

Return To Fred Flint
HHRP

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

WILD AND RECREATIONAL RIVER CLASSIFICATION
BOUNDARY DESCRIPTION
OF THE
"MIDDLE FORK OF THE FLATHEAD RIVER"



APR 1 1983



United States Department of the Interior		DIST. OFF-WL	
INTER ADMIN.		OFFICE OF THE SOLICITOR	
REC'D. APR 18 1983		GLACIER REGION	
VIS. PROT. SPEC.		PERSONNEL	
RES. SPEC.		PROCUREMENT	
WILD SPEC.		DENVER, COLORADO 80225	
FILE		C.R.C. 1	
CENT.		MARCH 20, 1983	

Regional Director	<i>[initials]</i>
Deputy Reg. Director	<i>[initials]</i>
Administration	<i>[initials]</i>
Park Operations	<i>[initials]</i>
Resource Plan & Ass.	<i>[initials]</i>
Comm. & PA	<i>[initials]</i>
EO	<i>[initials]</i>
User Eval.	<i>[initials]</i>
Adm. Serv.	<i>[initials]</i>

Memorandum

To: Regional Director, RMR, Denver, NPS

From: Regional Solicitor, RMR

Subject: Opinion on Glacier National Park Boundary (Your ref: L1417 (RMR-PP))

In accordance with your request we have considered at length the question of the proper location of the boundary to Glacier National Park as established by the Act of May 11, 1910, 16 U.S.C. § 161. The section of the boundary in question occurs with the language of the cited statute as follows:

Thence following southerly along and with the middle of the Flathead River to its confluence with the Middle Fork of the Flathead River; thence following the north bank of said Middle Fork of the Flathead River to where it is crossed by the north boundary of the right of way of the Great Northern Railroad; . . .

The specific question arises as to what is the proper definition of the "north bank of said Middle Fork of the Flathead River"

At the outset, we caution that the final answer to the question of the location of the boundary must depend upon the physical setting of the North Fork of the Flathead River. We have, of course, not inspected the physical setting and are only generally familiar with the "lay of the land." To the best of our recollection this section of the river at certain locations meanders quite widely leaving vast expanses of gravel beds that are exposed throughout much of the year and are covered with water only during the spring runoff season caused by the normal annual snow melt. In other locations of the river the river is confined to narrow canyon walls. The location of the boundary of the park can only be determined by a physical inspection of the river and its banks. In this respect we strongly recommend that you consider contracting with the Bureau of Land

HUNGRY HORSE RD
MAY 2 1983

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☒	Asst. Dir. for Mgmt.
☒	Wildlife Biol.
☒	Tr. Mgmt.
☒	Public Affs. 1
☒	Public Affs. 2
☒	Public Affs. 3
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Management, Cadastral Survey, to conduct a survey of the area and make the necessary factual determinations.

An additional problem in determining at present where the boundaries of the park actually are is that changes have undoubtedly occurred since the boundaries were established in 1910. The river course has unquestionably moved and eroded other lands. Some of the changes may have occurred suddenly and, therefore, did not legally result in a boundary change. On the other hand, gradual erosion creating a new river bank would cause a legal change in the boundary. Accordingly, the movement of the river since 1910 will have to be documented, if possible, before the precise boundary can be determined on the ground.

BACKGROUND

The term "bank" as used in the law defines the boundary between the upland area of land and the bed of the river on lands adjacent to a water course. See 78 Am. Jur. 2nd Waters §§ 375, et seq. The term "bank" of a river is that permanent elevation or location at the outer edge of a river bed which serves to confine the waters within the bed and to preserve the course of the river. Mammoth Gold Dredging Co. v. Forbes, 104 P.2d 131 (Cal. 1940). The Supreme Court of the United States in Oklahoma v. Texas, 260 U.S. 623 (1923), defined the bank of the Red River, which formed the boundary between Oklahoma and Texas, as that line on the bank that is the waterwashed and relatively permanent elevation at the outer edge of the river bed which separates the bed from the adjacent upland and serves to confine the waters within the bed and preserve the course of the river. This remains the accepted definition of the bank of a river. United States v. Claridge, 416 F.2d 933 (9th Cir. 1969). The mark is determined by locating the ordinary high water mark on the bank. The ordinary high water mark should be a readily visible mark on the bank and can only be determined by an on-the-ground inspection.

