

# BADGER-TWO MEDICINE PROTECTION ACT

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## SEC. 1. SHORT TITLE.

This Act may be cited as the “Badger-Two Medicine Protection Act”.

## SEC. 2. DEFINITIONS.

In this Act:

- (1) CULTURAL HERITAGE AREA—The term “Cultural Heritage Area” means the Badger-Two Medicine Cultural Heritage Area established by section 5(a).
- (2) EXISTING USE—The term “existing use” means a use that is occurring within the Cultural Heritage Area as of the date of enactment of this Act.
- (3) MANAGEMENT PLAN.—The term “management plan” means the management plan for the Cultural Heritage Area required by section 5(d)(1).
- (3) MAP—The term “map” means the map entitled \_\_\_ and dated \_\_\_.
- (4) NATIVE KNOWLEDGE.—The term “Native knowledge” has the meaning given the term in 36 C.F.R. 219.19 (as in effect on the date of enactment of this Act).
- (5) NEW USE—
  - (A) IN GENERAL—The term “new use” means—
    - (i) a use that involves surface disturbance and is not occurring within the Cultural Heritage Area as of the date of enactment of this Act; or
    - (ii) an existing use that is being modified so as to create a surface disturbance or to significantly expand or alter impacts on the land, water, air, fish, wildlife, or cultural resources of the Cultural Heritage Area.
  - (B) EXCLUSION—The term “new use” does not include a use that is—
    - (i) determined by the Secretary not to, individually or cumulatively, have a significant effect on the human environment;
    - (ii) necessary to maintain a road, trail, structure, or facility within the Cultural Heritage Area in existence as of the date of enactment of this Act; or
    - (iii) carried out to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (6) SECRETARY—The term “Secretary” means the Secretary of Agriculture.
- (7) STATE—The term “State” means the State of Montana.
- (8) TRIBAL BUSINESS COUNCIL.—The term “Tribal Business Council” means the Blackfeet Tribal Business Council.
- (9) TRIBE—The term “Tribe” means the Blackfeet Nation.

## SEC.3. FINDINGS.

The Congress finds that:

- (1) the Badger-Two Medicine is sacred land, a living cultural landscape, a hunting ground, a refuge, a wildlife sanctuary, a place of refuge for wild nature, and an important part of both tribal and non-tribal community values;
- (2) the Badger-Two Medicine is a stronghold for wild nature, isolated from and unmarred by development, where natural processes continue to function, and relatively uncommon plant and animal communities continue to exist;

- (3) the Blackfeet Nation have been present in the Badger-Two Medicine area for time immemorial, utilizing its plant, mineral, and animal resources and landforms for sustenance as well as cultural, medicinal, and ceremonial activities, purposes for which the Blackfeet people continue to use the area today;
- (4) tribal and non-tribal people have utilized the Badger-Two Medicine for multiple generations for hunting, fishing, camping, horse packing and wilderness solitude, purposes for which the community continues to use the area today;
- (5) the Badger-Two Medicine contains several important headwater streams of the Missouri River basin, which provide critical clean water for ecological, agricultural and domestic purposes, as well as abundant fish and wildlife, spectacular natural scenery, and outstanding recreational opportunities;
- (6) the Badger-Two Medicine provides important ecological connectivity to Glacier National Park and the Bob Marshall Wilderness Complex, the Blackfeet Indian Reservation, and other public lands;
- (7) through treaties and agreements with the Federal government, the Blackfeet Nation retains rights to conduct various activities within the Badger-Two Medicine region;
- (8) the establishment of the Badger-Two Medicine Cultural Heritage Area is vital to the continuation and revitalization of the Blackfeet culture, while continuing to serve the heritage of the broader public as a place of recreation, traditional use, and sanctuary.

