow

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<sup>271</sup> Lindsay, Craig. "Government Ruling on Flathead Called a Political Decision." *Kootenay News Advertiser* 18 Feb. 2010. Print.

<sup>272</sup> *Baucus Bill to Protect the North Fork - Once and For All: Senator Working with Canada to Halt Mining in the North Fork.* News | Max Baucus | U.S. Senator from Montana. Senator Max Baucus and Jon Tester, 4 Mar. 2010. Web.

Nation- jobs, business opportunity, and long-term sustainable energy development was welcomed with open arms.

### Water Quality

Increased sediment flow in the Flathead River was a huge concern for Montana during the coal development disputes. Through the course of the dispute British Columbia did not acknowledge that the issue was as dire as Montana projected, while Montana wanted to fully study the watershed before any development occurred.

### *British Columbia*

During the Social Credit Party's reign in the 1980s, confidence in B.C.'s environmental review and the mine development processes gave the government little reason to worry about energy development. The Sage Creek Coal Lt. proposal for the Cabin Creek Mine failed to address the full range of cumulative impacts during Stage II of the process, and as a result the B.C. mine review process sent the proposal back for revisions.<sup>273</sup> By rejecting the proposal because it failed to address specific concerns, the B.C. government felt that the provincial review process was sufficient. Two years later when the Sage Creek Coal Lt. re-submitted the application, Montana requested the IJC study cumulative impacts.

After the IJC report, the New Democratic Party formed the B.C. government as a result of defeating the Social Credit Party. Subsequently, issues over water quality between B.C. and Montana diminished.

Then in 2005 with the Liberal Party in charge, British Columbia's Minister of Mining, Bill Bennett, stated that he understood that the Flathead "has an almost sacred resonance for

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<sup>273</sup> *Flathead River International Study: Board Report*. Rep. Ottawa, Ont.; Washington, D.C.: Board: International Joint Commission, 1988. Print.

people in northern Montana”, but stressed his opinion that the proposed coal mine would not pose a threat and has been going on in the region for a century.<sup>274</sup>

Proposed coalbed methane development in the late 2000s spurred further worry over water quality issues. The process of extracting coalbed methane results in the production of huge volumes of water; ground water is pumped out of coal seams in order to depressurize reserve.<sup>275</sup> Water volumes for production are between 20,000 and 40,000 gallons pumped out of each well in order to stimulate the natural gas release.<sup>276</sup> The process requires blocks of land with multiple and closely spaced well sites.<sup>277</sup> British Columbia maintained that its expansion of coalbed methane in the Flathead would not harm Montana throughout the dispute resulting in no change on the issue of water quality.

### *Montana*

Heavy metal contamination of the Flathead River was a concern that Montana faced in the early 1980s.<sup>278</sup> The Sage Creek Coal mine proposal, or any mine development in the Flathead River Valley, would violate the Boundary Waters Treaty of 1909 in the eyes of Montana.<sup>279</sup> Contaminated water runoff from the proposed mine site would not be stationary, rather it would flow downstream, cross over the international boundary between British Columbia and Montana, and would keep flowing until it reached Flathead Lake, potentially impacting regional tourism and economic stability.<sup>280</sup> Increased sediment flow, changes in stream morphology, and changes in water chemistry were main concerns throughout the disputes.

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<sup>274</sup> Fletcher, Tom. "Coal Mining Concerns to Be Addressed." *Black Press* [Victoria]. 17 July 2005. Print.

<sup>275</sup> Canada. B.C. Ministry of Sustainable Resource Management. Economic Development Branch. *Coalbed Methane Development - An Economic Profile*. By Wendell Beavers. 2002. Print. pg. 2.

<sup>276</sup> Ibid. pg. 6.

<sup>277</sup> Ibid. pg. 2.

<sup>278</sup> "Premier, Governor Agree to Be Friends despite Coal Dispute." 29 August 1983.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

The lack of information on the Flathead watershed system frightened Montana. In 1984 Canada and the United States agreed to take the issue of coalmine development in the Flathead River Basin to the International Joint Commission.<sup>281</sup> In the Water Uses Committee Technical Report, as commissioned by the IJC review, water-based activities were identified throughout the Flathead River Basin that would be sensitive to any changes in water quality.<sup>282</sup> Socio-economic activities within the basin depend on the water-quality, water-quantity, and health of the fishery.<sup>283</sup>

In a 1984 study conducted by Noble, Van Voast and Sonderegger from the Montana University Joint Water Resources Research Center, water samples were taken from two British Columbia mines that were geologically similar to the proposed Sage Creek Mine, and analyzed for changes in dissolved solids in water runoff.<sup>284</sup> The study sought to gather a pre-mining baseline data of water-quality.<sup>285</sup> The study showed that an increase in dissolved solids would have the potential to adversely impact Howell Creek<sup>286</sup> during low-flow stages; however the increase in dissolved solids would “be so low as to be undetectable” at the International Boundary.<sup>287</sup> In the concluding statements, Noble, Van Voast and Sonderegger listed further hydrologic concerns resulting from the proposed Sage Creek Mine as increased transport of nutrients, trace elements, and sediments by the Flathead River over the B.C. and Montana border.<sup>288</sup>

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<sup>281</sup> "Across Canada Mining Proposal to Be Reviewed." *The Globe and Mail* [Toronto] Print. 16 October 1984.

<sup>282</sup> *Flathead River International Study: Water Uses Committee Technical Report*. pg. 158.

<sup>283</sup> *Ibid.*

<sup>284</sup> Noble, Roger A., Wayne A. Van Voast, and John L. Sonderegger. Some Hydrologic Aspects of Proposed Coal Mining in the North Fork of the Flathead River Headwaters Area, Northwest Montana and Southeast British Columbia. Rep. no. G-853-05. Bozeman, MT: Montana University Joint Water Resources Research Center, 1984. Print.

<sup>285</sup> *Ibid.* pg. 2.

<sup>286</sup> See Map 3. for Location Map of Study Area.

<sup>287</sup> *Ibid.* pg. 1.

<sup>288</sup> *Ibid.* pg. 22.

Water quality remained a sensitive issue for Montana even after the IJC recommendations in 1988 and the hold on the Sage Creek coal mine. Years later, Governor Judy Martz stressed the government's duty to protect water rights, especially in Montana during the 2001 State of the State address.<sup>289</sup> Gov. Martz stated, "[g]overnment, particularly in Montana, has a significant duty to protect our water rights, stream access, habitat and wildlife. Access to our rivers and streams in Montana has been an important issue since pioneers first arrived."<sup>290</sup> Montana's commitment to ensuring access to clean water for future generations is a key driving factor behind the thirty-year dispute.

The International Joint Commission was requested to review environmental impacts of a proposed coal mine operation for the second time in 2004 by Montana Governor Judy Martz after the Cabin Creek mine proposal from the Cline Mining Co.<sup>291</sup> Water quality concerns were the main issue found in the Cline Mine Company's TOR draft for the proposed Lodgepole mine. The State of Montana's comments noted sections of the draft that had a general lack of basic groundwater data and insufficient basin-wide baseline assessments of water resources.<sup>292</sup> Impacts to sediment discharge were largely missing from the draft, and more data was needed to include varying flow rates to understand the cumulative impacts of the mine on the tributaries and river systems.<sup>293</sup> Hal Harper, Chief Policy Advisor to Montana Governor Brian Schweitzer, submitted comments on the draft TOR and pointed out that the Cline Mining Co. had no intention of

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<sup>289</sup> Martz, Judy. "State of State Address." Helena. 25 January 2001. Speech.

<sup>290</sup> Ibid.

<sup>291</sup> State of Montana. Office of the Governor. *Governor Martz Expresses Environmental Concerns in Flathead.* Mt.gov. 7 May 2004. Web.

<sup>292</sup> *State of Montana Comment: Draft Terms of Reference on Cline Mining Corporation Lodgepole Project.* 12 April 2006. Print

<sup>293</sup> Ibid.



studying groundwater upwelling at the mine site or downriver.<sup>294</sup> Further, Harper stated that the TOR did not consider the impacts of de-watering process or the recharge zone impacts on water quality.<sup>295</sup>

In 2009, the World Heritage Committee reviewed impacts to Waterton-Glacier International Peace Park status as a world heritage site in light of development threats outside the park.<sup>296</sup> The Committee cited the IJC study of 1988 in which the effects of a coal mine in the Flathead River Basin could not be fully mitigated and any threat to the water quality or quantity in the basin would also be a threat to the Waterton-Glacier International Peace Park.<sup>297</sup> The committee requested a conservation report from both B.C. and Montana that would outline all mining and energy development within the Flathead River basin.<sup>298</sup>

While British Columbia refused to recognize the IJC's 1988 recommendations, ultimately the burden of poor water quality was not placed on Montana. The concern over adversely affecting water quality and its relevance was deemed more important to the economic and ecological stability of the Flathead River Valley were alleviated by the resolution of the dispute.

