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Questions of Sovereignty: Pyramid Lake and the Northern Paiute Struggle for Water and Rights

Andrew W. Carey

Andrew Carey
Candidate

Anthropology
Department

This dissertation is approved, and it is acceptable in quality and form for publication:

Approved by the Dissertation Committee:

Les Field, Ph.D., Chairperson

Beverly Singer, Ph.D.

Joe Watkins, Ph.D.

Leah Wilds, Ph.D.

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PYRAMID LAKE AND THE NORTHERN PAIUTE STRUGGLE FOR WATER AND RIGHTS

BY

ANDREW CAREY

B.A. ANTHROPOLOGY, UNIVERSITY OF NEVADA, RENO, 1988

M.A. ANTHROPOLOGY, UNIVERSITY OF NEVADA, RENO, 1996

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Struggle for Water and Rights

ANDREW CAREY

B.A., Anthropology, University of Nevada, Reno, 1988

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Ph.D., Anthropology, University of New Mexico, 2016

Abstract

The current U.S. government policy of Indian Self-Determination is determined by the principle of tribal sovereignty, which defines how issues identified in Indian Country are addressed. However, tribal sovereignty represents an ideal that has regularly been ignored or contested by private and corporate entities, as well as state and federal government agencies. My research explores this case study of the successful assertion of tribal sovereignty by the Pyramid Lake Paiute tribe as they worked to save Pyramid Lake, the spiritual and economic heart of their reservation.

The Pyramid Lake Tribe employed several strategies to secure water for Pyramid Lake and to save the endangered endemic species of fish, the *cui-ui* and Lahonton cutthroat trout, from extinction. They were opposed by an iron triangle composed of the Nevada Group, an interest group of Nevada water users, the Bureau of Reclamation, and Nevada's congressional delegation which tried to monopolize the waters of the Truckee River. Through numerous court cases and lobbying Congress, the Pyramid Lake Tribe was able to establish that no water issues could be settled without their input. With this

nearly all stake holders entered into negotiations to reach an agreement that would serve the needs of every group: the Truckee-Carson-Pyramid Lake Negotiated Settlement Agreement, or PL101-618. The Truckee River Operating agreement was then worked out over the next eighteen years to operationalize PL101-618.

I also explore the question of "where sovereignty lies," which has important implications for legitimacy of government. For the U.S. government, sovereignty on the Pyramid Lake Paiute Indian reservation lies with the enrolled members of the tribe; However, there is evidence that for some of the people at Pyramid Lake, sovereignty lies with the families. I suggest this disconnect may drive factional conflict within the Pyramid Lake Tribe, which interferes with tribal governance.

The members of the Pyramid Lake Tribe and their council are actively working to find solutions to issues created by the limitations of tribal sovereignty and resolutions to the internal conflict that creates animosity among the tribal members. They favor solutions that do not limit their sovereignty.

CONTENTS

1. INTRODUCTION

This dissertation recounts the efforts of the Pyramid Lake Paiute Tribe of Nevada to save Pyramid Lake as an anthropological case study to examine the ambiguous concept of tribal sovereignty that governs the political power and relationships of American Indian tribes. The current U.S. government policy of Indian Self-Determination involves a historically based government-to-government relationship between the United States and American Indian tribes. This relationship is defined by the principle of tribal sovereignty, which determines how significant problems and issues are identified and addressed in Indian Country (Castile 2006).

At one time all indigenous peoples who resided in what has become the United States were essentially sovereign entities. Although their methods of self-government varied widely, these indigenous peoples were independent political bodies that governed themselves, made war, and made agreements with other political bodies, including the United States, Great Britain, France, and with other Indian tribes. Indigenous peoples in the United States today no longer have absolute sovereignty because of treaties and agreements made with the U.S. government. However, federally recognized Indian tribes retain many important rights of self-government, which is defined as *tribal sovereignty* (Wilkins and Lomawaima 2001).

The exploration of tribal sovereignty is critical not only for understanding how American Indian tribes continue to work with the U.S. government and its agencies, but also how tribes must also contend with state and local governments despite the fact that American Indians are the poorest minority population in the United States (U.S. Civil Rights Commission 2003). Many governments throughout the world follow the lead of

the United States in dealing with indigenous people (Brown 2007). As a result, indigenous people around the world look to the Indian people of the United States as a model of success in fighting for their sovereign rights. In this case, aspects of the American Indian experience are relevant to other peoples, and exploration and understanding of the American model and its history are relevant to other indigenous groups of people fighting for their sovereign rights.

Because U.S. Indian policy has varied dramatically over time, both Indian and non-Indian people are unclear as to exactly what rights Indian tribes currently have. Non-Indians often react to the assertion of tribal sovereignty with confusion and fear (Biolsi 2001). When tribes try to assert these rights, they are regularly contested by private landowners, corporate entities, state and local governments, and federal agencies (McCool, 1994). As a result, American Indian tribes have to fight for their rights, and they have extensive experience fighting legal and legislative battles in defense of the limited yet significant rights that their sovereign status affords. In 2008, the Pyramid Lake Paiute Indian Tribe signed the Truckee River Operating Agreement (TROA), an important success in their ninety-year effort to assert their authority over water rights to preserve Pyramid Lake, the economic and spiritual heart of their reservation (Pyramid Lake Paiute Tribe, 2008). This dissertation is a case study of Pyramid Lake Paiute's assertion of political power that seeks to illuminate both conceptual and practical understandings of the significance of American Indian tribal sovereignty.

This dissertation differs from classic ethnographic writing in that I am not seeking to describe ancestral traditions or a "pristine" culture. I am focusing on the modern concept of tribal sovereignty, which is very much a part of being an Indian tribe in the

United States today. As of 2015 the Federal Register listed 566 federally recognized American Indian tribes. Each tribe has its own history and treaties or agreements and has experienced tribal sovereignty in different ways, but the basic concept of tribal sovereignty for all federally recognized Indian tribes in the United States stems from common historical roots.

The Pyramid Lake Paiute Tribe has long struggled to protect Pyramid Lake both as a habitat for the endangered species of fish that live in lake and for themselves as a people. Examining the perspectives of the members of the Pyramid Lake Paiute Tribal Council and the other parties involved in the negotiations and agreements provides the context in which the Pyramid Lake people have navigated while asserting their sovereign rights. By examining and analyzing their legal, legislative, and diplomatic efforts I seek to provide insight into how tribal sovereignty has actually worked. Certainly, many aspects of the Pyramid Lake Tribe's efforts are unique to their particular history and culture, but I assert that understanding the pitfalls and successes they encountered as they worked to save Pyramid Lake can provide a better understanding of the practical application of tribal sovereignty.

The model of the sovereign state involves a single, central, and final authority in which the people (nation), their government (state), and their land are conceived as a single unified organ and, as such, is subject to no other authority. Sovereignty is an idea about the use of power and authority that developed along with the idea of the nation-state during the Renaissance (Falk 1990; Jackson 2007). The nation-state developed in response to the chaotic patchwork of overlapping loyalties that characterized feudal Europe as rising commercial and political powers challenged the central authority of the

Pope and the Holy Roman Emperor. Nation-states are the predominant political actors in the world today and are often regarded as the only legitimate political actors (D'Errico 2006; Walker and Menlovitz 1990).

Since the mid-1970s, the official U.S policy regarding Indian tribes has been self-determination. Federal Indian Law author Felix Cohen (1942) and recent Native American scholars (Deloria 1979; Kickingbird et al. Berkey 1977; Wilkins and Lomawaima 2001) assert that Indian tribes are inherently sovereign political entities, retaining those rights of a nation-state not explicitly given up by treaty with the U.S. government. Operating under the principle of sovereignty, tribal governments have taken control of tribal lands and resources formerly administrated by federal, state, and local governments and used these resources to try to solve the tremendous economic and social problems that continue to plague Indian reservations (U.S. Commission on Civil Rights 2003). American Indian tribes operating under the banner of sovereignty have proven to be successful in addressing the problems facing Indian people in the United States (Castile 2006).

The actual authority granted by tribal sovereignty in the United States is not consistently formulated. Indian tribes along with state and federal governments regularly contest the boundaries of sovereignty, especially in matters of land ownership and water rights, as in the case of the Pyramid Lake Paiute Tribe. Because the political reality of tribal sovereignty does not match the theoretical ideal of absolute control of their territories, Native American intellectuals and tribal governments have worked to define tribal sovereignty to improve its utility. Native American activist intellectuals such as Ward Churchill (1994) and Russell Means (Republic of Lakotah 2009), were outspoken

in their aspiration for achieving independent nation-states status for Indian tribes within the current boundaries of the United States. Means and his Lakotah Freedom Delegation advocated forming an independent Lakotah nation-state in parts of Montana, Nebraska, North and South Dakota, and Wyoming, conforming to the Fort Laramie Treaty of 1868 (Republic of Lakotah 2009). Native American law professor Rebecca Tsosie (2003) asserts, however, that most American Indian tribes are working to extend tribal authority within the overall context of the United States. Wilkins and Lomawaima (2001) have defined the elements of tribal authority as a "bundle of reserved rights" not explicitly given up by Indian tribes by treaty, Supreme Court decisions, or federal law. According to Wendell Chino, long-time leader of the Mescalero Apache, "sovereignty, in essence, is power—pure and simple" (in Swaggerty 1979:91). First Nations scholar Takaiaiake Alfred says it is merely a philosophy, "a bargaining chip, a lever for concessions within the established constitutional framework" (Alfred 1999:68), and he questions the validity of applying such a Western concept to indigenous peoples at all. Tsosie (2003) states that Indian nations are trying to define a formal place for themselves within the federal system while maintaining independent identities.

Tribal leaders differentiate between political sovereignty and cultural sovereignty. Coffey and Tsosie (2006) state that political sovereignty involves the assertion of tribal political authority vis-à-vis federal, state, and local non-Indian authority, whereas cultural sovereignty involves questions of Indian identity, such as traditional languages and customs on Indian land, which are seen as the uncontested right of the tribes. Debates regarding tribal sovereignty are voiced by leading Navajo advocate John Redhouse (Swaggerty 1979), who questions the entire foundation of current tribal governments, and

Navajo tribal government in particular. He argues that many tribal governments are based on constitutions established under Wheeler-Howard Act of June 8, 1934, also called the Indian Reorganization ACT (IRA), and they do not reflect the identity and cultural traditions of the Indian tribes they represent. He argues that these constitutions lead tribes to operate more as business organizations and serve the needs of the United States more than the tribe itself. Redhouse's argument is similar to the critiques voiced by Locke and Rousseau, who also questioned the relationship between the government and the people (Walker 1988). This question of the foundation of sovereignty, or "where sovereignty lies," is instrumental for the legitimacy of political power (Jackson 2007)..

One of the most significant issues with the application of tribal sovereignty is that the political power of federally recognized tribes actually rests on the unsteady foundation of Supreme Court decisions. Even as tribes endeavor to assert sovereignty, the Supreme Court has handed down a number of decisions limiting tribal sovereignty (Barsh 2004). Much of this legal confusion is due to the vacillating nature of U.S. Indian policy. In chapter 3, I explore the dramatic changes in policy that have left in place large numbers of contradictory laws and court decisions that still technically carry the force of law. This has resulted in court cases in which the Indian and non-Indian litigants each enter the courtroom supported by different editions of existing law. The result is markedly contradictory court rulings, depending on the period of Indian law a judge uses as the foundation for a decision (Biolsi 2001). Court decisions are often made on very minor points that can be challenged again and again without ever getting to the heart of the problem. The rights that federally recognized Indian tribes hold in the U.S. federal system must constantly be negotiated and re-negotiated (Biolsi 2001; Lambert 2007).

Another factor which confounds understanding of tribal sovereignty is the plenary power of Congress. The U.S. Congress claims plenary power—exclusive, preemptive, absolute, and unlimited power—over tribes, their resources, and the field of Indian affairs. Though Congress acknowledges and sometimes supports the inherent sovereignty exercised by Indian tribes, it retains and exercises the power to change policies, laws, or even to either terminate or reaffirm the status of Indian tribes at any time through federal statute (Wilkins and Lomawaima 2001).

The overriding theme of the literature is the uncertain status and changing authority of tribal governments. This imprecise definition of tribal sovereignty means that neither the majority of Indian people nor non-Indian people are clear on the extent of political power held by Indian tribes. This resulting ambiguity has led to unrealistic expectations and fears about the extent of powers of federally recognized tribes. This uncertainty has been compounded by the failure of the United States to uphold its trust responsibilities to Indian tribes, so the descendants of settlers and Indian tribes have been positioned as enemies fighting for resources that each believes are rightfully theirs (Biolsi 2001). To be "sovereign," tribal governments must assert authority over Indian and non-Indian people within reservation boundaries and over those resources they are entitled to by law. This happens regularly as tribes assert authority they have not used in a long time or experiment with new endeavors, such as casinos. Non-Indian people are often anxious that the actions of tribal governments will rob them of land, water, or civil rights. These fears prompt them into legal and legislative battles with Indian tribes as they resist any extension of tribal authority, no matter how legitimate or justified (Biolsi 2001; Cattalino 2004; Lambert 2007). This comes through very clearly in water rights cases, where tribes

regularly face “iron triangles” or informal political alliances that work to influence federal policy in their favor. Federal water resource development is a classic example of one of these iron triangles (McCool 1994). The “sides” in these triangles include congressional committees or subcommittees, administrative agencies, and interest groups, many of whom actively support each other and steadfastly resist change. Despite these uncertainties, the Choctaw Nation of Oklahoma, the Seminole of Florida, and others have used their sovereign status as Indian tribes to dramatically alter various situations in their favor (Cattalino 2004; Lambert 2007).

The Effort to Save Pyramid Lake

Because of the changing nature of tribal sovereignty, a case study of a successful effort to assert tribal sovereignty can be used to illuminate exactly how tribal sovereignty worked at this place at this particular time. The Pyramid Lake Paiute people believe that Pyramid Lake is the spiritual and economic heart of their reservation. The tribe’s long and ultimately successful effort to save Pyramid Lake provides an opportunity to study the practical application of tribal sovereignty. This endeavor reveals differing perspectives on sovereignty and examines how closely those perspectives paralleled what actually occurred in the Paiute people’s effort to save the lake and the fish from upstream development: in other words, “tribal sovereignty in action.”

The Truckee River flows north out of Lake Tahoe and then turns eastward and runs down the eastern slope of the Sierra Nevada through the Truckee Meadows, where the cities of Reno and Sparks sit today. It continues east past the communities of Wadsworth and Fernley and finally turns north and flows into Pyramid Lake. In the past, the river also fed Winnemucca Lake (also called Mud Lake), an important wetlands area

supporting large numbers of birds and fish in the basin to the east of Pyramid Lake. The Northern Paiute people occupied the lower Truckee along with the Pyramid and Winnemucca Lake areas, while the Washoe people traditionally lived in and around Lake Tahoe and the Truckee Meadows.

The Pyramid Lake Indian Reservation in western Nevada is the home of the Pyramid Lake Paiute Tribe. Traditionally known as the *Kuyuidokado* (*cui-ui* eaters), the ancestors of this band of Northern Paiute people has lived around the Pyramid Lake area from time immemorial. Their creation story places them there as children of the first man and woman. According to their tradition, this first woman, the Stone Mother, still sits with her basket on the bank of the lake made from her tears (Pyramid Lake Paiute Tribe 2015).

The *cui-ui* and another native species, Lahonton cuthroat trout *(Oncorhynchus clarkii henshawi)* (LCT), formed the foundation of the Pyramid Lake people's economy and subsistence until the 1930s. The *cui-ui* (*Chasmistes cujus*) is a suckerfish endemic to Pyramid Lake and to Winnemucca Lake prior to its desiccation. This species exists nowhere else in the world, and as their traditional name suggests, the *cui-ui* has always been one of the most significant resources to the people at Pyramid Lake. The Lahonton cuthroat trout was also a major resource until the species went extinct in the 1940s. Euro-American accounts of the Northern Paiute people begin with John C. Fremont encountering the band at Pyramid Lake and trading for fish (Fremont 1851). The Pyramid Lake Paiute and Walker River Indian Reservations were set aside in 1859 as homes for the Northern Paiute peoples as Euro-American immigration increased. Stephan Powers passed through the area in 1875, collecting information for the 1876 Centennial

Exposition in Philadelphia, and he described many aspects of Northern Paiute culture, including fishing techniques at Pyramid Lake (Fowler and Fowler 1970). Fowler and Bath (1981) document the wide variety of nets, baskets, traps, weirs, harpoons, and other devices used to catch fish in the Truckee River and Pyramid Lake.

Encroachment by non-Indian settlers on the resources of the Pyramid Lake Reservation began almost immediately. Most of the arable farmland of the reservation was quickly lost to white squatters, and with the passage of the National Reclamation Act, the water that sustained the lake and fishery at Pyramid Lake was diverted for irrigation by Derby Dam, constructed by the Bureau of Reclamation in 1905 (Knack and Stewart 1999). Most and sometimes all of the water of the Truckee River was diverted for agriculture. Winnemucca Lake was the site of the Winnemucca National Wildlife Refuge, but diversions at Derby Dam reduced the water level of the Truckee below the level of the channel leading to the lake. By the mid-1930s, Winnemucca Lake had completely dried up. In 1938, when it became clear that it was not going to refill, its national refuge status was abandoned (Rusco 1992). By the 1940s, the surface of Pyramid Lake had dropped by 40 feet, the once abundant Lahonton cutthroat trout became extinct, and the *cui-ui* was in serious decline. In his 1976 film *Pyramid Lake Is Dying*, British investigative journalist John Pilgar explored the hopes of the Pyramid Lake people for saving the lake, but he pointed out that most people in the United States, the world, and even Pilgar himself, regarded the death of Pyramid Lake as inevitable. He stated, “The final irony of this story is that these defeated people actually think they are going to win out in the end” (Pilgar 1976). He concluded the film by saying that Pyramid Lake would

be yet one more example of white Americans plundering everything from Indian people in the name of progress.

