

The Flathead River and Waterton-Glacier: A Shared Treasure

To many Canadians and Americans, Waterton-Glacier International Peace Park is symbolic of the relationship between our two great nations. Together we share the future of this pristine and unspoiled area. Montana held great hope for the future of the region with the signing of an Environmental Cooperation Arrangement between then-Governor Martz and Premier Campbell in September of 2003.

Threats to the Flathead: Since the signing of this document, five major energy extraction proposals have been made for Canadian portion of the Flathead watershed. Montana hopes that this year—which marks the 75th Anniversary of Waterton-Glacier International Peace Park—will be the year that Canada and the United States come together in the spirit of peace and goodwill to protect and enhance the existing values of the Transboundary Flathead.

The Flathead Valley: Important to all North Americans

The Flathead Valley and encompassing Crown-of-the-Continent ecosystem is the icon of pristine Rocky Mountain wilderness to many North Americans. The spectacular natural setting of the region draws over 3.5 million people each year: including an estimated 700,000 Canadian citizens.

Existing Wilderness Values: The Flathead Valley is so important to America that in April of 2007 US Secretary of State Condoleezza Rice called on the Canadian government to engage in greater binational environmental cooperation and understanding in regards to the Flathead watershed.

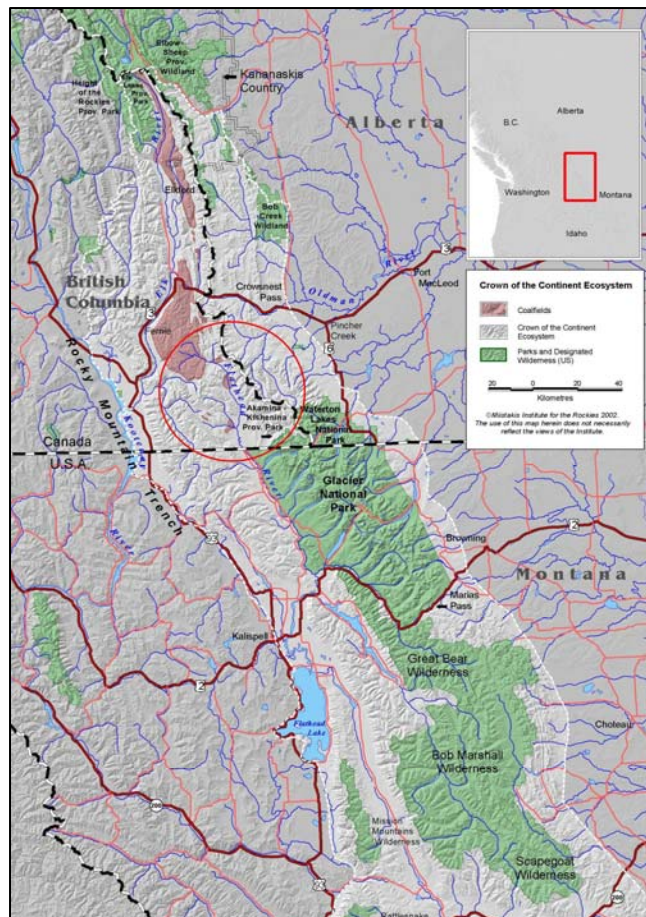
Protecting the existing values of the Flathead River—which do not include industrial coalfield development—is not only an environmental issue. It is also an economic issue. Tourism contributes \$300 million annually to Northwest Montana's economy and the economic value of Flathead Lake alone is estimated to exceed \$10 billion US dollars.

International Significance: Waterton-Glacier International Peace Park and the Flathead Valley are so internationally significant that the National Geographic Society is focusing on this area twice in the upcoming year. National Geographic is preparing a feature story for the September issue in honor of the 75th Anniversary of Waterton-Glacier International Peace Park. And a special geotourism map of the region is being crafted for international publication in early 2008.

Status of British Columbia/Montana Dialogue

In 2003, Montana and British Columbia became signatories to a joint Environmental Cooperation Arrangement (ECA) regarding environmental protection. The document included the following language: *“to identify, coordinate and promote mutual efforts to ensure the protection, conservation and enhancement of our shared environment for the benefit of current and future generations.”*^{vi}

No BC/MT Agreement to Implement the ECA: The ECA called for development of a supporting MOU and Action Plan within one year to implement the document. As of July of 2007, no MOU or Action Plan has been signed by the jurisdictions; and Montana's longstanding concerns over industrial coalfield development in the Canadian Flathead remain unaddressed.