#### **SEC. 4. PURPOSES.**

The purposes of this Act are—

- (1) to protect the cultural, ecological, scenic, and recreational resources of the Badger-Two Medicine area for the benefit, use, and enjoyment of present and future generations;
- (2) to permanently protect the cultural values, attributes, and integrity of the Badger-Two Medicine Traditional Cultural District;
- (3) to protect the ability of the Blackfeet Nation to exercise their treaty rights and to enhance the opportunity for the Blackfeet people to continue to use the Badger-Two Medicine area, as they have since time immemorial;
- (4) to protect the ability of tribal and non-tribal people to use the area for traditional activities, including hunting, fishing, hiking, horse packing, and camping, as they have for generations;
- (5) to protect and enhance the ecological integrity of the Badger-Two Medicine, including fish and wildlife habitat, and to ensure that the area continues to serve as an ecological corridor connecting adjacent lands;
- (6) to maintain the water quality and free flowing character of the rivers and streams within the Badger-Two Medicine area; and
- (7) to establish a management framework for the Badger-Two Medicine area that recognizes the Blackfeet Nation's treaty rights and historical and contemporary connection to the natural and cultural world of the area.

#### **SEC. 5. BADGER-TWO MEDICINE CULTURAL HERITAGE AREA.**

(a) ESTABLISHMENT.—Subject to valid existing rights, there is established the Badger-Two Medicine Cultural Heritage Area in the State.

(b) AREA INCLUDED.—The Cultural Heritage Area shall consist of approximately \_\_\_ acres of Federal land managed by the Forest Service as generally depicted on the map.

(c) PURPOSES.—The purposes of the Cultural Heritage Area are to—

- (1) preserve for the benefit and enjoyment of present and future generations the cultural, ecological, scenic, and recreational values of the area; and
- (2) enable the Blackfeet people to continue to undertake traditional cultural practices in the area.

(d) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act and in accordance with paragraph (2), the Secretary shall develop as an amendment to the land and resource management plan for the Helena-Lewis and Clark National Forest a comprehensive plan for the long-term protection and management of the Cultural Heritage Area.

(2) REQUIREMENTS.—In developing the management plan, the Secretary shall—

(A) consult with—

- (i) appropriate State, tribal, and local governmental entities;
- (ii) the Tribe;
- (iii) the Badger-Two Medicine Advisory Council established by section 7(a); and
- (iv) members of the public.

(B) at the request of the Tribe, include the Tribe as a cooperating agency in the development of the management plan;

(C) incorporate Native knowledge into the management plan to the maximum extent practicable;

(D) include public education and interpretation regarding the cultural significance of the Badger-Two Medicine region to the Blackfeet Nation as well as traditional uses and place names within the region; and

(E) provide for recreational opportunities to occur within the Cultural Heritage Area, including hiking, fishing, hunting, horseback riding, and camping.

(3) INCORPORATION OF EXISTING PLAN.—In developing the management plan, to the extent consistent with this section, the Secretary may incorporate any provision of the land and resource management plan for the Helena-Lewis and Clark National Forest.

(e) MANAGEMENT.

(1) IN GENERAL.—The Secretary shall manage the Cultural Heritage Area—

(A) in a manner that conserves, protects, and enhances the resources of the Cultural Heritage Area; and

(B) in accordance with—

- (i) the laws (including regulations) and rules applicable to the National Forest System;
- (ii) this Act; and
- (iii) any other applicable law (including regulations).

(2) USES.—The Secretary shall only allow such uses of the Cultural Heritage Area that the Secretary determines, in consultation with the Tribe, would further the purposes described in subsection (c).

(f) PROHIBITIONS.—Subject to valid existing rights, the following activities shall be prohibited on National Forest System land within the Cultural Heritage Area:

(1) Construction of new or temporary roads, except temporary roads necessary to protect public health and safety.

(2) The use of motorized or mechanized vehicles, except for administrative purposes, or to respond to an emergency.

(3) Commercial timber harvest.