Since its founding in 1934, the Pyramid Lake Tribal Council has fought continuously to preserve their ancestral use of and rights to the resources of their reservation. Against the tribe are an array of governments, organizations, and individuals who have tried to appropriate almost everything of value on the reservation, and because of the contradictory history of federal policy and law and the egregious failure of the U.S. government to uphold its trust responsibility, they argue that they are entitled to those resources (Biolsi 2001). In pursuit of their legitimate grievances, the tribe received help from some federal officials, but most federal, state, and local officials have actively worked to subvert tribal interests and rights through deliberate neglect, deception, and political maneuvering (Knack and Stewart 1999; Mortana 1973). Consequently, the Pyramid Lake Tribal Council has employed a wide variety of political acumen to assert their sovereignty as a federally recognized Indian tribe. The council's latest success, the Truckee River Operating Agreement (TROA), went into effect on December 1, 2015, under the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (P.L. 101-618), negotiated by the tribe in 1990. These events marked a significant milestone of tribal authority in western Nevada and should be one of the final chapters of the "Truckee River/Pyramid Lake water wars" (Pyramid Lake Paiute Tribe 2008).

The history recounted in this dissertation regarding the Pyramid Lake Paiute Tribe's efforts to save Pyramid Lake provides an excellent case study to explore these ideas of sovereignty and tribal sovereignty and how they are conceived by one tribal government. It has also allows the examination of the successful application of tribal

authority under the auspices of sovereignty within the U.S. federal system to achieve a long-sought goal, the rescue of the sacred spiritual and economic resource that is Pyramid Lake.

Biolsi (2001) contends that Indian and non-Indian people have been positioned as local enemies by structural forces beyond their control and that it is not possible to understand the contentious battles, agreements, and court decisions over the extent of tribal authority without exploring the perspectives of the non-Indians who vie with the tribes for land and other resources. To this end, my project explores the perspectives of numerous non-Indian political and corporate entities, including the states of Nevada and California, the Truckee-Carson Irrigation District (TCID), Sierra Pacific Power Company, and the U.S. government.

Finally, I sought to identify perspectives on the foundations of political power, or "where sovereignty lies," even on the local level. This is vital because this question involves the legitimacy of the use of political power. Conflict among tribal members over the role of the Tribal Council and the tribal chairman and their ideas of the proper use of political power within the Pyramid Lake Tribe hamper the ability and the authority of the Pyramid Lake Tribal Council to assert political sovereignty.

Objectives and Methodology

This research was organized around two objectives. The first entails investigating the Pyramid Lake Paiute Tribal Council's perspectives on tribal sovereignty and their actual experience of sovereignty with specific reference to their efforts to save Pyramid Lake. This will involve comparing how the concepts of sovereignty and tribal sovereignty held by scholars, tribal leaders, and other voices relate to the practical

application of sovereignty exemplified by the Pyramid Lake Paiute Tribe's efforts leading to the Pyramid Lake-Truckee-Carson Water Rights Settlement (Title II of P.L. 101-618, the Fallon Paiute Shoshone Tribal Settlement Act, signed into law on November 9, 1990; 104 Stat. 3289) and the Truckee River Operating Agreement (TROA). The second objective involves examination of the perceptions of the Pyramid Lake Tribe and tribal sovereignty held by the federal, state, and local organizations that have worked for and against the tribe's efforts to secure water to save Pyramid Lake. I originally saw the question of "where sovereignty lies" as a minor part of the first objective. However, over the course of fieldwork and analysis, this question became vital to understanding how sovereignty has been and is exercised at Pyramid Lake. Therefore, I devote an entire chapter to understanding this question and issues associated with it.

To address these questions, I employed participant observation, semi-structured interviews, and archival research. I began with participant observation by attending monthly tribal council meetings. I was looking for issues that involved any aspect of tribal sovereignty, but particularly those relating to Pyramid Lake, the Truckee River, and any related water issues.

To explore perceptions of the concept of tribal sovereignty, I conducted semi-structured and open-ended interviews with twenty-three people. To explore the perceptions of tribal sovereignty among the members of the Pyramid Lake Tribe and Tribal Council, twelve interviews were conducted with former and current tribal council members, tribal officers, and tribal attorneys. I wanted to address how the members of the Pyramid Lake Tribal Council understand the concept of tribal sovereignty and what sovereignty means to them. How did they characterize the efforts to save Pyramid Lake?

I also wanted to explore how these tribal leaders see their status within the federal system and in relation to other entities, in particular the states of Nevada and California; the cities of Reno, Sparks, and Truckee; and other organizations, such as Westpac Utilities or TCID. How have changes in federal policy and court decisions affected their concept of tribal sovereignty? (See Appendix A for the list of questions used to guide the interviews.) Whenever possible, I gave the questions to the participants before the interview. I was able to conduct follow-up interviews with several council members and tribal officers to explore the impact of other issues of tribal sovereignty that had come before the tribal council and the question of where sovereignty lies.

The second objective, approaching other parties involved in the Truckee River/Pyramid Lake water conflict, was to understand the primarily non-Indian perspective: how they viewed tribal sovereignty and the Pyramid Lake Tribe's efforts to assert their authority. Questions for these participants included: What are these people's and organizations' perspectives regarding tribal sovereignty and the Pyramid Lake Tribe's efforts to assert sovereignty over water to save the lake? What are their perceptions of the tribe itself? Do any of them see themselves as being treated unfairly? I was able to conduct eleven interviews with representatives from other agencies involved in the PL101-618 and TROA negotiations. It was important to include federal, state, and local actors. I endeavored to interview people who were directly involved in negotiations. These included Mary Conelly, director of Senator Harry Reid's state office, as well as negotiators for the Bureau of Indian Affairs (BIA), the State of Nevada, and Sierra Pacific Power Company/Truckee Meadows Water Authority (TMWA). I also conducted

interviews with representatives from the Truckee-Carson Irrigation District, the Nature Conservancy, the cities of Reno and Sparks, and the Fallon Paiute-Shoshone Tribe.[1]

All semi-structured and open-ended interviews were recorded when permission was granted. Otherwise, I took extensive notes and transcribed the interview as soon as possible. Recorded interviews were transcribed and then all interviews were coded to allow for more thorough data analysis. Coding involved labeling topics such as water rights, sovereignty, history, and so on, in each section of the interviews for later reference.

Many people declined to be interviewed. Several current and former tribal council members declined. Some expressed concern that an interview might have a negative effect on the as-yet-unresolved TROA agreement. The California official in charge of negotiations stated that he had done enough interviews, but he directed me to the Bureau of Reclamation's Oral History Project on the Newlands Project. These oral history interviews, conducted by Dr. Donald Seney from the Oral History Program at Sacramento State University, proved to be a rich repository with interviews of many persons involved in the negotiations, including some who had died, were unavailable, or had declined to be interviewed as part of this project.

To broaden my understanding of the context and circumstances of people involved in the tribe's efforts to save the lake, I used archival research to gauge the perspective of the other communities with a stake in the negotiations; my significant resources were newspapers and legislative documents. I examined editorials, statements,

[1] The Fallon Paiute-Shoshone tribe is included because they receive water from the Newlands Irrigation Project. Although their land and water are not part of the project or the rights associated with the project, their interests sometimes align with those of the Newlands Project.

letters to the editor, and articles on the negotiations and agreements published in local papers as well as in Reno, Sparks, and Fallon, Nevada, along with news accounts of the negotiations in the state capitals of Carson City, Nevada, and Sacramento, California. Archival data were interpreted using Content Analysis (Bernard 1994:339), and each document was coded with the identity of the author and the perspective on the tribe's efforts. These data were critically examined to provide a profile of the Pyramid Lake Tribe and tribal authority from the perspectives of the surrounding communities, as well as the states of Nevada and California.

2. THE CONCEPT OF SOVEREIGNTY

This chapter explores the concept of sovereignty, which is central in modern global politics. I discuss the attributes of the idea and its relationship to the nation-state. I then move to sovereignty's origins in Renaissance Europe and how the concept changed with the advent of European colonialism, and with the development of ideas such as the Doctrine of Discovery to justify the domination and displacement of indigenous peoples. I then look at how the United States has used sovereignty in dealing with American Indians, and how in the past fifty years Indian tribes across the United States have adopted the language of sovereignty in the form of "tribal sovereignty" to assert their own political authority within the context of the United States.

Sovereignty

Sovereignty is the dominant paradigm regarding the organization of political power in the modern world. "Sovereignty is an idea of authority embodied in those bordered territorial organizations we refer to as 'states' or 'nations' and expressed in various relation and activities both domestic and foreign. . . . Sovereignty is at the center of the political arrangements and legal practices of the modern world" (Jackson 2007:ix). Sovereignty is just one of many ideas about organization and power. Contemporary concepts of sovereignty are built around the idea of the nation-state, a defined territory ideally occupied by a single nation or ethnic group. Most countries are not nation-states in this sense. Nearly all countries have significant minorities composed of immigrants or indigenous peoples who are denied sovereignty or possess limited access to sovereign rights and are under the authority of the government of the recognized state in which they

live. This puts these other populations under the administration of dominant majorities who regularly oppress them, deliberately or otherwise.

Sovereignty governs relations between nation-states throughout the world (often referred to as "nations" or "countries" to distinguish them from the fifty U.S. states). Central to the idea of sovereignty is the concept of the nation-state: The concept of sovereignty as it is used today developed along with the concept of the independent, territorial state during the Renaissance in response to the chaotic patchwork of overlapping loyalties that characterized feudal Europe (Camileri 1990; Falk 1990). Powerful territorial governments within the Christian world began to reject the overarching authority of the Pope and the Holy Roman Emperor and act on their own. This idea of a single, central, and final authority comes when the state and the people are conceived of as a single unified organ, and therefore, the people (nation), their government (state), and the territory they control are one and the same and, as such, are subject to no other authority.

> By "state" I refer to the conventional meaning: a defined and delimited territory, with a permanent population, and under the authority of a government. . . . Governmental supremacy and independence is that distinctive configuration of state authority that we refer to as "sovereignty." It is vested in the highest offices and institutions of states as defined by constitutional law: kings, presidents, parliaments, supreme courts, etc. It is also vested in the independence of states: their political and legal insulation from foreign governments as acknowledged by international law. When the government of a state is said to be sovereign, it holds supreme authority domestically and independent authority internationally, at one and the same time (Jackson 2007:6).

Walker and Menlovitz (1990), D'Errico (2006), and others note that states are the predominant political actors in the world today and are regarded by many as the only legitimate political actors. Groups that do not fit the approved criteria are denied access to the international community, and the political power they can exercise within the state

in which they reside is severely limited. A good example here is the Palestinians, who have a government and a putative territory but are unable to exercise sovereignty over that territory and remain unrecognized by many other states. In some cases, the existence of ethnic groups without their own state is even denied, as is the case of unrecognized tribes in the United States, unrecognized minorities in China (Gladney 2007), and Kurds in Turkey (*Washington Post* 1999).

Internal sovereignty

As noted by Jackson (2007:11), technically sovereign states wield undisputed control over their territory and are also independent of any outside control. The government of the state is *the* sovereign and the supreme authority in that country. This government can be embodied in a monarch, dictator (populist, fascist, communist, etc.), some type of popular assembly, or the whole of the citizen body, as in the preamble to the United States Constitution, "We the people. . ."

Although the actions of any government may be questioned by outsiders, they have no legal right to intervene in any of the internal affairs of another sovereign state. This, of course, does not prevent outside interference, but "The doctrine of non-intervention long has been, and still continues to be, keyed to the idea of state independence and territorial integrity" (Jackson 2007:9). The lines on the political map (e.g., international boundaries) designate the political and legal independence of sovereign states. Whether indicated on the ground or not, these lines mark the official boundaries of authority for any nation or state. International borders demarcate the most basic "this is ours, and that is yours" of global political life. Within their own borders, governments are entitled to do as they will. This includes such things as taxing their

citizens, compelling them to military service, regulating property and trade, administering justice, and any other action the government sees fit to take.

External sovereignty

Externally, a state is but one among many such authorities around the world. In the outward exercise of their sovereignty, states are never in a position of supremacy. They are in a position of independence (Jackson 2007:11). States are the actors on the world stage. Classical international theory posits that states exist in a world of anarchy and must depend upon themselves to survive (Jackson 1990:164). As such, each state has the authority to make and break agreements with other states, wage war, boast, bully, shove, and otherwise operate as a completely independent entity. Every state enters into treaties, compacts, and other agreements with other states; however, every state also retains the right to break those agreements at any time and declare them null and void. Repercussions from the other signatories of any particular agreement may follow; however, the right to break the agreement is not questioned. Likewise, ideas and treaties involving human rights and international morality influence the actions of states; however, states do not always abide by them. History indicates that, in true Machiavellian fashion, most do or at least appear to do so when it suits their purposes, but clearly all states reserve the right to perform any act at any time.

Sovereignty Is an Idea

Sovereignty is not a fact of nature, but merely a Western expression of a claim about the way political power is, or should be, exercised that has been generalized to the rest of the world (Bateson 1990; Camilleri 1990; Hinsley 1964; Jackson 2007). It has

become hegemonic in the Gramscian[2] sense, in that no other form of political organization is accepted in international relations today. Although indigenous people have traditionally worked with, in, and through other forms of organization, any group of people that is not represented by the government of a sovereign state is denied access to the international community. Many ethnic groups have tried or are trying to assert an independent existence, though, and ethnic civil wars across the former colonial world are the result.

Other ideas about the role of political power within and between societies have existed and still exist, but the concept of the sovereign state is the predominant paradigm in international relations. Other eras have had different arrangements of authority. The medieval world of Latin Christendom operated without a notion of state sovereignty. The Roman Empire also carried on without it. The Imperial dynasties of China, the Islamic Ottoman Empire and the Mogul Empire in South Asia operated with notions of suzerainty, not sovereignty. They held sway over diverse territories and populations, usually with the aim of exacting tribute. "Their Weltanshauungen, and also that of Rome, was hierarchical and not horizontal, and they were on top" (Jackson 2007:7).

Territoriality is common in all cultures, but boundaries are not (Bateson 1990). All human groups recognize leadership of one form or another and use it to make decisions, but such leadership is rarely regarded as absolute or exclusive. Thus, sovereignty is neither universal nor necessary. Common themes in the discussion of world order have been the question of how to create an authority with sufficient power to enforce its will unambiguously. The viability of ambiguity is rejected by the logics of

[2] Antonio Gramsci conceptualized hegemony as the ruling class spreading their world view to the ruled, thus making the political status quo acceptable and normal (Bates 1975).

sovereignty and monotheism, but pluralism and ambiguity have worked well in many parts of the world for millennia. Bateson (1990) points out that the U.S. constitution serves so well because of its ambiguity. Pursuant to the constitution, not all disputes are resolved from above, and not all need to be resolved.

History of the Concept

The concept of sovereignty is a relatively simple idea states can use to build any type of state government large or small, as long as they follow the rules (Jackson 2007:56). Sovereignty has resided in kings and royal families (dynastic sovereignty), imperial powers and their colonial agents (imperial sovereignty), national parliaments and assemblies (parliamentary sovereignty), and the entire citizenry of a country. The same state can be sovereign in different ways in different places. In the early twentieth century, the British House of Commons was the central institution of both parliamentary sovereignty in the United Kingdom and imperial sovereignty in numerous British colonies around the world.

Walker (1988) notes, however that these concepts of nation/state/sovereignty are not static and have developed and changed over time. Sovereignty is not an abstract idea fashioned by philosophers and other theoreticians and then applied in practice (Jackson 2007:xi). It is an expedient idea worked out by kings, dukes, princes, other rulers, and their agents, in response to the novel circumstances of sixteenth- and seventeenth-century Europe. The rulers of early modern Europe developed this idea in their repudiation of the overarching authority of the pope, who was then the theocratic head of Latin Christendom. With the Renaissance and the Reformation fracturing of the power of the Catholic Church, Jackson notes that it was the Italian city-states such as Venice and

Florence that first began to assert themselves as independent actors outside the power of the papacy.

Venice and Florence were soon joined by other European political and religious actors, such as Henry VIII of England, who sought to escape from their subjugation to the papal authorities of medieval Europe and to establish their independence from all outside authorities, including each other (Jackson 2007:6). "[M]ost scholars see the seventeenth century and particularly the peace treaties of Westphalia (1648), which settled the Thirty Years War (1618–48), as the best historical reference for signifying that momentous turn in European history. That episode effectively removed or led to the removal of the last vestiges of papal authority over international affairs and acknowledged the states of Europe, both Catholic and Protestant, as independent entities" (Jackson 2007:50–51). This established the right to national self-determination, and the nation-state was born.

Where Does Sovereignty Lie?

Governments require legitimacy and legality to be stable and effective in the long-term; power alone is not sufficient (Jackson 2007:56). With the rise of Christianity and the collapse of the Roman Empire, the Catholic Church united Europe, and the head of the Church was the pope. The pope was the conduit of God, and to defy the pope was to risk excommunication, to be punished in this life as well as the afterlife. With the breakup of Europe into sovereign states, the king became the conduit of God. The divine right of kings was exemplified by this quote from King James I of England as he addressed the Parliament on March 21, 1609: "Kings are not only God's lieutenants upon Earth and sit upon God's throne, but even by God himself they are called gods . . . and they have the power of raising and casting down, of life and death, judges over all their subjects and all

causes and yet accountable to none but God only" (McIlwain 1918:307).