#### *Habitat, Connectivity, and Wildlife*

Habitat and connectivity loss were main concerns from the onset of proposed coal development in the Flathead River Valley. The alluvial river valley and surrounding mountainous geography provide prime habitat, spawning grounds, and critical movement

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<sup>294</sup> Harper, Hal. "Re: Public Comment Period: Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certification Pursuant to the Environmental Assessment Act." Letter to Garry Alexander. 20 January 2007. MS.

<sup>295</sup> Ibid.

<sup>296</sup> *Report of Decision, World Heritage Committee: Waterton Glacier International Peace Park (Canada / United States of America)*. Decision: 33 COM 7B.22. Seville. 2009. Print.

<sup>297</sup> Ibid.

<sup>298</sup> Ibid.

corridors for wildlife such as the grizzly bear, elk, lynx, mountain goats, and wolverine as well as vital spawning habitat for the threatened bull trout.<sup>299</sup>

### *British Columbia*

British Columbia did not perceive cumulative impacts from coal mining in the Flathead on habitat and connectivity in the region as a threat in the beginning of the coal development disputes. The Social Credit Party in the 1980s was focused on growing the provincial economy as much as possible and as a result environmental initiatives were not a priority. However, after the uproar caused by the Cabin Creek mine proposal by Sage Creek Coal Lt., efforts were made to acknowledge environmental concerns. As a result, Lt. Governor Rogers announced in the 1984 Speech from the Throne that a Habitat Conservation Fund would be established by placing a small fee on fishing and hunting licenses, which would garner funds for future conservation projects as a means to protect habitat of fishery and wildlife resources.<sup>300</sup> Habitat and connectivity impacts did not seem to worry the B.C. government throughout the coal development dispute.

Once the New Democratic Party won the 1991 election in British Columbia, concern for habitat and connectivity issues emerged. Of particular interest was the development of the Kootenay Land-Use Plan.<sup>301</sup> The Commission for Resources and the Environment (CORE) was established in the early 1990s as a resource for solving regional land-use conflicts.<sup>302</sup> The Kootenay Boundary Land-Use Plan was divided into east and west sections; the East Kootenay Plan designated three management zones: integrated, enhanced, and special resource

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<sup>299</sup> Sax, Joseph L., and Robert B. Keiter. "The Realities of Regional Resource Management: Glacier National Park and Its Neighbors Revisited." *Ecology Law Quarterly* (2006). Print. pg. 19.

<sup>300</sup> Rogers, Robert G. "Speech from the Throne." Opening of the 2nd Session, 33rd Parliament. British Columbia, Victoria. 13 February 1984. Speech. pg. 7.

<sup>301</sup> Canada. Ministry of Environment, Lands and Parks, Ministry of Forests, and Ministry of Energy and Mines. *Backgrounder - Overview of the Draft Higher Level Plan for Kootenay Boundary Land Use Plan Implementation Strategy*. Print.

<sup>302</sup> *Ibid.*

management zones.<sup>303</sup> The Special Resource Management Zone maintained continued full resource use of the land, but specified that sensitive natural and cultural values be respected. These sensitive natural values include fish and wildlife habitats, community watersheds, and conservation values.<sup>304</sup> The Special Resource Management Zone made up 11.3% of the eastern boundary plan, including parts of the Flathead River Valley.<sup>305</sup>

Under the NDP, the Akamina-Kishinena Recreation Area's status was changed to a Provincial Park in 1995.<sup>306</sup> Akamina-Kishinena adjoins Waterton-Glacier International Peace Park and provides connectivity over the continental divide. Further protection to the 11,700 hectares of land contributed to the long-term viability of the ecosystem.<sup>307</sup> Habitat and connectivity issues were important to the NDP during the 1990s, resulting in a lull in the dispute over coal development.

The calm of the 1990s over coal development in the Flathead River Valley was disrupted shortly after the 2001 Liberal election victory and re-expansion of energy development in the province.

In late 2004 a non-profit organization, the Nature Conservancy of Canada, and private enterprise Tembec Timber Company protected nearly 100,000 acres of land just north of Glacier National Park through a three-part deal with the intention of protecting connectivity and movement corridors.<sup>308</sup> The deal still allowed for future mining, but it did limit the extent of

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<sup>303</sup> Canada. *The East Kootenay Land-Use Plan*. Government of British Columbia, 1995. Print. pg. 2.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid. See Map 4. for detailed view of designated zones.

<sup>306</sup> Ibid. pg. 6.

<sup>307</sup> Ibid.

<sup>308</sup> Jamison, Michael. "Canadians Conserve Thousands of Acres near Glacier." *Missoulian* 24 Dec. 2004. Print.

logging.<sup>309</sup> The deal created a nearly unbroken corridor along the Continental Divide from Helena to Banff, however the B.C. government did not undertake this initiative.<sup>310</sup>

To illustrate the disregard B.C. showed towards habitat and connectivity concerns voiced by Montana, in 2005 the B. C. government gave the green light to the Cline Mine Co. to mine in designated “core grizzly bear habitat” and in a drainage that is critical to bull trout, westslope cutthroat, and wolverines – all at risk species in Montana.<sup>311</sup> This announcement garnered significant objections from conservation groups on both side of the border as well as Montana officials. The program manager for Energy and Mining with the Canadian conservation group Wildsight, Casey Brennan, pointed out that the Flathead River provides habitat to 72 microscopic aquatic life forms compared to only a dozen in the nearby Elk River.<sup>312</sup> Remote headwaters that flow straight south in a wide valley providing year-round habitat for many species are a few of the unique qualities of the Flathead River emphasized by Brennan.

After proposed coalbed methane gas development in the Flathead River Valley, B.C. maintained that provincial environmental assessments were thorough and impacts would not cause harm to Montana.<sup>313</sup> Throughout the dispute over coal development in the Flathead River Valley, B.C. environmental initiatives on habitat and connectivity shifted with each government ruling party. The Social Credit Party in the 1980s was focused on expanding energy development as rapidly as possible, while the New Democratic Party was interested in protecting habitat and connectivity in the Flathead through regional collaborative land-use planning. The Liberal Party in the early 2000s reverted back to expanding energy development in the Flathead.

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<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Jamison, Michael. "Canadian Company Quietly given Coal Mining Exploration Permit." *Missoulian* 26 January 2005. Print.

<sup>312</sup> "Mine Proposal Stirs up Controversy." *Kootenay News Advertiser* [Cranbrook, B.C.] 19 Jan. 2007. Print.

<sup>313</sup> Fletcher, Tom. "Coal Mining Concerns to Be Addressed." *Black Press* [Victoria] 17 July 2005. Print.

## *Montana*

Habitat and connectivity loss from haul road construction, mine infrastructure, and wastewater runoff were a few of the concerns raised by opponents to coal development in the Flathead River Valley.

Threats to the area were outlined in a 1980 report published by the National Park Service on the state of the Parks.<sup>314</sup> In the report, Glacier was the most threatened park due to timber harvesting, road construction, various energy exploration projects, and private land development that had the potential to endanger the ecological integrity of the park.<sup>315</sup> Thirty years after this report was published Glacier still faces the same threats.

Montana recognized the threat that coal development would pose to the Flathead River Valley in the early 1980s. In 1983 Montana Governor Ted Schwinden stated that the Sage Creek Coal mine proposal would violate the Boundary Waters Treaty, citing the concerns of increased sediment flows and the potential impact on fish habitat.<sup>316</sup> After the Cabin Creek coal proposal, the IJC impacts report highlighted the two streams, Cabin and Howell Creeks, that formed a significant part of the proposed mine site and are known to be spawning and rearing habitat for bull trout as well as westslope cutthroat trout, and mountain whitefish.<sup>317</sup> The IJC recommendations stated that understanding potential cumulative impacts on the groundwater would be needed to fully mitigate or protect against stream habitat loss.<sup>318</sup>

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<sup>314</sup> Office of Sci. & Tech., Nat'l Park Serv., State of the Parks 1980: A Report to the Congress (1980).

<sup>315</sup> Ibid. pg. 52.

<sup>316</sup> "Coal Mine Will Violate Treaty, Montana Says." *The Globe and Mail* [Toronto] Print. 14 May 1983.

<sup>317</sup> 15 December 1988. International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. Print. pg. 7.

<sup>318</sup> Ibid.

