Native American Water Rights Development: Survival of Indigenous Culture in the face of Energy Development and Mineral Extraction in the Southwestern United States

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Native American Water Rights Development: Survival of Indigenous Culture in the face of Energy Development and Mineral Extraction in the Southwestern United States

A thesis submitted to the faculty of Carroll College in consideration for graduation with honors.

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Helena, MT
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This Thesis for honors recognition has been approved for the Field of Anthropology.

Director

Reader

Reader

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Abstract

Native American water rights have been established with the United States Supreme Court’s support over the last century. Water rights on reservation lands are a precarious and serious subject requiring investigation and quantification in order to ensure the survival of Native Americans. The Colorado River Basin provides an example of the need for the quantification of rights for reserved lands to obtain water required to manage and support the Native populations. Ecologically, culturally, and spiritually, Native Americans depend on the arid desert of the Colorado River Basin. Laws and the court system in America need to ensure the balance of indigenous culture survival with energy development and mineral extraction in the Southwestern United States.
Introduction

Water permeates many traditional Native American stories. Water and its power are sources of life in oral literature, ceremonies, and the sustenance of Native culture relies on. One such story comes from Northeastern British Columbia and the Dunne-za (beaver) people. According to David Suzuki and Peter Knudtson the Dunne-za narrate the following creation story:

_In the beginning, all that existed was a vast expanse of water; there was no land. The Creator marked the spot on the surface of the primordial water and called upon the water-dwelling creatures of the world to plunge deep below to bring to the surface a clump of bottom silt. The clump was to be placed upon the designated cosmic center to become the source from which future landscapes were generated. It soon became apparent that none of the water creatures could physically carry out this challenging task: The dark, abyssal waters were far too deep. But finally Muskrat tried, and he succeeded in retrieving a small quantity of muck from the bottom. When he surfaced, he deposited his precious cargo upon the cosmic center that the Creator had marked, saying simply, 'You are going to grow.' From this innocuous clod of earth, the surface world started to grow and kept on growing every year like that. In this way through a series of creative acts and agents, the world can be said to have grown from an idea in the mind of the Creator into the bounteous physical realm that is so intimately familiar to the Dunne-za people._ (Suzuki and Knudtson, 1992).

Even though water characterizes so much of a part of Native culture, the settlement of the Western United States undermined much of the traditional Native American land base and traditional resources. In order to help preserve original Indian title and find a practical management of the Native Americans who were displaced from
their land base as settlement progressed, the U. S. Congress, the President, and treaties with Native tribal members established the era of reservations. As more reservations were established, the need to quantify the rights available to the populations on those islands of domestic-dependent nations became more important. The United States Supreme Court issued paramount rulings from the 1830s until the present concerning the rights to those members of indigenous culture displaced to reservations lands. Most importantly, the Supreme Court objectively defined the title of Native people to their water, mineral and land based resources.

The role of water in Native cultures, especially those in the Western United States holds essential standing. Due to sustenance patterns of tribal nomadic units, water prevails as an organic life-giving and sustaining substance. Not only is water life sustaining, but also it plays a part in much of the ceremonial aspects of Native American culture. Reverence for water and the creatures it sustains enters into Native spiritual perspective. In the West, especially the Southwest, water is a limited resource and its attainment a source of conflict. Regardless of the importance of water to tribal unity and culture, as Western settlement occurred Natives were pushed from their land base and denied their traditional sustenance patterns.

Water is a crucial element for the survival of indigenous Nations and over the course of the last 150 years, the United States government established a rule of law for Native Americans use and preservation their water use. This rule of law has of course been exploited by the apparent need for Western energy development interests and mineral extraction industries. Water is of great concern in Western America especially after the enormous migration West by Easterners practicing their own "manifest destiny".
Water became essential for their agricultural practices as the migrators settled on the semi-arid lands of the Western United States. By the time the United States established treaty relationships with Native American peoples as trustees to the Indian Nations, the war for water was already underway.

The United States established reservations ostensibly to protect the Natives from the disease and discrimination of the non-native settlers (Canby, 1988). However, the reservation lands isolated Natives from their traditional hunting and gathering grounds and traditional cultural practices. The United States established the Bureau of Indian Affairs to mediate between the government and the tribal units, but also to create direct influence over the Native nations for their “Westernization.”

Due to the view of Native Americans as “savages”, the European Settlers of the United States employed callous disregard for the cultural values of the Natives. Native Americans lived on the land, but did not profit from the land. In the eyes of the Europeans this was an unheard of action (Weatherford, 1992). Since the Natives were perceived as brutally uncivilized, schools, churches, and agency offices came into the reserved lands with the intent of civilizing the American Indian. This goal of civilization created chaos: loss of traditional values, complete changes in patterns of survival, and huge social problems such as alcoholism and disease.

The settlers of the West conquered Native Americans, not only through battles, but also through a slaughter of their land, economy, family, and rights as human beings. The result of the “civilization” of the native populations was the loss of millions of acres of reserved lands as the settlers found more methods of accomplishing their goals of acquiring land and resources. Callous disregard for the Natives original titles to the land
and resources delivered near destruction of tribal traditions, sovereignty, and self-
determination.

As the United States formed treaties and established reserved lands and rights for
Native populations, non-natives were busy consuming the land and water for their own
use. Since the Natives reserved lands would be most likely the driest portion of the
region, it could be assumed that the water needs were significant. The Western United
States, where many Native reservations were established, is an arid area of few rivers,
sparse rainfall, and a sudden influx of population and extraction industries from the
eastern United States. Combining these factors makes the Native water situation
precarious at best.

However precarious the nature of the water for Native use may have been, there
was a tremendous advance in 1908 when the United States Supreme Court rendered the
decision of Winters v United States (207 U. S. 564, 1908). In the Winters case non-
native landholders attempted to secure their water needs from the Milk River in Montana
without also allowing for the allotment of water to the Native populations on the Fort
Belknap reservation. The Winters decision also upheld the rights of Native Americans
and their tribes to have and use the water that was part of their needs for survival on the
reservation land. The Winters decision established the rule that the water was set aside at
the same time the reservation was established, thereby creating a water right for the
Natives in the appropriative water system of the West. The Winters decision was the
beginning to the advancement of Native American water rights. Constitutionally the
United States federal government was bound to the protection of Native American title
and rights, especially after the Winters decision and the opinions of Supreme Court Justice Marshall.

More advancement of Native rights came about in 1963 when the Supreme Court quantified the amount of water the Native reservation was to entitled in the United States Supreme Court case State of Arizona v State of California, 373 U. S. 546, (1963). In Arizona v California, the Colorado River fell under the scrutiny of a fight over its water. States, cities, and the federal government stepped in to argue over who is entitled to the water in what quantity. This disagreement ended up in the Supreme Court in 1963 and provided a rule of law over the amount of water reserved for Native reservation lands in the area. The federal government was involved in the case as the trustee of the five Native nations in peril of losing their water to California or Las Vegas. The decision of Arizona v California established the right for Natives to use the water needed for all of the irrigable acres on their reservations. This quantification of rights helped to solve nearly 50 years of controversy from the time of Winters v the United States decision. It was now determined who was entitled to the water, which legally included the indigenous cultures that depended on the aquifers and rivers of the Colorado River ecosystem for survival.

Although the right to the use of water needed to survive on reserved lands has been quantified and established for Natives, the Natives have lost the war of resource allocation. Water, land, and minerals have essentially become the exclusive privilege of non-Natives. Laws, case decisions, and legislation may have preserved the resources of Native peoples, but those resources have been sold or stolen from the hands of the Natives by developers, miners, and industries. Slowly, reserved lands have become
patchwork quilts of Native and non-native ownership. More land slips into the hands of non-natives and more American Indians lose the power to control their own destinies. Many cultural values are lost as the traditional methods of farming and sustenance fall prey to the mining company’s teeth as it digs into sacred lands and culturally valuable properties.

Laws have been established to preserve the traditional cultural properties and religious practices of Native Americans. These laws include the National Historic Preservation Act of 1980, and the American Indian Religious Freedom Act of 1978 with amendments in 1994. Even though these legislative acts passed through Congress, there seems an unspoken rule they hold no merit in the eyes of a profit-making venture. Dam building and mining destroys the graves and sacred grounds of Native Americans with callous disregard. Money rules in a dollars and no-sense approach to the development of the West. Unbridled building and digging in the last 150 years have negatively impacted thousands of years of cultural values of the indigenous peoples of North America (Beck, 1992).

Water plays an essential role in the survival of Native populations, but also is crucial to the balance and harmony of Native Nations with their traditional cultural values. Native American culture involves a developed manner of living on and with the Earth. Instead of a system of exploitative use, the Native population found a sustainable resource use pattern demanding respect for the Earth as a keeper, provider, and mother. With this relationship to the Earth, many Native cultures have stories, songs, and prayers incorporating the importance of the Earth to their survival and culture.
By looking at the Colorado River Basin, it is easy to see an example of the disregard of Native American sovereignty and the role of the federal government as a trustee to reserved rights. The Colorado River Basin was and currently is exploited by huge dams and water allocation and mining practices without reclamation. The Colorado River ecosystem houses 60 dams and huge strip-mining ventures utilizing the aquifers beneath the arid desert landscape. Water is the most essential tool to survival in the desert area of the Southwest and energy development and mining companies have removed the water’s natural course.

Tribal councils which tend to be puppet governments under Bureau of Indian Affairs control have sold or leased lands to energy developers and huge mining companies under the hope that profit would come to the tribal unit. Much of the profit stays with the mining company or energy companies as the surrounding Native population is forced from their land due to sale, increased pollution, or water depletion. At the hands of tribal council, the rights and land have slowly been removed from the hands of their original titled people and put into the hands of non-Native businesses (Matthiesen, 1984).

In Native American culture, each life places itself in a position of ecological balance that will preserve the beauty of the Earth for the “Seventh Generation.” The idea of the preservation of the Earth for the “Seventh Generation” can be attributed to the Iroquois Nation of North America (Weatherford, 1988). Throughout exploitation of the lands and waters of Native Americans, many tribal organizations remain culturally intact and willing to teach non-natives to preserve the Earth for the coming generations. Due to the rise of conservationism in the late 1800’s in the United States, the value of the
Earth to the American public has become an increasing priority. There is room for a balanced Earth and United States culture, with a positive change in the dominant capitalistic economy to one with more sustainable practices and softer walks upon the Earth's fragile lands and waters.