Over time, ideas changed, and people no longer accepted the legal rights of kings and dynasties as omnipotent rulers. When various kings' assertions to divine authority were rejected, it became necessary to find other grounds for sovereign authority of secular governments. Enlightenment philosophers such as Locke and Rousseau provided a new foundation, and "the people" began to come into view as the basis of state sovereignty. "What proved to be morally decisive in defying the king, or at least curbing royal authority and power, was the claim that sovereignty was a trust from the people" (Jackson 2007:58). In the Declaration of Independence, Thomas Jefferson wrote of governments being "instituted among men, deriving their just powers from the consent of the governed," and indeed the preamble to U.S. Constitution states, "We the people of the United States, in order to form a more perfect union . . . do ordain and establish this Constitution for the United States of America." At least in theory, "it is 'the people' who do not answer to anyone else. The President and the Congress answer to 'the people'" (Jackson 2007:18).

As popular movements began to reject the divine authority of kings in the late eighteenth century, and vesting sovereignty in "the people," they required the creation of constitutions of various forms to define how this sovereignty worked. "A people cannot exist in political reality without a constitution which validates their existence and which is widely if not universally accepted. The clearest and most significant case in point is the United States, where the Constitution provides the basic vocabulary and grammar of political life" (Jackson 2007:93). The document defines who the people are and how the government will operate, and it defines where supremacy resides on any specific issue.

Supremacy can lie at the federal level, such as federal Indian law, or at the "state" or provincial level of authority (Jackson 2007:11).

The concept of the nation-state created the conditions under which individual ethnic groups defied the global authority of the pope and established the political independence of each ethnic group within their own state. With the advent of colonialism, however, this changed. "Colonialism resurrected a dynastic practice killed by the rise of nationalism in Europe whereby sovereigns acquired and held various non-contingent lands as parts of their states or empires" (Jackson 1990:67). As the new nation-states began to extend authority over colonial "others," the dominant group within each state retained—indeed fortified—the dominant political power for themselves.

In a constitutional democracy, the dominant ethnic or racial group writes the constitution and gets to decide who "the people" are. They can exclude anyone they choose, and there is no obligation to be equitable or fair. For example, in the United States of 1800, only free men of European descent who owned property were recognized as citizens with a right to vote. Despite Abigail Adams's famous plea, women were designated secondary citizens and could not vote until 1920 with the ratification of the Nineteenth Amendment to the Constitution. Black slaves counted as three-fifths of a person for purposes of taxation and representation in Congress but were not citizens and had no rights. Free persons of African descent were citizens, paid taxes, and had some rights, but these rights varied greatly between states. They were regularly denied such rights as voting and testifying in court (Litwack 1961). The Dred Scott decision later declared that people of African descent were not citizens, could not vote, and were not protected by the Constitution (*Dred Scott v. Sandford*, 60 U.S. [393] 1857), and they

remained so until passage of the Fourteenth Amendment, which declared all persons born or naturalized into the United States and subject to the jurisdiction of the United States are citizens. The amendment expressly excludes Indians who were "not taxed." Indian people were not granted citizenship and guaranteed the right to vote until the act of June 2, 1924 (43 Stat. 253, ante, 420). Thus, although the foundation of most modern governments is "the people," that term conforms to whatever the dominant group decides it means.

Sovereign Europe vs. the World

The military and political power of groups such as Imperial China, the Ottoman Empire, as well as numerous indigenous tribes, states and confederacies was sufficient that Europeans and Americans had to deal with them on relatively balanced terms. Demonstrated capacity for self-government created credibility and respect that warranted recognition (Jackson 1990:34). In the early days of European expansion into North America, the political power of the Iroquois Confederacy, the Creek Confederacy, the Cherokee, the Shawnee, and other American Indian tribes could not be denied. They were not states in the European sense, but European governments and later the U.S. government had no option but to treat with them on an equal basis, by negotiating and signing treaties, as they did among themselves.

> [D]uring the early period of European Imperialism, there was a willingness to recognize the sovereignty of non-Western rulers in accordance with the doctrine of Natural law. . . . Natural law, rooted in ancient and medieval jurisprudence was later displaced by positive law—such as the British Foreign Jurisdiction Acts—as the basis for European and American claims to territorial sovereignty in the non-Western areas of the world. Positive law was the law that European sovereign states created for themselves. That restricted the right of territorial sovereignty almost entirely to European and later Western states occurred once they became sufficiently powerful to brush indigenous non-European authorities aside. In that way, via European imperialism, sovereignty became a global institution. Even

> when non-European authorities could not be completely subjected to imperial sovereignty, as in the case of China, Western states nonetheless employed their military and commercial power and the international law of the day to handicap indigenous authorities. (Jackson 2007: 73–74)

The expansion of the European international political system eventually included the entire world. Even with the decline of colonialism, former colonial boundaries still form the basis of most modern states, and the majority of indigenous peoples are either neatly contained or disdainfully neglected within them. "It consecrates the ex-colonial boundaries and ironically is the triumph of the European definition of the non-European world—as indicated by the current map of Asia, Africa, and Oceania which is scarcely altered from colonial times and bears only limited resemblance to the pre-existing political situation" (Jackson 1996:41). Indigenous peoples who are not in charge of governments are generally dismissed as internal problems of the sovereign governments, even those that traditionally existed as states in their own right, such as Dahomey (now Benin) or Hawai'i.

Doctrine of Discovery

As European explorers set out around the world and European merchants and settlers followed them, they regularly took advantage of the local populations and pushed them aside whenever possible. "They . . . were inclined to recognize each other's empires, according to the rule of reciprocity, while not recognizing most non-European political authorities" (Jackson 2007:73). Jackson further points out that non-European authorities were almost always regarded as lacking valid claims to sovereignty and were accordingly subjected to unequal treaties and other discriminatory measures by European intruders. The justification for discrimination had a medieval echo: it was the right and indeed the responsibility of Europeans to rule non-Europeans of different, and by

implication lesser, religions and civilizations than their own. There was believed to be a "standard of civilization, to which non-western societies had to measure up, before they could make a credible claim to state sovereignty" (Jackson 2007:74). This attitude became formalized as the Doctrine of Discovery.

According to Miller (2008), the current relationship of Western-style governments and indigenous peoples had its beginnings in the thirteenth-century, as Pope Innocent IV pondered the legality of the Crusades. The question involved the authority of Christians to invade and dispossess infidels of their *dominium*, their governmental sovereignty, and their property. He reasoned that non-Christians' natural legal rights to choose their own leaders and to own property were qualified by the papacy's divine mandate to care for the entire world. "Because the pope was entrusted with the task of the spiritual health of all humans, . . . the pope had a voice in all the affairs of all humans. It was the duty of the pope to intervene even in the secular affairs of infidels when they violated natural law, as that natural law was defined by Europeans and the Church" (Miller 2008:12).

Under pressure from the advancing Turks, Portugal's maritime explorations to the Canary Islands and beyond prompted changes in the justification of European expansion. "The new argument for European and Christian domination was not based on the infidels' lack of dominion or natural rights, but instead based Portuguese rights of discovery on the perceived need to protect natives from the oppression of others and to lead them to civilization and conversion under papal guidance" (2008:13–14). With this in mind, Pope Nicolas V penned *Romanus Pontifex* in 1454 to aid Alfonso of Portugal and other Christian leaders in defense and expansion of Catholic Christianity:

> to invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms,

> dukedoms, principalities, dominions, possessions, and all moveable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery, and to apply and appropriate to himself and his successors the kingdoms, dukedoms, counties, principalities, dominions, possessions, and goods and convert them to his and their use and profit.

With this statement Nicholas declared Christianity *über alles*, all non-Christians as fair game for any *Christian* sovereign to exploit for their own advantage, and even that any attempt to aid a non-Christian people becomes a crime. The pressure from the Muslim advance seems to have created something of a siege mentality that never went away, even when the tables were turned and European, and much later American, governments held dominant power.

While Alfonso and the Portuguese were given free rein to pillage the non-Christian world, Columbus's arrival in the Americas under the Spanish flag created a problem because this land had technically already been promised to the Portuguese. In an effort to encourage Spanish exploration and exploitation of these lands, in his *Inter Caetera* (1493) Pope Alexander VI agreed to "give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south by drawing and establishing a line . . . one hundred leagues towards the west and south from any of the islands of commonly known as the Azores and Cape Verde." However, any lands already claimed by the Portuguese were off limits.

The depredations wrought by the Spanish and Portuguese explorers were taken to such extremes that Pope Paul III was compelled in 1537 to declare, in *Sublimus Dei,*

> The enemy of the human race . . . he inspired his satellites who, to please him, have not hesitated to publish abroad that the Indians of the West and South, and

> other people of whom We have recent knowledge should be treated as dumb brutes created for our service, pretending they are incapable of receiving the Catholic Faith. We, who, though unworthy, exercise on Earth the power of our Lord and seek with all our might to bring those sheep of His flock who are outside the fold into the fold committed to our charge, consider, however, that the Indians are truly men and that they are not only capable of understanding the Catholic Faith but, according our information, they desire exceedingly to receive it. . . . the said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and have no effect.

This position retreats from the earlier pronouncements and may have relieved some of the most egregious injustices against indigenous people, but did not signify that Europeans dealt with non-European peoples as equals.

There was some ambiguity in what was required to claim discovery. The Spanish and Portuguese felt that the New World was already theirs, granted by the papal Bulls, but England and France, anxious to obtain land rights in North America, "argued that the Doctrine required a European country to actually occupy and have current possession of non-Christian lands to perfect a title to newly found lands" (Miller 2008:18). With that, the British, French, Dutch, and even the Swedish rushed to found colonies around the world, and Miller notes that the British and French, now Protestant nations, modified the definition of Discovery with the concept of *terra nullis*. "This element stated that lands that weren't occupied by any person or nation, or which were occupied but not being used in a fashion that European legal systems approved, were considered to be empty and waste and available for Discovery" (Miller 2008:21). By this definition, all of North America was vacant except where the Spanish had actually established a colony at St. Augustine in Florida, and the other Europeans moved in.

The Doctrine of Discovery was and is widely accepted and applied by all of the European nations as well as the United States to justify colonizing and settling the Americas and dominating the native inhabitants. "The Doctrine of Discovery is not a relic of ancient history in either American law or International law. It continues to have relevance today" (Miller 2008:23). The doctrine forms the foundation of relations between nearly all modern states and the indigenous peoples that reside within them. The abuses that have been justified by the Discovery Doctrine have led the General Convention of the Episcopal Church to repudiate the doctrine in 2009, followed by the Anglican Church of Canada in 2010 and the World Council of Churches in 2012 (Fox 2012). The recent adoption of the Declaration of Rights of Indigenous Peoples by the United Nations would counter many of the doctrine's abuses, but in their status as independent states, we have yet to see how seriously the signatory nations will abide by it.

North America and Tribal Sovereignty

As the British moved into North America, they encountered not only numerous powerful Indian tribes but also Dutch, French, Swedish and Spanish colonies. Despite their expansive ambitions, they did not have the power to take land from the Indians nor to expel the other Europeans. "Europeans did not begin with hegemony in the New World. They gained it only gradually, and while they were working toward it, they and their Indian opposites created something new" (Jones 1988:186). Because of the relatively equal power balance between the various Indian tribes, the British, and other European colonies, a diplomatic system was established "that tied disparate, self-interested groups into a grid of extended interlocking relationships. The relationships

were defined by treaties, and the treaties were a reflection of the leverage of each group during negotiations" (Jones 1988:188). To this end, the British made treaties with the various Indian tribes for peace, land cession, and war against the other Europeans and other Indian tribes. The British concluded 175 treaties with various Indian tribes between 1607 and 1775, and Indians leaders were tough negotiators (Jones 1988). "Out of the almost daily interaction among Indians and Europeans came a system of treaties that was complex, flexible, completely satisfactory to none, and yet—on the whole—a remarkable achievement for people whose principals and interests, were frequently in opposition" (Jones 1988:185).

With the Declaration of Independence and the end of the Revolutionary War, the United States established itself an independent and sovereign state according to the European model. The newly formed United States invoked the status and powers of a sovereign European state and used the Doctrine of Discovery to justify its treatment of Indian tribes. As the British had experienced, at the time of the American Revolution the power of Indian tribes was such that the United States could not simply dispossess them (D'errico 2006; Hoxie 2007; Newton 1986; Williams 1984) but had to treat with them as separate entities. As such, the United States entered into hundreds of treaties with various Indian tribes.

Under the leadership of Chief Justice John Marshall, the U.S. Supreme Court issued a number of decisions which established the European paradigm of state sovereignty in the new nation's relations with Indian tribes. Three of the most important were *Johnson v. McIntosh*, *Cherokee Nation v. Georgia*, and *Worchester v. Georgia*.

In the first, *Johnson's Lessee v. William McIntosh* (21 U.S. 543 1823), Marshall

asserted that the U.S. government acquired complete title to the territory it governs or claims because it is the successor to Great Britain. The United States succeeded to the title of all lands claimed by the British Crown by virtue of victory in the Revolutionary War. He further established that the United States staked a claim under the Right of Discovery to Indian lands and expressed the right to dispossess the Indian tribes of their lands.

> By the treaty which concluded the war of our revolution, Great Britain relinquished all claim, not only to the government, but to the "propriety and territorial rights of the United States," whose boundaries were fixed in the second article. By this treaty, the powers of government, and the right to soil, which had previously been in Great Britain, passed definitively to these States (*Johnson v. McIntosh* 1823).

> While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all, to convey a title to the grantees, subject only to the Indian right of occupancy. . . . The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles. (*Johnson v. McIntosh* 1823)

Marshall argued both that the U.S. government acquired title to the territory it governs and the subordinate status of the title of the original inhabitants. The decision also claims the right to limit the degree of sovereignty Indian tribes are allowed to claim. Importantly, Marshall asserts that only the U.S. government can terminate Indian title to the land; the individual states cannot.

> They [original inhabitants] were admitted to be the rightful occupants of the soil, with a legal as well as a just claim to possession of it, and to use it according to their own discretion but their rights to complete sovereignty as independent nations were necessarily diminished and their power to dispose of the soil at their own will, to whomsoever they pleased was denied by the fundamental principle that discovery gave title to those who made it. . . . They [the United States] maintain as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave also a right to such a degree of sovereignty as the circumstances of the

people would allow them to exercise. (*Johnson v. McIntosh* 1823)

Much like *Romulus Pontifex*, this decision forms the basis of U.S. Indian policy in asserting the ultimate right to disenfranchise and dispossess non-European peoples. Marshall found that the court cannot interfere in the process by which Indian land is acquired because the judiciary must serve the needs of the conqueror (the United States), no matter how reasonable and fair the claims of the Native peoples may be. All the courts can do is urge that government dealings with the Native Americans be "reasonable and just."

The next major decision of the Marshall court dealing with American Indians was *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). As the state of Georgia moved to seize Cherokee lands within its boundaries, the Cherokee Nation filed suit to stop the unlawful seizure of Cherokee property guaranteed under treaties with the United States. The court rejected the claim because Marshall asserted that the Cherokee Nation did not qualify as a foreign state; despite the treaties with the United States, it did not act like a sovereign state in the European sense and therefore could not file the suit against Georgia.

> Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. 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. Meanwhile they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian. (*Cherokee Nation v. Georgia* 1831)

This also establishes what has been called the "trust relationship" doctrine. The United States assumes the role of guardian to Indian tribes to look after their best

interests, with “moral obligations of the highest responsibility and trust” that should “be judged by the most exacting fiduciary standards” (*Seminole Nation v. United States*, 316 U.S. 286, 297 [1942]). However, Newton (1986) and many other scholars state that this has been a guideline rather than a rigorous legal stance. “[T]he trust doctrine has been used to rationalize some of the greatest intrusions into tribal sovereignty, cultural independence, and property rights” (Newton 1986:67).

As Georgia continued to push its claim to Cherokee territory and expel them, Marshall further defined the status of American Indian tribes in the United States in *Worchester v. Georgia* (31 U.S. 515 1832). Much like his papal predecessors in *Sublimus Dei*, Marshall seems to be trying to head off the gross injustice of Indian removal by asserting the right of the Cherokee to self-government and independence. Again borrowing from European tradition, he flatly denies the claims of the state of Georgia to Cherokee territory, but he reaffirms the right of the U.S. government to deal with the Cherokee nation through treaties and statutes.

> The actual state of things at the time, and all history since, explain these charters; and the king of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly asserted titles can derive no aid from the articles so often repeated in Indian treaties; extending to them, first, the protection of Great Britain, and subsequently, that of the United States. These articles are associated with others, recognizing their title to self government. The very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state. Examples of this kind are not wanting in Europe. “Tributary and feudatory states,” says Vattel, “do not thereby cease to be sovereign and independent states, so long as self government and sovereign and independent authority are left in the administration of the state.” At the present day, more than one state may be considered as holding its right of self government under the guarantee and protection of one or more allies.

> 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, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States. (*Worchester v. Georgia* 1832)

The status of Indian tribes as distinct political entities was affirmed in *Worchester v. Georgia*; however, that decision also affirmed every Indian tribe's inferior standing in United States law as domestic dependent nations. Despite the *Worchester* decision, the U.S. government convinced the Cherokee that they had to abandon their territory in Georgia and set a dangerous precedent for dispossessing Indian people from their lands. However, as the power of the United States grew, the federal government manipulated the laws and treaties in favor of the United States and against Indian peoples in efforts to seize land and resources (Wilkins 1997; Williams 1984).