Following the renewed proposal of coal mining in the Flathead Valley in the early 2000s, concern over large carnivore habitat impact resurfaced.<sup>319</sup> A study conducted by the U.S. Wildlife Conservation Society in 2001 reported that the Flathead is the single most important basin in the Rocky Mountains for grizzlies, wolverines, marten, and lynx.<sup>320</sup> The study stressed that because species move across the international boundary, the landscape needs to be managed as an ecological unit.<sup>321</sup> Subsequent to renewed mine proposals in the Flathead River Valley, Governor Judy Martz's State of the State address in 2001 emphasized government duty to protect water rights, stream access, habitat, and wildlife.<sup>322</sup>

Wildlife concerns were front and center during the comment period on the Cline Mine Co.'s Draft Terms of Reference. Comments from Glacier National Park's Brace Hayden included the need for thorough description of wildlife movement in the region and the need for documentation on what is known about "transborder wildlife movement".<sup>323</sup> The State of Montana's comments echoed these sentiments, stating that the draft failed to include impacts to wildlife beyond the immediate vicinity.<sup>324</sup>

Harvey Locke, a member of World Commission to Protected Areas, penned a letter in 2009 to the World Heritage Mission to Waterton-Glacier International Peace Park that stated the proposed coal development in the Flathead would "disrupt the ability of the region's biota to

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<sup>319</sup> Jamison, Michael. "Canadian Mining Plans Pose Threat to Flathead Watersheds." *Missoulian*. 17 March 2004. Print.

<sup>320</sup> Pynn, Larry. "Time for Peace in the Flathead Valley; Conservationists from Canada and the U.S. Strive to End Contentious Natural Resource Projects." *The Vancouver Sun*. 1 August 2009. Print

<sup>321</sup> Ibid.

<sup>322</sup> Martz, Judy. "State of State Address." Helena. Speech. 25 January 2001. pg. 8.

<sup>323</sup> Hayden, Brace. *Comments on Draft Terms of Reference - Lodgepole Mine Project* (Glacier National Park). 27 March 2006. Print.

<sup>324</sup> *State of Montana Comment: Draft Terms of Reference on Cline Mining Corporation Lodgepole Project* 12 April 2006. Print.

adapt to climate change”.<sup>325</sup> Further, Locke asserted that coal development would impair “the southern half of the Yellowstone to Yukon region to successfully adapt to climate change...”<sup>326</sup> Locke touched on connectivity issues along Highway 3 in the Elk River Valley, highlighting the Nature Conservancy’s protection of private lands along the Elk River and expanded coal development south of the Elk River would undo their efforts.<sup>327</sup> Locke recommended to the World Heritage Mission that the Southern Rocky Mountain Management Plan be replaced to allow the portion of the Flathead outside the national park to be designated as a Wildlife Management Area.<sup>328</sup> This recommendation echoed the IJC call to manage the Crown of the Continent as a single ecosystem.

Proposed coalbed methane development further threatened connectivity in the Flathead. Drilling rigs, new road construction, disruption of migratory corridors, as well as massive water extraction and wastewater storage were a few of the concerns accompanied by coalbed methane development proposals in the Flathead.<sup>329</sup> Coalbed methane development often requires large road systems that displace wildlife and further fragment habitat and movement corridors.<sup>330</sup> A key concern expressed by Montana was that discharge water from coalbed methane operations would negatively impact aquatic species habitat in the Flathead River and its tributaries.<sup>331</sup>

After British Columbia announced the withdrawal of coal, oil, and gas development in the Flathead, Montana Senators Max Baucus and John Tester began appealing to private energy

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<sup>325</sup> Locke, Harvey. "Consultation with IUCN World Commission on Protected Areas." Letter to World Heritage Mission to Waterton-Glacier International Peace Park World Heritage Site. 22 Sept. 2009. MS.

<sup>326</sup> Ibid. pg. 1.

<sup>327</sup> Ibid.

<sup>328</sup> Ibid. pg. 3.

<sup>329</sup> Ingelson, Allan, Lincoln Mitchell, and Sean Assie. "Coal and Coalbed Methane Development in the Flathead - an International Water Dispute. (Critical Intersections for Energy & Water Law: Exploring New Challenges and Opportunities)." *Pacific McGeorge Global Business & Development Law Journal* 22.2 (2009): 155. *HeinOnline*. Web. pg. 174.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid. pg. 158.

companies to voluntarily relinquish oil and gas leases on the Montana side of the border to further protect the region from fragmentation.<sup>332</sup> By 2011, Baucus and Tester negotiated the return of 200,000 acres that had been privately held by energy companies in the Flathead.<sup>333</sup> Commitment to protect vital habitat and connectivity in the Flathead never wavered for Montana during the thirty years of coal development disputes.

### *Fish Population*

#### *British Columbia*

At the beginning of the coal development dispute in the Flathead, British Columbia did not acknowledge the threat posed by the mine on fisheries in Montana. In 1983 B.C. Premier William Bennett and Montana Governor Ted Schwinden met to discuss proposed coal development and to find a deeper understanding of each other's environmental and economic interests. Premier Bennett emphasized that B.C. would do its best not to pollute Montana stating, "we're going to be next to each other for a long, long time".<sup>334</sup> In response to the red flags raised by Montana, the Sage Creek Coal corporate secretary William Burge argued that the project would not harm property or health and, if it did, the state of Montana would have the right to sue the company in Canadian courts.<sup>335</sup> These comments reflect the Social Credit Party's focus solely on expanding British Columbia's economy in the 1980s.

In his 1985 Speech from the Throne, Lt Governor Robert G. Roger noted a recent agreement reached by the United States and Canada over the salmon fishery, hopeful that it

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<sup>332</sup> *Senators Move to Protect Flathead Forever: Baucus, Tester Working with Canada to Halt Mining in the North Fork. News | Max Baucus | U.S. Senator from Montana.* Senator Max Baucus and Jon Tester, 12 Feb. 2010. Web.

<sup>333</sup> *Baucus, Tester Continue Fight for Permanent Protection of the North Fork and Tourism Jobs Senators Push Legislation Toward Finish Line, Continue Fight for Montana's Outdoor Heritage. News | Max Baucus | U.S. Senator from Montana.* Senator Max Baucus and Jon Tester, 25 May 2011. Web.

<sup>334</sup> CP, AP. "Premier, Governor Agree to Be Friends despite Coal Dispute." *The Globe and Mail* [Toronto] 29 Aug. 1983. Print.

<sup>335</sup> *Ibid.*



would “establish a pattern in the coming years for even deeper broader contacts with our American neighbours in economic and cultural matters”.<sup>336</sup> Despite this agreement, the Social Credit Party never acknowledged a risk from coal development in the Flathead River Valley on the fish populations.

With the election of the New Democratic Party in 1991, the B.C. government demonstrated a greater concern for fish populations in the Flathead River Valley. As noted in the Habitat and Connectivity section, the East Kootenay Land Use Plan designated “special management” zones, which acknowledged the value of the regions fishery.<sup>337</sup>

Beginning in 2001, after the Liberal Party election victory, rekindled interest in expanding coal development in the Flathead shifted focus back to benefits of economic growth and less on the burden of harming the common fishery. There was hardly any mention of the fisheries in the Speech from the Throne over the span of the dispute. The Kootenay Boundary Land Use Plan was changed after the 2001 election to the Kootenay Boundary Higher Level Plan, which allowed subsurface mineral extraction to take place despite the designated management zones.<sup>338</sup> During the thirty year dispute there was focused shifted from economic benefit by the Social Credit Party, to acknowledgement of the ecological value of the Flathead River fish populations by the New Democratic Party. Economic benefit of developing coal in the region was spurred by the Liberal Party, and ultimately provincial legislation to remove oil, gas, and mine development from the Flathead River Valley.

### *Montana*

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<sup>336</sup> Rogers, Robert G. "Speech from the Throne." Opening of the 3rd Session, 33rd Parliament. British Columbia, Victoria. 4 March 1985. Speech. pg. 1.

<sup>337</sup> Canada. *The East Kootenay Land-Use Plan*. Government of British Columbia, 1995. Print.

<sup>338</sup> Canada. Ministry of Forests and Natural Resources Operations. *Kootenay Boundary Higher Level Plan*. By Frank Wilmer. 2003. Web.

Concerns of toxic runoff from the proposed coal development in the Flathead River Valley impacting fish habitat and ultimately fish populations were voiced by Montana from the beginning of the dispute in the 1980s. The Flathead River International Study Board's technical committees spent significant time researching the potential impacts of the mine site on native aquatic populations.<sup>339</sup> The area in which coal development was proposed in southeastern British Columbia is comprised of alluvial river channels that feed into the Flathead River and flow towards the Pacific Ocean through the Columbia River watershed.<sup>340</sup> This watershed provides critical habitat and spawning ground for threatened bull trout and westslope cutthroat trout populations, which could face elimination resulting from coal development in the area.