- (4) Construction of permanent structures, except as necessary to meet minimum requirements for the administration of the cultural heritage area (including grazing management).
- (g) **VEGETATION MANAGEMENT.**—Nothing in this section prevents the Secretary from conducting non-commercial vegetation management projects within the Cultural Heritage Area—
- (1) subject to—
    - (A) such reasonable regulations, policies, and practices as the Secretary determines appropriate; and
    - (B) all applicable laws (including regulations); and
  - (2) in a manner consistent with the purposes described in subsection (c).
- (h) **GRAZING.**—The Secretary shall permit grazing within the Cultural Heritage Area, if established on the date of enactment of this Act—
- (1) subject to—
    - (A) such reasonable regulations, policies, and practices as the Secretary determines appropriate; and
    - (B) all applicable laws; and
  - (2) in a manner consistent with the purposes described in subsection (c).
- (i) **WILDFIRE.**—Wildfire suppression within the Cultural Heritage Area shall be conducted—
- (1) in a manner consistent with the purposes of the Cultural Heritage Area, as described in subsection (c); and
  - (2) using such means as the Secretary determines to be appropriate.
- (j) **NATIVE AMERICAN CULTURAL AND RELIGIOUS USES.**—
- (1) **IN GENERAL.**—Nothing in this section diminishes any tribal rights regarding access to the Cultural Heritage Area for tribal activities, including spiritual, cultural, and traditional food-gathering activities.
  - (2) **NATIVE AMERICAN USES AND INTERESTS.**—
    - (A) **ACCESS AND USE.**—In accordance with applicable law, the Secretary shall ensure access to the Cultural Heritage Area by members of the Tribe for traditional cultural purposes.
    - (B) **TEMPORARY CLOSURE.**—In implementing this subparagraph (A), the Secretary, upon the request of the Tribe, may temporarily close to the general public use of one or more specific portions of the Cultural Heritage Area in order to protect the privacy of traditional cultural activities in such areas by members of the Tribe. Any such closure shall be made to affect the smallest practicable area for the minimum period of time necessary for such purposes. Such access shall be consistent with the purpose and intent of Public Law 95–341 (42 U.S.C. 1996), commonly referred to as the American Indian Religious Freedom Act and other applicable law.
- (k) **ADJACENT MANAGEMENT.**—
- (1) **IN GENERAL.**—The designation of the Cultural Heritage Area shall not create a protective perimeter or buffer zone around the Cultural Heritage Area.
  - (2) **EFFECT.**—The fact that activities or uses can be seen or heard from areas within the Cultural Heritage Area shall not preclude the conduct of the activities or uses outside the boundary of the Cultural Heritage Area.
- (l) **LAW ENFORCEMENT.**—The Secretary, in coordination with the Tribe, shall ensure adequate law enforcement presence to maintain the integrity of the Cultural Heritage Area.

(m) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the Tribe to further the protection, management, or public interpretation of the Cultural Heritage Area.

(n) WATER RESOURCE FACILITIES.—

(1) DEFINITIONS.—In this subsection:

(A) RESERVATION.—The term “reservation” means the Blackfeet Indian Reservation, located in the State.

(B) WATER RESOURCE FACILITY.—the term “water resource facility” means dams, irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures.

(2) PROHIBITION ON NEW WATER RESOURCE FACILITIES.—After the date of the enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the Cultural Heritage Area.

(3) EFFECT.—Nothing in this subsection prevents the development, maintenance, or operation of any water resource facility located on—

(A) the reservation;

(B) Federal lands outside the Cultural Heritage Area; or

(C) non-Federal land.

(o) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and a legal description of the Cultural Heritage Area with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The map and legal description filed under paragraph (1) shall have the same force and effect as if included in this section, except that the Secretary may correct typographical errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description filed under subparagraph

(A) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

## **SEC. 6. TRIBAL COORDINATION.**

(a) CONSULTATION.—

(1) IN GENERAL.—The Secretary shall consult with the Tribe not less than twice each year, unless otherwise mutually agreed, regarding—

(A) the protection, preservation, and management of the Cultural Heritage Area (B) proposed new uses;

(C) whether management is compatible with the values and attributes of the Badger-Two Medicine Traditional Cultural District; and

(D) management actions within the Cultural Heritage Area necessary to—

(i) fulfill the purposes of this Act;

(ii) ensure management decisions reflect Native knowledge; and

(iii) protect the Tribe’s off-reservation rights.