Note that under Marshall's definition, the Cherokee fit the description of a modern state, as do many indigenous groups who reside within recognized countries today. Likewise, the Discovery Doctrine has been described in a federal district court decision as a legal fiction with no basis in law (*Oneida Indian Nation of Wisconsin v. State of New York*, 649 F. Supp. 420, 424 [1986]). However, the U.S. legal system is based on precedent, and Marshall established the precedent on what was considered "understood by all" in *Johnson v. McIntosh*, and clearly is still considered so by the United States. In contrast,

> Self-determination of peoples as acknowledged by the UN Charter (Article 1) has been reiterated by many subsequent treaties, declarations, and resolutions by the international community. Who today is entitled to self-determination? Who qualifies as "peoples"? It is no longer a positive right of *national* self-determination—very few new states are "nations" either by long history or common ethnicity or successful constitutional integration. . . . Numerous peoples

> which were not colonies could not claim this new right of self-determination and have accordingly been barred from entering the international community. Many which still aspire to independence are consequently frustrated by the rules of the new sovereignty game which not only exclude them, but give no sign of allowing them to play in the future. The accidents of history consign them to the role of unwilling spectators even where they may be in effective control of territory—as in the case of Eritrea. Baluchis, Biafrans, Eritreans, Tigreans, Ewes, Gandans, Karens, Katchins, Kurds, Moros, Pathans, Sikhs, Tamils, and many other ethnonationalities are the abandoned peoples of the contemporary community of states. The moral language of the game refers to them disparagingly as "separatists", "secessionists", or "irredentists" which strongly suggests that they are illegitimate and not likely to be admitted to the clubhouse in the foreseeable future. (Jackson 1990:41) [Note: Eritrea established itself as an independent state in 1993]

Though the sovereignty of Indian tribes within the United States was originally defined by the Marshall decisions, it has fluctuated with U.S. Indian policy since that time. In 1871, with the end of the treaty era, with its policy of making mutually-agreed-upon treaties with Indian tribes, the United States began dealing with tribes through congressional statute and without their consent, even as a formality. Through this process, Congress steadily began to encroach on the powers exercised by Indian tribes, usually claiming that their inherent sovereignty was diminished and, under the trust doctrine, that these policies were in the "best interests" of the Indian people (Newton 1986). "The diminishment doctrine within Federal Indian Law looks to the supposed intent of Congress to diminish, or perhaps even disestablish, Indian reservations when enacting allotment legislation" (Coffey and Tsosie 2001:192–93). Under the allotment policy, reservation land was divided and individual plots were allotted to Indian families in hopes they would become farmers. The remaining millions of acres of Indian land were given away or sold by the U.S. government. This was coupled with an aggressive policy of assimilation to end Native religion and customs. The result was crowding Indian people into ever smaller spaces with less and less control over their own lives. This

reached a nadir in the 1920s when the *Meriam Report* (Meriam 1928) revealed the deplorable living conditions that had developed on most reservations in the United States. The report called for millions of dollars in emergency funds to alleviate the abysmal deficiencies of Indian life created by federal policies. This, in turn, led to passage of the Wheeler-Howard or Indian Reorganization Act of 1934 (IRA), which ended federal land seizures and reaffirmed the rights of Indian tribes to self-determination. Tribal governments were restored or strengthened and conditions improved as tribes once again took some control over life on the reservation.

This era was short-lived, though, as in the 1950s, the federal government decided to eliminate Indian tribes as political entities without their consent. This Termination policy would end Indian self-determination and make them ordinary citizens of the United States. Reservation lands were to be sold and the funds divided among the former tribal members, and the Bureau of Indian Affairs and all procedures and policies regarding Indian people were to be eliminated. As this policy went into place, sixty-one tribes were terminated and legally ceased to exist. Their land was sold and they were left on their own. It was also during this era that American Indian tribes began to adopt the language and conception of European sovereignty.

Indian tribes had long asserted their independence and right to self-determination, but in this post-termination era, they were calling for sovereignty within the framework of modern states. Indian people in the United States began to rally around the call for "tribal sovereignty" as early as the American Indian Chicago Conference in 1961 (Lurie 1999:112). Lurie asserts that many tribal leaders were worried that speaking out too strongly against federal policies risked the backlash of termination, and discussion of

sovereign rights was seen as the talk of radicals. Since that time, though, the concept of sovereignty has been adopted by most Indian tribes as they fight for their legal and economic rights. This assertion combined with the federal policy of Indian Self-Determination has allowed tribes to aggressively pursue their own goals. The federal policy of self-determination dovetailed with the Nixon administration's New Federalism and decentralization of government, which allowed tribes, states, and local governments to take over control or operation of federally funded or administered programs (Castile 2006:15).

These changes came on the heels of new sources of funding through the Office of Economic Opportunity's Community Action Program in the Johnson era. These grants along with the passage of the Indian Self Determination and Assistance Act in 1975 (P.L. 93-638) allowed tribes to take over services that had previously been provided by the federal government and empowered tribes to find their own solutions to the serious problems that have plagued Indian country. This was bolstered by Supreme Court decisions such as *United States v. Washington* (384 F. Supp. 312 1974) and *Santa Clara Pueblo v. Martinez* (436 U.S. 49 1978), which supported tribal efforts to assert Native American treaty rights in the face of non-Indian resistance.

Within this framework of sovereignty and self-determination, federally recognized Indian tribes have made significant gains in economic development and self-sufficiency. Recent work dedicated to tribal development and assertion of tribal sovereignty by Thomas Biolsi (2001, 2004), Jessica Cattalino (2004), and Valerie Lambert (2007) focuses on efforts by American Indian tribes to take over economic development from the Bureau of Indian Affairs in the past four decades. Three temporal

trends are responsible for these changes (Biolsi 2005:236–37). First, a new cadre of younger tribal members came onto the scene who had gained experience in politics and public administration. Second, new sources of tribal revenue became available in the form of federal grants. Finally, Indian intellectuals such as Vine Deloria Jr. advanced an agenda of recovering tribal sovereignty with the idea that tribal governments were, in fact, governments with inherent powers of self-determination.

Under the banner of sovereignty and self-determination, many of the tribes that had been terminated, but not all, have since reestablished themselves as federally recognized tribes. A total of 356 Indian tribes have petitioned the U.S. government to restore or gain federal recognition (Fleming 2013). These groups may exist traditionally, but they have no legal standing within the U.S. government.

Native American Approaches to Tribal Sovereignty

Wendell Chino, former well-known leader of the Mescalero Apache, eloquently described a differing concept of where sovereignty lies:

> Tribal sovereignty has its roots in the primeval development of Indian tribes within the area now known as the United States. This development has been an ongoing process since before the establishment of this country. Long before the days of reservations and before the age of tribal constitutions any conflict between Indian and non-Indian usually resulted in the tribe moving west or submitting to a superior force authority. Indian tribes of the eighteenth and nineteenth century literally carried their sovereignty on their backs. This sovereignty, though unwritten and not cataloged, was steeped in tradition and ritual. For tribal sovereignty is not just the contact of Indian tribes with non-Indians, but is rooted in the traditions and folklore of intra-tribal relations. The tribal structure as to kinship and leadership were all part of the internal power of the tribe. This chain, often challenged and sometimes broken, is the back drop of today's tribal sovereignty. I mention this historical background because the foundation of today's tribal sovereignty must look to the past of its origin. Tribal sovereignty must be viewed as the authority of the tribe to allow traditional development to exist and also the power to exclude state interference. This recognition of tribal sovereignty has sometimes been classified as an inherent tribal sovereignty vested in all tribes (in Swaggerty 1979:90).

Other Indian leaders have chosen to take tribal sovereignty to its logical extreme and seek to establish complete independence from the United States and Canada. Despite the overwhelming power of the United States and Canada, some Native American groups have never given up asserting their claims of self-government (Hansen 2004). In the years following World War I, Deskaheh, a Cayuga chief, pressed the League of Nations to recognize Haudenosonee (Iroquois) sovereignty and self-determination. They continued with the 2010 effort of the Haudensonee lacrosse team to travel internationally on Houdensonee rather than U.S. passports (Kaplan 2010). Native peoples of Canada, the United States, New Zealand, and Australia have tried since the chartering of the United Nations in 1945 to use this body as a forum to address their grievances (Biolsi 2005; Churchill 1998). Biolsi (2005) also notes that the Confederated Tribes of the Warm Springs Indian Reservations have declared their territory sovereign and independent of the United States. As mentioned above, Russell Means has followed this path with efforts to establish the Republic of Lakotah. He leads the Lakotah Freedom Delegation, the provisional government for a proposed independent Lakotah nation-state in the north-central part of the United States, and he has called upon other nations of the world to recognize this new country. “Lakotah respectfully petitions your government for formal recognition of Lakotah Sovereignty. Accompanying this petition are supporting documents which show, beyond any doubt, the validity and necessity of the reclamation of our sovereignty” (Means 2008).

The majority of tribal leaders, however, try to work within the federal system of the United States to achieve their goals. As Wendell Chino postulated:

> What is this tribal right we classify as sovereignty? Of course, the term sovereignty is not applied only to Indian tribes, but is applied to any state which possesses a power that is the source of law, but which is not bound by law. Sovereignty, in essence, is power—pure and simple. Application of the doctrine of sovereignty to the Indian tribes acknowledges simply and fundamentally that they are governments with the authority to manage their own affairs within their own territorial limits. These references to sovereignty then reflect the reason tribal sovereignty has appeared to have an up and down existence during the last two centuries.
>
> Indian tribes in exercising their sovereignty must integrate with the supreme authority of the United States, and invariably rub against the sovereignty of the various states of the Union. This is why the Supreme Court of the United States has been called upon for many years to balance the tribal sovereignty, as recognized under the supreme authority of the United States, against the states who have attempted to encroach on this basic Indian right (in Swaggerty 1979:91–92).

Within the federal system, Wilkins and Lomawaima (2001) and Lambert (2007) have defined the elements of tribal authority as a "bundle of reserved rights," stating that Indian tribes retain all powers of sovereignty not explicitly given up in treaties.

> The legal construction of tribes as political bodies with a bundle of inherent sovereign powers is enshrined in treaties, in the U.S. Constitution, in federal law, and in federal Indian policy. By virtue of their sovereignty, tribes are entitled to, among other things, elect their own leaders, determine their own membership, maintain tribal police forces, levy taxes, regulate property under tribal jurisdiction, control the conduct of members under tribal jurisdiction, regulate the domestic relations of the members, and administer justice. (Lambert 2007:17)

In addition to these general powers, specific powers are given to particular tribes based on their unique treaties with the United States. These reserved rights have formed the foundation of tribal sovereignty since the end of the Termination period, and they are the basis of American Indian tribal efforts to pursue their own path today as they try to act in the best interests of the tribe.

Rebecca Tsosie (2003:13) asserts that Indian nations are formally defining a place for themselves within the federal system while maintaining independent identities. To this end, some tribal leaders differentiate between political sovereignty and cultural

sovereignty (Coffey and Tsosie 2001). Political sovereignty involves the assertion of tribal political authority vis-à-vis federal, state, and local non-Indian authority, whereas cultural sovereignty involves the questions of Indian identity, such as traditional languages and customs on Indian land, and they see this as an uncontested right of the tribe.

Because the political reality of tribal sovereignty does not match the ideal definition of a group of people with complete control of their territory, Native American intellectuals and tribal governments have worked to redefine tribal sovereignty to improve its utility. "What Indians mean by sovereignty is different from what courts mean by sovereignty. Indians want the power to rule themselves in their own way in their own territories. They want political independence for their tribes. Courts have much more elaborate definitions that have developed out of many centuries of history in England and America" (Francis Jennings, in Swaggerty 1979:2).

Some dislike the term "sovereignty" because of its foundation in Western ideals of individual rights over the rights of the tribe as a whole; therefore they question the validity of applying the term to Indian peoples (Alfred 1999). Issues of sovereignty have been the foundation of the subordinate status of Indian tribes, and "diminished sovereignty" has been the pretext for U.S. government encroachment on Indian lands, independence, and culture. James Youngblood-Henderson of the Council of Nova Scotia Indians points out that as tribes made agreements first with British Empire and later with the United States and Canada, they did so using different terms that implied much greater equality.

> So I don't like the term, but each Indian tribe will have something that they've already talked about; with a Micmac it's the concept of the chain. When we

> signed these treaties with the English Crown in 1725, we didn't talk about sovereignty. We talked about a chain into which we're linked, co-equal and together. With this chain there will be peace. Among my mother's family the Cheyenne, we talked about it as a road and we agreed to go down this road together of co-existence between the two governments. In other Algonquin tribes we talk about as the fire. Those are the only terms I personally want to talk about in terms of tribal power. (James Youngblood-Henderson in Swaggerty 1979:58–59).

Many of the current tribal governments were established under the IRA in the 1930s. Most tribes ended up with a tribal council built on a standard parliamentary template supplied by the BIA and operating under the American standard of the rule of the majority. This was antithetical to many tribes' traditions of consensus (Robbins 1999) and has led to conflict within tribes as these councils often bore little resemblance to traditional systems of leadership.

> This proposition recognizes that Indian tribes are a political community equal to any other sovereign state in public law or as it is now called "international law." The source of this power to [the U.S. government] was the "will of the Indian people" under the equivalent will of the people as sovereign in constitutional theory. Most lawyers can accept this notion because it is common. But I would suggest that to my forefathers this notion was revolutionary because the government was one of spirituality rather than sovereign. It was the spirits of our ancestors which held the clans, bands, and tribal society together, not any theory of a social compact. It was a spiritual compact (Youngblood-Henderson in Swaggerty 1979:78).

Youngblood-Henderson's argument does not question the right of Indian tribes to self-determination, but it does question the foundation and legitimacy of federal Indian policy and many current tribal governments. The question here is not about independence, but as Jackson noted above, "where sovereignty lies."

In many cases, as various tribes prepared to vote on reorganization, traditional leaders and members of tribes withdrew in protest, arguing that they did not need an election or federal approval for their existing traditional system of government, and that

they had the treaties to prove it (Robbins 1999). However, on many reservations, elections still went forward, and those tribal members seeking to establish a council along the lines of the BIA template carried the election. This template was the only one recognized by the BIA, and so these small and often unrepresentative groups became the official leaders of the tribe from the perspective of the federal government. These minority leaders took control of tribal government operations, leases, funding, and so on, which resulted in serious internal conflict on many reservations. Sometimes these members were the most acculturated and showed little regard for tradition (John Redhouse in Swaggerty 1979).

Many of the calls for cultural sovereignty question the legitimacy of these cookie-cutter councils, and in many cases these councils and the internal conflict they brought with them have been detrimental to the tribe. “Cultural sovereignty seeks to provide a different context for political sovereignty, one rooted in autonomy of Native people as distinct cultural groups” (Coffey and Tsosie 2001:201). This approach fits the model of the nation-state since, from this perspective, Navajo sovereignty would be based on Navajo spiritual tradition and customs, which would in turn form the foundation for Navajo government. It might then be argued (as it has in the past) that diminished spiritual traditions undermine calls for a traditional political system based on that spirituality. Anything undermining or diluting Navajo tradition could be perceived as a threat to Navajo sovereignty, and this may be the basis of opposition to pan-Indian beliefs.

James Youngblood-Henderson is an advocate of this spiritual approach. “When we talk about political power, we’re also talking about spiritual power, because if we

don't have a spiritual, a cultural base to our power, to be legitimate, then we don't have the right to exercise the power" (in Swaggerty 1979:57). In support of this idea, Coffey and Tsosie assert:

> It is time for a reappraisal of the tribal sovereignty doctrine—one that is based in the conceptions of sovereignty held by Indian nations and which responds to the challenges that confront Indian Nations today. This account of inherent sovereignty should embody cultural sovereignty: that is the effort of Indian people to exercise their own norms and values in structuring their collective futures. (2001:195–96)

Despite the differing interpretations and uncertainties, nearly all of these leaders are trying to achieve remarkably similar goals: a reliable measure of independence and a less subordinate role in their own affairs. Youngblood-Henderson states, "We should have no less power than any other states or provinces" (in Swaggerty 1979:68). Each is looking to assert local control of tribal lands and resources and often to regain control of specific sacred areas. They want life on Indian lands to be governed by the Indian people themselves and their traditions as they see fit. They would also like some security, so their society can develop and adapt to current conditions without it being taken away or undermined as it has been in the past.

> The most significant challenge of our generation is to safeguard what little remains. The answer to the question of what sovereignty means is deeply rooted in our cultural identity and out traditional spiritual values. Indian men and women are continuing to learn the lessons of our culture. Cultural sovereignty is a renaissance for Indian nations: the flowering of life, the beginnings of wisdom, and in turn, reverence for spiritual strength. (Wallace Coffey in Coffey and Tsosie 2001:210)

Issues of Tribal Sovereignty

Despite the uncertainties and questions of legitimacy, asserting sovereignty has enabled some tribes to dramatically alter their situations. The Choctaw Nation of Oklahoma emerged from the brink of termination in 1970 to a resurgence of Choctaw

identity and political power that now constitutes a major presence in southeastern Oklahoma (Lambert 2007:86–87). The Seminole Indians of Florida has used the unique status of Indian reservations to counter state regulations that seek to prevent development of tribal gaming industries (Cattalino 2004:91). Although lack of state cooperation has limited the growth of gaming for the Seminole, their ingenuity has opened up new possibilities for other tribes, who have used them to their advantage. In the area of environmental law, however, tribes have the greatest strength (Weaver 2002:193). The Clean Water Act, the Clean Air Act, and the Endangered Species Act have granted reservations the same status as states in reference to controlling pollution coming onto the reservation from the outside and protecting endangered wildlife. These efforts have made federally recognized Indian tribes stronger than they have been since the treaty-making period when they faced European and Euro-American settlers as independent nations. The Supreme Court decision *Winters v. United States* (207 U.S. 564, 28 Sup. Ct. 207 [1908]) guarantees Indian reservations rights to water for the purpose the reservation was set aside for. In most cases this was agriculture, and tribes were generally promised federal help with the development of necessary irrigation systems. In many cases, the federal government failed to follow through on promises to help, but *Winters* maintains that tribes are still entitled to those water rights even though they have not been able to put them to use. With principles such the *Winters* Doctrine and treaties with clearly delineated conditions, the concept of tribal sovereignty and tribal rights would seem to be clear-cut; however, Lambert remarks, "[exercising sovereignty is] like treading across a thawing lake in the far north at the end of winter. The footing is unsure not only because the ice is slippery and uneven, but also because the ice often gives way, and it does so in

unexpected places at unexpected times" (2007a:156).