Straddling the International Border, the Transboundary Flathead forms the core of the greater Crown-of-the-Continent ecosystem. The British Columbian portion of the Flathead watershed is circled in red.

International Designations for the Flathead and Surrounding Landscape



The United Nations: The United Nations Educational, Scientific, and Cultural Organization (UNESCO) has recognized Waterton-Glacier International Peace Park and the encompassing Crown-of-the-Continent ecosystem as a World Heritage Site and an International Biosphere Reserve. Waterton-Glacier International Peace is the world's first Peace Park, and this model has been replicated throughout the world as a solution to international conflict and transboundary ecosystem protection.

Peace Park Plus: In 2002, over 12,000 people from 67 countries, every Canadian Province, and every American State, signed a petition to Prime Minister Chrétien supporting the expansion of Waterton Park in to the Eastern portion of Flathead valley. This expansion would be equivalent to the existing

boundary of Glacier National Park South of the International Border.

International Collaboration: In recent years, there has been significant and expanding interest in this transboundary region. In 2001, federal, state, and provincial agencies from British Columbia, Alberta, and Montana formed the Crown-of-the-Continent Managers Partnership (CMP) to build awareness of common interests and issues, relationships and opportunities for collaboration across borders, and identify areas of collaboration and further cooperation.



Montana/Alberta Cooperation: In May of 2007, the Montana Alberta Bilateral Relations Council (MABAC) endorsed an MOU between the State of Montana and Province of Alberta recognizing the shared ecological and social significance of the Crown-of-the-Continent ecosystem and pledging future provincial and state financial support for the CMP.

Framework for International Decision Making

The Boundary Waters Treaty: In 1988, the International Joint Commission (IJC) issued a consensus decision that the proposed Cabin Creek open pit coalmine located 15 km north of the International Border and Glacier National Park should not proceed as it would violate Article 4, or non-degradation standard, of the 1909 Boundary Waters Treaty.

The IJC report stated, in part: *“the Commission concludes that damage will inevitably occur to that habitat which would be located in the midst of a major mining development, and consequently to the dependent fishery.”*ⁱⁱ The IJC report continued: *“The Commission believes that, to ensure the provisions of the Boundary Waters Treaty are honored, when any proposed development project has been shown to create an identified risk of a transboundary impact in contravention of Article IV, existence of the risk should be sufficient to prevent the development from proceeding.”*ⁱⁱⁱ

1988 IJC Recommendations: In addition to finding the proposed Cabin Creek coalmine to be in violation of the Boundary Waters Treaty, the 1988 IJC report also issued the following recommendations: 1). Mine proposals not receive regulatory approval in the future until it can be demonstrated that identified potential transboundary impacts have been determined and constitute an acceptable level of risk to both Governments; 2). Impacts to native, threatened trout in the Flathead River would not occur; and 3). the Governments consider opportunities for defining and implementing compatible, equitable, and sustainable management activities in the upper Flathead River basin.^{iv}

Montana Attempts to Collaborate with British Columbia: In the two decades since the IJC report Montana has repeatedly approached British Columbia regarding the potential to implement joint management strategies for the Transboundary Flathead, including an International Conservation Reserve, to no avail.

Recent Federal Activity: In 2004, in response to Cline Mining Corp's application for an open pit coalmine at the original Cabin Creek site, the US Department of State issued a statement from Secretary of State Colin Powell that it is the position of the US Federal Government that the 1998 IJC recommendations remain valid.

Understanding the Flathead: Montana's Legacy of Protection

Biological Significance of the Transboundary Flathead Valley

The Transboundary Flathead Valley is one of the most biologically important places on earth. The valley is home to a free-flowing river with exceptional water quality and is unmatched in North America for the variety, completeness and density of carnivore species like grizzly bears that live and breed there.

North America's Mixing Zone: As the meeting point of Northern and Southern Rockies, Pacific Northwest and Great Plains ecosystems, the biodiversity of plants and animals within this Valley is unparalleled. A key connection for animals moving north and south through the Rocky Mountains, it is a magical place of great wildness value that has never been settled by humans. The existing provincial land-use plan for the Flathead places the vast majority of the watershed open to industrial mining. This policy is clearly incongruent with the significant, existing ecological and habitat values of the Flathead. It is also asymmetrical with the significant protection afforded to the Montana portion of the Flathead River by Glacier National Park.