Many studies were conducted by Montana on the fisheries and watershed health in the Flathead River Valley and it was thought that information on the B.C. side was severely lacking. An aquatic biologist from the University of Montana stationed at the Yellow Bay Biological Research Station, Jack Stanford, remarked on the increase of silt in the Flathead River by 20 to 30 times as a result of the proposed mine.<sup>341</sup> Increased silt loads would alter stream flows, oxygen levels, and habitat for fish populations potentially threatening the current fish populations.

Of most concern in the eyes of the IJC final report in 1988, as requested by Montana, was the uncertainty of impacts on ground water flow from the mine site into the nearby Howell and Cabin creek, which comprise a significant bull trout spawning and rearing habitat.<sup>342</sup> The Commission concluded that harm would inevitably occur to the habitat of bull trout populations,

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<sup>339</sup> 1988. *Flathead River International Study: Board Report*. Rep. Ottawa, Ont.; Washington, D.C.: Board: International Joint Commission. Print.

<sup>340</sup> Dalby, Charles. *Evaluation and Monitoring of the Hydrologic Impact of Cabin Creek, B.C. Coal Pit Mining on the North Fork of the Flathead River*. Rep. Bozeman: Water Resources Research Center, 1983. Print. pg. xi.

<sup>341</sup> CP. "Coal Mine Will Violate Treaty, Montana Says." *The Globe and Mail* [Toronto] 14 May 1983. Print.

<sup>342</sup> International Joint Commission. *Impacts of a Proposed Coal Mine in the Flathead River Basin*. 15 December 1988. Print. pg 7.

and decline of these populations could cause economic loss through decreased sport fishing.<sup>343</sup> The loss of bull trout from pollution in the Flathead River on the B.C. side of the border, a loss that is felt in Montana, breaches Article IV of the Boundary Waters Treaty because pollution itself does not have to flow across the border to cause injury to the other side.<sup>344</sup> Specific recommendations made by the Commission regarding the Sage Creek Coal mine stated that it should not be approved “as presently defined and understood”.<sup>345</sup> The Commission stated that the mine should not be approved until potential transboundary impacts have reasonable certainty of low risk and that potential impacts on fish populations could be fully mitigated or would not be impacted at all.<sup>346</sup>

The Water Uses Committee technical report to the Flathead River International Study Board included the economic value of sport fishing to the region. They estimated that in 1981 over 300,000 active British Columbia resident anglers generated 5.6 million angler days.<sup>347</sup> In Montana the 1983-1984 fishing season in the Swan Valley, a sub-basin of the Flathead River, generated 16,300 angler days.<sup>348</sup> The anglers signified that the value of bull trout was far greater than other trout species, giving further motivation to maintain bull trout populations.<sup>349</sup>

Montana’s concerns relaxed in the early 1990s with the replacement of the Social Credit Party with the New Democratic Party in B.C. However, it was not long before the dispute was reignited. The replacement of the New Democratic Party by the Liberal Party in 2001 brought about rapid expansion of energy development and renewed threat to the Flathead River Valley.

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<sup>343</sup> Ibid. pg. 8.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid. pg. 11.

<sup>346</sup> Ibid.

<sup>347</sup> 1988. *Flathead River International Study: Water Uses Committee Technical Report*. Rep. Ottawa, Ont.; Washington, D.C.: Board: International Joint Commission. Print pg. 177.

<sup>348</sup> Ibid.

<sup>349</sup> Ibid. pg. 179.

In response to the Cline Mining Co.'s proposed Lodgepole mine in 2004, comments on the draft Terms of Reference (TOR) included concern for the fish populations that rely on nearby streams. Hal Harper, the Chief Policy Advisor to Governor Brian Schweitzer, commented that the Cline Mining Co. failed to collect sufficient data on population, spawning, over-wintering habitat in the area or downstream from the mine.<sup>350</sup> Comments submitted by the State of Montana pointed to the lack of information about haul road impact on streams and fish populations in the TOR.<sup>351</sup>

A few years later when the World Heritage Committee sent a mission to Waterton-Glacier International Peace Park, the deputy executive director for Sierra Club Bruce Hamilton sent a letter to the World Commission on Protected Areas for North America regarding the ecological significance of the region.<sup>352</sup> Mr. Hamilton stated that the Flathead River supported threatened populations of west slope cutthroat, mountain whitefish, sculpin, bull trout, and the primitive tailed frog, Canada's only stream-dwelling frog.<sup>353</sup> Hamilton called for B.C. to withdraw the area from mine development and to create a new national park in order to rectify the ecological threat posed.<sup>354</sup>

Montana's call to protect threatened fish populations in the Flathead River Valley did not change during the thirty-year dispute. The burden of commitment to protect fish populations from extinction fell on Montana since British Columbia failed to see the risk in the 1980s and again in the 2000s.

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<sup>350</sup> Harper, Hal. "Re: Public Comment Period: Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certification Pursuant to the Environmental Assessment Act." Letter to Garry Alexander. 20 January 2007. MS.

<sup>351</sup> *State of Montana Comment: Draft Terms of Reference on Cline Mining Corporation Lodgepole Project*. 12 April 2006. Print.

<sup>352</sup> Hamilton, Bruce. Letter to World Heritage Mission to Waterton-Glacier International Peace Park. 26 Sept. 2009. MS. San Francisco.

<sup>353</sup>

<sup>354</sup> Ibid.

## Air Quality

### *British Columbia*

British Columbia perceived its provincial environmental initiatives as progressive throughout the coal development disputes. During the Sage Creek Coal mine dispute in the early 1980s, B.C. was concerned with energy development and economic growth rather than air quality. The Social Credit Party during the early 1980s focused its efforts on transitioning trade from Atlantic markets to the Pacific by encouraging large scale timber and mining operations.<sup>355</sup> The Social Credit Party's focus was on provincial politics and they objected to Montana interfering with their economic interests of coal mine development in the B.C. side of the Flathead River Basin.

Despite changes in the ruling political party, British Columbia did not change its stance on this issue. The New Democratic Party gained power in the 1990s, built extensive relationships with environmental groups, and passed more pro-environment initiatives. For example, in the 1998 Speech from the Throne by Lt. Governor Gardom Garde, Garde stated that B.C.'s environmental record would be continued and expanded to include further initiatives to protect air and water quality.<sup>356</sup> Gardom stressed B.C.'s legacy of environmental protection and strong commitment to protecting air quality in local communities.<sup>357</sup> During the NDP's control of B.C. politics, air quality was not of much concern from Montana.

After the Liberal party won the provincial election in 2001, strong economic and pro-development energy initiatives were brought to the forefront.<sup>358</sup> Like the Social Democrats, the

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<sup>355</sup> Crawford, Mark. "Pluralism, Institutionalism, and the Theories of B.C. Politics." *B.C. Studies* 172 (2011): 77. Web. pg. 8.

<sup>356</sup> Gardom, Garde B. "Speech from the Throne." Opening of the 3rd Session, 36th Parliament. British Columbia, Victoria. 26 March 1998. Speech. pg. 10.

<sup>357</sup> Ibid.

<sup>358</sup> "History | B.C. NDP." *British Columbia New Democratic Party*. Web.

Liberal Party was interested in expanding trade to markets in the Pacific. However, the Liberal Party claimed it was committed to protecting clean air and clean water.<sup>359</sup> For instance, Lt. Governor Iona Campagnolo's 2007 Speech from the Throne highlighted the progress on environmental programs over a five year time frame.<sup>360</sup> Campagnolo addressed carbon emissions stating they had risen 35% since 1990.<sup>361</sup> To address this issue, a 40-point climate plan was adopted in 2004 as well as an energy efficient building plan in 2005.<sup>362</sup> Climate action and economic development must be kept in balance according to Campagnolo.<sup>363</sup> It was announced that B.C. would require, effective immediately, that all coal-fired projects sequester 100 percent of carbon emissions.<sup>364</sup> However, in July of 2006, B.C. Hydro awarded contracts to two proposed coal plants, one in Tumbler Ridge and one in Princeton, B.C. that if completed would double greenhouse gas emissions in the energy sector.<sup>365</sup> Campagnolo touted the increase in investment in B.C.'s mineral exploration: \$256 million alone in 2006.<sup>366</sup>

A year later Lt. Governor Steven Point focused on climate change and carbon emissions in the 2008 Speech from the Throne.<sup>367</sup> Lt. Governor Point announced that the *Greenhouse Gas Reduction Targets Act* would require carbon emission levels to be reduced by 33 percent of 2007 levels by 2020 and reduced by 80 percent of 2007 levels by 2050.<sup>368</sup> Lt. Gov. Point stated that the B.C. government's commitment to climate action is "unflagging and crucial to our economy"

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<sup>359</sup> "What We Believe." *The B.C. Liberal Party*. Web.