Most Indian people and leaders are well aware of the tenuous and convoluted nature of tribal sovereignty. Coffey and Tsosie note, "This [Indian] universe is governed by 'Federal Indian Law,' the most byzantine series of statues, regulations, treaties and court opinions that any nation has ever possessed" (2001:191). The treaties and policies that form the basis of the political power of federally recognized tribes rest on the unsteady foundation of Supreme Court decisions and the plenary power of Congress. Even as tribes endeavor to assert sovereignty, the Supreme Court has handed down a number of decisions limiting that sovereignty (Barsh 2004:55–56). For example, tribes have the right to administer justice on the reservation, but *Oliphant vs. Suquamish Indian Tribe* (435 U.S.. 191, 203 [1978]) removed non-Indians from criminal jurisdiction in tribal courts, and in *Brendale vs. Yakima Indian Nation* (492 U.S. 408, 109 S.Ct. 2994, 106 L.Ed.2d 343 [1989]) the court stated that tribes lack regulatory power over non-Indian settlements on reservations. The potential for further limitations on tribal sovereignty has led the Choctaw (Lambert 2007) to negotiate settlements in water rights cases rather than take them to court.

Likewise, Wilkins and Lomawaima (2001:99) point out that the "United States claims plenary power—that is, exclusive, preemptive, absolute, and unlimited power—over tribes, their resources, and the field of Indian affairs." Though the United States acknowledges and sometimes supports the inherent sovereignty exercised by Indian tribes, it retains the power to change policy, laws, or even terminate Indian tribes at any time through federal statute (Wilkins and Lomawaima 2001). One example is the Indian Gaming Regulatory Act (IGRA), which established a minimal regulatory apparatus for

tribal gaming (Rose 1998:13). Although it retains tribal immunity to state taxation, tribes are required to negotiate compacts with states (and share revenues) if they want to engage in class III gaming, the most lucrative, casino-style table games (Castile 2006:86).

> In reality, tribes exercise their sovereignty in a larger national context over which a more powerful centralized federal government also exercises sovereign powers, as do fifty subnational or state governments. . . . It is very often the case that tribes must negotiate their right to exercise these "rights," "rights" that become, in the negotiation process, merely rights-claims. It is often only after and through processes of negotiation—usually with state governments and/or federal government—that tribes are able to legitimately exercise certain of their "rights." Moreover, in the end, these rights may or may not bear resemblance to the rights that tribes claim inhere in federal law, case law, and treaties. Tribal governments tend to frame such processes of negotiating their rights as processes through which their preexisting rights are merely affirmed; non-Indian governments (especially state governments) sometimes view such processes as processes through which tribes acquire "new" rights. (Lambert 2007a:18)

Tribes encounter a recurring factor when asserting tribal authority in cases in which non-Indian people are involved: fear. As the Choctaw began to assert political power over the full extent of their reservation in southeastern Oklahoma, Lambert reports that she began to hear such comments as "The government should dissolve the tribes" and "soon non-Choctaw will lose their farms to the tribe," showing fear of the unknown and a refusal or inability to consider other possibilities. "Though the emotions behind the fears were real, the fears themselves were not realistic" (Lambert 2007a:162). Indian tribes must operate under the U.S. Constitution. Section 1 of the Fourteenth Amendment states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Tribal governments are as bound by the Constitution as state governments, and as such, the tribe could not simply take property

from a legal owner.

Indian tribes in desperate need of income are looking for any means to generate revenue, and many have turned to legal gambling. Eddie Tullis of the Poarch Band of Creek Indians notes that states in general, and Nevada in particular, fear the impact of Indian gaming on their own economies, and they emphasized the negative social impact of gaming as a smokescreen to justify the IGRA (Tullis 1998:100). The state of Nevada and others attack Indian gaming because they can. If another state, such as California, decided to legalize gaming, Nevada would have no such option. These fears have lead non-Indians to desperately contest any extension of tribal authority, even though their fears are often unfounded. This in turn leads to extensive court and legislative battles whose results are not predictable.

Cattalino (2010) argues that success in asserting sovereignty in these endeavors creates a "double-bind" for Indian tribes. As tribes such as the Seminole become wealthy enough to exercise economic power, they no longer fit the popular image of the "poor" Indians who utilize sovereignty for survival through traditional means but are seen as successful, "assimilated" Americans. With this change in image, sovereign rights become reinterpreted in the public mind as "special rights," and this, in turn, leads to calls for government control and ending tribal sovereignty, the basis of that success. Thus, political and economic success resulting from the assertion of sovereignty can undermine tribal sovereignty, creating a no-win situation for Indian tribes.

In the United States, where tribal sovereignty is dependent upon federal acknowledgment, Indian nations will always be vulnerable to restrictions upon and perhaps even total annihilation of their sovereignty, as the court observed in *United States*

v. Wheeler (435 U.S.. 313, 323 [1978]): “The sovereignty that the Indian tribes retain is of a unique and limited character. It exists at the sufferance of Congress and is subject to complete defeasance” (Coffey and Tsosie 2001:194–95). With the Supreme Court and Congress as the final arbiters of any tribe’s rights and powers, sovereignty fragilely hinges on the thoughts and fears of other people and political entities. But, fear can be overcome. According to Lambert (2007), many non-Choctaw in southeastern Oklahoma now see the Choctaw Nation as a better advocate for their rights than the state of Oklahoma. Politics and public relations are important factors in the success of Native American efforts to assert what would seem to be very clear sovereign rights. It is these subtleties of sovereignty that warrant further exploration. How has an established political organization such as the Pyramid Lake Tribal Council chosen to navigate the “thin ice” of tribal sovereignty and meet the needs of its people?

3. THE DECLINE AND RESURGENCE OF PYRAMID LAKE SOVEREIGNTY

This chapter explores the changing conditions that the Northern Paiute people in general, and the Pyramid Lake people in particular, have dealt with as Euro-American trappers and settlers advanced across the West and eventually settled in the western Great Basin. I use archival accounts to explore settler efforts to displace Northern Paiute people to reservations under the control of Indian agents, and settler exploitation of reservation resources. I also discuss the Pyramid Lake people's long fight to regain those resources once the passage of the IRA empowered them to once again take control of their destiny.

Ancestors of the group known among themselves as the *Numu*[3] and known by anthropologists and others as "Northern Paiute" traditionally foraged across the northwestern Great Basin in western Nevada, eastern California, and southeastern Oregon. The Northern Paiute people historically occupied a range covering western Nevada, a sliver of eastern California, and southeastern Oregon. The majority of Northern Paiute peoples lived in small, fluid, and mobile bands that foraged across most of the western Great Basin (Steward and Wheeler-Voegelin 1974). Two exceptions are the Owens Valley Paiute, who occupy a fairly lush valley in east-central California and lived a settled agricultural existence, and the Bannocks, who had adopted horses, mingled with the Northern Shoshone, and lived a lifestyle similar to the Plains Indians, hunting buffalo on the Snake River plains and annually crossing over to the Great Plains (Murphy and Murphy 1986).

[3] These terms are only close approximations of the phonetic pronunciations.

Liljeblad and Fowler (1986), like Steward and Wheeler-Voegelin (1974), maintain that the lifestyle of most Northern Paiute bands was constrained by the desert environment they inhabited. The majority of Northern Paiute people, including the people around Pyramid Lake, were broad-spectrum foragers who exploited a vast array of plants and animals, including fish. Plants were the primary subsistence resource, and the Northern Paiute utilized more than 150 different types of seeds, berries, roots, and other plant products (Liljeblad and Fowler 1986). Most resources were open to whoever could harvest them, but others were subject to family rights. According to anthropologist Willard Park (Fowler 1982), some families held rights to piñon groves, areas for trapping small animals, fishing stations and corrals, as well as impounds for deer, antelope, and mountain sheep. Piñon groves in particular were considered extremely valuable, and families inherited rights to trees bilaterally. "Sometimes people fought over pine nuts. It could happen when someone tried to take nuts from another's trees, the owners destroyed the camp outfit and picking baskets of the intruders. If owners so chose, however, and particularly if the harvests were good, they would extend permission to others to pick from their trees" (Fowler 1982:118). Groups generally moved between water sources, areas where plant resources such as pine nuts or camus roots were available, or to visit relatives.

Animals such as rabbits, coots, ducks, and antelope were hunted by large groups, who herded them into nets or corrals. Large animals such as deer and mountain sheep were hunted by individuals or small groups who used bows. Small animals were captured with snares and deadfalls (Liljeblad and Fowler 1986). Fish were an abundant resource at Pyramid and Walker lakes and along the Humboldt River, where they were caught using

nets, baskets, weirs, platforms, harpoons, bident (two-pronged) spears, hooks, gorges, and traps (Fowler and Bath 1981). Platforms and weirs were considered the exclusive property of the builder.

Communities or bands were semi-nomadic groups that occupied a home district or *tibiwa*. Each band was known for the predominant food resource in their home area. For example, the band around Pyramid Lake was known as the *Kuyuidikadi* (*cui-ui* or sucker eaters); the band to the east around the Quinn River was the *Kupadikadi* (squirrel eaters); and the *Toidikadi* (Tule eaters) lived to the south around the Carson Sink (Inter-tribal Council of Nevada 1976). The *tibiwa* consisted of a collection of preferred camping places known to be ideal spaces for large gatherings that were held seasonally, usually in the late fall. When the band members were not camped together, individual households or "camps" formed smaller clusters that were spread out across a much larger area. These camp clusters varied in response to the seasons and through the years. They only came together in large groups for communal events such as rabbit or antelope drives, or concentrated attacks on their traditional enemies, the Pitt River Indians (Park 1934:98).

Steward and Wheeler-Voegelin (1974) argue that the composition of these territorial bands was completely fluid, with family groups regularly moving in and out of bands. According to data recorded by Willard Z. Park, however, "These bands played a minor role in social and political life. Private property and rights to resources were commonly in the hands of 'family groups.' Park noted a vague concept of resource areas reserved for the use of the habitual residents, but frequently people crossed band lines to exploit inherited rights (Fowler 1982:125). In this scenario, the names had a more subtle function and referred to "what the local groups had most to share" (Fowler 1982:127),

and although resource areas were generally shared freely, it was customary to "check-in" with the local group when foraging in their territory.

The principle social and political units were the independent families (Liljeblad and Fowler 1986). Decisions affecting their livelihood as well as their internal and external relations were made by the senior family members in consultation with other members. Headmen (*poinabi*) acted as camp advisers and commonly gave speeches encouraging virtue and industriousness. They served as focal points of group discussions on matters of mutual concern, such as witchcraft or dealing with neighbors. "For such discussions they called the people together in their houses and passed a smoking pipe to all senior members. After smoking, each person was free to discuss the point at issue. The headman summarized the discussion of such topics and helped the group reach a consensus" (Liljeblad and Fowler 1986:450).

Temporary task leaders, who were persons of skill or knowledge in a particular area, acted as coordinators of specific tasks, such as antelope, coot, or rabbit drives; dances; or battles. While in charge, the leader or "boss" directed the daily activities involved in the event with group consensus. The designation of leader was temporary, and these temporary leaders changed quite often (Liljeblad and Fowler 1986).

White settlers and government officials looking for leaders with whom to negotiate misperceived Paiute leadership and often labeled these *poinabi* and part-time leaders as "chiefs," insisting that they held chiefly status (Knack and Stewart 1999; Wheeler-Voeglin 1955). Some of these temporary "chiefs" were willing to take the gifts of prestige and power from the whites, but "Indians themselves often viewed such

pretension to chiefly power as either ridiculous presumption or as traitorous cooperation with the conquerors" (Knack and Stewart 1999:54).

Arrival of Europeans and Euro-Americans

As the first Euro-American trappers moved into Northern Paiute territory they were greeted with curiosity by most of the Native residents. A member of the 1833 Joseph Walker expedition noted as they moved down the Humboldt River, "The Indians issued from their hiding places in the grass, to the number, as near as I could guess, of 8 or 900, and marched straight toward us, dancing and singing in the greatest glee. When within about 150 yards of us, they all sat down on the ground and dispatched five of their chiefs to our camp to inquire whether their people might come in and smoke with us" (Wagner 1904:161). The trappers, afraid of the large numbers of Indians, rejected the offer and fired their rifles into a beaver pelt, and the Indians fled. The next day, the trappers were surprised to see the Indians had returned.

Paiute oral tradition related by Lalla Scott reports the Beaver pelt shooting incident. She states that the nearby Paiutes perceived the whites as objects of extreme curiosity. Having seen a few pass along the road, several of the leading men felt that, as custom dictated, these strangers should be approached in the spirit of friendship and accorded the welcome of traditional hospitality. They gathered at the Humboldt Sink to greet the next expedition to pass by, which happened to be the Walker party.

> From this vantage point they could keep hidden and yet observe the movements of the white caravan. . . . It was a thrilling adventure, as many of the young men had never been away overnight from their relatives. They passed the time playing games and telling stories. They laughed and pretended they weren't afraid of the strange creatures they were expecting to meet. . . .Waves of excitement ran through the crowd of two hundred young Paiutes as they boldly marched toward the white man's camp. . . . Thinking that these were the Shoshones come to drive them away, the long suffering Walker gave orders to his men to prepare for battle.

> The trappers hastily made a barricade of their tents and baggage two hundred feet from the camp. The men were divided, those with guns were sent out to stop the savages before they reached the camp. Instead of halting when they saw the men pointing their guns, the Paiutes, with smiles painted on their faces, lifted their prancing feet higher and came forward. At the sound of the guns, the reception party scattered and fell to the ground. They had never heard gunshot, and they thought it was a clap of thunder. After a few volleys, the Paiutes knew the white men were fighting with deadly weapons and did not want to be friends. (L. Scott 1966:28-30)

Walker reported killing thirty-nine Paiutes in this encounter (Knack and Stewart 1999:34). This pattern of violence and overreaction was to become the hallmark of American contact with Northern Paiutes in western Nevada. When Walker's expedition returned the following year, they encountered a larger number of Indians, and fearing retaliation for the previous year's killings, they attacked again, killing fourteen this time (Cline 1963). From this point onward, most Northern Paiute people avoided the whites.

The discovery of gold at Sutter's Mill brought increasing numbers of settlers west. The route along the Humboldt River became a conduit for wagon trains headed for California, and initially the Paiute people simply stayed clear of them. The harshness of the country helped because it kept the emigrants close to the river, but the river itself was a vital resource (Knack and Stewart 1999). As the settlers passed through, they disrupted fishing and fowling, making it difficult and dangerous to gather food for winter, and the cattle ate grass that had served as a summer mainstay. This competition for food resources created a tension that soon turned to violence.

John Holman reported in an 1852 letter to Commissioner of Indian Affairs L. Lea:

> It is my painful duty to report to you, that from all of the information I can get, from Whites and Indians, the great, almost the sole cause of all the difficulties—the destruction of life and property on this route [the Humboldt], is owing to the bad conduct of the whites, who were the first to commence it—and in many instances, the whites are the sole depredators of it, they manage to have it charged to the Indians. . . . The Indians retaliate upon the whites whenever they have it in

> their power, and thus the excitement is kept up. . . . It is very difficult to get any conversations with the Indians on this route—they have been treated so badly by the Whites, that with very few exceptions they have no confidence in the professions of friendship made by a white man. (Knack and Stewart 1999:60)

In 1854 there were probably no more than 200 whites in what is now Nevada, and many of them did try to get along with the Indian people (Knack and Stewart 1999). For example, the Northern Paiutes and the settlers from Honey Lake fought together against the Pitt River people to the west (Ferol 1985). They also agreed to air grievances rather than retaliating for any wrongs incurred by one side or the other. When gold was discovered in Virginia City in western Nevada, however, the influx of people inevitably brought more conflict. The American and European emigrants saw any resource as free for the taking. The miners cut piñon trees for mine timbers and firewood, stockmen commandeered any available grassland for cattle, miners diverted streams for flumes, and prospectors camped on springs and drove the Indians away for fear of theft. "[W]hites absorbed the richest productive areas of this region, and they backed up their claims with guns" (Knack and Stewart 1999:47). The Indian people who had relied on these resources were starving. Many Paiute people retreated into the mountains; others went to work on farms and ranches, and some decided to fight back.

The temporary leaders with a talent for warfare were turned loose with the blessings of the bands. "These new bands and chiefs [*sic*] were thus a phenomena wholly and completely different from anything known in the pre-white days. They were predatory, military, and mounted" (Steward and Wheeler-Voegelin 1974:316). In eastern Oregon, Panai'na/Po-li-ni/Paulina and Weawewa were the most well-known. "Mr. Logan, agent at the Warm Springs Reservation, said that the Indian women said that Po-li-ni's brother was the principal chief, he being only war chief" (Wheeler-Voegelin

1955:246). In western Nevada, Numaga and later Egan were "war chiefs," as the whites called them.

By May 1860, further south, the Paiute people around Pyramid Lake had had enough, and a large gathering of respected elders, including Winnemucca, Smoke Creek Sam, Numaga, and others were discussing going to war (Ferol 1985). Numaga, who had fought with the settlers from Honey Lake against the Pitt River Indians, counseled against war and went on a three-day hunger strike to prevent it. The other leaders finally relented and talk of war ended. Then a report came that two Paiute girls were being held against their will at Williams Station, a trading post along the Truckee River south of Pyramid Lake. A group of kinsmen had tried to retrieve the girls and fighting had broken out. The whites at the station were killed and the building was burned. A hastily organized volunteer force led by William Ormsby, who had been a friend of Numaga, set out for Pyramid Lake to punish the Indians. Since war was upon them, Numaga attacked Ormsby's force in the canyon leading to the lake and destroyed them, and Ormsby was killed (Ferol 1985). Panic spread among the white communities, and a month later another force of 200 Army regulars and about 500 volunteers marched to the lake. The Second Battle of Pyramid Lake was inconclusive, and the Paiutes suffered some losses and retreated into the mountains. Small skirmishes occurred over the next couple of months, until Col. F. W. Lander, who was building a wagon road through the area, got annoyed that the situation was interrupting his work. He sought out Numaga, and the two of them discussed the situation and agreed to a truce, ending the Pyramid Lake War.