Traditional Native American world-view has many lessons to share with the materialist Western perspective on the development and exploitation of the Earth. The scientific, Western world-view grew out of the European philosophical argument for the use of nature for resource development has not accomplished the utopia which it claimed possible. Instead, a vast array of challenges and problems manifest in the way people exist in relation to their environment and each other. Throughout the 20th century, challenges to the existence of humanity have been exacerbated by the technological scientific paradigm which created problems such as human overpopulation and extinction of species, soil loss, and the proliferation of weapons of mass destruction.

David Suzuki and Jerry Mander make similar cases in their books, *Wisdom of the Elders: Sacred Native Stories of Nature* and *In the Absence of the Sacred: The Failure of Technology and the Survival of the Indian Nations*, respectively. Both teach that unless the Western World decides to reevaluate their overusing and extremist method of living, and choose a softer path to walk on the Earth, the human population is in danger of inducing its own demise. Not only must a way be found to support the lives of the remaining indigenous cultures on the Earth, but there must be a way to awaken to the teachings of the Native cultures and determine the manner in which the non-natives and Western developed world can avoid self-destruction.
Water and the Law

Law and Native Nations

Within the fight for the American Indian water resources and conservation, important legislation and court adjudication occurred throughout the 20th century. The most essential of these court cases support the American Indian for use and procurement of their basic rights and water rights. U.S. Supreme court cases such as Cherokee Nation v Georgia in 1831, the Winter’s decision in 1908, Arizona vs. California in 1963, and Colorado River Water Conservation District v United States in 1976 lay the ground-work for the rights of Native Americans to live in a sovereign dependent unit and later to use the water on their reservations. The argument for defining Native water usage lies in the battle over the nature of rights for water. The battle contains a philosophical argument over whether the use of water is a natural right or a reserved right. Many opponents feel the water on the reservations must only be delegated through Court opinions. However, indigenous and cultural rights must be considered when there is a legal and ethical question concerning Native populations.

Native water rights function under the natural rights argument as an intrinsic need for survival. For the entire Western United States, the battle over water resources began immediately following the settlement of Americans from the East. Settlements assert the importance to water through the irrigation of crops and the industrialization of the West. However, Native populations still existed in a manner of traditional hunting, gathering, and horticulture practices. Water provided the sources of fish, wild ungulate watering
holes, and herbs and plant food sources essential to the Native American's survival. The question of privilege to the water in the West then falls under the moral argument of whether native cultures are the primary managers of the ecosystem, or if the western development issued primacy over the needs of native cultures. It is obvious to the contemporary eye that the Native population lost the battle to the development of the West.

The development of the West encompassed the settling of the land past the Mississippi River. Initially, Native populations foraged and hunted on their traditional lands in a system of horticulture economics. However, soon the United States federal government formed treaties based on the U.S. Constitution which gave Congress power to regulate commerce with Natives, and the President power to make treaties with individual tribes. The Indians retained their natural right of occupancy for the land as the federal government imposed more and more restrictions on tribal action. Water resources of the tribes remained the main means of sustenance for many tribes. For instance, the Pacific Coast tribes required the right to the rivers and seas for their traditional hunting and fishing practices (Weatherford, 1992). The Constitution established the United States of America as a sovereign entity and strengthened the federal position. The Native right of occupancy became tenacious as the federal government gave itself the right to acquire Native land and water base by "purchase or conquest" (Canby, 1988).

After the American Constitutional Convention, a "legal right" to the resources used by the Natives for thousands of years replaced Native populations "right to occupancy". Encroachment continued on the Native land base and threatened to take the lifeblood of Earth away from them. Despite the shift in policy toward Native
populations, important rights were arbitrarily eradicated with the signing and ratification of the Constitution (Weatherford, 1988). The federal government held power to make treaties with Native Nations under acts of the President or of Congress, prohibiting the states from forming compacts of trade relations and legal decisions with the Natives. The United States Constitution also gave the Supreme Court a unique opportunity to shape American Indian Law. The right to form treaties with the federal government brought about many changes to the movement West and the “Indian Wars”.

Although never recognized officially as a war by Congress, the U. S. Government won the battle for the West over the Native Americans. First of all, the traditional hunting, gathering, and horticultural way of life for Western Natives was replaced with an agricultural (farmers and ranchers) sustenance pattern. Second, a manner of religious conversion pervaded the Native culture and the Europeans attempted a plan of civilizing the ‘savages’. Basically the Indians were, “an obstacle to settlement and progress; therefore they had to be removed or restricted to a limited area.” (Hundley, 1978). As settlers moved to the West, the need for security instituted the manner to which the Indians were treated. As more of the Eastern population came West, there was a greater need for water and land in the West. Inevitably, a reasonable solution must come about whether the Western settlers, or the Native populations win the battle over the land and water.

The Western settlers shared the water among themselves, however the Natives tended to be on the short side of the stick during the resource attainment and securement process. Hundley states, “Obviously, the Indian was at a disadvantage in the race for water, but there were those who recognized this imbalance, sought to correct it, and in
doing so contributed to a legal legacy that continues to influence the nation today.” (Hundley, 1978). This legal legacy encompassing the Native’s position in the United States court and law processes supports the sovereignty and rights of the Natives. The decisions come from the Supreme Court and pass down generations of jurisdiction over laws and congressional resolutions to protect the Native population in its dependent political entity which Chief Justice Marshall qualified tribal units in 1831 (Canby, 1988).

Rights of Sovereignty

In 1831, a ground-breaking decision from the Supreme Court of the U. S. established the view of American Indian Nations. Georgia imposed laws limiting Natives from their governmental role and divided up the Cherokee Nation into several Georgian counties. Due to the displacement and limitations, the Cherokee Nation issued an original action suit against the State of Georgia: Cherokee Nation vs. State of Georgia, 30 U. S. (5 Pet.) 1 (1831) (Canby, 1988). Chief Justice Marshall initiated an opinion defining the Cherokee Nation as a distinct political entity capable of governing themselves. Justice Marshall’s opinion was supported by treaties and defended the sovereignty, but not the foreign nature of the Cherokee tribe. The court opinion written by Chief Justice Marshall acknowledged, “Though the Indians are acknowledged to have an unquestionable, and, heretofore unquestioned right to the lands they occupy, until that right be extinguished by a voluntary cession to our government...They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of
possession, when their right of possession ceases.” (Cherokee Nation v State of Georgia, Marshall opinion, 30 U. S. (5 pet.) 1 1831). The tribe was deemed a “domestic dependent nation”.

In 1832, Chief Justice Marshall gave another opinion crucial to the role of Indian Nation sovereignty in the case Worcester v Georgia U. S. (6 pet.) 515 (1832). Justice Marshall wrote, “The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force” (Canby, 1988). With the previous statement Justice Marshall confirmed the reliance of the treaty boundaries between the Federal Government and the Cherokee Nation without state jurisdictional interference. This ruling remains pivotal to American Indian rights today concerning issues of land base, resource uses and sovereignty. In order to examine more of the challenges to tribal historical exploitation by those moving to the West, the next step reviews the reservation process and the cases pertaining to the rights Indians hold.
Reserved Rights

From Chief Justice Marshall’s Supreme Court opinions in the 1830s, a network of rights was preserved for American Indians. From 1830-1860, the federal government’s policy toward Indian affairs remained a removal of traditional cultures from their land base. In the years between 1853-56, a long series of treaties were forced upon Natives to induce selling of lands and displacement to reservations (Canby, 1988). During these three years of treaty formation, 52 treaties were formed and the U. S. acquired 174 million acres of Indian land. Within the treaties, hunting and fishing rights were preserved, but subsequently ignored by non-Indians. The Natives were displaced and as were forced onto a new land base where their traditional hunting, fishing, and gathering practices remained precarious.

However, with the establishment of reservations and the displacement of Native peoples from their traditional land base, new rights entered into the picture for Natives resource and land uses, and their relationship to the federal government. Reservations restrict the land base for Indians, however their initial function was to safeguard the peace between Indians and non-Indians as they battled for the development of the West (Canby, 1988). In 1871, Congress presented the Indians with legislation prohibiting the United States from making any more treaties with Native Nations. This challenges Native peoples who even today wish to have tribal recognition and a land base from the federal government.

Reservations provided for missionary efforts and ‘civilization’ efforts to come about. Reservation schools, churches, and federal agent offices were established with the
reservations. By putting American Indians into organized and controlled environments, the federal government undermined the original Indian title and right of occupancy to the land and water resources the Indians traditionally used. Tribal councils were established as mediators between the Federal agents of the Bureau of Indian Affairs and the Native populations, but even the tribal councils were tricked out of their sovereignty, land and water resources. The trickery involved the promise of money and increased self-determination while actually systematically taking away the right to manifest destiny of the tribal unit. Federal authority, the church's conversion efforts, and the banning of traditional education by the reservation schools undermined tribal organizations (Beck, 1992).

With all of these challenges to tribal sovereignty and the right to self-determination even the Supreme Court attacked the ability of the Native population to survive. The Supreme Court ruled in Elk v Wilkins in 1884 that the 14th Amendment to the United States Constitution freed the African Slaves, but did not grant citizenship to the American Indians, even those who had surrendered their tribal status and joined the larger society (Weatherford, 1991). Action of this kind from the Supreme Court initiates even more enslavement of the right to self-determination of the Native Americans. It was not until 1924 that the U. S. Congress granted full citizenship and constitutional rights to American Indians (Weatherford, 1992).