<sup>360</sup> Campagnolo, Iona. "Speech from the Throne." Opening of the 3rd Session, 38th Parliament. British Columbia, Victoria. 13 February 2007. Speech.

<sup>361</sup> Ibid. pg. 5.

<sup>362</sup> Ibid.

<sup>363</sup> Ibid. pg. 6.

<sup>364</sup> Ibid. pg. 7.

<sup>365</sup> The Pembina Institute. *Coal-Fired Power in British Columbia*. 2006. Print.

<sup>366</sup> Ibid. pg. 18.

<sup>367</sup> Point, Steven L. "Speech from the Throne." Opening of the 4th Session, 38th Parliament. British Columbia, Victoria. Speech. 12 February 2008. pg. 5.

<sup>368</sup> Ibid.

again in the 2009 Speech from the Throne.<sup>369</sup> Lt. Gov. Point emphasized that sources of clean and renewable energy are important for the future of B.C. and in the fight against global warming.<sup>370</sup>

While these carbon emission reductions are not directly connected to the coal mine disputes of the Flathead, these initiatives illustrate the shift from absolutely no recognition of impact on air quality caused by coal mining, to a government acknowledging cumulative impacts and passing initiatives to make development less intrusive on others.

### *Montana*

As early as 1983 Montana showed signs of concern with the Sage Creek Coal project and potential air quality impacts.<sup>371</sup> Glacier National Park was worried that an increase of dust would adversely impact the regions air quality and had the potential to negatively affect regional tourism.<sup>372</sup> Emissions from the coal mine operation itself had the potential to impact Glacier's air quality. Concerns died down after the IJC recommended the proposed Sage Creek Mine not be developed and B.C. put the project on hold.

However renewed interest in energy development in the Flathead recharged concern over air quality. In 2005 and 2006, concerned groups in Montana, as well as British Columbia submitted comments on the Cline Mine Co.'s Draft Terms of Reference on the Lodgepole

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<sup>369</sup> Point, Steven L. "Speech from the Throne." Opening of the 1st Session, 39th Parliament. British Columbia, Victoria. 25 August 2009. Speech.

<sup>370</sup> Ibid. pg. 6.

<sup>371</sup> "Premier, Governor Agree to Be Friends despite Coal Dispute." *The Globe and Mail* [Toronto]. 29 August 1983. Print.

<sup>372</sup> Ibid.

project.<sup>373</sup> Comments submitted by the State of Montana highlighted the need for dust and particulate matter quantities that would be released from the haul road.<sup>374</sup>

Emission concerns from coalbed methane development continued to worry Montana up until mining, oil and gas development in the Flathead was withdrawn. While Montana expressed concern over air quality, other issues were more pressing and threatening to the Flathead. These issues drew the focus of the state during this dispute.

### **Trading Off Benefits and Burdens, Did it Occur?**

Tensions between the economic benefits of coal mining and the burden of poor water quality were not easily traded in the Flathead River Valley. British Columbia's goal to increase its presence in world energy markets and Montana's vision of a pristine watershed could not at first be reconciled; however, there would have to be a compromise one way or another. British Columbia ultimately agreed to end oil, gas, and mining development in the Flathead and thus gave up on its resource extraction-based interests in the region, yet the compensation package provided some economic benefit to energy companies who owned the lease rights that were retired. This compensation was nowhere near the economic benefit that would have occurred if the mine proposals had been approved. In the end Montana avoided the burden of poor water quality, but they did not avoid burden altogether. This section will investigate further the benefits and burdens of the conflict and whether they were traded-off in the end.

#### *British Columbia*

Over the course of the dispute, British Columbia wavered little in its positions. The two areas in which the B.C. government compromised in the Flathead River Valley were in energy

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<sup>373</sup> Whiteley, Don. "Fundamental Differences with Montana over Proposed Coal Mine May Erupt Again." *The Vancouver Sun*. 1 March 2006. Print

<sup>374</sup> *State of Montana Comment: Draft Terms of Reference on Cline Mining Corporation Lodgepole Project*. 12 April 2006. Print.



development and job creation. The government maintained its initial stance that the provincial mine review and environmental assessment were sufficient, and that development could occur within B.C.'s strict environmental standards. Without outside attention from hosting the 2010 Winter Olympic Games and pressure from the World Heritage mission committee in combination with the efforts by Montana and grassroots organizations, a compromise may not have been reached.

Economic development and stability were the main interests for British Columbia in the 1980s and 1990s, and even into the 2000s. By increasing mining and coal activity in southeastern British Columbia, the province sought to increase its tax base and to expand its presence in Asian and Western European energy markets. The energy crisis in the 1970s exacerbated the drive for British Columbia to expand energy development throughout the province. At the same time, softwood lumber industry closures in the region exacerbated the need for a stable local energy market. Energy security and economic stability were the driving factors, while environmental factors ranked low on the priority list.

The Social Credit party's energy development initiatives promoting resource extraction and streamlining the approval process increased coal shipments to the Pacific Rim and Europe by 68% in 1985, illustrating the importance of coal mining to overall provincial economic benefit.<sup>375</sup> Though the New Democratic Party did not actively pursue mining in the Flathead to the same extent of the Social Credit or the Liberal Party, the economic benefits of the mining sector were present in B.C. during the 1990s. While the New Democratic Party was in office, tensions between economic benefit and environmental burden were eased and both interests were represented in government actions. For example, the Kootenay-Boundary Land Use Plan

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<sup>375</sup> Bell-Irving, Henry. "Speech from the Throne." Opening of the 3rd Session, 32nd Legislative Assembly. British Columbia, Victoria. 4 December 1980. Speech.

implemented in 1995 was a step towards sustainable management of resources through a collaborative effort.<sup>376</sup>

The Liberal Party increased energy development efforts after the party took office in 2001, almost in tandem with the bid to host the 2010 Winter Olympic Games.<sup>377</sup> Negotiations between British Columbia and Montana were not present until the mid-2000s and the 2003 MOU between the two states.<sup>378</sup> British Columbia's stance on energy development in the Flathead River Valley shifted most dramatically in 2010 when Lt. Governor Steven Point announced the decision to remove the development of oil, gas, and mining on the Canadian side of the transboundary valley. The announcement came a year after the World Heritage's mission to Waterton-Glacier International Peace Park and shortly before the recommendation that any energy development in the Flathead River Valley threatened the Outstanding Universal Value of the UNESCO Biosphere reserve.<sup>379</sup>

The shift from active expansion of energy development to suddenly protecting the valley with provincial legislation also illustrates the compromise the government made on job creation. B.C. redirected the focus from job creation in the energy sector to the tourism industry, especially after the province announced it would host the 2010 Olympic Games. It became more economically beneficial to promote the province as a recreation dreamland than it was to sustain conflict over developing resources in the Flathead River Valley.

Overall, mining and energy development continues to thrive in British Columbia. The province continues to increase its presence in world energy markets and the few compromises

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<sup>376</sup> Canada. *The East Kootenay Land-Use Plan*. Government of British Columbia, 1995. Print.

<sup>377</sup> 12 February 2002. Campagnolo, Iona. "Speech from the Throne." Opening of the 3rd Session, 37th Parliament. British Columbia, Victoria. Speech.

<sup>378</sup> Canada, United States. *ENVIRONMENTAL COOPERATION ARRANGEMENT Between the Province of British Columbia and the State of Montana*. 2003. Print.

<sup>379</sup> *Report of Decision, World Heritage Committee: Waterton Glacier International Peace Park (Canada / United States of America)*. Decision: 33 COM 7B.22. Seville, 2009. Print.

made in the Flathead River Valley to eliminate environmental burden on Montana did not change overall policy goals for the government.

### *Montana*

The dispute of coal development in the Flathead River Valley placed the burden on Montana. Economic benefits from a healthy and thriving ecosystem were threatened by energy development proposed by B.C. Throughout the thirty-year dispute, Montana maintained its stance on protecting the Flathead River Valley from ecological destruction.

Montana's interests were not that divergent from those in British Columbia during the dispute. Energy development, job creation, and a stable economy were all important issues; however, environmental concerns over water quality in the Flathead region was much more pressing for Montanans. The burden of poor water quality would have adversely impacted Montana's tourism sector, which as noted previously is the second largest economic sector in the state.