In addition to what has been stated above, it is possible for the boundary line to move. This can occur through the process known as accretion. Accretion is the natural and gradual process of erosion by which the bed and the channel of the river are changed and moved. This process will occur over a long period of time. On the other hand, if the bed of the river should move suddenly through avulsion, which is a sudden and artificial process which causes

the stream to leave the old bed and form a new one, then there will be no change in the boundary. Oklahoma v. Texas, supra; United States v. Claridge, supra. With this brief recitation of the background for the definition of the term "banks" we now proceed to answer the questions contained in the Superintendent's letter.

Question No. 1. "In the context of the boundary line is the bank considered to be the water's edge at low water or is the bank considered to be the rising ground bordering the river and formed by the river?"

Answer: The boundary line is that line formed by the ordinary high water mark of the river. This term has been construed to mean that point on the bank where the river will flow each year at high water. This has generally occurred during the spring run-off period. We are uncertain what is meant by the term "rising ground," but without viewing the river valley we cannot state with certainty that the rising ground is the bank of the river. However, we are certain the the water's edge at low water is not the river bank. It would have to be higher.

Question No. 2 "If in fact the bank is the rising ground is the boundary at the top of the rise or at the toe of the rise?"

Answer: This question cannot be answered yes or no. The boundary line which divides the upland from the river is again the ordinary high water mark. This mark could be at either the toe or the top of "rising ground" or somewhere in between. It can only be determined by discovering the erosional feature that has been created by the high water flow over a period of time.

Since it is your desire to obtain a clear definition of the boundary described as the north bank of the Middle Fork of the Flathead River, we believe that the only process by which this can actually be determined will require an on-the-ground inspection of the entire boundary line between the intersection of the Great Northern Railroad right of way and the river bank and the junction of the Middle Fork of the Flathead River with the Flathead River. We view this process as first establishing where the ordinary high water mark was in May of 1910 and then attempting to determine whether the river bed has shifted in location through the

avulsive process, in which case the boundary line will not change; or, on the other hand, if the river bed has shifted through the more normal and gradual processes of constant erosion over a period of years, then the boundary line will likewise have shifted. In this regard you have mentioned that one of your desires is to regulate more accurately and carefully camping and fires that occur on river bars utilized by river runners. One of the characteristics noted in our research has been that gravel bars that are annually covered by the river at high water stage, are considered to be located in the bed of the river. In this case they may well be outside the boundaries of Glacier National Park. On the other hand if the bank of the river has accreted and moved away from a gravel bar so that the bar is no longer covered annually over a long period of time, then it may well be that the gravel bar has become part of Glacier National Park. In such case, the activities you mention would be subject to regulation. However, it seems likely that fishing in the river, except during run-off stage when fishing must occur from within the boundaries of the Park is not and will not be subject to Park Service regulation because the bed of the river, and presumably the water on top of the bed, will be outside the boundaries of the Park.

We realize that this area of the law is not subject to precise interpretation except on a case-by-case basis and that actual application of the definitions must take place on the ground through the observations of competent and qualified personnel. However, we hope that this brief discussion is useful. If you have further need for discussions, please call upon us at your earliest convenience.

Curtis Menefee
Curtis Menefee *by J. D. Hittman*
For Regional Solicitor
Rocky Mountain Region

T.30N., R.19W.

- Sec. 6, NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ excepting that portion in the South Fork Addition Subdivision and also excepting blocks 11, 12, 13, and 14 and all streets, roads and alleys in First Addition to Hungry Horse City Subdivision.
- Sec. 5, Government Lots 1, 2, 5, 6, 8, 9, 10, 11 and that portion of Government Lot 7 North and West of U.S. Highway No. 2; also block 15 of the First Addition of Hungry Horse City Subdivision; also Lots 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 25, 26, 30, 31, 32, 33, 34, 35, 37, 39, 41, 42 and those portions of Lot 1 described in Book 457, Page 787, and Book 436, Page 15, of Deed Records of Flathead County in Wagsmith Villa Subdivision.
- Sec. 4, All portions of land described in Book 280, Page 63, and Book 599, Page 159, and Book 487, Page 511, and Book 512, Page 78, and Book 582, Page 762, and Book 467, Page 756, and Book 595, Page 842, and Book 535, Page 734, and Book 157, Page 220, and Book 531, Page 853, and Book 367, Page 534, and Book 378, Page 528, and Book 287, Page 465, and Book 270, Page 321, and Book 448, Page 893, and Book 266, Page 446, of Deed Records of Flathead County.