(2) PROCESS FOR CONSULTATION.—

(A) EXISTING REGULATIONS.—The Secretary shall carry out consultation under this section in accordance with this Act and the requirements in chapter 1560 of the Forest Service Manual (or successor regulations).

(B) SCHEDULE.—As soon as practicable after the date of enactment of this Act, the Secretary shall establish, in consultation with the Tribal Business Council, a schedule for consultation.

(C) INITIATION.—To initiate consultation, the Secretary shall request, in writing, to consult with the Tribal Business Council.

(D) IN-PERSON CONSULTATION.—The Secretary shall carry out consultations, in person, with the Tribal Business Council.

(E) SUMMARY.—Within 30 days after the completion of each consultation, the Secretary shall send a written summary of the consultation to the Tribal Business Council.

(F) REOPENING CONSULTATION.—If the Tribal Business Council disagrees with the summary of consultation, the Tribal Business Council may, within 30 days, request to reopen the consultation.

(2) TRIBAL MANAGEMENT PROPOSALS.—The Secretary shall consider proposals for management actions within the Cultural Heritage Area submitted by the Tribe and respond in writing within three months if a management action proposed by the Tribe is rejected.

(b) NEW USES.—

(1) NEW USES.—

(A) REQUEST FOR CONSENT AFTER CONSULTATION.—

(i) DENIAL OF CONSENT.—If the Tribe denies consent for a new use within the Cultural Heritage Area within 30 days after completion of the consultation process, the Secretary shall not proceed with the new use.

(ii) GRANTING OF CONSENT.—If the Tribe consents to the new use within the Cultural Heritage Area in writing or fails to respond within 30 days after completion of the consultation process, the Secretary may proceed with the notice and comment process and the environmental analysis.

(B) FINAL REQUEST FOR CONSENT.—

(i) REQUEST.—Before the Secretary signs a record of decision or decision notice for a proposed new use within the Cultural Heritage Area, the Secretary shall again request the consent of the Tribe.

(ii) DENIAL OF CONSENT.—If the Tribe denies consent for a new use within 30 days after receipt of the proposed record of decision or decision notice, the new use shall not be authorized.

(2) PUBLIC INVOLVEMENT.—With respect to a proposed new use within the Cultural Heritage Area, the public shall be provided notice of—

(A) the purpose and need for the proposed new use;

(B) the role of the Tribe in the decisionmaking process; and

(C) the position of the Tribe on the proposal.

(c) EMERGENCIES AND EMERGENCY CLOSURE ORDERS.—

(1) AUTHORITY.—The Secretary shall retain the authority of the Secretary to manage emergency situations within the Cultural Heritage Area to—

(A) provide for public safety; and

(B) issue emergency closure orders in the Cultural Heritage Area subject to applicable law.

(2) NOTICE.—The Secretary shall notify the Tribe regarding emergencies, public safety issues, and emergency closure orders as soon as practicable.

## **SEC. 7. BADGER-TWO MEDICINE ADVISORY COUNCIL.**

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish an advisory council, to be known as the “Badger-Two Medicine Advisory Council” (referred to in this section as the “Council”).

(b) DUTIES.—The Council shall advise the Secretary with respect to the preparation and implementation of the management plan.

(c) APPLICABLE LAW.—The Council shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(d) MEMBERS.—The Council shall include 9 members to be appointed by the Secretary with backgrounds that reflect—

(1) the purposes for which the Cultural Heritage Area was established; and

(2) the interests of the stakeholders that are affected by the planning and management of the Cultural Heritage Area.

(e) REPRESENTATION.—

(1) IN GENERAL.—The Secretary shall ensure that the membership of the Council is fairly balanced in terms of the points of view represented and the functions to be performed by the Council.

(2) TRIBAL REPRESENTATION.—The Council shall include a representative of the Tribe, who shall be recommended to the Secretary by the Tribal Business Council.