> By walking unarmed into an Indian camp after the second skirmish, Lander gained an audience with Numaga, the Paiute war leader from Pyramid Lake. Lander asked the headman why they were fighting, and learned that they were outraged by the whites' seizure of land without remuneration and subsequent

> claims of exclusive ownership. Nevertheless, Numaga declared, if they were compensated for loss of their homelands, and were given aid to adjust to a new way of life on farms and in building permanent homes, they for their part would be willing to live in peace. Numaga insisted, however, that shooting of Paiutes without reason, the ravaging of women, and the general hostility of whites toward Indians were further causes of the conflict and must stop. (Knack and Stewart 1999:72)

There was considerable tension between the Paiutes and the whites, but the truce held (Ferol 1985). The brief era of warfare was characterized by great bravery, spectacular battles, and tremendous heroism (Steward and Wheeler-Voegelin 1974). The Pyramid Lake War, the Bannock War, the Shoshone War, and untold numbers of skirmishes gave the Indian people of the Great Basin some satisfaction, but most of them ended when they were cornered and negotiated settling onto reservations.

The Pyramid Lake Reservation

The Pyramid Lake people had always been fishermen. When John C. Fremont first arrived at Pyramid Lake in 1844 he received gifts of fish and traded for more, noting how large and tasty the fish were. He inferred that they were the group's main source of sustenance: "These Indians were very fat, and appeared to live an easy and happy life" (Fremont 1851:215). The band of Northern Paiute that lived around Pyramid Lake was traditionally called the *Kuyuidikadi* or "*cui-ui* eaters" (Inter-Tribal Council 1976:11), and the c*ui-ui* (suckerfish) live only in Pyramid Lake.

The Pyramid Lake and Walker Lake Paiute Indian Reservations were set aside in November 1859 at the request of Major Frederick Dodge, the first agent of the Western District of the Office of Indian Affairs. "I respectfully suggest that the North West part of the Valley of the Truckee River including Pyramid Lake , and the North East part of the Valley of Walkers River including the lake of the same be reserved for them, the

localities and boundaries of which are indicated on the accompanying map. These are isolated spots, embracing large fisheries surrounded by mountains and deserts, and will have the advantage of being their home of choice" [quoted in (Knack and Stewart 1999:90)]). The lands were withdrawn from the public domain, and this withdrawal was duly recorded in the Nevada State Land Office when Nevada achieved statehood two years later. It was finally confirmed by President Grant in an 1874 executive order (Knack and Stewart 1999:92).

After the Pyramid Lake War, many of the Northern Paiute moved onto reservations, such as Pyramid Lake and Walker Lake in Nevada, and Malhuer in western Oregon. Many people who lived around Pyramid and Walker Lake regularly foraged off the reservation in their yearly round. When they did so, however, the Paiute people were largely outside the protection of the law. Beating, raping, stealing, or even killing an Indian resulted in complaints from Indian people and sometimes the agent, but no action from Nevada authorities. In 1864, agent Jacob Lockhart wrote in a letter to Nevada Governor Nye:

> I regret to say that within the past year three inoffensive Indians have been unprovokedly killed by the settlers. The Indians have not yet in a single case attempted to retaliate. We have always taught them if any one of their people is injured by the whites to come and inform us at once and in no case to resent the injury themselves. In this way we have prevented serious trouble from time to time. I fear however if the bad white men do not cease their barbarous treatment upon innocent Indians that they will not always bear their injuries so tamely. (Lockhart 1865:149)

Indian people felt as vengeful as whites when a relative was killed but were not as likely to strike out against communities as whites were. Attacks on Indian camps by whites outside the reservation occurred regularly. In his *History of Nevada,* Myron Angel (1973 [1881]) notes that between 1860 and 1870, 30 whites and 287 Indians were killed

outside of battles. In 1953, a U.S. federal court estimated that two thirds of the aboriginal Paiute population was killed during the contact period (U.S. Court of Claims, "Opinion of the Court," *Snake or Paiute Indians of the Former Malheur Reservation in Oregon v. United States*, Appeal, docket No. 10, June 1953, p. 23). If cattle were missing or a white person was killed, groups of vengeful whites attacked any nearby Indian camps, killing men, women, and children. For example, in 1865 a group of militia looking for missing cattle attacked a foraging group at Mud [Winnemucca] Lake, killing 30 men, women, and children, including three of Winnemucca's wives and numerous other relatives (Knack and Stewart 1999:79). Sarah Winnemucca Hopkins wrote, "I do not think my Father will ever come in [to Pyramid Lake Reservation] with his own consent on account of the Brutal Murder by Capt. Wells, then of the Nevada Cavalry . . . of all my sisters, and my Father's three wives, but I do not think he will ever again be hostile. They were killed upon the Truckee Reservation and it has had a bad effect on all the Indians ever since" (1868 letter to Cmdr at Ft. McDermitt, quoted in Knack and Stewat 1999:79).

Paiute people moved onto reservations or into the mountains largely to avoid the whites. Anti-Indian sentiment was high, and Paiute people also began to look to the army for protection. "Although the military was not known for its affection for the enemy, and promotion did depend on victory over them, still the army had fewer vested interests in Indian extermination. Indians knew this and feared the local militias and citizen groups far more" (Knack and Stewart 1999:83). Paiutes would regularly camp near army outposts such as Camp Harney and Fort McDermitt. It meant the freedom to come and go, but the army's presence kept militia and murderous settlers at bay.

Life on the reservation meant loss of independence and having to deal with the Indian agent. Agents wielded considerable power over Indian people and were determined to change almost every aspect of their lives. Anything "Indian" was bad, even when local whites were doing the same thing. Traditional aspects of Indian life were suppressed, from gambling to traditional subsistence methods, marriage practices, harvest festivals, religious beliefs and practices, shamans, and even the negotiated right to ride on top of train cars was curtailed when agents decided to keep Indian people on the reservation. Despite the productive fishery at Pyramid Lake, the official federal Indian policy was to convert Indian people to a sedentary agricultural lifestyle. Agents at Pyramid Lake and elsewhere pushed the people to take up agriculture, even when it wasn't practical. They heaped great praise upon those who took up farming, while other traditional methods of subsistence were labeled as "idleness" and dismissed and/or punished accordingly.

Life on the reservation was also not necessarily safer. A Paiute man called Truckee John successfully established a productive ranch along the lower Truckee River section of the reservation, and the agents hailed him as an example to be followed. However, after a few years of successful production, Truckee John was murdered by Alec Fleming and Edward Payne on July 4, 1867 (Knack and Steward 1999:182). Fleming and Payne disappeared, and other Indian people were afraid to move to the ranch out of fear that they would be murdered as well. Mr. Gates, a neighboring white squatter who had known Fleming and Payne, took over Truckee John's ranch after his death. The people had had enough of fighting and worrying about murderous whites and just wanted to live in peace. "Paiutes hoped merely to survive on the reservations with as little

interference with their daily lives as possible. In 1875, an Indian expressed this view, which reappeared throughout the history of Pyramid Lake, when he said, 'Anything the government says, we will do—if we can keep our homes.' Paiutes cooperated with agency demands because of an absence of any practical alternative" (Knack and Steward 1999:116).

On the reservation, it was federal Indian policy to loosen tribal cohesion and deal with the Indians as individuals (Rusco 1988). Agents derided and suppressed freedom and personal initiative. "Throughout the early historic period they [agents] stressed constantly that the Indians should not act on their own. They should bring complaints to the agent who would act in their name. The agent would protect them in all matters, and they should abandon their independent right to defend their own interests" (Knack and Stewart 1999:118). In 1923, Agent Lorenzo Creel ordered the resident farmer: "In this connection, you must discourage 'meetings' of Indians that take them away from their work and do nothing but unduly excite them. Explain to them that you are not here to hold councils, but to direct work. The 'talk habit' must be stopped whenever possible" (Knack and Stewart 1999: 310).

Paiute people had long been independent, and although they were willing to work within the system, they remained active agents and avoided abuse whenever they could. Sarah Winnemucca (Hopkins 1994 [1883]) noted that most of the arable land at Pyramid Lake was already taken by whites, and people were disappointed with the manipulations and corruption of the agent. In the early 1870s, many people, including Winnemucca and his family, went north to the new Lake Malhuer reservation in western Oregon. The clear purpose of the agent there, Sam Parrish, was to create a farming community of Paiute

people, but he was honest, supportive, and true to his word, which the people found refreshing. One influential man, Egan, noted, "For my part I think it is very good, if he will only carry it out. There has been so much said that has never been fulfilled by our other agent. But we have no other way only to do what we are told to do" (Hopkins 1994 [1883]:106). After four years, however, federal Indian policy changed and reservations were turned over to missionary agents under contract to the U.S. government. Sam Parrish was replaced by a man named Reinhard, who according to Indian accounts was dictatorial, violent, and used food rationing as a tool of control (Hopkins 1994 [1883]). People found the conditions intolerable, and many of them left, and with the outbreak of the Bannock War, all the Paiute people left Malhuer. Many joined the Bannocks in their fight, including Egan, who led the fight after Buffalo Horn, the original leader, was killed.

After the Bannock War in 1878, many Paiute people, including Winnemucca, Sarah, and the rest of their family, were interned at Yakima, Washington, despite Sarah's efforts to secure peace by aiding the army. At Yakima they felt they were being used, manipulated, and starved by the local agent (Hopkins 1994 [1883]). In the winter of 1879–1880 they sent a delegation led by Sarah and her father, Winnemucca, to present their case in Washington, D.C. They met with Secretary of the Interior Charles Schurz and received a letter granting them permission to leave Yakima and return to Malhuer (Canfield 1983:174). However, as they prepared to leave, the Yakima agent protested and the promise was rescinded. Sarah went to Washington again in 1884 and testified before Congress to secure the release of the last of the Paiutes from Yakima. She also requested a reservation at Fort McDermitt run by the army rather than the Indian Office, but

Congress only assented to letting the Paiutes leave Yakima (Canfield 1983). By that time, the Malhuer reservation had been abandoned to white settlement, and many Paiutes joined the people living at Pyramid Lake. However, because of his previous experiences with agents at Pyramid Lake, Malhuer, and Yakima, the influential Winnemucca and many members of his family refused to return to any reservation. He lived among his people in their traditional territory until his death (Canfield 1983).

Those people who chose to live off-reservation tried to get along with their neighbors. Many worked on local ranches; others tried to get their own land and become farmers. However, even when the Indians complied with Euro-American ideas about making a living, they were treated with prejudice and discrimination by the local whites both on and off the reservation. "Paiutes were caught between sets of contradictions. Whites demanded that they conform to American cultural ways, but in doing so they were deterred by preconceived and bigoted stereotypes about what Indians, in general, were like" (Knack and Stewart 1999:118). Those who remained off the reservation found friends but also faced serious discrimination that hindered making a living. A case in point is Natches Winnemucca, son of Winnemucca and brother of Sarah. With the intervention of State Senator Stanford, he got a piece of land near Lovelock, NV, fenced it, and joined the local effort to get water for irrigation. He got twelve relatives to help for a month, digging ditches. Things went well for a time, but then the water company decided not to let him have any more water because "Indians are so lazy, they don't want to have him around" (Sarah Winnemucca, quoted in Peabody 1886:21).

> In addition to prejudice and unpleasant interracial relations, off-reservation Indians were also hampered by legal inequities under Nevada state law. Non-whites, including Indians, were forbidden to marry whites until 1919, and "fornication" between Indians and whites was similarly illegal. The very first

> legislature in 1861 forbade non-whites from becoming attorneys, serving in the militia, receiving the standard tuition waiver to the state universities, or being sheltered in the state orphanage. The state law outlawing the sale of liquor to Indians was retained from the founding of Nevada until 1949, well after Prohibition had been repealed for the Anglo population. Indians were strictly forbidden to vote, and hence, were excluded from holding public office until 1880. Even after that date, the continued requirement of a poll tax and the specific exemption of Indians from paying the tax effectively prevented them from voting until at least 1910. In many areas of the state, the first records of Indians voting was in 1924 and 1925 after a federal law had specifically declared all American Indians to be citizens of the United States and hence state citizens. Indians could not offer testimony for or against a white man in civil court cases until 1869, and in criminal cases until after 1881, nor could they serve on juries. (Knack and Stewart 199:118)

Indian people living off the reservation were pushed to move onto the reservation, and agents pressed influential leaders such as Winnemucca and his family to bring people in. Arguing this point with the Pyramid Lake agent brought retaliation: for example, Natches Winnemucca was arrested and incarcerated in Alcatraz in 1874. He wasn't released through regular channels. It was only when two white men whose lives he had saved attested to his character and petitioned for his release that he was allowed to leave (Hopkins 1994 [1883]:88). Federal authorities finally decided to create more reservations where the Indian people actually lived. The Inter-tribal Council of Nevada (1976) notes that many Paiute people settled around western Nevada towns, working on farms and ranches, and small reservation areas or "Indian colonies" still exist in most of these communities. Fort McDermitt eventually became a reservation, and another was created at Storm Lake near the Quinn River. Land in the Walker Lake Reservation was allotted in 1902 and reduced to one quarter of its original size, but it was expanded to near its original size by executive order in 1934. Because the new boundaries did not enclose the lake, control of Walker Lake was permanently lost. This has contributed to its decline

from a very productive desert fishery to its current condition as a dead and drying lake, inhospitable to most aquatic life (Gordon 2011).

At the Reservation

With settlement on the Pyramid Lake Reservation, the Paiute people had to give up most of their traditional authority to solve their own problems. Everything revolved around the agents and their ability to look out for the interests of the tribe and fulfill the trust responsibility of the United States. In this role, the agents were practically useless. The local white population coveted the lake and its resources and refused to accept Indian control. Paiute people at Pyramid Lake had to deal with many kinds of white trespass on the reservation (Knack and Stewart 1999). Many of these trespassers argued that since the reservation had not been created by treaty, it was not valid, and they had rights to use those resources. Because the boundaries of the reservation were not initially marked, the trespassers invariably claimed they did not know they were on Indian land, and local authorities were sympathetic to them. Although the reservation around the lake has survived mostly intact, a 20,000-acre timber reserve that had been set aside for the tribe to the west, above Verdi, Nevada, was quietly appropriated by outsiders. The best agricultural land along the Truckee River was appropriated by white squatters; white cattlemen "accidentally" ran their cattle onto the reservation; white fishermen caught huge numbers of fish; and even the river that fed the lake was diverted for use by white farmers on and off the reservation.

The agent in charge of the reservation was responsible for removing non-Indian trespassers and technically had the authority to arrest them or to call upon the army to do so. However, in reality, "despite the agent's legally defined powers and claims to

assistance, he was most often upon his own. He had very little control over the behavior of whites on reservation lands and absolutely none over whites who abused Indians off-reservation" (Knack and Stewart 1999:94).

Despite federal objectives, agriculture never became the primary form of subsistence for the *Kuyuidikadi* people at Pyramid Lake. The encroachment on reservation lands by Euro-Americans ate up the vast majority of arable land. Thus, bit by bit, white men took the land, until by 1869 they controlled no less than 80% of the usable river bottom land on the southern tongue of the reservation. At least two major ranches were established on the western side of the lake where probably no more than three or four additional inhabitable sites existed" (Knack and Stewart 1999: 183). By the 1880s, whites had grabbed the last scraps of land in the Truckee River bottomland, leaving as Indian lands only the delta and mouth, in direct view of the agency house.

> Not only did these white squatters dislodge Paiutes and fence off parcels of land, but they proceeded to utilize a wide range of other reservation resources without compensation. Their cattle grazed far from their homesteads on Indian lands. The white men fished. They cut the scarce timber for cabins and firewood, especially from the cottonwood groves in the Truckee canyon where so many of them had settled. They took water from the river for irrigation as necessary for farming. Some even drew water from the BIA ditch built by Indian labor. It was not simply a matter of land, but of total, illegal exploitation of the resources of Pyramid Lake, reserved in the name of the Paiutes by the federal government (Knack and Steward 1999:192).

Loss of Sovereignty and the Decline of Critical Resources

The fisheries at Pyramid Lake were still very productive through the end of the nineteenth century, and the people made their living fishing despite stiff competition from local white commercial fishermen. On August 31, 1881, Indian Agent Joseph McMaster noted in his annual report, "The most important means of livelihood to the Indians besides working for white people is their fisheries, the trout from Pyramid Lake

and Walker Lake being accounted the very finest, and bring as high a price as any known to the writer." However, white commercial fishermen did not slow down. Even well-meaning agents could do little. "And now if the department would order a survey of the reservation so that the lines could be positively defined, and authorize a sufficient force of Indian police, trespassers could be kept off or made to suffer, and the Indians get benefit which is their due from the fisheries in these waters which have been reserved to them" (McMaster 1881:132).

Federal efforts to stop the trespassers were halfhearted at best. In 1879, the agent called on the army to remove the white fishermen. "They had to evict six companies plus twenty more independent fishermen and confiscated 73,740 pounds of fish in hand, worth more than $7000. The fishermen left without resistance, but returned and began fishing again as soon as the soldiers departed, in direct violation of federal authority" (Knack and Stewart 1999:167). Nine non-Indian fishermen on the lake were later arrested by the army when they headed back to the lake before the soldiers had even left. They were convicted of poaching in federal court; however, anti-Indian sentiment was so high, the agent took unscheduled leave and fled for his life. The arresting marshal, the prosecuting attorney, and the governor all signed a petition asking for them to be pardoned. In an election year, 1880, President Hayes pardoned the nine fishermen (Knack and Stewart 1999).