T.31N., R.19W.

- Sec. 33, All land west of the west right-of-way line presently existing of U.S. Highway No. 2.
- Sec. 32, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$; also land west of the west right-of-way line presently existing of Burlington Northern Railroad in NW $\frac{1}{4}$ NE $\frac{1}{4}$.
- Sec. 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$, also all land west of the west right-of-way line presently existing of the Burlington Northern Railroad in the W $\frac{1}{2}$ E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$.
- Sec. 20, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$; also all land west of the west right-of-way line presently existing of Burlington Northern Railroad in S $\frac{1}{2}$ SW $\frac{1}{4}$.
- Sec. 19, E $\frac{1}{2}$ E $\frac{1}{2}$.
- Sec. 18, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.
- Sec. 17, E $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.
- Sec. 7, E $\frac{1}{2}$.
- Sec. 8, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$.
- Sec. 5, S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$.
- Sec. 4, N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$.
- Sec. 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

WILD AND RECREATIONAL RIVER CLASSIFICATION

BOUNDARY DESCRIPTION

of the

"MIDDLE FORK OF THE FLATHEAD RIVER"

The official boundary description and that boundary which is shown on a map titled "Boundary Map" of the Middle Fork of the Flathead Wild and Recreational River, and aerial photography of said area dated 30 June 1977, 1:15840 scale, Roll 5 and photos 121 through 238, and photos 115 and 116 and photos 320 through 333, which is on file and available in the offices of the Forest Supervisor, Flathead National Forest, Kalispell, Montana, and the Regional Forester, Northern Region, Missoula, Montana. All subdivision and plats referred to in this description are on file at the Flathead County Courthouse, Kalispell, Montana. Said boundary is located in and through the following described areas:

Montana Flathead National Forest

Segment No. 1 - Recreational River classification consisting of a portion of the lands on each side of the Middle Fork of the Flathead River through the following townships:

T. 30N., R. 20W.
T. 30N., R. 19W.
T. 31N., R. 19W.
T. 32N., R. 19W.
T. 32N., R. 18W.
T. 32N., R. 17W.
T. 31N., R. 18W.
T. 31N., R. 17W.
T. 30N., R. 17W.
T. 30N., R. 16W.
T. 29N., R. 16W.
T. 29N., R. 15W.

All referred to the Principal Meridian, Montana, in Flathead County and more particularly described as follows:

T. 30N., R. 20W.
Sec. 1, NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Also all land lying west and south of the thread of the Middle Fork of the Flathead River in the following sections:

- Sec. 20, $E\frac{1}{2}$, $E\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}$.
- Sec. 21, $S\frac{1}{2}$.
- Sec. 22, $SW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$.
- Sec. 28, $N\frac{1}{2}NE\frac{1}{4}$.
- Sec. 27, $N\frac{1}{2}$.
- Sec. 26, $E\frac{1}{2}$, $NW\frac{1}{4}$.
- Sec. 25, $SW\frac{1}{4}$.
- Sec. 36, $E\frac{1}{2}$, $N\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$.

Also that land lying between the thread of the Middle Fork of the Flathead River and a line 1320 feet north and east and parallel with said thread in surveyed Sections 6, 7, 8, 17, 20, 21, 22, 23, 26, 25 and 36.

Also that portion of land lying in following sections not already described:

- Sec. 21, $E\frac{1}{2}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$.
- Sec. 22, $W\frac{1}{2}W\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$.

T.30N., R.17W.

That land lying north and east of the east right-of-way line of U.S. Highway No. 2 presently existing in which probably will be when surveyed Section 1.

T.30N., R.16W.