More changes in tribal sovereignty came about at the passage of the General Allotment Act or Dawes Act in 1887. Canby asserts, "...the leadership for passage of the Dawes act came from those sympathetic to the Indians. They believed if individual Indians were given plots of land to cultivate, they would prosper and become assimilated
into the mainstream of American culture as middle class farmers” (Canby, 1988). The General Allotment Act gave the President the power to divide reservations into plots for individual Indians. Not only did this contradict the cultural integrity of the Natives, but also it was used as a means to dissolve tribal unity. By eliminating tribal unity, the federal government could then accomplish its goal of acquiring land from the Indians. In fact, the General Allotment act initiated the loss of millions of acres of the reservation land base. Since the reservation under the General Allotment Act became owned by individuals, land could be sold to non-Indians. In fact, through fraud and land sales the reservations became a “checkerboard” of Native and non-native ownership. The 138 million acres traditionally maintained by tribal unity before the Dawes Act in 1887 slimmed down to 48 million acres owned by Natives by 1934 (Canby, 1988). The federal government had once again stripped tribal unity in an effort to provide ‘civilization’ to the ‘savages’.

The Dawes Act provided many restrictions to tribal unity other than the redistribution of the land and resources. At the same time of the Dawes Act, prohibitions on certain traditional dances and cultural practices also came into play. Without thought or consideration for the traditions of Natives, the federal government was only concerned with acquiring the resources and land of the Natives. Sovereignty limited, the subsequent loss was profound for many Indians and Native Nations.

The period of 1924 -1934 brought about a new viewpoint on the rights of Native Americans. In 1924, American Indians were granted full citizenship and constitutional rights. Although the social situations on the reservation were not necessarily improved immediately, American Indians were now United States citizens with all the rights and
privileges of all American citizens (Canby, 1988). Also, by 1934, a new viewpoint was established on behalf of the treatment of the federal government to the Indian Nations. The Indian Reorganization Act (IRA) of 1934 turned the tide from divide and conquer the Natives, to protect the land base and traditional culture, religion, and economics of the Natives. The (Indian Reorganization Act) ended the practice of allotment and authorized the acquisition of new water rights and land for the tribes. The IRA brought about a new era for tribal government. The Federal Government encouraged each tribe to develop a tribal council and a constitutional statement of by-laws. (Canby, 1988). Sovereignty was extended during the period of the IRA’s rule.

However, 1953-1963 began a new effort to eradicate the tribes and the self-rule of the Indians with the congressional legislation titled “H.Con. Res. 108, 83rd Cong. 1st session, 67 Stat. B132” (1953). The resolution initiated a role of “termination as rapidly as possible, to make the Indians within the territory of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States…”(H. Con. Res. 108, 83rd Cong., 1st Session, 67 Stat. B132 (1953)). Under the new resolution, tribes were terminated from federal jurisdiction and forced under state control ending in the extinction of many tribes. From then, things were only to get worse.

Public Law 280 was established to extend state civil and criminal jurisdiction to Indian Country in five specified Western States: California, Nebraska, Minnesota, Wisconsin, and Oregon (Canby, 1988). The effects of Public Law 280 allowed states to assume jurisdiction over Native Nations. Public Law 280 specifically goes against the court opinions of Chief Justice Marshall from the 1830’s Cherokee and Georgia suits.
His opinion issued the federal role of jurisdiction, eliminating the state’s interference into Indian affairs. Of course this angered tribal units because it undermined their rights as “Dependent Domestic Nations” and self-governing institutions. States under the new unfunded mandate of taking the role of jurisdiction over the Native Nations increased taxes, and including taxation of the resources of reservation lands.

Major changes occurred in 1968 and continue today. The Indian Civil Rights Act (ICRA), passed by congress in 1968, marked a new beginning for American Indians and their rights as individuals and sovereign nations. The Indian Civil Rights Act applied statutes of protection including free speech, free exercise of religion (later strengthened with the American Indian Religious Freedom Act of 1994), due process, and equal protection under the law, and other civil liberties (Canby, 1988). Going against the termination policy of the 1950’s, the ICRA took the jurisdictional actions away from the states, placing them back under the federal chain of command. States no longer held powers of civic and civil jurisdiction over tribal units. Furthering the rights of Natives became the direct focus, and the tribes returned to an interesting but precarious settlement over the ability to use, sell, and allocate their reserved resources. Self-determination and self-government strengthened as the tribes gained the powers received from the Indian Civil Rights Act.

Over the last 200 years of the United States government, the policy over Indian Affairs changed drastically- however, the underlying themes of all policy was to gain the lands and resources found in the West. Wrestling away the water, land, and mineral rights of the reserved lands for Natives has been Congressional policy. Until recently, the international scene of government did not heed the cries of injustice from Native
Americans and other Native peoples around the globe. Now, current policy issues have found their way into the United Nations. The United Nations Draft Declaration on the Rights of Indigenous Peoples supports the sovereignty and rights of natives all over the world. The Draft maintains, “Recognizing the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially the right to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies.” (UN Draft, Article 6).

Rights For Native Resources

Water remains an essential substance to survival of people across the globe. For the Native Americans in the West, water continues to be the most sought and conflict laden resource on reservations. With the introduction and needs of technological development in the West, the battle over water includes the survival of the Native populations versus the energy and mineral development of the West. Laird makes the statement, “Modern society has become so dependent on these refined energy fuels in virtually every facet of life that it might now be more correctly stated that ‘he who controls water, controls the energy that controls life itself’” (Laird, 1979). Increased need for water, which is limited by annual snow and rainfall, inhibits the unrestrained development practices characterizing the race for Western Civilization and the American West. The question then left is: Who gets the water? Industrial technocrats want it. Mineral extraction companies wish it. Southern California’s cosmopolitan arena demands it. Native Americans holding tracts of land in which the water begins or runs
through are entitled to it. The West is a treasure of energy and mineral wealth; the task prevailing is deciding which treasure is worth most, survival of both indigenous and non-Native people, or the development of energy and minerals.

In the West, the water from rivers and lakes is allocated to landowners based on the “appropriative” system. This allocation system began when the primary need for the water came from mining and not farming the West (Canby, 1988). Later as agriculture became the primary use, appropriative allocation of water took on a new look. The appropriative distribution lies on the premise of “first come-first served.” As Canby attests, “The right to water belongs to the first user who appropriates it and puts it to beneficial use. The appropriator is guaranteed the right to continue to take the same amount of water from the source without interference by any later appropriator.” The right to the water in the appropriative system is precarious, functioning under a “use it or lose it” policy. Water in the West continues to be on the battleground of the Native and Non-Native wars.

The reason for the battle is not necessarily scarcity, but rather the overuse of the water allocated to developing industry, agriculture, and mineral extraction practices. These practices coupled with dam development for energy support lend a challenge to the Natives who need the water for farming and their own economic development. Not only do Natives find their reserved water reduced in capacity, but contaminated and polluted. The Native reservation population finds this to be economically crippling, ecologically treasonous and culturally destructive. According to Rosalie Martone, “A statement issued by the Committee to Save the Fort McDowell Reservation asserts that cession of land and
water will result in tribal and community disruption, family disintegration, alcoholism, increased welfare dependency, suicides, and violence” (Martone, 1974).

Although many challenges to water use for Natives have arisen over the past 150 years since the Easterners began to accumulate the Western land base and remove the remaining Native tribes onto reservation land, three essential United States Supreme Court Cases support the rights of Natives based on the original treaty status between the U.S. and Native Nations. These court cases include Winters vs. United States in 1908, Arizona vs. California in 1963, and Colorado River Water Conservation District v U.S. in 1976. The three cases legally uphold the rights of the Native populations asserted by the treaty doctrines of the federal government and the tribe. However, mitigated by state interests, the opinion of the court in each case has been tragically difficult to enforce. Essentially, Natives win the battle in the courtroom because of the treaty and reserved rights, only to lose on their claims to original Indian Title and inherent right to survive on the land (United Nations Draft Declaration on the Rights of Indigenous Peoples). Slowly the water slips through the cracks into the hands of capital from gold and energy development, leaving the Natives to fight a battle today as their land withers. Non-native interests are favored in issues over the land and resource allocation on Native lands, despite the court’s support of the rights to natives for their use of water and reservation resources. Executive and congressional order tend to sanction non-native interests ahead of cultural preservation and ecological sustainability. Money and capital drive a hard bargain for the leaders of the United States and their responsibilities to provide for the entire land:
The real process by which non-Indian interests are favored over those of the Indians in the federal government are rarely reviewable by the courts, and hence the system offers the Indians little protection in a sense. Instead, non-Indian interests tend to be favored in the exercise of executive discretion, in development of the budget, and in technical assistance... This strategy makes it virtually impossible for the Indians to take advantage of what rights are confirmed. (Deloria, 1985).

**Winters vs. United States (1908)**

May 1, 1888 the Fort Belknap Reservation agreement was approved by Congress and subsequently allocated 1,400 square miles to the Gros Ventre and Assiniboine tribes in North-central Montana (Hundley, 1978). The Milk River marks the northern boundary of the reserved lands, and became the land’s principal water supply. The Milk River ensured the ability for the Natives to survive due to the farming and cattle grazing being undertaken by Indians.

However, the federal government’s plans for the Assiniboine and Gros Ventre tribal units was soon undermined by blossoming towns such as Harlem, Havre, and Chinook and their accompanying non-Indian ranchers and farmers. The new landowners diverted water from the Milk River at will until drought invaded the area in 1904 and 1905. The survival of the reservation population lay in the ability to use the Milk River as an irrigation source, but non-natives took most of the water off the reservation before the water entered the Native compound. Henry Winters and other non-natives were restrained by court order from the use of 5,000 miner’s inches which were to be subverted
to the Natives of the Fort Belknap Reservation (Hundley, 1978). Non-natives argued for appropriative rights to the water, while the Native’s under United States jurisdiction argued for reserved rights accompanying the establishment of the reservation. The result was the landmark Supreme Court Case of 1908, Winters v United States.

After the appeal of the Ninth District Court, the U. S. Supreme Court issued an opinion for “reserved rights”. Justice McKenna with an eight to one support from the bench issued the opinion including the rights of the Natives of the reservation to the water flowing through and beside it. McKenna writes, “The case as we view it, turns on the agreement of May 1888, resulting in the creation of the Fort Belknap Reservation. In the construction of this agreement there are certain elements to be considered...The lands were arid, and without irrigation were practically valueless...” (Winters v U.S., 207 U. S. 564(1908)). Water for the reservation population was necessary and not dispensable, in fact, water sustains the life of all people in the area.