The Geography of the Greater Flathead Basin

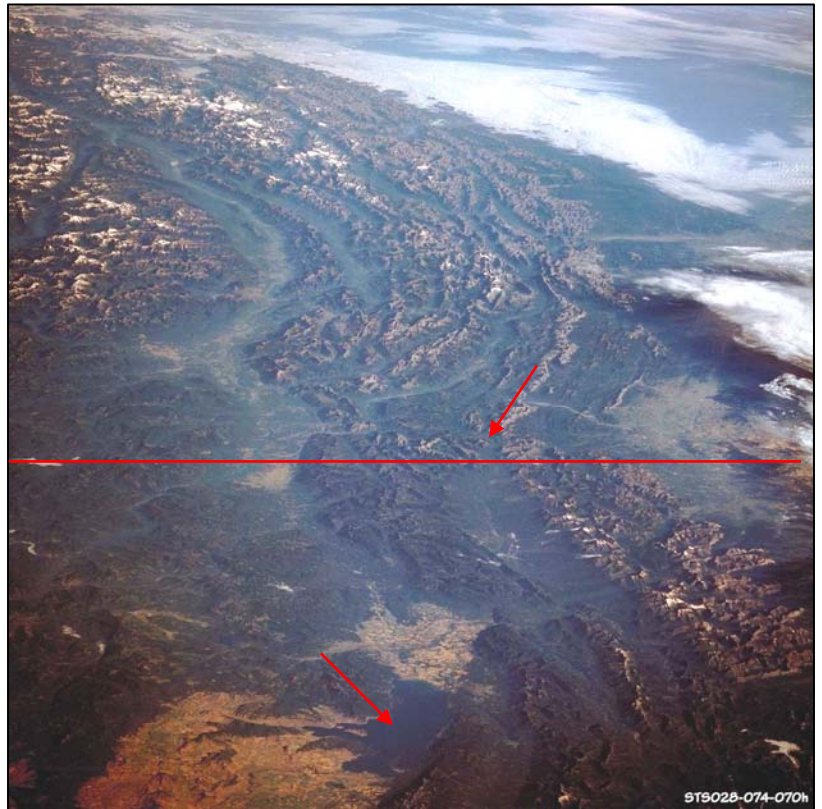
At 160,000 hectares the Canadian Flathead is the headwaters and northern extent of the Greater Flathead basin. The Canadian Flathead represents 10 percent of the Greater Flathead basin (1,643,000 ha), which is defined as all waters that flow into Flathead Lake.

Flathead Lake is the largest, natural freshwater lake in Western United States. 80 km below Flathead Lake, the Flathead River joins the Clark Fork of the Columbia, which returns to British Columbia South of Trail.

The upper Flathead River consists of three forks: the Transboundary Flathead, or North Fork, (160,000 ha in BC/ 248,000 ha in MT), the Middle Fork (293,000 ha), and South Fork (433,000 ha). Additional tributaries include the Swan River (296,000), which flows directly into Flathead Lake, Stillwater River (212,000 ha) and lower Flathead River (295,000 ha). The vast majority of human settlement (pop. 85,000) in the Flathead basin is limited to the broad intermountain valley that comprises the lower portion of the basin.

Montana Protection: South of the International Border, the Greater Flathead basin is one of the most protected watersheds in North America. Permanent land protection in the form of Glacier National Park, and Forest Service Wilderness and Roadless Areas designations are concentrated in the watershed's upper tributaries.

Amount of Protected Area: Wilderness designations—the most protective land management designation allowed under federal law—exceed 440,000 hectares in the greater Flathead watershed. Glacier National Park encompasses another 405,500 hectares of protected land area. These protected areas form the core of the wildest, most intact ecosystem in the Continental United States. Roughly 2/3 of US public lands in the watershed are protected in perpetuity.



The Flathead basin from space: The watershed is located in the lower right quadrant of the photo. The horizontal redline represents the US/Canada Border. The lower arrow is pointing to Flathead Lake. The upper arrow is pointing to the Canadian Flathead.

No History of Energy Extraction in the Greater Flathead Basin

No energy development project has ever reached production stages in either the Canadian or US portions of the Flathead basin. In the 1980's energy companies expressed interest in obtaining oil and gas leases (tenure) from the US Forest Service in the Montana portion of the transboundary Flathead. However, strong opposition from local populations, and a ruling by the 9th Circuit US Federal Court of Appeals requiring that any oil and gas leasing in the Flathead National Forest be subject to the highest level of scrutiny provided under both the US Endangered Species Act (ESA) and National Environmental Policy Act (NEPA), resulted in the suspension of all existing leases and a de facto prohibition on the letting of any new leases.