That land lying between the thread of the Middle Fork of the Flathead River and a line that begins with the intersection of the east right-of-way line of U.S. Highway No. 2 as presently existing and the west line of what will be when surveyed Section 6; thence southerly along said right-of-way line to the intersection of said line and the east right-of-way line of Burlington Northern Railroad presently existing; thence southerly along said line, excluding H.E.S. 822, to the intersection of said line and the east right-of-way line of U.S. Highway No. 2 as presently existing in which probably will be when surveyed Section 33; thence southerly along said line to the intersection with the south boundary of the township.

Also that land lying between the thread of the Middle Fork of the Flathead River and a line 1320 feet north and east and parallel with said thread in sections which will probably be when surveyed Sections 6, 5, 7, 8, 17, 16, 21, 28, 27, 33, and 34.

T.32N., R.19W.

- Sec. 33, $S\frac{1}{2}$ SE $\frac{1}{4}$.
- Sec. 34, NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$.
- Sec. 27, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$.
- Sec. 26, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$.
- Sec. 35, N $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$; also that portion of land in S $\frac{1}{2}$ NE $\frac{1}{4}$ north of the north right-of-way line of a county road as described in Book 184, Page 313 Deed Records of Flathead County.
- Sec. 36, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$.
- Sec. 25, All land lying between the thread of said river and a line 1320 feet north and parallel with said thread.

T.32N., R.18W.

- Sec. 31, N $\frac{1}{2}$ NW $\frac{1}{4}$.
- Sec. 32, N $\frac{1}{2}$ NE $\frac{1}{4}$.
- Sec. 33, N $\frac{1}{2}$ N $\frac{1}{2}$.
- Sec. 34, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$.
- Sec. 35, N $\frac{1}{2}$, E $\frac{1}{2}$ SE $\frac{1}{4}$.
- Sec. 26, SE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.
- Sec. 25, W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.
- Sec. 36, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Also all land south of the thread of the Middle Fork of the Flathead River in Sections 30, 29, 28, 27, 26 and 36 not already described. Also that land lying between the thread of the Middle Fork of the Flathead River and a line 1320 feet north and parallel with said thread in surveyed Sections 30, 29, 28, 27, 26, and 36 not already described.

T.32N., R.17W.

- Sec. 31, that portion of land lying between the thread of the Middle Fork of the Flathead River and a line 1320 feet east and parallel with said thread.

T.31N., R.18W.

All land east of the east right-of-way line of Burlington Northern Railroad as presently existing in which probably will be when surveyed Section 1.

T.31N., R.17W.

- Sec. 6 and 17, that portion of land lying west and south of the thread of the Middle Fork of the Flathead River in said sections.
- Sec. 7, 8 and 18, that portion of land lying between the thread of the Middle Fork of the Flathead River and the east right-of-way line of Burlington Northern Railroad as presently existing in said sections.

Segment No. 2 - Wild River Classification consisting of a portion of the lands lying on each side of the Middle Fork of the Flathead River through the following townships:

T.28N., R.16W.
T.28N., R.15W.
T.28N., R.14W.
T.27N., R.14W.
T.27N., R.13W.
T.27N., R.12W.
T.26N., R.12W.
T.26N., R.11W.

All referred to the Principal Meridian, Montana in Flathead County and more particularly described as follows:

Beginning at the intersection of the south Township line of T.29N., and a line 1320 feet east and parallel with the thread of the Middle Fork of the Flathead River; thence southerly along said parallel line to the intersection of a east-west line based on Montana Grid Coordinate System with a north coordinate 415433 feet (north zone); thence easterly along said coordinate line to the intersection of a line 1320 feet north and parallel to the thread of the Middle Fork of the Flathead River; thence easterly along said parallel line to a point at right angles with the confluence of Strawberry Creek and Bowl Creek thence southerly through the confluence of Strawberry Creek and Bowl Creek 2640 feet, more or less, to the intersection of a line 1320 feet south of and parallel with the thread of the Middle Fork of the Flathead River; thence westerly along a line parallel with and 1320 feet south of the thread of the Middle Fork of the Flathead River to the intersection with a line 50 feet east and parallel with the center line of the closest road to the Middle Fork of the Flathead River presently existing; thence northerly along a line 50 feet east and parallel with the center line of the closest road to the Middle Fork of the Flathead River to the intersection of the south township line of T.29N.; thence easterly along said township line T.29N. to point of beginning.

T.29N., R.16W.