The Court stated the right to the water was reserved at the time the Fort Belknap Reservation was established and continued to be a functioning right whether the water was used or not (Hundly, 1978). The Supreme Court made the point that in no way would the reservation agreement in 1888 preserve the rights of the Natives to farm the land, without water necessary to make farming practices feasible. This reserved water right for the Natives and the reservation fell under a separate category than the traditional appropriative rights to water secured by most of the non-natives in the West. Hundley asserts, “the reserved right exists whether or not Indians are actually using the water, and it continues unimpaired even if the Indians should subsequently cease their uses” (Hundley, 1982).
Another important distinction of the Winter’s decision was the quantification of the status of the tribal entity in respect to the state of Montana. The Winter’s court opinion provided, “the implied reservation of water was unaffected by the subsequent admission of Montana into the Union ‘upon equal footing with the original States’” (Canby, 1988). Combined with the doctrine of the Native Nations as ‘dependent domestic nations’ from the Cherokee Nation v the State of Georgia in 1831, the Winter’s decision enforced the important role of the treaty law that must be considered in any problem upcoming with the fight over resources on and beside the reserved land of Natives. Jurisdiction did not lie in the hands of the states, but continued to be a federal jurisdiction between the U.S. and Native tribes.

The Winters decision upholds the use of water to Native landholders. Montana and the Milk River along with the Fort Belknap Indian Reservation lay the groundwork for the reserved rights of Native Populations on reservation land. However, obscurities remained after the decision of the Supreme Court over the amounts and natures of the water use. The court opinion gives no indication of the important distinctions of “who gets the water” because the decision left too many loopholes. Yes, the water was reserved for the Natives, but no, the Natives still did not control their own water destiny. Three important questions to the right to the water remained after the Supreme Court issued their ruling:

1. The quantity or volume to which the Natives were allotted,
2. The legitimate uses to which the reserved water could be put by the Natives,
3. The priority of the right in relation to the rights of the non-Indians attempting to secure the same water source (Hundley, 1982).
Native Americans continue to fight for water, the precedent and inherent right from prehistory, as Native tribes find themselves under the hand of the "civilizing forces" of government schools, missionary efforts, and government agents. The qualification of reserved water rights for Natives was also a means for ending the legacy of indigenous culture. Sovereign nations were supported with the right to farm with the water of the Milk River, but the tribal unit like others watched their children taken to government schools.

As the years passed, the quantification of water rights became a dominant issue for Native Americans on reservations. Despite the ruling, reserved rights for Native water usage were largely ignored due to the United States interest in settling and developing the West with Non-Native settlement. Winters v United States acknowledged the need for the Native to have a prevalent and supported right to the water of the Milk River. However, the three dominant questions left unexplored by the Winters decision still remained untouched in the realm of legal jurisdiction:

1. The quantity or volume to which the Natives were allotted
2. The legitimate uses to which the reserved water could be put by the Natives
3. The priority of the right in relation to the rights of the non-Indians attempting to secure the same water source.

These three questions would find their way into the courtroom as time passed and conflicts cumulated over the use of water. The next question to be answered became the quantity or volume of the water, which could be used by the Natives. The answer came in the 1963 Supreme Court decision of Arizona v California.
Conflict over the Colorado River's water allocation to the states and reservations, which ultimately depended on its water for their economic survival, began in 1928. The strife began when the Boulder Canyon Project Act, passed by Congress in 1928 gave approval to the Secretary of the Interior to construct a dam on the Colorado River. The dam and project supported the attempt to "to control floods, improve navigation, regulate the river's flow, store and distribute waters for reclamation and other beneficial uses, and generate electrical power" (Arizona v California 373 U. S. 546 (1963)). The dam and project threatened the states in the West due to the fear that California would capitalize on the project and use most of the new water supply. Arizona began the action suit and was soon followed by Nevada, New Mexico, Utah, and the United States - representing five Native reservations - to thwart the intentions of California.

The United States entered the conflict because of its interest in five Native reservations established between the years of 1865 and 1907, national forests, recreational and wildlife areas, and other governmental land and works dependent on the water from the Colorado River. The five reservations in question were established by either executive or congressional order, so the case was not under the same treaty-based law and jurisdiction as the Winters v U. S. case in 1908. Arizona v California settled the interstate argument over the waters of the Colorado River. Also, Arizona v California attempted to clear up the question of the resource rights secured when Native Reservations were not based on treaty agreements, but rather on executive or congressional order.
The opinion of the court established that the reservations, regardless of the way they were established, maintained their title to the water and resources necessary for survival and viability. The opinion of the Supreme Court includes, "Under the power to regulate navigable waters included in the Commerce Clause, and the power to regulate government lands included in Article IV Section 3 of the Federal Constitution, the United States has power to reserve water rights for its reservation and property" (Arizona v California, 373 U. S. 546 (1963)). The Supreme Court opinion reserved the right of the United States to hold their vested interests of reservations and public lands viable with water from the Colorado River. The Supreme Court also updated their previous decision of reserved rights of reservations established with the Winter's Decision by stating, "The water rights of the Chemehuevi, Cocopah, Yuma, and Fort Mohave Indian Reservations, having vested before the enactment of the Boulder Canyon Project Act (43 USC section 617 et seq.) are 'present perfect rights' and as such are entitled to priority under the statute." (Arizona v California, 373 U. S. 546 (1963)).

Following the importance of the Winters opinion in 1908, the U. S. Supreme Court in 1963 supported the rights to Native water use based on the establishment of the reservation. The appropriative rights normally applied to the Western non-native's use of water did not apply to the reserved land for the Native American population. The court opinion issued in 1963 states much the same as the Winters v United States case in 1908 concerning the need for water for reservation land. Justice Black wrote:

Arizona challenges the Master's holding as to the Indian Reservations on two other grounds: first, that there is a lack of evidence showing that the United States in establishing reservations intended to reserve water for them; second, that even
If water was meant to be reserved the Master has awarded too much water. We reject both of these contentions. Most of the land in these reservations is and always has been arid. The water necessary to sustain life is to be had, it must come from the Colorado River or its tributaries (Arizona v California 373 U. S. 546 (1963)).

The United States Supreme Court continued to sustain a policy of priority toward the vested and reserved rights of reservations to use the water based on their date of creation (Baxter, 1965). The most significant aspect of the Arizona v California ruling from the U. S. Supreme Court in 1963 was the quantification of the volume of water, which could be allocated and used by the Natives. This resolved of one of the key questions left unanswered by Winters v United States in 1908. The opinion concludes:

...the water was intended to satisfy the future as well as the present needs of the Indian Reservations and ruled that enough water was reserved to irrigate all the practicably irrigable acreage on the Reservations. Arizona on the other hand, contends that the quantity of water reserved should be measured by the “reasonably foreseeable needs”, which in fact, means by the number of Indians. How many Indians there will be and what their future needs will be can only be guessed. We have concluded, as did the Master, that the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage (Arizona v California 373 U. S. 546 (1963)).
The amount of water in this ruling remains a “consistent acreage-based quantity.” However, the challenge left to be decided was whether the water could only be used for the irrigation of agricultural land, or if the water was at free disposal for the tribes to use in industry or mineral extraction. The “practicable irrigable acreage” ruling from the Supreme Court reserved and allocated a consistent water supply for the Native Nations on the Colorado River watershed, but failed to establish the specific use of that reserved water.

As the quantification of the water use on reservations was established by the Arizona v California case, the decree remained clouded with the attempts of states to receive jurisdiction over the reservations lands. With the McCarren Amendment in 1952, the United States moved into a position of trusteeship for the reservations subject to suit in State court. Despite the apprehension of the Native Nations who feared the role of the State in their affairs over resource usage, the Supreme Court ruled in the case of Colorado River Water Conservation District v the United States 424 U. S. 800 (1976) that federal courts should abstain to state litigation. The original jurisdiction rests in the hands of the federal government, but states hold a right to adjudication. Many changes occurred with the McCarren amendment and the ruling of Colorado River which include an apprehension of the tribes to attempt more qualification and quantification of the rights already existing. More than 50 bills have been introduced in Congress to try to quantify or abolish the reserved water rights of Natives (Laird, 1979). Practically the role of these bills and legislation include the responsibility of the States in matters of Indian Water law. The most important Supreme Court ruling over the jurisdictional role of the States came about with the 1976 decision of Colorado River Water Conservation District v U. S.

The McCarren Amendment passed in 1952 states, "The United States when a party to any such suit, shall

1. be deemed to have waived any right to plead that the States laws are inapplicable or that the United States is not amenable thereto by reason of its sovereign;

2. shall be subject to the judgments, orders, and decrees of the court having jurisdiction." (66 Stat. 560, 43 U. S. C. A. Section 666).

Until 1976, the meaning of this congressional action was not understood in respect to the impact the role of the state in water law for Native Reservations. However the ruling in 1976 with Colorado River Water Conservation District v U. S., established the principle that the McCarren Amendment "rendered the United States as trustee for Indian water rights subject to suit in State court" (Canby, 1988).

The Supreme Court opinion issued by Justice Brennan stated, "The effect of the Amendment is to give consent to state jurisdiction concurrent with the federal jurisdiction over the controversies involving federal water rights" (Colorado River Water Conservation District v U. S., 424 U. S. 800 (1976)). The federal government holds trusteeship with the reserved water rights, but the McCarren Amendment and the Colorado River Water Conservation Dist. v U.S. case establish the title of the state court to administer the adjudication over the water law of their state - states decide matters relating to Indian water law. The impact of this decision is especially important to the
Southwestern states involved in an ongoing struggle to execute the titles to the limited water resources from the Colorado River and its tributaries. The long term impacts of these two important acts of legislation and the Supreme Court opinion even to the current day are yet to be quantified and understood. Basically the effect of the legislation and the ruling has been to create a Rocky Mountain Region with a confusing and varied understanding of the jurisdiction over and the rights to the water in the West. As the states enter into the picture with the original federal government and tribal government relationship, more confusion prevails.