In the end, The Nature Conservancy of the U.S. and Nature Conservancy Canada defused the burden of buying out exploratory investments made by energy companies in British Columbia at a price tag of \$17 million.<sup>380</sup> In other words, Montana was not faced with the obligation of financial payout to energy companies rather than suffer from poor water quality, diminished fisheries, and a decline of regional tourism. The trade-off between the economic benefit of the ecologically intact Flathead River Valley and the burden of poor water quality for Montana did not occur. Economic benefits from a pristine ecosystem won out over the burden of poor water quality and diminished ecosystem through the efforts of the government, concerned citizens and many non-governmental organizations.

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<sup>380</sup> 1 July 2010. Jamison, Michael. "Schweitzer, Tester, Baucus Say Deal to Preserve Canadian Flathead Is Close." *Missoulian*. Print.

## **Conclusions and Implications**

Trading-off economic interests and environmental concerns in the Flathead proved to be a very political issue throughout the dispute. The expansive energy development initiatives promoted by the Liberal Party in combination with hosting the 2010 Winter Olympic Games created the perfect storm for protection of the Flathead. Global attention focused on the province projected an enticing outdoor wonderland, as well as a world leader in sustainable energy development. These dual interests were critical in the addressing of costs and benefits in the coal development disputes. Pressure applied from UNESCO concerning the environmental value of Waterton-Glacier National Park in light of hosting the Olympics helped push B.C. towards conceding development in the Flathead. The implications of the timing and influences on the resolution through the 2010 MOU indicate that B.C. wanted to demonstrate authority over resource decisions in the province, while actively promoting the province on a global scale as a beautiful and majestic destination. B.C. communicated the desire for a resolution to be decided between the two states rather than federal or outside intervention. This demonstration of control by B.C. may have further implications for future cooperative environmental management decisions between the two parties.

The environmental benefit was traded off for a financial burden: covering repayment to Canadian energy companies. The cost of this tradeoff to Montana was abated by the willingness of environmental non-profits on both sides of the border to assume that burden. Further protection of the Flathead on the Montana side of the border will largely depend on legislation that at the time of this paper has not passed the Senate. Without federally legislated protection, mineral development projects could theoretically develop in the future.

There are uncertainties about the future of the Flathead, yet threats from energy development dramatically decreased in 2010. The years of fighting for the protection of the Flathead had an enormous impact on the overall dispute, but did not carry as much weight as outside pressure and attention in resolution through the 2010 MOU. Montana's demand for a more thorough provincial environmental assessment was made a reality by Premier Campbell through an agreement with the federal government to more closely align environmental assessments, however, significant information gaps still exist for this ecosystem.

Trading-off economic and environmental interests occurred in a very short period of time at the end of the dispute, as illustrated in Table 1. Investment in tourism by the B.C. government for the 2010 Olympics shifted the attention towards a global audience, forcing a certain harmonization of self-interests, i.e. relinquishing mineral development, on the Montana side ultimately set the stage for resolution. Without the attention and external pressures brought about from hosting the 2010 Olympics, perhaps the trade-off economic interest for environmental concern would not have been possible. The trade-off between these burdens was not necessarily equal, but there was enough of a balance that both parties could reach an agreement that served both interests.

It is clear that the cooperative management model of transboundary issue resolution was not operative in this case.<sup>381</sup> Instead, it is the alignment of political self-interest that ultimately allowed British Columbia and Montana to reach agreement. British Columbia remained steadfast in its priority for economic development. It was only when the Flathead dispute threatened to undo a major investment in tourism centered on the 2010 Olympics that BC shuffled its economic interest priorities to elevate tourism over mining in the Flathead. Until that decision

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<sup>381</sup> Selin, Steve, and Deborah Chavez. "Developing a Collaborative Model for Environmental Planning and Management." *Environmental Management* 19.2 (1995): 189-95. Web.

was made, British Columbia had changed its position little since the election of the Liberal Party to leadership of the province in 2001. Thus, while cooperative models may be effective in some situations, it is important to consider the potential for dispute resolution through alignment of self-interest of the parties in transboundary environmental disputes.

On border issues, as illustrated with this case study, governments have a difficult time finding common goals for shared resource management, however it would be helpful if policy makers could take a step back to realize common interests. The Flathead dispute was only one of many environmentally entwined economic issues that could influence the positions of the parties. Disputes over softwood lumber, border regulation and enforcement, water compacts in other basins and salmon fishing but are a few examples.<sup>382</sup> Refocusing on the positions of local citizens in both countries might help reframe the issue in ways that allow the discovery of common interests. For instance, citizens in the Flathead River Valley on both sides of the border valued the environment and conserving the resources for future generations.

Not surprisingly, this research also reaffirms that government positions do not change until a satisfactory arrangement negotiated out of the view of the public has been reached. State and Provincial parties stand firm on positions they are deeply committed to, particularly when the trade-off needed to reach agreement involved foregoing substantial benefits or assuming significant burdens. It was Montana's continued commitment to water quality, likely coupled with important NGO pressure not analyzed in this study, which ultimately prevailed. That success depended, in part, on that persistence. Likewise, British Columbia's maintained its mineral development priority until the very last as so to maximize self-interest. In this case, a substantial compensation package to the province for resolving property claims was a key part of

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<sup>382</sup> Moshofsky, Molly. "Mill Closures in BC." - *FACT: Forests and Communities in Transition*. N.p., 9 Feb. 2010. Web. <<http://www.fact.ubc.ca/2010/02/mill-closures-in-bc/>>.

that maximization. Once that deal was struck, BC's public position changed radically with respect to the Flathead.

Despite the focus of this study on government positions, it is clear that outside influence for civil society is very important, if not pivotal. Seeking levers for realignment of government self-interest should be an important part of any campaign to change government positions. In this case it was the confluence of a major investment in the 2010 Winter Olympics in British Columbia with a probable finding by the United Nations Education, Scientific and Cultural Organization that the World Heritage status of Waterton-Glacier International Peace Parks was endangered that was followed by a major shift in provincial position on the development in the Flathead. Non-governmental organizations filed the initial petition with the World Heritage Committee of UNESCO that began this chain of events. This is but one of many fulcrum points pursued by the NGO campaigns against development in the BC Flathead. Such levers for position realignment are critical elements of any such campaign.

One final point raised by this analysis is that position realignment may be characterized by sudden shifts rather than gradual evolution. For example, energy expansion initiatives were aggressively pursued in the 1980s and early 1990s until the New Democratic Party won the BC election and policies suddenly changed to favor resource conservation and cooperative management structures. The policies suddenly shifted once again in 2001 with the election of the Liberal Party in British Columbia towards the energy expansion initiatives of the 1980s. The shifts in policy therefore did not evolve within one party, rather when power shifted from party to party so did the policies and interests pursued by the government.

In the end, coal development in the Flathead River Valley did not occur. Montana's environmental interests were maintained, while of B.C. actions changed over time with a quick

change of interest in the 2000s after the province announced its bid to host the 2010 Olympic Games. Continued energy development is present in B.C. and Montana signifies that resource extraction issues will not end with this resolution.



**Figure 1.<sup>1</sup>*****British Columbia Leaders, 1980-2012***

<b>Premier</b>	<b>Party</b>	<b>Term</b>
William R. Bennett	Social Credit	1975-1986
William N. Vander Zalm	Social Credit	1986-1991
Rita M. Johnston	Social Credit	April 1991- Nov. 1991
Michael F. Harcourt	New Democratic	1991-1996
Glen D. Clark	New Democratic	1996-1999
Dan Miller	New Democratic	1999-2000
Ujjal Dosanjh	New Democratic	2000-2001
Gordon Campbell	Liberal	2001-2011
Christy Clark	Liberal	2011- Present

<b>Lieutenant Governor</b>	<b>Party</b>	<b>Term</b>
Henry Bell-Irving	Social Credit	1978-1983
Robert G. Rogers	Social Credit	1983-1988
David C. Lam	Social Credit/ New Democratic	1988-1995
Garde B. Gardom	New Democratic	1995-2001
Iona V. Campagnolo	Liberal	2001-2007
Steven Point	Liberal	2007- Present

**Figure 2.<sup>2</sup>*****Montana Leaders 1980-2012***

<b>Governor</b>	<b>Party</b>	<b>Term</b>
Thomas L. Judge	Democrat	1973-1981
Ted Schwinden	Democrat	1981-1989
Stan Stephens	Republican	1989-1993
Marc Racicot	Republican	1993-2001
Judy Martz	Republican	2001-2005
Brian Schweitzer	Democrat	2005-present

<b>Senator</b>	<b>Party</b>	<b>Term</b>
Max baucus	Democrat	1977-Present
Conrad Burns	Republican	1989-2006
Jon Tester	Democrat	2007-Present