That land lying between the thread of the Middle Fork of the Flathead River and a line that begins at the intersection of the township line and the east right-of-way line of U.S. Highway No. 2 as presently existing, in section which probably will be when surveyed Section 3; thence southerly along said right-of-way line to the south boundary of H.E.S. 269; thence westerly along south boundary to corner No. 5 of H.E.S. 269; thence south to corner No. 12 of H.E.S. 810; thence south to corner No. 11 of H.E.S. 810; thence S. 67°47' W., 72 feet, more or less, to the west right-of-way line of U.S. Highway No. 2 as presently exists; thence along the west right-of-way line to the intersection with the north line of Parma Addition Subdivision; thence southerly between Lots 76 and 77; thence along the west line of Lots 56 through 76; thence along the west and south boundary of Lots 51 through 55 of the Parma Subdivision; thence along east side of Lot 1 of Parma Subdivision to corner No. 8 of H.E.S. 810; thence N. 47°13' W., 290 feet; thence due west to section line between Sections 14 and 15; thence southerly along the section line to the northwest corner of Section 23; but excluding that portion described in Book 591, Page 526, Book 507, Page 125, Book 362, Page 385, and Book 553, Page 689 all in H.E.S. 869 and also excluding H.E.S. 269.

Also that land lying south and west of the thread of the Middle Fork of the Flathead River in following sections:

Sec. 23, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

Sec. 24, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$.

Sec. 25, E $\frac{1}{2}$.

Also that land lying west of the thread of the Middle Fork of the Flathead River and a line 50 feet east and parallel with the closest road to said river in Section 36.

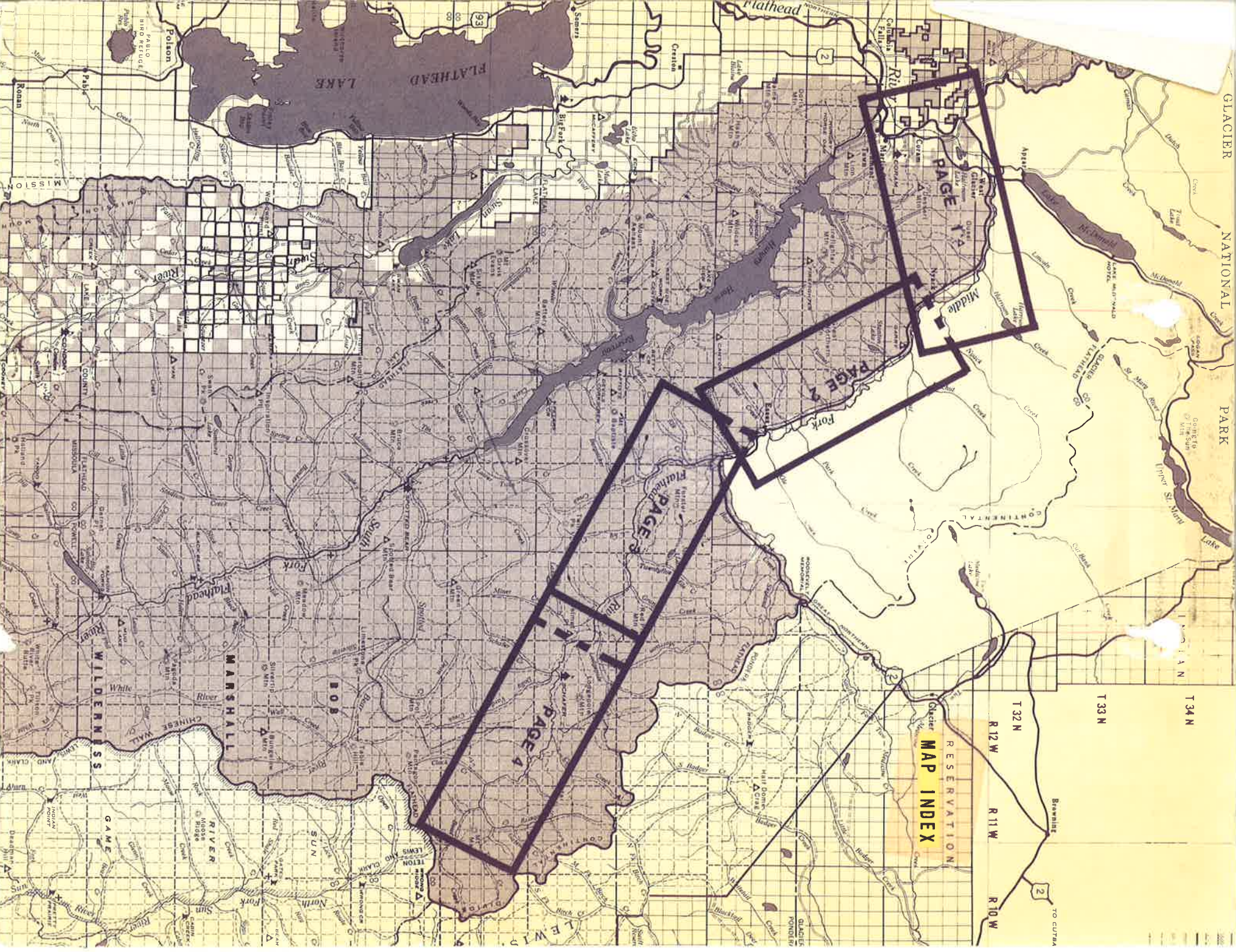
Also that land lying between the thread of the Middle Fork of the Flathead River and a line 1320 feet east and parallel with said thread in sections which will probably be when surveyed Sections 3, 2, 11, 12, 13, 14, 23, 24, 25, and 36.