(f) DURATION.—The Council shall terminate on the date that is 1 year from the date on which the management plan is adopted by the Secretary.

## **SEC. 8. SELF-DETERMINATION CONTRACTS.**

(a) IN GENERAL.—The Secretary may contract with the Tribe to perform administrative or management functions within the Cultural Heritage Area through contracts entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.).

(b) REQUIREMENTS.—With respect to any contract carried out under subsection (a)—

(1) the Secretary shall carry out all functions delegated to the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.); and

(2) the contract shall be entered into under, and in accordance with, section 403(b)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5363(b)(2)).

(c) ENVIRONMENTAL AND OTHER REQUIREMENTS.—

(1) RULE OF CONSTRUCTION.—This section shall not be construed to alter or abridge the application of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(B) any other Federal environmental law (including regulations).

(2) ENVIRONMENTAL ANALYSES.—Nothing in this section shall be construed to allow the Secretary or the Tribe to waive completion of any necessary environmental analysis under applicable Federal law.

(3) RETENTION OF NEPA RESPONSIBILITIES.—The Secretary shall make any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other applicable Federal law (including regulations) with respect to any activity to be carried out on Federal land under this section.

(4) **APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.**—Nothing in this section shall alter or abridge the application of subchapter II of chapter 5, or chapter 7, of title 5, United States Code with respect to this section.

**SEC. 9. LEGAL EFFECT.**

(a) **FISH AND WILDLIFE.**—Nothing in this Act affects the jurisdiction or responsibilities of the State with respect to fish and wildlife.

(b) **PUBLIC ACCESS.**—Except as otherwise provided, nothing in this Act affects public access to the Cultural Heritage Area.

(c) **WATER RIGHTS.**—

(1) **IN GENERAL.**—Nothing in this Act—

(A) constitutes an express or implied reservation by the United States of water or water rights for any purpose; or

(B) modifies or otherwise affects any water rights existing on the date of enactment of this Act, including any water rights held by the United States.

(2) **STATE WATER LAW.**—The Secretary shall follow the procedural and substantive requirements of the applicable state and Federal law in order to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to the Cultural Heritage Area.

(d) **TREATY RIGHTS; TRIBAL LAND.**—

(1) **TREATY RIGHTS.**— Nothing in this Act alters, modifies, enlarges, diminishes, or abrogates the treaty rights of any Indian tribe, including the off-reservation reserved rights secured by the Treaty with the Blackfoot Indians on October 17, 1855 and the Agreement with the Indians of the Blackfeet Indian Reservation on September 26, 1895.

(2) **TRIBAL LAND.**—Nothing in this Act affects any land or interest in land held in trust by the Secretary of the Interior for the Tribe or individual members of the Tribe.

(e) **NO EFFECT ON JURISDICTION.**—Nothing in this Act limits or otherwise affects the civil or criminal regulatory jurisdiction, including law enforcement, for issues under the jurisdiction of the Tribe.

(f) **EXISTING STRUCTURES AND FACILITIES.**—The maintenance of structures and facilities within the Cultural Heritage Area in existence as of the date of enactment of this Act may be permitted to continue—

(A) in accordance with—

(i) this Act; and

(ii) applicable law;

(B) in a manner consistent with the purpose described in section 5(c); and

(C) subject to such reasonable regulations, policies, and practices as the Secretary considers necessary.

**SEC. 10. NON-DISCLOSURE OF CULTURAL SITES.**

(a) **IN GENERAL.**—The Secretary shall not disclose to the public, information regarding the nature and location of cultural sites where the Secretary concerned determines, in consultation with the Tribe, that such disclosure may risk harm to cultural resources of the site, cause a significant invasion of privacy, or impede the use of the site for traditional cultural activities by the Tribe or members of the Tribe.

(b) **EFFECT.**—Information withheld from the public under subsection (a) shall not be deemed a Federal record for purposes of the Freedom of Information Act (5 U.S.C. 552 et seq.).