Although the states have an adjudication jurisdiction on the privilege to water in the West, the Supreme Court opinion of Colorado River Water Conservation District v the United States supports the federal trusteeship relationship and ultimate authority over the Indian water law. The opinion of Justice Brennan confirmed, “That Amendment includes consent to determine in state court reserved water rights on behalf of Indians ... and the exercise of state jurisdiction does not imperil those rights or breach the Government’s special obligation to protect the Indians” (Colorado River Water Conservation District v U. S., 424 U. S. 800 (1976)). Due to this ruling the court reiterates the hands of the federal government still control the nature and extent of reserved water rights of Indians. Even though the state court can adjudicate these decisions, the Supreme Court opinion continues:

...Moreover, the Government’s argument rests on the incorrect assumption that consent to state jurisdiction for the purpose of determining water rights imperils those rights or in some way breaches the special obligation of the Federal Government to protect Indians. Mere subjection of Indian rights to legal
challenge in state court, however, would no more imperil those rights than would a suit brought by the Government in district court for their declaration... (Colorado River Water Conservation District v U. S., 424 U. S. 800 (1976)).

The capacity for the federal government’s trusteeship to the reservation lands of Natives supposedly remains intact by the McCarren Amendment and the United States Supreme Court decision over Colorado River Water Conservation District v United States in 1976. The United States still holds the relationship with the tribes as it did in the Winter’s Decision of 1908 based on the ruling of Cherokee Nation v State of Georgia (30 U. S. (5 Pet)1, 8 L. Ed. 25, 1831) calling the tribe a “domestic dependent nation.”

**Importance of the Court and Indian Water Law**

Canby lists the important results of court cases over the problem of Native American Water rights. The important distinctions are as follows:

“From the Winters and Arizona v California cases, it is possible to summarize some of the characteristics of reserved Indian water rights, commonly referred to as ‘Winters rights’:

1. Winters rights are creatures of federal law, which defines their extent.
2. Establishment of a reservation by treaty, statute, or executive order includes an implied reservation of water rights in sources within or bordering the reservation.
3. The water rights are reserved as of the date of creation of the appropriation
dates under state law take precedence over the Indian rights, but those with later dates are subordinate.

4. The quantity of water reserved for Indian use is that sufficient to irrigate all the practicably irrigable acreage of the reservation.

5. Winters Rights to water are not lost by non-use” (Canby, 1988).

The role of the water rights is essential to the survival of Native Nations on reservations and the Supreme Court attempts to support this while still preserving the settlement of the West by non-Indians. In order to assure the viable existence of the Natives and also to assure the economic potential of non-Native settlement the Supreme Court enters into a trusteeship relationship with the Native Reservations.

In addition to the items on the list provided by Canby, the Winters Rights over Native water usage now must be added as more court cases and legislation occur. Documents such as the United Nations Draft Declaration on the Rights of Indigenous Peoples affirms Native rights as in Part IV Article 26:

Indigenous peoples have the right to own, develop, control, and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna, and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions, and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.
This wording acknowledges the sovereignty of indigenous cultures and their rights as people for self-determination of the use of their resources and land base. The following addition to the Canby list is necessary in the light of the Draft Declaration of the Rights of Indigenous People:

6. The inherent right to self-determination of the Native American Nations on reservation land includes the privilege of deciding their own use of water in its most necessary and beneficial matter, and should not be dictated by the Federal Government.

Another important addition to the Canby list includes the role of the State adjudication process for the water issues of the Native Americans on reservations. Due to the McCarran Amendment and the Supreme Court case of Colorado River Water Dist v the United States, the State in which a reservation lies holds a new and profound relationship with the tribal entity. Although this can be seen as an effort to undermine the sovereign status of the reservation, the most important part of the legislation and ruling is continuing exploitation of the tribe’s water dependent situation. The Western States, especially in the Rocky Mountain region, have a greater capacity under the shadow of the McCarran Amendment and the United States v Akin ruling to undermine the rights of the Natives to the water essential to their survival on reservation land. The following addition should also be included:
7. The State shall have adjudication privileges over issues of water law, but the original trusteeship relationship between the United States and Native American Tribes will retain its ultimate authority.

Throughout the 20th century the Federal Government and Tribal units have attempted to quantify the title American Indians hold to the lands they occupy. Court decisions and legislation continue to be argued and initiated today in the light of an increased interest in Natives to establish their inherent right to their resources and means of existence. Many of the cases and legislation today involve arguments over western energy development and the impact of the pollution concurrent with that development.
Case Study: Colorado River Basin

The Colorado River

Nature is everything important to the Hopi. It is the land, all living things, the water, the trees, the rocks—it is everything. It is the force or the power that comes from these things that keeps the world together. This is the spiritual center of this land. This is the most sacred place. Right here on this Mesa...before the white men came, all the Hopi were happy and sang all the time. The Hopi didn’t have any class structure at all—no bosses, no policemen, no judges—everyone was equal. There weren’t any politics then...In those days the air was clear and everyone could see far. We always looked to the Earth Mother for food and nourishment. We never took more than we needed. Our lives were very rich and humble. We lived close to the Earth as laid out by the Great Spirit. When the white men came, everything started to get out of balance. The white brother has no spiritual knowledge, only technical...Now there is a big strip mine where coal comes out of the earth to send electricity to the big cities. They cut across our sacred shrines and destroy our prayers to the six directions...Peabody Coal Company is tearing up the land and destroying the sacred mountain...It is very bad. You can’t do things like that and have nature in balance. (Mander, 1991)

John Lansa

The Colorado River Basin is the locale of one of the largest struggles for resources in the Western United States. The impacts of Western energy development can be seen clearly upon the earth in the form of polluted water, large strip mine scars, and colossal dams. The ecological destruction impacts the sustenance patterns of the Native populations existing in the Southwestern Desert. Cultural patterns and spiritual patterns of the Native Nations suffer alterations as more dams and more mines intrude on their
sacred lands. Water rights for the Natives in the Colorado River Basin are preserved in principle through the Supreme Court case Arizona v California in 1963, but are distracted by the implosion of western energy development and the subsequent discovery of the mineral richness of reservation lands. These discoveries of mineral richness and energy resources in the Colorado River basin provoke a struggle for Natives to maintain their cultural, spiritual and land based concepts ingrained from centuries of tradition.

For the Hopi in the Colorado River Basin, the concept of the sacred involves a holding onto the land that is not theirs and never will be. Land and water find their way into the hearts, spirits, and minds of the Hopi due to their irreplaceable traditional role. Thomas Banyacya of the Hopi village in Kykotsomovie, Arizona writes:

The Great Spirit has told the Hopi Leaders that the great wealth and resources beneath the lands at Black Mesa must not be disturbed or taken out until after purification when mankind will know how to live in harmony among themselves and with nature. The Hopi were given special guidance in caring for our sacred lands so as not to disrupt the fragile harmony that holds things together. To us, it is unthinkable to give up control over our sacred lands for money to Non-Hopis. We have no way to express exchange of sacred lands for money. It is alien to our ways. The Hopis never gave authority to anyone to dispose of our lands and heritage and religion for any price. We received these lands from the Great Spirit and we must hold them for him, as a steward, a caretaker, until he returns. (Suzuki and Knudtson, 1992)

The land and water in the Colorado River Basin leaves Native hands and enters the realm of the Western dominant paradigm of thought which thrives on the theories of
capitalism and development. Science and technology control the market for the riches in the Hopi’s sacred land and leaving scarred land and dammed rivers. The water is stopped, the land is scarred, and the people who value the beauty and intrinsic value of the Earth are forced off their lands as the tribal council puppets themselves to the business of capitalism.

Ecological Perspective

Western Surface Water Development

The Colorado River originates in the state of Colorado, crosses parts of Utah, Nevada, Arizona, Californian and Mexico, and ends in the Gulf of California. These states and the populations in them depend almost primarily on the Colorado and its tributaries for their water supply to provided agricultural and urban needs. Reservations were established in the region as the land was deemed a wasteland. However, the region soon became recognized for the richness under the earth’s surface and the river’s power potential.

One of the most important energy developments and water allocation sources for the Colorado River Basin is the Glen Canyon Dam, built in 1956, and the creation of Lake Powell Reservoir, the second largest reservoir in the country. Backing the Colorado River two miles northwest of Page, Arizona, the Glen Canyon dam forms a large water storage for energy, agricultural, and recreation purposes. The 710-foot high dam (the fourth tallest dam in the United States) backs up 27 million acre-feet of water from a drainage area of 108,335 square miles (Bureau of Reclamation, Glen Canyon
Most of the land behind the dam suffered as the basin filled and displaced people and species of animals, plants. On the other side of the dam many more impacts were felt. The Colorado River's course was impeded and the lands below the dam then depended on the agricultural allocation of water through canals and aqueducts to the desert land.

With any dam, many ecological changes come about. For example, the balanced ecosystem depending on the water in the Colorado River finds an enormous spontaneous change to supply and water quality that it must adjust to. The water suffers from oxygen depletion, the invasion of weeds detrimental to fish and water creatures, interruption of silt flow, mitigation of natural water fluctuations, and increased prevalence of evaporation and erosion (Lewis, 1980). These effects of dam building force changes to people who live both above and below the dam. The people who depended on the water's natural flow are faced with migration, and adverse health affects. Many of the traditional agricultural peoples find themselves moving into urban areas in order to find a reasonable sustenance alternative to their traditional gathering and horticultural existence (Martone, 1974).

Dam building has come at a high price in the Colorado River Basin. In fact, hydrologists and dam builders knew the cost of the Glen Canyon dam before their building even began. The estimate of water lost through evaporation of Lake Powell alone shocked the builders and hydrologists (Franklin, 1997). But, in 1963 the Glen Canyon dam was built and the resultant loss of one million acre-feet per year began. The Glen Canyon dam not only caused the loss of water, but increased the ionization and salt
content of the remaining water, affecting the health of any life left in the Colorado River after 60 dams impeded its course.