T.29N., R.15W.

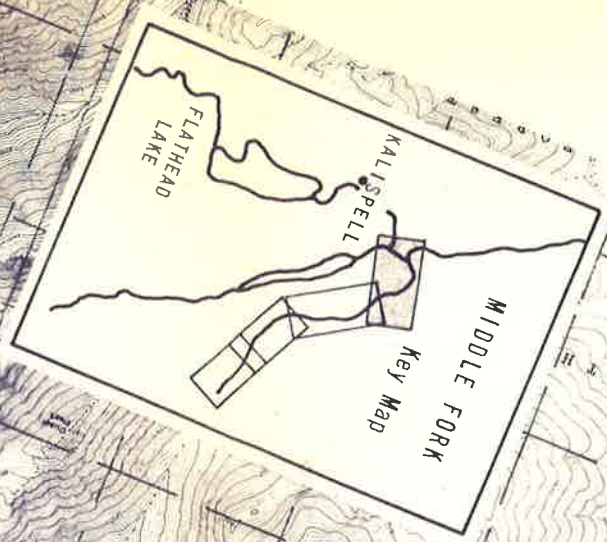
Sec. 30, W $\frac{1}{2}$ W $\frac{1}{2}$.

Sec. 31, W $\frac{1}{2}$ W $\frac{1}{2}$.

Also that land lying between the thread of the Middle Fork of the Flathead River and a line 1320 feet east and parallel with said thread in Section 19.