Fish in the lake were still abundant in the winter and spring of 1889 and still a major source of revenue for the tribe. Over a six-month period, 100 tons of cutthroat trout caught by commercial fishermen along the lower Truckee River and in Pyramid Lake were shipped by Wells Fargo and the railroad to many parts of the United States. Many

more tons were being removed from the lake and the Truckee River by white sportsmen and Indians using "efficient" steel gaff hooks instead of stone spear points (Horton 1997[II]:36). However, people were beginning to notice a decline in their numbers. In 1890, annual restocking of the Truckee River was initiated to meet the demands of sport fishermen. "Nevada's restocking stressed the McCloud River (Alaska) trout variety and Eastern Brook trout" (Horton 1997[II]: 36).

In 2891 the Nevada legislature passed a law that effectively eliminated commercial fishing in the state; in fact, the only commercial fishery was at Pyramid Lake. Since agricultural land was scarce, fishing was the only source of revenue for the Paiute people, and the law devastated the reservation economy. In response, the Paiute people developed an effective smuggling tradition. In 1896, a petition to the Secretary of the Interior signed by many state officials stated that the Paiutes were still selling fish "in large quantities . . . in this state and in California, thus violating the Statutes of this state and drawing great and illegal profits to the injury of the commonwealth" (Knack and Stewart 1999:302–3). The construction of Derby Dam in 1905 to divert water from the Truckee to the Newlands Irrigation Project stopped flow into the lake completely at times, inhibiting spawning runs, and inadequate fish ladders prevented the trout from getting past the dam to spawn. In 1921, the state outlawed the sale of any type of game fish in Nevada, which effectively ended any but subsistence fishing by Indian people at Pyramid Lake. This again wrecked the reservation economy. The agent responded by instituting a permit system requiring all non-Indians to pay to fish on Pyramid Lake. He was immediately removed by his superiors (Knack and Stewart 1999:308). Efforts by Indian people and the agents to restore fishing rights soon became moot as the

combination of pollution from upstream users and the diversion of the water for irrigation at Derby Dam caused such a serious fish decline that any type of fishing ceased to be an issue. By 1943, the Lahonton cutthroat trout was extinct in the Truckee River system.

Jose Zuni, Superintendent of the Nevada Agency of the BIA reported in a letter to his superior, Phoenix Area director, John Artichoker, "The restricted flow of the river, experienced after the construction of Derby Dam, finally resulted in the total destruction of the natural fishery in the 1930s—with a disastrous impact on the lives of all the Indian residents, particularly those who found it necessary to leave the reservation for the cities" (Knack and Stewart, 1999:285). When the fishery collapsed, many people simply left the reservation because there was not enough agricultural land for them. One white trader who had been a middleman for fish sales stated, "There was never a hungry person on the reservation, they loved that kind of work—that way of making a living, and they had a dignity, which went away after the last run of 1937. Nearly all the fishermen went off to Reno or somewhere and never came back" (Knack and Stewart 1999:285).

The Ormsbee Commission, established to investigate white intrusion, noted that only 3,400 acres of land were of any value for agriculture and more than 3,000 were already in the possession of white men. They said in 1891 that "all of the intruders in this portion of the reserve have always known they were trespassers" (United States House of Representatives 1892:6). The commission proposed the following:

> whereas the rights of the Indians to that portion of the reservation, namely the southern portion, have been invaded, and they have been thereby deprived of the benefit and advantage of these lands, although justly entitled thereto; and whereas it is considered and deemed best that a cession or relinquishment of a portion of the southern part of said reservation by the Indians aforesaid to the United States upon just and equitable terms and conditions, and fair compensation to be paid therefore by the United States be made, that justice be done and further

> complications of the matter be avoided. (United States House of Representatives 1892:11)

The plan was to recompense the Indians for the land taken by the whites, but Congress never passed the agreement and nothing was done. The senior senator from Nevada, William Stewart, proposed to expand the Ormsbee agreement to abandon the Walker Lake Reservation and the northern and western shores of the Pyramid Lake Reservation to white settlement. However, though Stewart regularly resubmitted the legislation, "the bill repeatedly failed passage on the floor, for the injustice of this special interest legislation was simply too raw for even a callous congressional conscious" (Knack and Stewart 1999:214).

In 1910, the irrigation department of the BIA was preparing to improve the irrigation system to water those lands still in hands of Paiute people; however, the lands inhabited by white squatters interfered with plans for an efficient irrigation system. The squatters had been tapping the Indian irrigation ditches for years. They would have to be dealt with before the system could be put in place. Instructions were sent to the U.S. attorney in Nevada to begin proceedings against them. Another eight years passed before the first suit was filed. The squatters did not even try to defend themselves in court because they had no legal grounds to stand on, and in 1917 they were all found guilty of trespassing on federal property.

The next move was to begin eviction procedures against the squatters, and they appealed to their congressmen, who intervened on their behalf. The Nevada congressional delegation tried to pass legislation to give patents to the land. In 1922, federal prosecutors abandoned attempts to evict the squatters (Knack and Stewart 1999:206-7), and Nevada Senator William Stewart worked with the BIA to push through

legislation giving the squatters an opportunity to buy the land from the tribe to settle the issue in 1924 (Mortana 1973). Most did, including several of the major landholders and some residents in the town of Wadsworth, who promptly purchased the land in the allotted time period, causing the tribe to lose most of the best agricultural land on the reservation. A few made the initial payment, however, and then refused to complete the payments. The land should have reverted to the reservation, but the remaining squatters again appealed to Congress, claiming the rates were too high. Nevada Senator Tasker Oddie was able to pass another bill reevaluating the value of the land and drastically reducing the purchase price. Four more squatters purchased land, but most of the remainder simply continued to sit on the land, and another senator rose to take up their cause.

Sovereignty Returns to the Pyramid Lake People

The 1932 elections brought good and bad things for the tribe. In the tribe's favor was the election of Franklin Roosevelt and passage of the Wheeler-Howard or Indian Reorganization Act (IRA). The IRA meant a number of things to the tribe. The tribe could represent itself, land could no longer be taken without tribal consent, and the tribe was now guaranteed the right to hire their own legal counsel to ensure their interests. On the other side was the election of U.S. Senator Patrick McCarran, the new senator from Nevada. McCarran was a powerful and vindictive opponent who used his position on the Appropriations Committee to remove effective Indian agents and even the tribe's own attorney. He is quoted as telling a BIA official, "Now, look it! I'm chairman of the subcommittee that handles your dough. And if you don't do this, why you're going to be out of luck when you want to get some more money" (quoted in Mortana 1973:55).

Although BIA employees often tried to suppress any form of Indian self-government, there are several examples of councils being called for pressing matters. At a council meeting in December 1927, members of the tribe vehemently opposed archaeological excavations on the reservation by Mark Raymond Harrington, and the Secretary of the Interior revoked his permit (Rusco 1988:192). In 1929, a council turned down a proposal from a Reno resident to lease part of the lakeshore to build a hotel (Knack and Stewart 1999: 231). Attempts to set up a permanent council to represent tribal interests in 1932 and 1933 were opposed by Abraham Mauwee, who was considered a very influential tribal elder by some of the older people but was heartily resented by the younger tribal members (Rusco 1988). By 1934, however, Mauwee had changed his stance and supported a council. With the news of the impending Wheeler-Howard Act, some Nevada tribes mistakenly set up councils even before the act was passed (Rusco 1988). They quickly started dealing with substantial issues. When the official IRA guidelines and procedures came out, they had to start over, but there was a celebration on December 15, 1934, the day the tribe officially voted to accept the IRA (Rusco 1988:202).

With the establishment of the tribal council, the Pyramid Lake people were able to control some of their own destiny, including the battle over the resources that the BIA agents had handled so dismally. First the tribe addressed their long-standing economic problems with those who trespassed for grazing purposes, the squatters, and the water rights problem which I discuss in the next chapter.

Euro-American cattlemen had long grazed their cows inside the reservation, but the cattlemen were finally turned away when the boundaries of the reservation were

fenced and patrolled. However, the BIA then began leasing large portions of reservation grazing lands to white stockholders without the tribe's consent (Knack and Stewart 1999:326–27). The rates were much lower than on non-Indian land and were arranged by the agents, who used the funds to pay their own salaries. There was no effective control over the number of animals on the reservation, and the pasturelands were in terrible condition when the Pyramid Lake Tribal Council took over from the BIA. The council first demanded fees comparable to the regional standard and required that lessees be bonded. They refused to renew some of the leases and gave priority to Indian bids. Tribal members bought cattle with personal money or tribal loans, and by the mid-1940s were running more than 800 of their own cattle. The Paiute livestock owners formed the Pyramid Lake Cattle Association in 1946 and took over many of the large-scale leases from white stockholders. The tribe still granted grazing leases to non-Indians, but they were fewer and the tribal attorney went over the leases very carefully. The tribe had gained control of the reaches of their own lands, but the pasturelands were still in poor condition. The council sought assistance in range development and management from the BIA and the agricultural extension service to repair the damage done by years of uncontrolled grazing (Knack and Stewart 1999: 327).

The new tribal council and the new superintendent of the Carson Agency, activist Alida Bowler, than renewed attempts to remove the squatters who had refused to make payments on the land. In 1942, the federal district court in Reno ruled in favor of the squatters. Senator McCarran, who was a landholder on the lower Truckee River and a strong advocate for whites, called Secretary of the Interior Harold Ickes and asked him not to appeal the decision, but Mr. Ickes declined (Liebling 2000:56). The Ninth Circuit

Court of Appeals reversed the decision and ordered that the land be returned to the United States as trustee for the Pyramid Lake Paiutes (Mortana 1973:55), and the Supreme Court later affirmed that opinion (Knack and Stewart 1999:261).

This appeared to have settled the issue, but McCarran again came to the aid of the squatters by interceding with the Department of Justice before eviction procedures could begin (Knack and Stewart 1999:250). He also undermined any advocates of the tribe. He arranged to have Superintendent Bowler transferred because she was "prejudiced" against the squatters (Liebling 2000:119), he tried to get Superintendent E. Reesman Fryer transferred, but the tribal council promoted a public relations campaign and was able to prevent Fryer's transfer (Mortana 1955). Soon, however, Fryer accepted a higher-paying and more prestigious position at the U.S. Department of State, which served McCarran's ends just as well.

As the tribe began to deal directly with the government, they found they needed legal counsel to represent them, particularly in Washington, where the major decisions were made. Federal regulations and powerful political figures, most notably McCarran, hindered their use of Department of Justice lawyers. In 1948, the tribe had retained the services of James Curry, a very effective advocate who worked for the National Congress of American Indians (NCAI) and several tribes. Curry as the Pyramid Lake Tribal attorney worked with the NCAI to check the progress of McCarran's bills while the council raised public support.

> McCarran evidenced interest in the major effort by some Congressmen and some Interior Department officials to control more closely the tribal attorney contracts. Among the issues raised was the assertion that tribes needed attorneys who were based in Washington, D.C. If one were cynical, one could presume that this stand was motivated by a wish to prevent tribal councils from being able to keep a close check on the progress of legislation. The importance of having lawyers to

> represent the interests of a particular group in the American political system cannot be overestimated. (Mortana 1955:57)

Although the IRA authorized tribes to hire their own counsel, the choice of counsel and fees were subject to approval by the Secretary of the Interior. The incoming Commissioner of Indian Affairs was Dillon S. Myer, a friend of Senator McCarran, who revised the methods by which attorneys' contracts were approved. Many of Curry's contracts were canceled, including his contract with the Pyramid Lake Tribe. When McCarran prevailed and their attorney's contract was canceled in the middle of the critical battles over tribal land, Superintendent Fryer declared in a letter to Tribal Chair Avery Winnemucca, "Developments of the past months, and particularly in more recent times have convinced me you cannot afford to be without a lawyer who is in a position to independently fight your battles" (Knack and Stewart 1999:242). The tribe quickly retained new counsel and fought on.

> In a year after Fryer's removal, McCarran was to pressure [Commissioner of Indian Affairs] Meyer to cancel Attorney Curry's contract with the Pyramid Lake Tribe. Thus Nevada's Senator McCarran was attempting systematically to strip the tribe of their activist agents and their independent attorney. Once they lost these allies, he hoped they would lose their ability and willingness to fight the insidious legalistic war he was waging against them in the halls of Congress. (Knack and Stewart 1999:256)

McCarran repeatedly introduced bills to give free patents on the land to the squatters, but the tribal council organized letter-writing campaigns to educate congressmen and other individuals and interest groups on the issue. They were successful in gaining the support of Nevada Congressmen James Scrugham, Maurice Sullivan, and Charles Russell, as well as Oliver LaFarge, John Collier, the American Civil Liberties Union, various chapters of the Daughters of the American Revolution, Will Rogers Jr., Eleanor Roosevelt, and several non-local newspapers (Mortana 1973:55). Also, the tribal council went to

Washington to present their case in person, and with the support and ceaseless assistance of the NCAI, McCarran's efforts to give away tribal land were defeated again and again (Knack and Stewart 1999:262).

Finally, in 1954, McCarran proposed a bill for a supplementary appropriation for $31,000 to buy out the patented interest of Depaoli, one of the squatters, but the others failed to negotiate a reasonable price and were finally evicted. The bill passed both houses of Congress and was signed by President Eisenhower in 1954, and the congressional battles over land had finally ended. The tribe had retrieved at least some of the land from the invaders. McCarran died later that year.

The tribe is now working to reclaim other lands that had been lost to non-tribal landholders. With the passage of P.L. 101-618, the federal government is authorized to exchange other federal lands for fee land within the boundaries of the reservation. The ground rules have changed, as the current owners all have title to the lands. However, the tribe is still working to acquire the lands from these now-legal owners to bring the properties back into the reservation. In some cases, owners are asking for huge sums, far above the assessed value of the property. In others, the original owners have abandoned the property and locating the current owners is difficult.

The tribal property manager, Lisa Marks, said that they had managed to get several properties back, including the old Wadsworth School, the Depaoli ranches (North and South), the Eurida Ranch, the S-S Ranch, and the Crosby Ranch near Wadsworth (personal communication 2010). The ranches were acquired through purchase at inflated prices; others were acquired through land exchanges, working with the Bureau of Land Management (BLM). Some of the purchased or "fee land" had simply been abandoned.

The tribe cannot go through the usual process of paying the back taxes and acquiring the land from the county because the property must be brought back into the reservation. It will become federal land (held "in trust"), taking it off the local tax rolls. Efforts have been made to locate the legal owners, but in many cases this has been unsuccessful, so these properties continue to sit as abandoned private property within the confines of the reservation.

One of the pieces of the Depaoli property was acquired through a land exchange between the BLM and the American Land Conservancy. "The tribe was not involved with the land exchange itself, it was strictly between BLM, American Land Conservancy . . . and the individual owners" (Harry 1995:72). One tribal council member noted that the price paid for the property seemed excessive, but former Chair Norman Harry noted that the tribe didn't have to pay for it, so they were content to let the BLM handle it.

In other cases, when the land is no longer viable for agricultural production, the owners agree to sell. The tribe recently purchased the S-S Ranch from the University of Nevada. The ranch had been donated to the University of Nevada in 1967 by Helen Mayer Thomas in the name of her parents to be used for agricultural education. After a severe flood in 1997, an invasive weed known as tall whitetop spread across many of the ranch's fields, rendering them useless for agriculture (Nevada Agricultural Experiment Station No Date). The university agreed to sell the property to the tribe a short time later. In another case, a ranch was recently acquired from the Depaoli family, but according to reports from tribal officers, the family only agreed to the purchase when the irrigation system required major repairs in order for the land to be productive again. Nevertheless,

Marks said that tribe was glad to have the land back again (personal communication 2010).

From the beginning of Euro-American movement into the Great Basin, whites have seized the land and resources of Indian tribes without regard for the people who lived there, at times demonstrating active malevolence. The Northern Paiute people worked with the early immigrants to avoid conflict or simply avoided them as much as they could, but as more and more Americans arrived, non-engagement became impossible. When pressed, the Paiute people did turn to violence, but early success brought severe and pernicious retaliation as more and more immigrants flooded the land. The Paiute people found themselves in a struggle for survival, and they turned to the BIA agents who were supposed to help, but most of them only meekly protested as immigrants took everything they could, aided by the neglect and collusion of federal officials. It was not until the passage of the IRA and the establishment of the Pyramid Lake Tribal Council that things began to turn around. Senator McCarran thought he had taken away all of their advocates, but the tribe took control themselves and carried the day despite McCarran's chicanery. The tribe gleaned many lessons from all these experiences. "As they gained in strength and political awareness, the Pyramid Lake Tribal Council was no longer content to risk being defended solely by an ineffectual BIA and uncertain congressmen" (Knack and Stewart 1999:263). The tribe drew numerous allies to their cause that proved invaluable in their struggle to retain and reclaim their land. The National Congress of American Indians provided legal knowledge and political expertise that proved invaluable (Knack and Stewart 1999). The tribe has also brought in

other organizations and individuals to aid their cause. In their many battles over land and water, they did not fight alone.