So, the question remains whether the damming of the Colorado River was worth the destruction of millions of acres of land’s natural ecosystem, the evaporation of millions of acre feet of water per year from the arid landscape, and the forced migration of an indigenous culture occupying the area for thousand of years. Are all of the consequences of the damming worth the Las Vegas extravagant energy use? City planners in Las Vegas claim the water and energy derived from the damming is used to support the 4000 new residents who arrive in the city each month (Franklin, 1997). However, the city of Las Vegas consumes huge amounts of unnecessary energy use with lights shining to the Earth’s inner atmospheric layer and the newest development plan of a system of Venetian Canals. Should the Glen Canyon dam support the city of Las Vegas when it has been diverted from the ability to support the native populations living on or near the Colorado River for thousands of years?
Mineral Extraction

As the American Desert was recognized for its rich mineral resources, even more ecological and cultural impacts ensued. One of the most traumatic examples of the effects of coal strip mining in the Colorado River Basin lies in the Black Mesa mountain region of the Navajo and Hopi. Black Mesa is a sacred female mountain for both cultures. However, in 1964 mining permits were encouraged by the Bureau of Indian Affairs to the tribal councils of the Navajo and Hopi (Matthiesen, 1984). By 1970, the Peabody Coal Company began their strip mining operations around Black Mesa. The coal derived from the mine is shipped to Phoenix, Las Vegas, and Los Angeles for their energy needs. It is also shipped north to Page, Arizona where it enters a power plant that pollutes Lake Powell behind the Glen Canyon Dam (Mander, 1991).

Contracts for mining were thought to provide a unique opportunity for the Native Nations of the area, but the contracts caused severe ecological, cultural, and spiritual rifts and changes in the Native Nations of the Hopi and Navajo (Matthiesen, 1984). The Black Mesa strip mine pollutes the air, water, and landscape with its drilling rigs, 26,000-acre hole, railroad, power stations, and deep wells that suck up the underground spring aquifers. Much of the coal lies in piles on the earth and tremendous amounts of soil are tossed to the side of the strip forming mountains of wastes. Reclamation of this land is a near impossibility due to the lack of rainfall and the sensitive ecosystem lying in the American Desert. Of all the terrible ecological consequences of the Peabody Coal Company’s strip mine on the Black Mesa Mountain, one of the worst is the decline of the aquifers.
The aquifers have been the source of Native subsistence for centuries and with the introduction of the Peabody Coal Company, the water no longer sustains their horticultural practices. The Peabody Coal Company holds control of many wells, but two wells of 3,500 feet deep create the most damage by sucking 2,300 gallons per minute. Also, in the coal strip mining process, the subsurface coal is broken by underground explosions causing the water to be polluted with poisons (Matthiesen, 1984). Poisons and depletion of the necessary water force the Navajo and Hopi into alternate subsistence patterns including migration into urban areas or working for the coal company which undermines their entire existence.

Internationally, the Hopi and Navajo recently found some new interesting attention and support for their fight against the Peabody Coal Company and destruction of Black Mesa (Mander, 1991). However, Jerry Mander asserts:

In 1989, the Gallup Independent, a New Mexico newspaper reported on a secret meeting between officials of the Peabody Coal Company and the Hopi Tribal Council, in which Peabody requested official approval of a new coal strip mine directly south of the present mines at Black Mesa. The new area would include Big Mountain and was claimed to contain some 300 to 500 million tons of high-quality coal, which would double Peabody’s production (Mander, 1991).

According to Mander, the Peabody Coal Company hopes to begin mining between 1997-1999 and ship the coal to Japan. The hold-up to the project include a lack of the underground aquifers necessary to the coal removal, and a continued resistance of a few hundred men and women who do not want to see more rape of the land. These people
hold on to the land because they must hold on to their culture. These men and women know what it is to love the land, know the land is alive and is being severely damaged. They oppose the desecration of their Holy Land and their remaining link to traditional life.

Cultural Perspective

Cultural Genocide

With the Glen Canyon Dam (and other dams on the Colorado River) and increased mining practices in the Colorado River Basin, many cultural changes to Native Nations have occurred and continue to occur. People migrate to urban areas and into concentrated villages where life and work differ greatly from the original farming, stock raising and gathering practices. These changes have undermined traditional culture and as the Natives attempt to hold on to tradition they find they must develop new religious ceremonies and cultural traditions such as the food eaten and the homes lived in (Matthiesen, 1984).

Tribal sovereignty is affected by these changes in traditional horticulture existence to urban or concentrated village lives centered on the jobs provided by coal companies or dams or close to the agency distribution centers. Hopi and Navajo argue over the economics of their lands and people -- supposedly represented by the tribal councils -- with limited trust in those who make decisions for land use. The energy and mining companies hold the ball in their court due to their economic success and subsequent influence on the United States Congress and individual state governments. Many of the decisions made by the tribal councils to sell mineral and land use rights come from the
idea that there is nothing left to do. Many of the people affected by these decisions are never educated to the decision and have no say in the selling of their lands. Influences over the tribal councils by economic power-holders of the mining and energy developers force many people off of their land where their traditional subsistence practices adhered.

Tribal sovereignty issues come about over the dramatic schisms of the tribal unit evolving out of the cultural impacts from the coal strip mining and vast dam building in the Colorado River Basin. Reservations of the region have slowly been taken from the traditional purpose they were created to serve -providing a sanctuary for the Native Nations. In essence, the role of the tribal council holds in a certain standing of sovereignty with the corporations and federal and state governments of the United States. However, tribes are not represented effectively by tribal councils who sell land out from under their own people’s feet. Federal jurisdiction and their trusteeship relationship with the reservation lands and tribal units are mitigated by the power of business and the strength of the influence mining and energy production have on the government of the United States. The Supreme Court issues rulings such as Arizona v California in 1963 to preserve the trusteeship relationship of the federal government with Native Nations, and then slowly the relationship is abridged by industrial economics (Mander, 1991).
Cultural Preservation

The federal government began to take an interest in the preservation of traditional cultural values of the Native Americans in 1906 when they passed the Act for the Preservation of American Antiquities. This act to preserve the role of artifacts in a culture’s historical survival began a battle with development advocates. The act made it a criminal offense to “appropriate, excavate, injure or destroy historic or prehistoric ruins or monuments or objects of antiquity located on lands owned or controlled by the United States government.” This blazed the trail for the preservation of cultural heritage. Lands in federal control were supposed to be subject to the laws made by Congress to protect cultural heritage; even then the laws were violated and the government turned the other cheek. As the Act for the Preservation of American Antiquities failed to preserve valuable cultural materials, a new legislation came about in 1979: the Archeological Resources Protection Act.

The Archeological Resources Protection Act filled in the blanks of the Act for the Preservation of American Antiquities by quantifying the materials in a more direct and established manner. The Archeological Resources Protection Act provided the rule of law that development on tribal lands must be accompanied by permits, and any work on public lands held sacred by tribal units requires notification of the tribe before the permits are issued. Of course the role of the law in both cases fails to accomplish the goal of preserving the cultural heritage of the Native American populations. The government thwarts someone from digging up a grave, but they fall short in providing protection for the living members of the traditional cultural heritage.
Soon after the Archeological Resources Protection Act, the United States passed another piece of legislation for the preservation of cultural resources. In 1980, the United States Congress created and approved the National Historic Preservation Act (NHPA 502; 16 U. S. C.) to "preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk, cultural traditions that underlie and are a living expression of our American Heritage" (Parker, 1990). Although traditional cultural properties remain difficult to classify, places like the Black Mesa Mountain is included because it holds cultural relevance to the Hopi and Navajo people. Under the National Historic Preservation Act, spiritual and cultural traditions are to be preserved and mining does not enter into the equation of preservation without strict guidelines on the amount and depth of the impact on land and water of the region. According to the National Register Bulletin No. 38:

Traditional cultural values are often central to the way a community or group defines itself, and maintaining such values is often vital to maintaining the group's sense of identity and self-respect. Properties to which traditional cultural value is ascribed often take on this kind of vital significance, so that any damage to or infringement upon them is perceived to be deeply offensive to, and even destructive of, the group that values them. As a result, it is extremely important that traditional cultural properties be considered carefully in planning (Parker, 1990).

In the consideration of a project, the National Register is to be consulted before the inception of the project to ensure that any traditional cultural properties are preserved.
Such special cultural sites involve an extensive listing of criteria in order to be registered and considered. This selection process helps to identify the important regions whether that area be a mountain, section of stream, or stretch of forest of the Colorado River Basin which are essential to the existence of the reserved lands, their people, and their history.

Properties essential to the full functioning of a Native American nation or tribe prove to be expendable to the Federal government and the problematic tribal council system in the Colorado River basin. As industrial enthrocentricism steps in, a form of cultural Darwinism does also. Regardless of the federal trusteeship relationship to the reserved lands, the economics of California, Arizona, Nevada, Arizona, and Colorado win the actual battles of who gets the water of the Colorado River and the minerals under the surface of the reserved land. Despite a National Historic Preservation Act from the United States Congress, or United States Supreme Court rulings like Arizona v California in 1963, reserved lands and waters and Native people's rights as sovereign Nations under trusteeship of the Federal Government seem to disappear under the shadow of the needs of corporations, capital, and politics.
Native cultures have inhabited the Americas for at least 12,000 years. Native cultures developed to fit their environment from the plains people dependent on bison and gathering to the maize farming communities in the Southwest. Although the subsistence patterns of these people differ, evidence shows some common spiritual patterns. Hunting, gathering, and horticulture all depend on a direct relationship with the earth and much of the spiritual relevance to Native culture comes through in reverence for the earth. Songs, ceremonies, and oral tradition remind their culture of the spiritual connection with the Earth in Native spiritual practices. The Native population embraced a way of life that involved living on the land, but not profiting from the land (Weatherford, 1992).

Though the Native Americans have a beautiful and balanced manner in which they walk on the Earth, they have been persecuted for it since the settling of the Americas by Europeans. The worst such persecution arrived with the mission efforts to civlize the “savage” Native Americans at the beginning of reservation sanctioning by the Federal government. The mission efforts brought disease and misunderstanding to the Native Americans. In a nation like the United States founded on the premise of Freedom of Religion, the Native Americans were forced to give up their religious practices. In 1869, the Board of Indian Commissioners Act was set up to “humanize, Christianize, and civilize” the people of Indian nations (Beck, 1992).