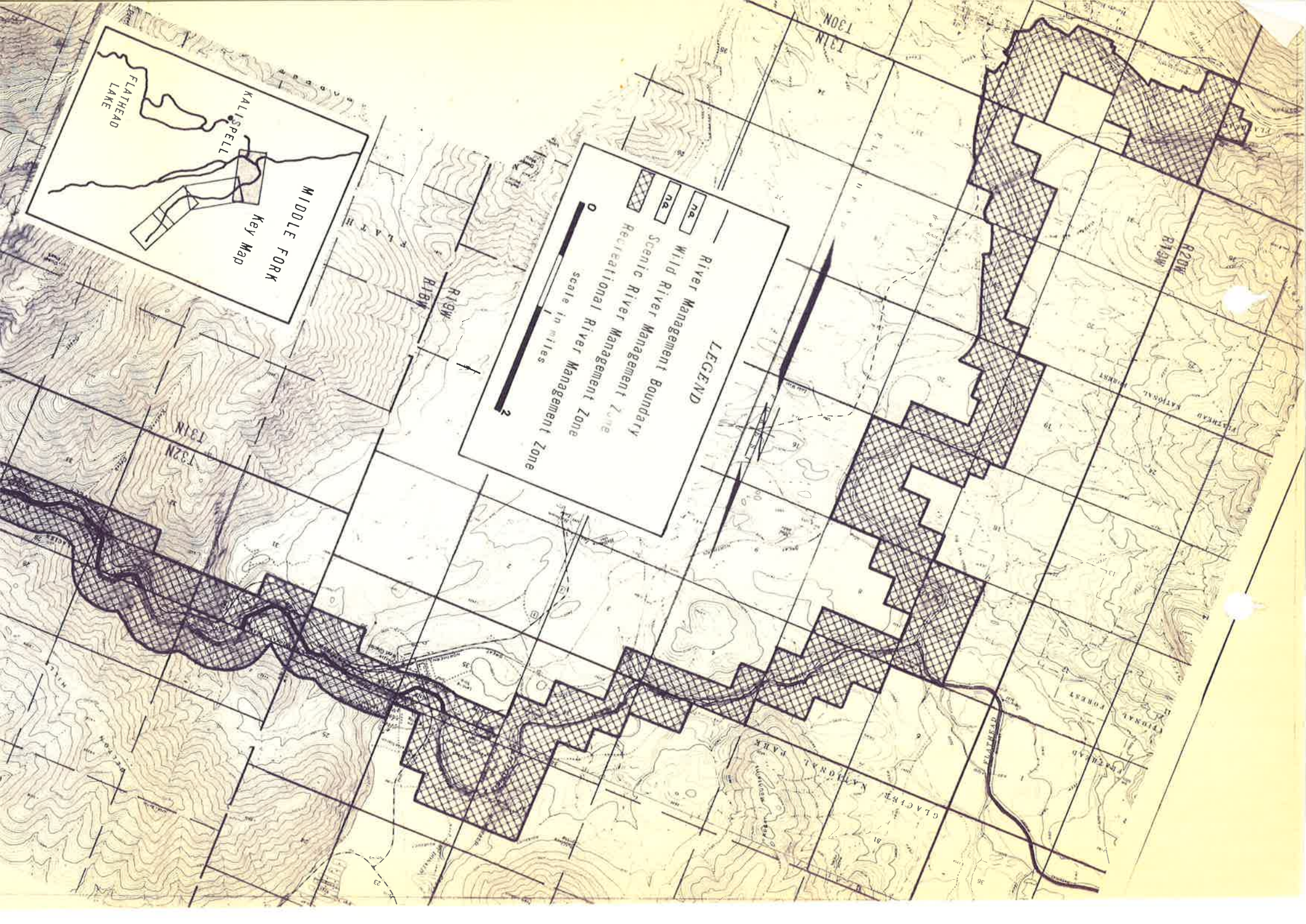
RESERVATION
MAP INDEX

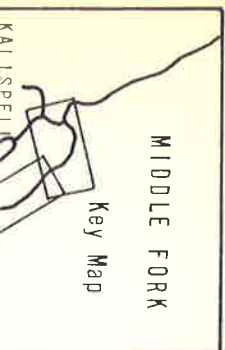


LEGEND

- River Management Boundary
- na Wild River Management Zone
- na Scenic River Management Zone
- Recreational River Management Zone

0 2
scale in miles





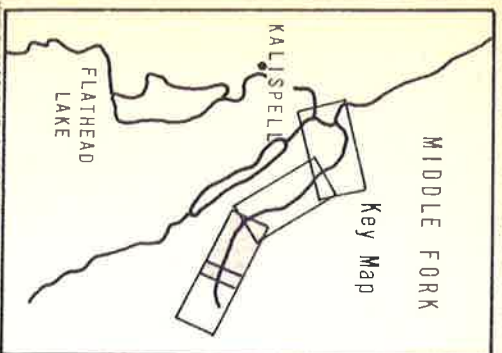
MIDDLE FORK
Key Map



LEGEND

- River Management Boundary
- Wild River Management Zone
- Scenic River Management Zone
- Recreational River Management Zone

0 2
scale in miles



LEGEND

- River Management Boundary
- ▭ Wild River Management Zone
- ▨ Scenic River Management Zone
- ▩ Recreational River Management Zone

0 1 2
scale in miles



LEGEND

- River Management Boundary
- Wild River Management Zone
- Scenic River Management Zone
- Recreational River Management Zone

0 1 2
scale in miles

MIDDLE FORK
Key Map

KALISPELL

FLATHEAD
LAKE