Flathead Water Quality Protection

The quality of water that flows into Flathead Lake is of primary concern to Montanans. Flathead Lake is the largest natural freshwater lake in the Western United States. It is also the most unimpaired. Over 80 percent of the water quantity in Flathead Lake flows from protected areas.

Water Quality Laws: Under the US Federal Clean Water Act and Montana Water Quality Act the Montana portion of the Transboundary Flathead is designated as both Class A-1 and Outstanding Resource Waterway (ORW). These are the highest and most pristine water quality values that exist under US Federal and Montana State law. As a Class A-1 and ORW waterway any action with the potential for any level of degradation is not permissible.



The pristine waters of Flathead Lake draw millions of visitors from around the world each and are a driving force of Western Montana's economy.

Transboundary Native Fish Populations

A significant and growing body of biological research clearly demonstrates the transboundary migration of spawning native trout species. The upper tributaries of the Canadian Flathead are key spawning habitat for Bull Trout (*Salvelinus confluentus*), which are listed as a threatened species under the US Endangered Species Act.

Transboundary Migrations: This spring, the Montana Department of Fish, Wildlife, and Parks native trout radio-monitoring program documented over 40 percent of the sample population traveling over 100 km north from the initial monitoring location to spend a portion of their lifecycle in the Canadian Flathead. In the fall of 2006, the agency documented 75 bull trout redds, or spawning nests, in a two-mile stretch just below the Flathead River's convergence with Foisey Creek, the drainage where the Cline Mining Corp. is proposing an open-pit coalmine.

Special Protection Efforts for the Montana Portion of the Flathead Watershed

The 1980's proposal for the open pit coalmine at Cabin Creek not only led to the first ever invocation of non-degradation clause of Article IV of the Boundary Waters Treaty: it also provided the State of Montana with the opportunity to assess what actions needed to be taken in the Montana portion of the watershed to protect water quality. This assessment resulted in the passage of several new Montana laws to enhance the existing legacy of protection for the greater Flathead basin; for example, the use of phosphate cleaning detergents is banned under state law in Northwest Montana.

The Flathead Basin Commission: In 1983 the Montana Legislature created the Flathead Basin Commission "to protect the existing high quality of Flathead Lake aquatic environment: waters that flow into, out of, or are tributary to the lake, and the natural resources and environment of the Flathead Basin." The FBC is comprised of federal, state, and local officials as well as citizen representatives. The Province of British Columbia also has representation.

Montana Environmental Law: Protecting the Flathead

As previously mentioned, the existing, high level designations provided to the Flathead River under Federal and Montana Law preclude any future development of energy resources in the Flathead that would result in any adverse impacts to water quality or species listed under the US Endangered Species Act.

Appropriate Land Uses: Federal and State Land Management Agencies—with strong public support—have determined that energy extraction is not an appropriate land use for the Flathead. As a result, current State and Forest Service management plans for non-protected areas focus on recreational, wildlife, and timber values.

The Negative Legacy of Mining: Montana’s significant history of mining and mineral extraction has left a legacy of environmental degradation. During the first part of the 20th century powerful mining interests owned the state’s newspapers and held considerable power over Montana politicians, as a result, inadequate reclamation and a negative environmental legacy were commonplace throughout the state.

A New Era and Constitution: In 1972, Montanans called for a new constitution. Today, this document is recognized as the most progressive state constitution in America. It is the only state constitution in America that guarantees the citizens of Montana the inalienable right to a clean and healthful environment (Article II, Section III). It also has a clause mandating the complete reclamation of land (Article IX).

No Coalmines in Western Montana Mountains: It is important to note that Montana has no coalmines west of the Continental Divide. All of Montana’s coal production occurs in prairies of Southeastern Montana—an area with flat contour, relatively small amounts of overburden, and low precipitation.

Montana Strip and Underground Mine Reclamation Act: (Montana Code Annotated 82-4-201)

To comply with the Montana Constitution, the Montana Legislature has enacted the Montana Strip and Underground Mining Act. This act sets forth the reclamation requirements for any coal mining operation in the State of Montana.

No Mountaintop Removal Coalmines: Montana permitting law requires that all lands be returned to approximate original contour^v. These laws essentially act as a prohibition on any mountaintop removal mining operations parallel to the coal mining activities in the East Kootenays.