The 1869 Act was only the beginning for the religious persecution of the Native Americans. In 1883, the Indian Religious Crimes Code was founded to prohibit Native American ceremonial activity (Canby, 1988). The punishment of imprisonment and
withholding of rations for up to 10 days would be upheld by the Reservation courts under the Bureau of Indian Affairs direct control. This act subverted the rights of Natives to practice their traditional cultural values and eliminated their right to tribal sovereignty and self-determinism (Beck, 1992). The United States tried to eliminate the traditional spiritual and cultural values of Native Americans as more settlers moved to the West and occupied more of the Native’s land base.

It was not until 1978 that the Native people of the United States were able to practice their spiritual values in full legality. In 1978, the American Indian Religious Freedom Act (AIRFA) was passed. AIRFA provides a guarantee of the First Amendment of the United States Constitution to protect the freedom of Native Americans to “…believe, express, and exercise their traditional religions…including access to sacred sites, use and possession of sacred objects and freedom to worship through ceremonial and traditional rites.” Although written in the law books, the AIRFA tends to be viewed as a policy statement rather than a mandate to provide for Indian rights. Enforcing AIRFA requires a toleration of religious activity, which had not been practiced publicly for almost 100 years. Many traditional ceremonial practices, languages, and sacred places have been lost to this non-practice because of the United States policy of civilizing or assimilating the Native population.

Still, the AIRFA is important and since 1978 has been amended by the 1994 Native American Free Exercise of Religion Act. The 1994 amendments provide for the traditional use of peyote by Natives for sacred purposes. As greater freedom to practice religion comes to the Native American populations, the preservation of cultural values
may be obtained. It is essential to the full functioning of the Native American value systems that ceremonies and celebrations of the Earth and her gifts are able to be held.

Lessons are needed for non-natives to eradicate the dominant paradigm of enormous, unbalanced growth of industry, energy, and technology. The dominant American cultural values involve the separation of church and state, but also the separation of spiritual values from the rest of life's tasks - kinship, work, and moneymaking ventures (Mander, 1991). With the American value of individualism so engrained into the heads of young children by the media, schools, and relationships, comes a significant emphasis on material success at whatever the cost to the Earth. However, these values are not the same as the Native American cultural values. Native American culture requires that spirituality is integrated into all aspects of everyday life (Beck, 1992). There can not be a separation of the role of spirit from the path which a person embarks on. Native cultures thrive on sharing, giving, and community based advancement. As people in the dominant American value system begin to recognize their weaknesses in overuse of the land and overproduction of material goods, the Native American spiritual and cultural value system may hold positive lessons for change.

Some of the lessons non-natives must soon learn from the traditional cultural values of the Native American population include the sacred nature of the Earth, and the ability to tread on the Earth for the purpose of preserving it for the Seventh Generation past the current time frame (Weatherford, 1992). Many decrees have been written for the remembrance of the Native view of the Earth. The Sacred Pipe: Black Elk's Account of the Seven Rites of the Oglala Sioux, written by Joseph Epes Brown shows a remarkable
grasp of the concept of the sacred nature of the earth in Native culture and spiritualism as shown by the prayer from Black Elk:

\[
O, \text{Mother Earth from whom we receive our food, you care for our growth as do our own mothers. Every step we take upon You should be done in a sacred manner; each step should be as a prayer. Remember this my relatives: that the power of this pure soul will be with you as you walk, for it, too, is the fruit of Mother Earth; it is as a seed, planted in your center, which will in time grow in your hearts, and cause our generations to walk in a wakan manner (Brown, 1953).}
\]

The prayers of Native Cultures across the Americas follow a similar pattern. Life depends on the power and strength of the earth and her fruits. Each two-legged is one of those creations as are all the animals, plants, and the soil, air and water that nourishes each of the relatives. Nothing is separate from one another (Beck, 1992).

John Neihardt echoed the words of Black Elk also in Black Elk Speaks. For all of the spiritual reverence which native culture holds for the Earth and Her gifts, an equal and opposite reverence can be discerned as to what the white settlers of the West felt for the Earth. Black Elk indicates:

\[
\text{News came to us in the Moon of the Falling Leaves (November) that the Black Hills had been sold to the Wasichus and also all the country west of the Hills- the country we were in then. I learned when I was older that our people did not want this. The Wasichus went to some of the chiefs alone and got them to put their marks on the treaty. Maybe some of them did this when they were crazy from drinking the minnie wakan (Holy water, whiskey) the Wasichus gave them. I have heard this; I do not know. But only crazy or very foolish men would sell their Mother Earth. Sometimes I think it might have been better if we had stayed together and made them kill us all (Neihardt, 1931).}
\]
Looking back on decisions made by a few chiefs Black Elk can see they did not speak for the entire tribe and all of the people. This same concept can be applied to tribal councils selling the Colorado River rights and Black Mesa to those who they know are going to disrespect the land and water. Much of the pain felt by these two projects could be thwarted with a traditional reverence for the Earth and an understanding of the cultural relevance to the water, air and land by the Native culture.

Rapport with the land has been lost to technology, energy development and mineral extraction. In retrospect, the Peabody Coal Company could learn a lot, as could many of the American people from the traditional cultural values of the Native American People. It is not too late, though damage to the Native Nations has spread deeply in their spiritual lives as well as their cultural lives. American Indians must assert their rights to water, land, and health and walk through their reserved lands without having to worry about the pollution from the Peabody Coal Company and other mining companies (Mander, 1991). And the American people must re-open their eyes as many 18th century European newcomers acknowledged to the manner in which Native Americans traditionally walked the Earth, with spirit, beauty, provisions, and reverence and realize that in order to survive only what is needed must be taken (Weatherford, 1992).

According to Claus Beigert, a German writer writing of Native peoples’ struggles around the world:

Native peoples tell us that Uranium should stay in the ground- but their voices are lost in the wind. Tribal people possess the knowledge of the past that could help heal and restore the earth- but their views are in conflict with the nuclearized, neo-
colonial mindset of the multinational energy corporations. We in the West are in possession of the most advanced strains of ignorance the world has ever developed....Native people don’t think (this) way. By resisting the repeated incursions of industrial society into their lands, their cultures, and their religions, they have heroically preserved a world view which carries the concept of the sacred earth...It is time we listened. (Mander, 1991)

In order to ensure our Earth remains viable for the coming generations, it is essential the Western World find a balance between their material needs and their spiritual values. We must find a way to assess decisions concerning the Earth for Her intrinsic values, not just economic value (Suzuki and Knudtson, 1992). Most of the Colorado River Basin needs a viewpoint assessing the Earth’s intrinsic value, traditional cultural value, and sustainable value rather than looking at the Earth for the Uranium under its skin, the coal beneath her heart, and the water flowing over her mounds and how much money can be made from these resources. The shift from the dominant social paradigm of using the Earth for her riches to the alternative of sustainable development for the coming generations and the health of the current generation needs to occur soon. The Native view of the world incorporates a socially, morally, and ecologically responsible manner to live on and with the Earth.
Conclusion

Native Americans in the western United States have undergone and continue to undergo challenges to their survival both personally and culturally. In the course of the last 150 years, many changes have occurred in the way the United States government perceives and treats Native American populations. Legislation, acts of the President and Supreme Court opinions shaped the perceptions and treatment of Native Nations. Throughout this long struggle, the Native American population lost their traditional land base, much of their cultural heritage, and the fundamental resources they need to survive to the manifest destiny of eastern United States settlers. Decisions about resources such as water and land have been deceivingly removed from the hands of Native Americans and placed in the hands of the Bureau of Indian Affairs.

In the Western United States, Native Americans continue to struggle for the water and land which they gained title to at the establishment of treaties and reservation lands. These waters and lands hold spiritual and cultural relevance to the Native Americans, but they continue to be stolen from the control of the Native population. Many of the water rights and land titles in the reservation lands have been sold to energy developers and mining companies. Although water and land are essential to the survival and success of Native Americans, big business and capital interests have overwhelmed the rights of Native Americans more often than not. Native populations face increased pollution of the water, air, and land they have left to use, making life even more challenging as cancer rates increase, migration from ancestral home land becomes necessary, and the spiritual link to Native’s original land base threatens to become obsolete as more cultural values are lost to the material race for wealth by the dominant culture. Although this is not a pretty picture, Native Americans enjoy certain protections of their lands and water--protections recognized by the United States Supreme Court over the last 100 years.
Water in the West has played one of the most essential roles in determining the survival of Native people. As the West became more populated, the need for the quantification of water rights became crucial. The Supreme Court issued three decisive cases over the water resource allocation challenge throughout the 1900’s. These cases include Winters v United States in 1908, Arizona v California in 1963, and the Colorado River Water Conservation District v United States in 1976. The Winters decision established the right for Natives to use the water on or near the reserved lands they occupied, using the date of the reservation’s establishment as the water right date. The Arizona v California Supreme Court opinion issued a quantifiable amount of water to reserved lands for the use by Natives as the volume of water needed for a specific number of irrigable acres. The Colorado River Water Conservation District v the United States Supreme Court decision and opinion pushed some of the water issues into state jurisdiction.

The battle for water in the West is far from over. Water remains pivotal to the health and welfare of the American Indian throughout the continued exploitation of the resources by mining and surface water development surrounding the reserved lands in the West. Water is defined by the Winters decision as a property right for Native American reserved lands. Since water achieved property rights status, the state and federal government have been forced to recognize the appropriative rights of the water for Native American lands. For the first part of the century, this recognition may have been enough to allow the American Indian a viable existence, but as more mining and energy development moved into the West, water becomes an ever more limited resource. The remaining flowing water is polluted or contaminated with ionization. So how do the Native Americans use their water, which was allocated to them in 1908 with the Winters v United States, and in 1963 with Arizona v California?
Although the cases from the United States Supreme Court have helped to establish the rights of Native people to their lands and water, many more issues remain unresolved concerning the water rights for Native peoples on reserved lands. Most importantly, Native populations must continue to fight the pollution and destruction of their streams, rivers, and lakes before the water that is under their jurisdiction becomes extinct. Dams and mining practices in the Southwestern United States in the Colorado River ecosystem have wreaked havoc on the health of the land, air, water and people in the area (Hackenburg). Methods to combat the terrors of pollution have been sought recently across the United States. Congress is beginning to heed the will of the people and within the last ten years, legislation has occurred to help eradicate the pollution problems with stricter guidelines. Now, the challenge for not only Native Americans, and for all Americans is to have those guidelines enforced to preserve the quality of life in the United States. These values have grown out of the environmental movement.

