

Divided Sovereigns:

A Legal Analysis Surrounding

the Creation of County Boundaries on Indian Reservations

Within the Territory and State of Montana

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Introduction

The 1864 Organic Act of the Territory of Montana, the Enabling Act opening the way for statehood in 1889, Ordinance No. I, which was appended to Montana's 1889 Constitution, and Article I of the 1972 Montana Constitution each contain a disclaimer of right and title to Indian lands and an acknowledgment that until the title was extinguished by the United States, all Indian lands would remain under the "absolute jurisdiction and control" of the United States Congress.¹

The boundaries of 18 of Montana's current counties cross the exterior boundaries of Montana's seven Indian reservations: the boundaries of Glacier and Pondera Counties cross the boundaries of the Blackfeet Reservation; Blaine and Phillips Counties cross the boundaries of the Fort Belknap Reservation; Roosevelt, Daniels, Valley, and Sheridan Counties impact the boundaries of the Fort Peck Reservation; Big Horn and Rosebud Counties cross the Northern Cheyenne Reservation's boundaries; Big Horn and Yellowstone Counties impact the Crow Reservation; Hill and Chouteau Counties cross the Rocky Boy's Reservation; and the boundaries of Missoula, Lake, Flathead, and Sanders Counties cross the boundaries of the Flathead Reservation.

In light of the disclaimer language contained in Montana's 1864 Organic Act, the state's 1889 Enabling Act, Ordinance No. I, and Article I of the 1972 Constitution, an opinion has been requested on whether the creation of counties within the exterior boundaries of Montana's seven Indian reservations violates these disclaimer provisions. This document necessarily relies on historical documentation and analysis, but is not intended to be exhaustive or all-encompassing with regard to that analysis.