Cyanide Heap Leach Gold Mining Illegal

First in the World: In 1999, the State of Montana became the first jurisdiction in the world to ban cyanide heap leach (CHL) gold mining operations. A citizens’ initiative placed the ban on the Montana ballot and the majority of voters approved the ban in the 1998 election. An effort to repeal the ban by the mining industry in 2004 failed with over 65 percent of Montana voters supporting the existing law.

Potential for Cyanide in the Canadian Flathead: This is particularly significant with respect to the Transboundary Flathead: the Howell Creek tributary located less than 10 km north of the International Border has been assessed by the mining industry as having gold deposits that would be recoverable using cyanide heap leach technology. If the Howell Creek gold deposits were developed these activities would occur in direct conflict with Montana environmental protection laws.



America’s Wildest River is BC’s Most Endangered River: Cline Mining’s application for an open pit coalmine and BP’s proposed CBM tenure placed the Flathead at the top of the BC Endangered River list in 2007. The New York Times recently deemed the same river America’s wildest.

No Existing Coal-Bed Methane (CBM) in the Montana Flathead

BP's CBM Proposal: This May, BP of Canada announced their intention to obtain provincial tenure for CBM in the upper headwaters of the British Columbian portion of the Flathead River before the end of the year. As with coalmining, there is no CBM activity in Montana West of the Continental Divide.

CBM In Montana: Serious discussion has been held in British Columbia regarding the extent of CBM activity in Montana. CBM activity in Montana is located on private land in the Powder and Tongue River Basins. The Montana agriculture community has grave concerns regarding CBM discharge water; consequently, Montana has taken a cautious approach to CBM activity.

Montana Legal Action Against Wyoming over CBM: Wyoming, which has the headwaters of the Powder and Tongue Rivers located within its land area, has aggressively developed its CBM resources. Incompatible water management policies have resulted in interstate conflict between Montana and Wyoming. This year the Montana Legislature appropriated \$3 million to file a federal lawsuit against Wyoming for alleged violations of the interstate compact governing the watersheds.

Montana CBM Requirements: To date, Montana has issued only three permits for the discharge of CBM water. Two of these three permits require of permits require treatment. Montana was the first state in the union to adopt protective numeric criteria for salinity and sodium. Governor Schweitzer vetoed legislation (Senate Bill 407) during the 2007 Montana Legislature allowing for CBM water to be discharged into existing stock containment ponds.

Conclusion: Creating a Cooperative Vision for the Future of the Flathead

For over 30 years the US Federal Government and the State of Montana have expressed severe concerns over the potential impacts of industrial coalfield development in the Canadian Flathead at the headwaters of Waterton-Glacier International Peace Park and Flathead Lake. The proposed developments are inconsistent with the ecosystem's existing, world-class wildlife and habitat values.

Asymmetrical Land-Use Policies: British Columbia's land-use policy for the Flathead is clearly asymmetrical with Montana's: the proposed energy extraction activity in Canadian the Flathead are not be permissible in the Montana portion of the Flathead under the existing protection afforded by US Federal and State land management policies and environmental protection legislation.

Significant Risks Still Exist: The risks of adverse, transboundary impacts to native trout populations, transboundary endangered species, and Montana water quality remain as high—or higher—today as when the International Joint Commission recommended against the industrialization of the Flathead 19 years ago. These risks remain clear, immanent, and unacceptably high.

A Call for Action: On behalf of our 330,000 members—who care deeply about the future of Waterton-Glacier International Peace Park—the National Parks Conservation Association (NPCA) urges the province of British Columbia to work with the State of Montana to develop a special plan for this special place that will protect the existing values of the Flathead River for future generations.

The Mission of the National Parks Conservation Association: To protect and enhance America's National Parks for present and future generations.

For more information about NPCA go to www.npca.org.

Or contact NPCA Glacier Program Manager Will J. Hammerquist at whammerquist@npca.org

ⁱ MT/BC ECA online at: http://www.env.gov.bc.ca/spd/documents/Montana_ENVIRONMENTAL_COOP_ARRANGEMENT.pdf

ⁱⁱ Pg. 8. International Joint Commission. Impacts of a Proposed Coal Mine in the Flathead River Basin. December 1988.

ⁱⁱⁱ IBID Page 9.

^{iv} IBID Page 11.

^v Approximate original contour is defined in MT law at: <http://data.opi.state.mt.us/bills/mca/82/4/82-4-203.htm>