More often, people have turned to the values of environmentalism in the last 30 years for active protection of the land, water, and air of the United States. American conservationists like John Muir, Ralph Waldo Emerson, Henry David Thoreau, and Rachel Carson founded an ethic among Americans in the late 1800s that endure to the present. This ethic of conservation, protection, and preservation of the gifts of the natural world from the writers mentioned above grew in part out of the cultural ethics and spiritual values of Native Americans. As the environmental movement increases in popularity, many programs and organizations solicit the traditional cultural values of Native populations.

By focusing on the natural beauty of the Earth, conservationism and environmentalism proposes the sustainability and management of natural resources. Since conservationism embodies the ideology of the interdependence of the natural
world, the conservation movement espouses some of the ethic of the Native American
cultures. Native philosophy is compatible with conservationist thought, advocating the
intelligent ethical use of the environment. The Earth and her inhabitants are not separate
and can not survive without the health and life of all according to some environmental,
conservationist literature and philosophy (Cornell, 1992).

With the movement of conservationism came the Wilderness Act, setting aside
millions of acres of land, largely in the Western United States to protect the ecosystems
and inhibit the development of these beautiful areas. The ethics involved with
wilderness preservation should also be coupled to the lands and waters of the Native
reservations. Reservations of Navajo and Hopi feel the effects of the Peabody Coal
Company as tons of air and water pollution is pumped out, aquifers are drained, and the
land is stripped by huge machines while reclamation lays in the wayside. Conservation
ethics espouse a Native American consciousness which holds the giving back to the land
to be as important as taking from the land. Water and land must be cared for in order to
ensure the survival and health of the people. Ceremony, storytelling, and prayer from the
traditional Native American cultural value indicate the importance of caring for the Earth.
It is time for the shift in thought for the general American public so that the damage to the
Earth may be limited. The quality of life of Native Americans and all Americans
depends on the care, replenishment, and sustainable development practices of our Earth.

Along with the rise in conservationism and its bond to the values of the cultural
and spiritual values of Native peoples, there has grown an effort to combat the cultural
genocide occurring in the Native population as land and water is abused by large mining
companies and energy developers. Preservation of traditional cultural values has come in
the form of the Archeological Resources Protection Act in 1979 and the National Historic
Preservation Act of 1980. Both of these pieces of legislation attempt to preserve the
historic material culture and lands of sacred and cultural significance for the Native populations of the United States.

The legislation incorporates the evaluation of cultural necessities. Evaluating of a site for building dams, mines, or industries, the National Historic Preservation Act steps in to further investigate the cultural relevance of that site. If the site is deemed necessary to the survival and health of the Native American’s culture, then the site is removed from the planning process or the plan limits the impacts on the area. Although this legislation does not fix the past annihilation of Native cultural values, at least it begins to help preserve the remaining artifacts of historic, cultural, and spiritual necessity.

Not only has there been an increased interest in preserving Native traditional cultural history in the last 20 to 30 years in the United States, but there has also been an increased interest in preserving the lives, health, and political and civic values of the American Indian. As more action is taken through the courts to eliminate the injustices of industrialization against Native reservation populations, the predicament of the American Indian eases. Empowerment of the Native American population has come from American Indian interests groups who award the opportunity for legal assistance, health care assistance, and increased educational awards. Survival of Native American cultural and spiritual values depends on the survival of tribal sovereignty and rights for Native American people.

Preservation of the heritage of Native Americans is also seen as combating the forces of social diseases such as alcoholism and drug abuse. Tribal units must be given the ability to work for themselves, find ways to become self sufficient with the land and resources remaining in their control, and balance the requirements of contemporary life with languages, traditions, and patterns of previous cultural importance. Tribes need the ability to preserve their historic places and integrity of their culture which have been
damaged by Westernization and previous policies of the United States federal government.

With proper tools, Native people of America can survive the set backs initiated with centuries of cultural repression. Some ideas include:

1. Funding for tribal agencies for determination of cultural necessary objects and lands and grants for historic preservation, museums, art, and education,

2. Involvement of tribal units in the decision making process of federal agencies, state and local governments concerning the land and water resources surrounding or on reservation or culturally important land

3. Encouragement of education that represents an accurate depiction of the cultural values of Native American heritage,

4. Recognition by the federal government’s policy of the importance of the preservation of language in maintaining the tribal integrity, identity, and well being.

Improvement of the Native American’s condition in the United States in relation to the federal trusteeship role must be revamped to include more input from tribal units. The American conviction of self-determination and individual rights must espouse all of their people, especially the American Indian. Cultural integrity is essential to the survival of the Native American heritage. Native American social and spiritual values hold important lessons for non-native Americans for the health, beauty and survival of the human species. Not only should the cultural integrity and sovereignty of Native Americans be preserved as a principle of defending human rights, but also because the future of the United States as a viable and healthy nation is tied to the ethics surrounding the Native American traditional way of life.
The continuing battle over the western United States water resources can be seen in the case study of the Colorado River. This case represents the pivotal movements and impact of Native Americans in relation to their water and land resources. Surface water energy development and the coal strip mining industries have found their way into the arid and fragile ecosystem of the Southwest and the Colorado River Basin. Many scars have been placed on the land, the water and the people who enjoyed a peaceful existence there for thousands of years. Water has been depleted from aquifers at astonishing rates while the Colorado River is blocked from its progression to the Sea. Coal has been removed from the ground to run the huge industrial and excessive cities in the Southwest, as the water feels the impact of dangerous levels of pollution. More development and growth in the Southwest proves to be harsh on the ecosystem of the Colorado River basin. It is time to recognize the indicators of ecological disaster such as the depleted health of the river with dead fish, high silt and ion content, and the choking air of the Peabody Coal Company’s processing plant.

As the symptoms of the ecological disaster become more prominent and recognizable, the next step must be to limit growth for growth’s sake and to heed the scientists and Native Americans who send the same warning: “We are hurting the Earth.” The obstacle to balancing out water appropriations and finding solutions to the problems of sharing the precious water in the desert of the Southwest United States will not be solved until pollution and unnecessary water use is addressed (Moore, 1989). Spiritual and cultural guidance from the traditional ways of Native Americans hold the potential for greater understanding of the situation. Listening to, learning from, and acting with the Native populations of the United States will alleviate many pains, diseases, and migrations from the beautiful and sensitive ecosystem of the Southwest.
The lesson of all of the challenges and injustices Native Americans have faced through recent history since the Western settlement of the United States is that non-natives are dreadfully slow to learn. The Native population endured the pain of displacement to reservation lands, development of non-traditional farming and gathering and hunting practices, religious persecution and cultural genocide, and heedless development of energy and mineral extraction on or near the reservation land. Perhaps they hope through all of the pain that non-natives will understand the errors inherent in carving up and selling the Earth when she does not belong to any one person. Maybe the hope is not in vain - maybe future generations will see and succeed at ensuring the survival of Native American Cultures.
APPENDIX A


PART I
Operative Paragraph 1

Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationship with the States in which they live, in a spirit of co-existence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity.

Operative Paragraph 2

Indigenous people have the right to the full and effective enjoyment of all of the human rights and the fundamental freedoms which are recognized in the Charter of the United Nations and other international human rights instruments.

Operative Paragraph 3

Indigenous peoples have the right to be free and equal to all other human beings and peoples in dignity and rights, and to be free from adverse distinction or discrimination of any kind based on their indigenous identity.

PART II
Operative Paragraph 4

Indigenous peoples have the collective right to exist in peace and security as distinct peoples and to be protected against genocide, as well as the individual rights to life, physical and mental integrity, liberty and security of person.

Operative Paragraph 5

Indigenous peoples have the collective and individual right to maintain and develop their distinct ethnic and cultural characteristics and identities, including the right to self-identification.
Operative Paragraph 6

Indigenous peoples have the collective and individual right to be protected from cultural genocide, including the prevention of and redress for:
(a) any act which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities;
(b) any form of forced assimilation or integration;
(c) dispossession of their lands, territories, or resources;
(d) imposition of other cultures or ways of life; and
(e) any propaganda directed against them.

Operative Paragraph 7

Indigenous peoples have the right to revive and practice their cultural identity and traditions, including the right to maintain, develop and protect the past, present and future manifestations of their cultures, such as archaeological and historical sites and structures, artifacts, designs, technology and works of art, as well as the right to the restitution of cultural, religious, and spiritual property taken from them without their free and informed consent or in violation of their own laws.

Operative Paragraph 8

Indigenous peoples have the right to manifest, practice and teach their own spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to religious and cultural sites; the right to use and control of ceremonial objects; and the right to the repatriation of human remains.

PART III
Operative Paragraph 14

Indigenous peoples have the right to maintain their distinctive and profound relationship with their lands, territories, and resources, which include the total environment of the land, waters, air and sea, which they have traditionally occupied or otherwise used.
Operative Paragraph 15

Indigenous peoples have the collective and individual right to own, control and use the lands and territories they have traditionally occupied or otherwise used. This includes the right to the full recognition of their own laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective State measures to prevent any interference with or encroachment upon these rights.

Operative Paragraph 16

Indigenous peoples have the right to the restitution or, to the extent this is not possible, to just and fair compensation for the lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall preferably take the form of lands and territories of quality, quantity, and legal status at least equal to those that were lost.

Operative Paragraph 17

Indigenous peoples have the right to the protection of their environment and productivity of their lands and territories, and the right to adequate assistance including international cooperation to this end. Unless otherwise freely agreed upon by the peoples concerned, military activities and the storage or disposal of hazardous materials shall not take place in their lands and territories.
Appendix B

United States Supreme Court Cases


Elk vs. Wilkin, 1884 (Weathford, 1992)

Cherokee Nation v State of Georgia, 30 U. S. (5 Pet.) 1, 8 L. Ed. 25 (1831)


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