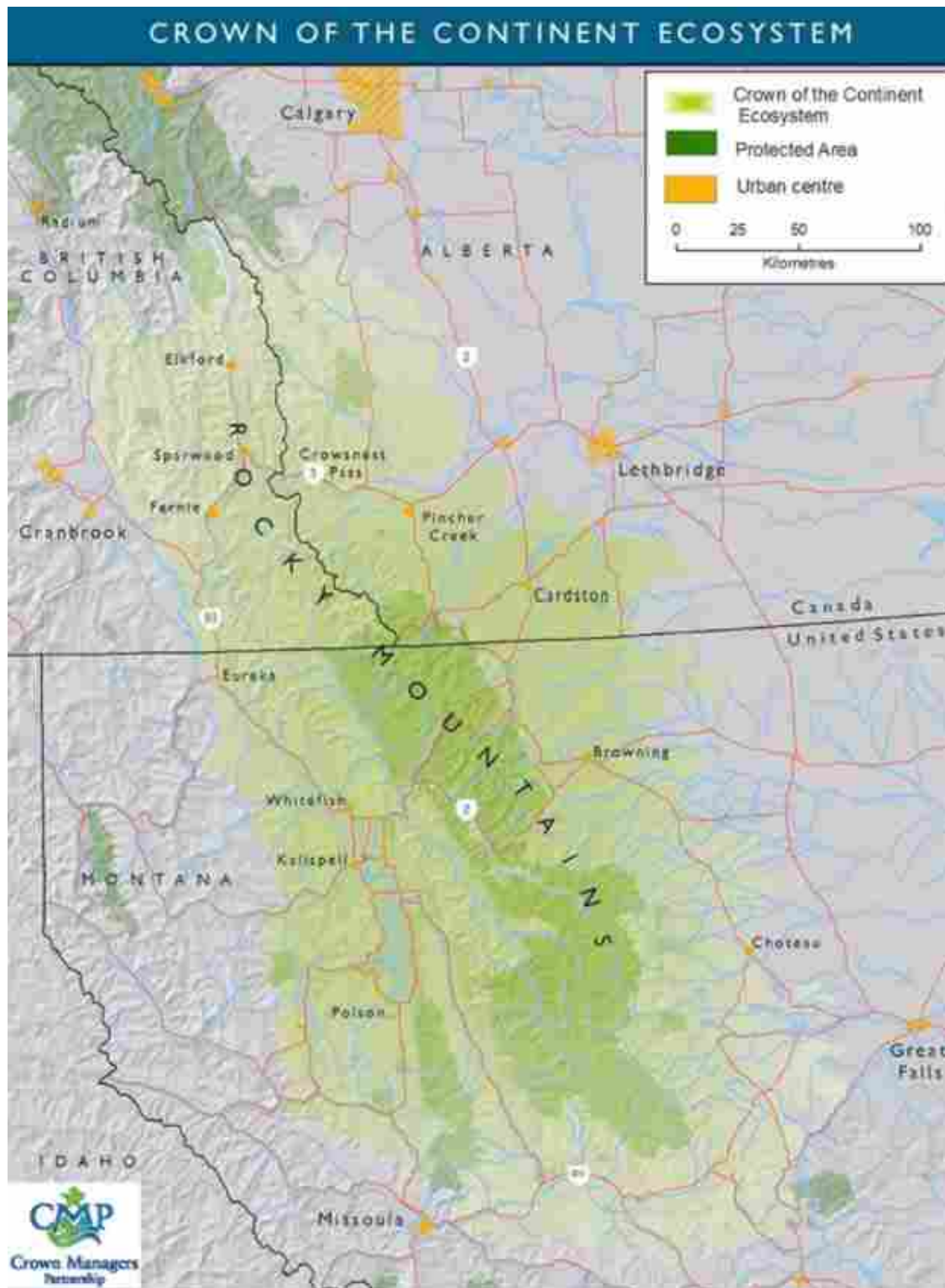
  

<b>Representative</b>	<b>Party</b>	<b>Term</b>
Ronald C. Marlenee	Republican	1977-1992
John P. Williams	Democrat	1979-1996
Rick Hill	Republican	1997-2000
Denny Rehberg	Republican	2001- Present

<sup>1</sup> Canada. *Premiers of British Columbia, 1871- Today*. The Province of British Columbia. Web. Canada. *Former Lieutenant Governors of British Columbia*. The Province of British Columbia. Web.

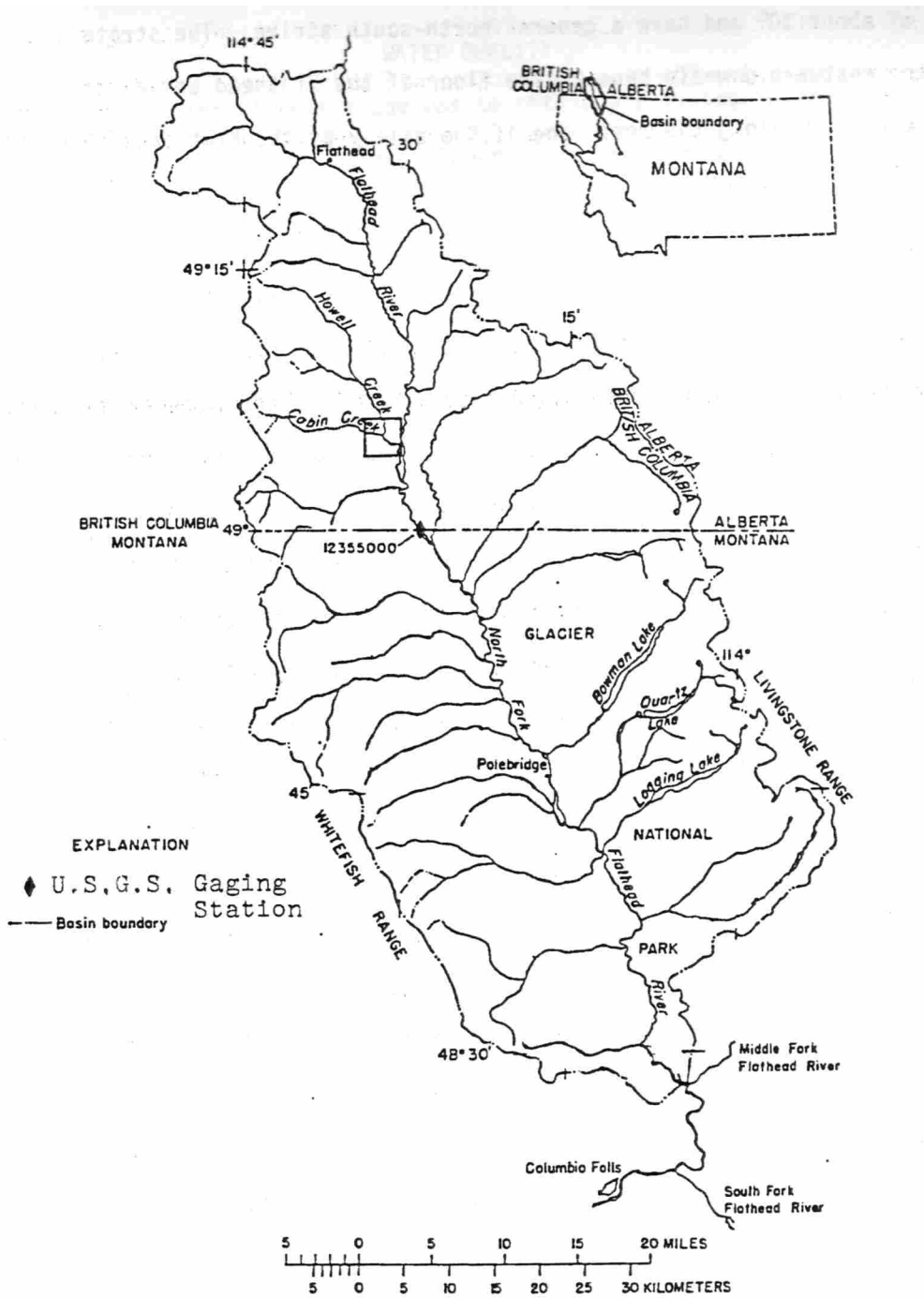
<sup>2</sup> "Congressional Biographical Directory." United States Congress. Web. <http://bioguide.congress.gov/biosearch/biosearch1.asp>; "Governor Brian Schweitzer." *Montana*. Governors Office. Web. <<http://governor.mt.gov/governor/govbio.asp>>. United States. *Former Montana Governors*. Governor of Montana. Web.

Map 1. Crown of the Continent Ecosystem<sup>3</sup>



<sup>3</sup> Crown Managers Partnership. "Crown Topographical Map." Map. *Crown of the Continent - The University of Montana*. Print.

## Map 2. Flathead River Basin <sup>4</sup>



Location Map of Study Area

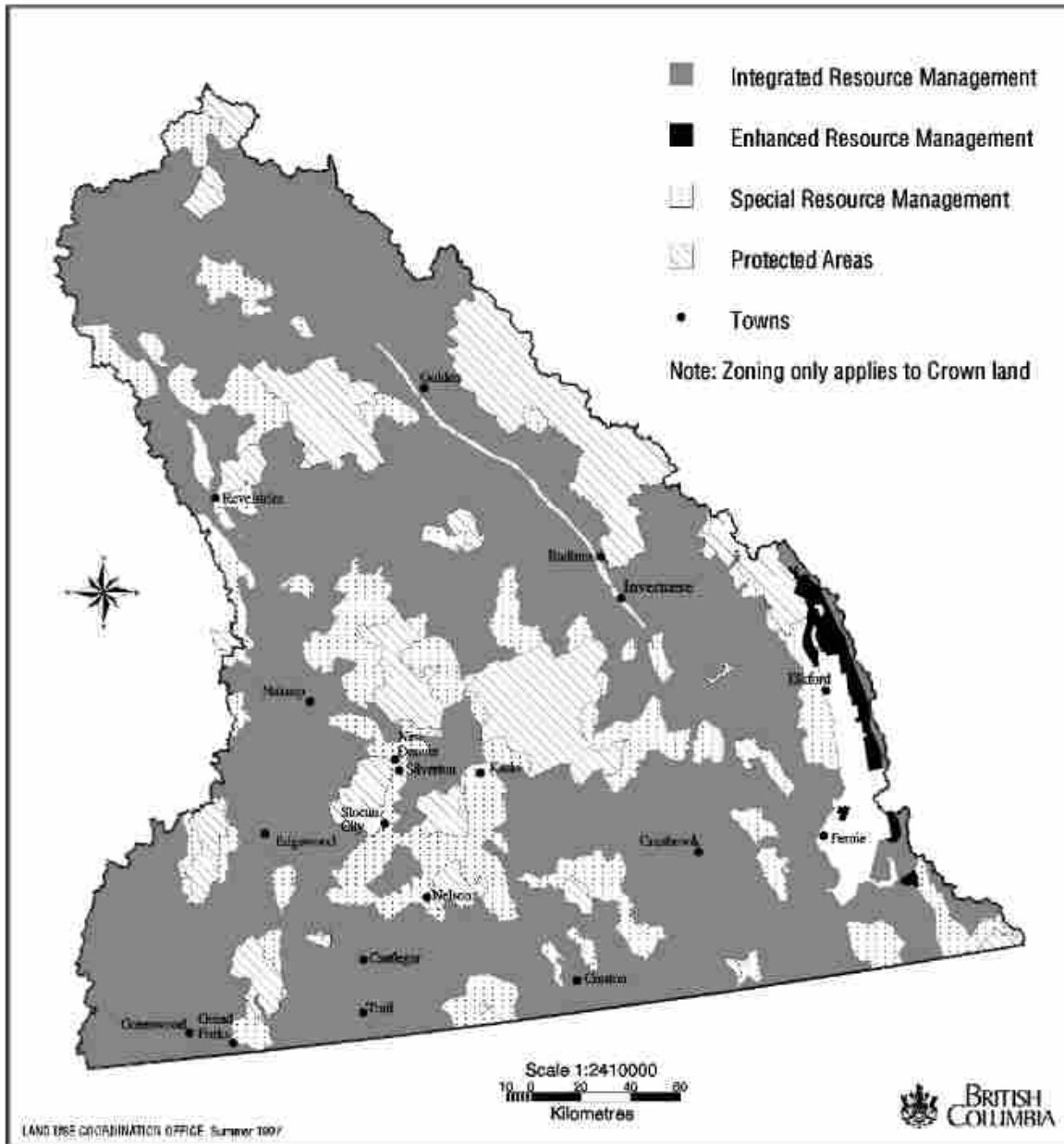
Figure 1

<sup>4</sup> Nobel, Sonderegger, and Van Voast, 1984. Pg. 5.



Map 4. Kootenay Boundary Land Use Plan <sup>6</sup>

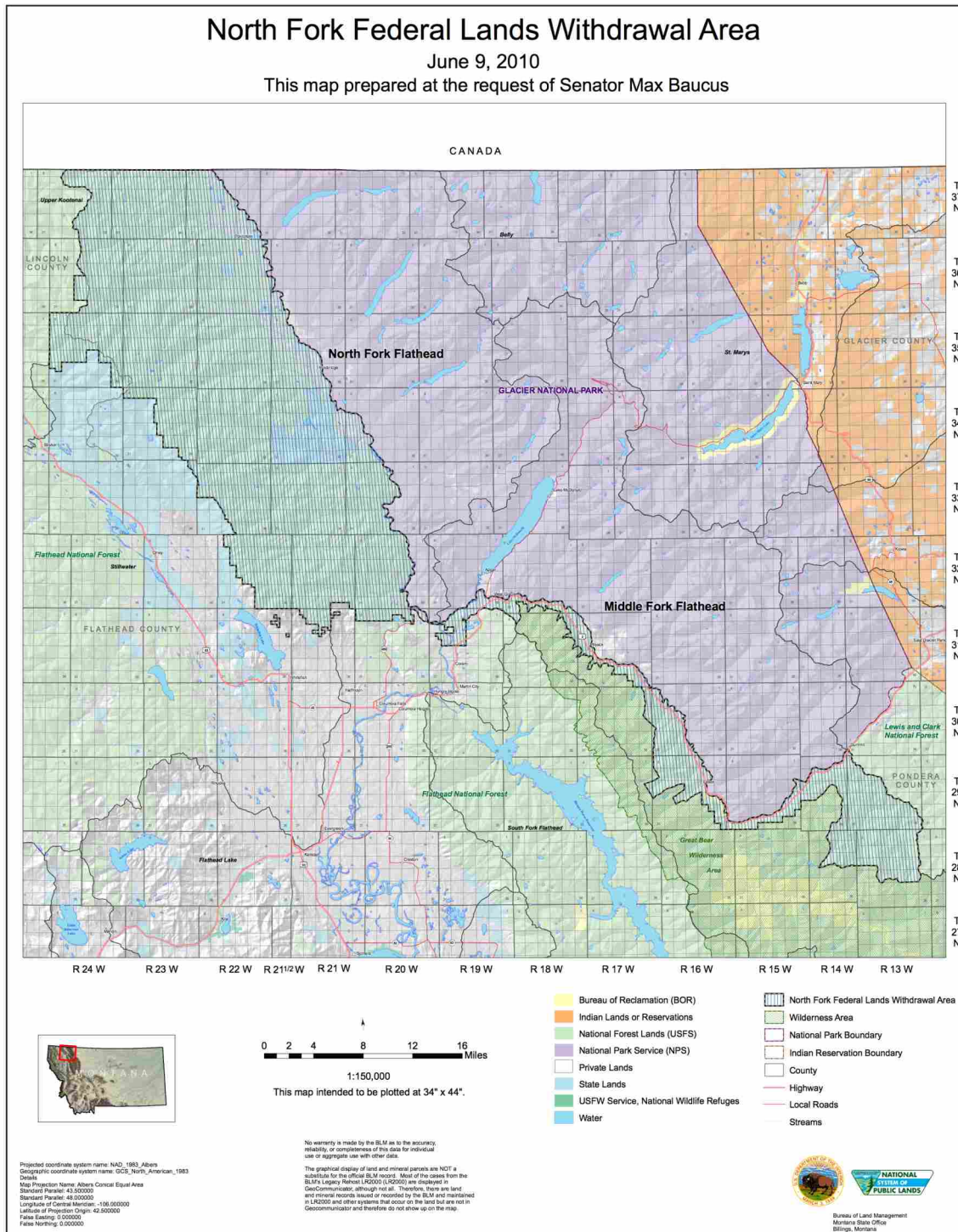
## Kootenay Boundary Land Use Plan Resource Management Zones



<sup>6</sup> "Kootenay Boundary Land Use Plan: Resource Management Zones." Map. *Kootenay - Boundary Regional Land Use Plan Documents*. Summer 1997. Web.  
<<http://www.ilmb.gov.bc.ca/content/documents/2010/02/02/kootenay-boundary-regional-land-use-plan-documents>>.



# Map 5. North Fork Federal Lands Withdrawal Area <sup>7</sup>



<sup>7</sup> Bureau of Land Management, Montana State Office. "North Fork Federal Lands Withdrawal Area." Map. U.S. Department of the Interior, 9 June 2010. Web.

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