4. SOVEREIGNTY IN ACTION, PART I

In this chapter I explore the Pyramid Lake Tribe's relationship with Pyramid Lake, and their sustained legal and diplomatic efforts to secure sufficient water resources to save the lake, the *cui-ui,* and the Lahonton cutthroat trout.[4] This effort is primarily an exercise of external sovereignty as the tribe deals with the federal government, the state of Nevada, and all of the other water users in the Truckee River system. I identify and discuss the various tools and resources that the Pyramid Lake Tribe used to achieve their goals. I collected data from newspapers, historic accounts, and websites belonging to the Pyramid Lake Paiute Tribe, the U.S. Fish and Wildlife Service (FSW), the Bureau of Reclamation (USBR). I also interviewed eleven current and former council members (the names of council members and officers have been changed) and other participants in the P.L. 101-618 and Truckee River Operating Agreement (TROA) negotiations, as well as nine oral histories collected as part of the Bureau of Reclamation's Newlands Oral History Project. Much of the history of the Pyramid Lake Tribe's legal efforts recounted here come from the USBR oral history project and my interview with former Pyramid Lake tribal attorney Robert (Bob) Pelcygar. Pelcygar has written very detailed and nuanced accounts (1995, 2011) of the legal battles the tribe fought during his twenty-year association with the Pyramid Lake Tribe, which are the basis of parts of this discussion.[5]

[4] The Summit Lake variety of Lahonton cutthroat trout that was introduced after the extinction of the native species is of commercial value to the tribe. As of 1975, it was listed on the Endangered Species List as "Threatened" (as discussed in detail in Wilds 2010).

[5] The focus of this research is the Pyramid Lake Paiute Tribe's efforts to exercise sovereignty to save Pyramid Lake and the endangered species that live there. Therefore,

Pyramid Lake (*Cui-ui Pah*)

According to former Pyramid Lake council member and Chairman Joe Ely (1996), the Pyramid Lake Tribe or *Kuyuidikadi* have lived along the shores of Pyramid Lake since time immemorial. Anthropologists and oral historians suggest Indians have lived at the lake continually for about 10,000 years, and any people dwelling in a land rich in natural resources for that long a time would acquire a strong relationship, in essence a kinship, with that area and its sustained way of life. Ely states that it would be difficult to erase thousands of years of tradition or the memory of that tradition in less than a century and a half. It would also be unthinkable for any culture to give up its fight to maintain its traditions when only a comparatively short time separates the current way of life from that of the former era.

> The history of the *Cui-ui Tuccutta* is marked by many events stored in the minds of the elders who, in turn, teach the children by telling stories and legends. The legend of the Stone Mother, the story of the tribe's origin, is the most often told story. Telling of the creation of the people, the lake, and the *Cui-ui*, it also sheds light on the importance of their existence. (Ely 1992:60).

In 1992, Ely said that the *cui-ui* run was a significant yearly event at Pyramid Lake, but that it had been decades since the last spawning run of any size. "The *Cui-ui*, found only in Pyramid Lake, is the last of its species, the last of its genus. It is the most fragile component of the identity and the existence of its namesake, the *Cui-ui Tuccutta*,[6] *Cui-ui* eaters, known today as the Pyramid Lake Paiute Tribe" (Ely 1992:60).

According to tradition, the Pyramid Lake people are descended from the first man and women who inhabited the area. This is the tale of the Stone Mother.

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the perspectives and opinions of tribal members, officers, and their representatives are privileged here. Other perspectives and opinions are included in Wilds's analysis (2010).

[6] *Cui-ui tucutta*, *Kuyuidokado*, and *Kuyuidikadi* are alternative spellings of the Pyramid Lake people's name for themselves, and different sources use different spellings.

The Pyramid Lake Creation Story: The Stone Mother

One day the father of all Indians came to this area and lived on a mountain near Stillwater. It is said that he was created near Reese River. He was a very great and good man. He was very lonesome and wished he had someone to keep him company.

One day, much later, Woman heard about man. She was married to Bear. She wished that someday she might see Man, and this made Bear very jealous. One day Woman and Bear had a fight. They fought for a long time and finally she knocked him down and killed him with a club. She decided to leave the country and go north in search of Man. She had many interesting experiences on her trip. Even today, her footprints can be seen along Mono Lake.

Near Yerington, she fought a giant who tried to eat her. She managed to kill him and his body turned to stone, where it can also be seen today. She arrived at Stillwater Mountain at last. There she saw Man who was so handsome. She hid from him in for fear he might leave. One day, as Man was walking around he saw Woman's tracks. He started to look for her, and called out, saying that he knew she was around. At last she came out from hiding. She was nervous and very tired from her trip. He noticed this and spoke to her kindly. He asked her to go with him to his camp where he would give her food. She meekly followed him.

After they finished eating, Man asked Woman to stay with him. That night she stayed near the fire. The next night she slept by the door. Each night she moved a little closer. On the fifth night they were married. They had many children.

Their first born was a boy who was very mean. He was always causing trouble among the other children. One day when they were fighting, the father called the children together to talk to them. He told them that if they continued to fight he would have to separate them. They started fighting before he finished talking.

Man became very angry. He stopped them and said, I am going to separate you now. I shall go up to my home in the sky. When you die you will come up to me. All you have to do is follow the dusty-road (pointing to the Milky-Way). You will reach my home where I shall be waiting. Someday I hope that you will all come to your senses and live together in peace.

Slowly he called the oldest boy and gave him one of the girls. He sent them west. They became the Pitt-Rivers. The other children who were peaceful, he kept at home. He told them that they were to take good care of their mother whom he was leaving with them. They became the "Paiutes." Then he went up into the mountains then up to the sky.

The Paiutes grew into a strong Tribe, but Woman still grieved for her other children. Woman was so sad that she began to cry bitterly. She missed her other children very much. She cried more and more each day.

One day she decided to sit near a mountain where she could look toward Pitt River country. She sat there day after day crying. Her tears fell so fast that they formed a great lake beneath her. This became "Pyramid Lake." She sat so long that she turned to stone. There she remained to this day, sitting on the

> Eastern shore of Pyramid Lake, with her basket by her side. The "Kuyuidokado" (Pyramid Lake Paiutes/Cui-ui Eaters) call her "Stone Mother." (Pyramid Lake Paiute Tribe 2015)

The tribe has invoked their identity as the people of lake, the *Kuyuidokado,* to unite them in their efforts to save Pyramid Lake. "There are many significant aspects within the legend of the Stone Mother, but none as clear as the direct relationship between the *cui-ui,* the people (*Kuyuidokado*), and the lake (*Cui-ui pah,* Pyramid Lake). These three creations become the three components that give name and identity to the Pyramid Lake Paiute Tribe. If one of the components is lost, the identity from creation and an immemorial tradition is completely erased" (Ely 1992:62). Ely points out that the *cui-ui* are not of any commercial benefit to the Pyramid Lake Tribe. The benefit is that it is an integral part of the tribe's culture. He compared the tribe's feeling for the *cui-ui* to Americans' feelings for the Statue of Liberty. "[The c*ui-ui*] are part of our culture. It helps identify us for other people" (Diggins 1987:1–2). This connection is part of what drives the members of the tribe. "The willingness to engage in an all-out campaign to acquire and reserve enough water to restore and preserve the *Cui-ui*, the most fragile component, is backed up by thousands of years of tradition and history. The very existence of the *Cui-ui Tuccutta* depends on it" (Ely 1992:62). This sentiment is shared throughout the community. They see their very existence tied to the lake and their role as stewards of the lake. As one council member pointed out, "The water is our life, our being and was created by the Stone Mother. It has always been our main goal to take care of the water creatures" (Mike Thomas, personal communication 2010).[7]

[7] Consultants are identified by pseudonyms unless otherwise noted. Quoted material from consultants is cited as personal communications. Consultants are listed in Appendix B.

All of the tribal members that I asked about the significance of Pyramid Lake answered, "The Lake is everything." The lake provides a spiritual foundation for the people, and every aspect of the lake is tied into their lives, faith, and identity.

> You really can't quantify or measure it up against anything as far as value. The spiritual nature, the traditional foundation, that . . . everything, the spirit of the water, the spirit of the life, the stories that go with the Stone Mother formation, the Pyramid itself, the Needles, all of them, they are all connected. The geothermal resource, the hot water, the healing nature, there is really nothing that can quantify, at least for me as well as for many people out here, the value of the lake. It is what it is. There is no value because it is *so* valuable. It's just one of those things, it's just hard for me to describe, but at the same time it is easy for me to describe. It's just like anything you have faith in. Treat it with respect and it will give you that in return (T. Lance, personal communication 2010).

Pyramid Lake is sacred, with many areas that are particularly special. The Stone Mother is near Fremont's pyramid, and both are revered places. The Needles are well known throughout the region for the hot springs, which have a reputation for their healing properties. The waters of the lake were also considered protective. One council member, Cicely Williams (personal communication, 2010), noted that as a child she was always told to go get water from the lake to rinse her face, which would protect her. Many of the sacred areas had long been open to the public, but many have also been vandalized, and the tribal council has now made those areas off-limits to non-tribal members.

Pyramid Lake provides the economic and spiritual foundation for the people. There are some agricultural lands, but until very recently only a few of them belonged to the tribe (see chapter 3). Some tribal members raise cattle and belong to the Pyramid Lake Cattlemen's Association, but pastureland is not abundant. Gas stations/convenience stores provide the tribe with some income. The marina at Sutcliff, the Nixon store, the I-80 smoke shop, and the recently added Big Bend RV park just outside of Wadsworth provide some income. The tribe has also been researching geothermal and solar energy

production as new avenues of revenue. However, the foundation of the tribe's economy is the sale of permits for the use of the lake. One council member states, "The lake was our ancestors' homeland. It is ours, and it is our only source of income in my opinion. We make money through permit sales. . . . I'm proud to be from Pyramid Lake. It is our birthright and the only thing we have left" (M. Wood, personal communication 2010).

The tribal members are well aware of their precarious situation. They are doing all they can to save the lake, but the work is not done yet. If they are not able to save the lake, there will be nothing left for them. If the lake dies, there will still be a reservation, but the foundation of their existence will be gone.

> Like I said, our way of life was fishing. The lake sustained our life here. We used to have big fish in the lake. . . . It is our way of life, our culture, so we're able to be proud of that part of it. The kids can say this is how we used to live, our parents and grandparents. When I look at it, okay, they're taking water out of our lake. I had a dream about this. I took my boy down there and he was telling his friend, "my Dad used to sit on the council and this is what he left us, a big mud hole." When you think about it, when we're losing water, what is our lake going to become? We're going to have a dried up lake like we did Lake Winnemucca. We're going to self-destruct. (C. Miller, personal communication 2010)

One council member, Valerie Martinez, made it clear that that they had no intention of ever letting up in their defense of the Lake. The lake is a part of all that they are, and to lose the lake would be unthinkable. "Pyramid Lake is our lifeblood; it is part our creation story. The indignant and callous manner in which the federal government overlooked us in the creation of the Newlands Project set the tone for the continued battles in court and has created a real divide amongst people for many years. Restoration of the lake is important, because the lake is everything. Without the lake, who are we? We're still here, and we plan on staying" (personal communication, 2010).

Saving Pyramid Lake

As noted in the previous chapter, the Pyramid Lake and Walker Lake Paiute Indian Reservations were first set aside in November 1859 at the request of Major Frederick Dodge, the first agent for the Western District of the Office of Indian Affairs. He was concerned that encroachment on local resources by whites would leave the Indian people nothing to survive on. The lands were withdrawn from the public domain, and this withdrawal was finally confirmed by President Grant in 1874 (Redhouse 1994). This becomes history is vital for establishing the date of the Pyramid Lake Tribe's water claims. Under the *Winters* Doctrine, Indian claims for water rights on reservations date to the establishment of the reservation. In 1975, the Indian Claims Commission awarded the tribe $8 million for damages to Pyramid Lake and declared that under the *Winters* doctrine, the Pyramid Lake Tribe was entitled to water to save the fishery (*Pyramid Lake Paiute Tribe v. U.S.* [36 Ind. Cl. Cm. 256 (1975)]).

Water Rights Law in the U.S. (Riparian vs. Prior Appropriation)

In the United States, water is allocated under two different systems of law. In the eastern United States, water is divided according to riparian law. Under riparian law, land and water are inseparable, and any owner of property adjoining a river or stream automatically has rights to use the water. The property owner can use the water in reasonable amounts up the proportion of the amount of frontage that his property controls. He can use any amount for his own profit as long as it does not interfere with the similar rights of other users. Since the water is linked to the land, he can apply it only within its natural watershed, and the law does not allow it be diverted to any other

drainage system. In times of shortage, all users must reduce water use by a common percentage.

In most Western states, water is allocated according to the doctrine of "prior appropriation" (Scott 1984). Under this doctrine, property rights to water and land are separate. Though defined differently in each state, in general water rights are acquired when a person first uses water for a socially recognized purpose, and their legal right dates to that initial use. The owner's rights are for a specified amount rather than a percentage, and they can do whatever they like with the water, including diverting it to another watershed and applying it anywhere the owner chooses. Those rights continue as long as the user puts the rights to beneficial use.

> The fact that the earliest economic uses to which water was put in the West were for mining and agricultural gave rise to the three major principles of the "prior appropriation doctrine," the dominant water allocation and use principle in the West: the priority rule, the diversionary requirement, and the beneficial-use requirement. (Wilds 2010:2)

The rule of prior appropriation states that the first person or organization to use or divert water from a river or stream has the right to continue using that water. Users that come along later can only get water after the first person's right is satisfied. Each user is classified by the date they started using the water. The earliest right or priority is satisfied first, then the second, and so on until the water runs out. Ideally, in a year of normal precipitation, all of the water rights holders in the system will receive their full allotment of water. In years of below-normal precipitation, the right holders with the earliest dates or priorities will still receive their full allocation of water. Some rights holders with a later date of origin ("junior" rights) may receive nothing. The water must be put to a valid or "beneficial" use, such as mining, agriculture, industry, or municipal water supply. Use

of water to maintain fish, wildlife, and recreation has not traditionally been regarded as "beneficial." If a water right is not used for a period of time it may be challenged and lost to others who wish to use the water (Wilds 2010).

> The ultimate result of these principles has been the development of a "consumptive" ideology, which historically perpetuated the notions that (1) water not used is wasted or lost; (2) only economic, diversionary uses are beneficial; and (3) individuals have the right, if all other requirements are met, to use the allotted amount of water no matter what conditions prevail—even to the detriment of other users or the surrounding environment. Adding to the culture of consumption is the requirement that if a water rights holder does not continuously use the water for defined beneficial purposes, those rights may be considered abandoned or forfeited. (Wilds 2010:2)

Wilds (2010) also points out that this doctrine of consumption discourages the conservation of water supplies. Since the right to any water that is not used is lost, efficiency is discouraged, so the "use it or lose it" policy prevails.

Homestead and Desert Land Acts

The Homestead Act of 1862 was used to encourage settlement of the Western United States. Each homesteader received 160 acres of land for agriculture, but in many areas it quickly became apparent that this was insufficient. Passage of the Desert Lands Act in 1877 expanded the grants to larger tracts of land (640 acres) to those who would irrigate them. Most individual farmers did not have the necessary capital for the construction of canals and reservoirs that would ensure a reliable water supply to make these grants practical (Wilds 2010). The famous explorer John Wesley Powell, who had surveyed much of the arid West, noted that large-scale irrigation projects would be necessary to make agriculture practical. Projects like these would require significant capital outlays and cooperation to be successful (Glass 1964).

Difficult times for farmers in the East and the decline of mining in many Western states led to an economic depression in large parts of the country in the 1880s. The collapse of gold mining in particular pushed Nevada congressmen and other Western leaders to look for ways to diversify their economies. Together these conditions led to the rise of the Populist Party and to calls for large-scale federal investment in the economy. They encountered resistance from congressmen from Eastern states who opposed competition from new agricultural projects in the West and prevented federal involvement. Private attempts at large-scale projects led mostly by Mormons in Utah and settlers in California had some success (Wilds 2010). The Carey Act was passed in 1894 to provide funding through the sale of federal lands in the West to fund state-led irrigation projects. For the most part these projects were not viable because many important Western rivers cross state borders, which makes distribution an interstate matter, and water rights do not cross state lines (Glass 1964). Populist sympathy and support in Congress grew, but it was Theodore Roosevelt and his Progressive policies that led to support for the establishment of dams and irrigation districts. The National Reclamation Act was passed in 1902, and the first project by the new Office of Reclamation was the Truckee-Carson (later Newlands) Reclamation Project.

The Newlands Project and Derby Dam

Francis Newlands, congressman and later senator from Nevada, was instrumental in the passage of the Reclamation Act of 1902, authorizing massive government funding of irrigation projects and establishing the Office (later Bureau) of Reclamation (USBR). In 1903, the Secretary of the Interior authorized its first project, the Truckee-Carson (later Newlands) Reclamation Project. Bureau of Reclamation engineers and farmers asserted

that the Truckee River had excess water that was "wasted" by allowing it to flow into Pyramid Lake. Fishing was not regarded as "beneficial use." The Derby Dam ten miles above the Pyramid Lake Reservation boundary was built to divert water into the 32-mile-long Truckee Canal, which would carry it to the Carson River drainage. There the "excess" water would be stored behind the soon-to-be-constructed Lahonton Dam for summer irrigation in Carson Valley. Project planners said 350,000 acres of land could be reclaimed, which would "make the desert bloom." The federal government would fund the project and the cost would be returned through irrigation fees. Derby Dam, completed in 1905, diverted 48% of the waters of the Truckee River, and the level of Pyramid Lake began to decline that year and continued to do so until 1967 (Knack and Stewart 1999).

The Fallon area turned out to be less than ideal for farming (Wilds 2010). Alkaline soil and a shallow water table required the construction of 230 miles of deep drains in the valley. Even with this added construction, no more than 74,500 acres was ever put into production. Additionally, the water loss in the Truckee canal through evaporation and seepage was considerable.

The effect on Pyramid Lake did not raise any concerns among most non-Indian people. Politicians and Bureau of Reclamation engineers were well aware of the effect the diversion would have on the lake. Senator Newlands himself stated that Pyramid and Winnemucca lakes existed "only to satisfy the thirsty sun" (Knack and Stewart 1999:272), and Newlands Project Director Richardson informed Agent Creel at Pyramid Lake that "the plans of the project were not based on allowing any water to go into Pyramid Lake for the purpose of the preservation of the fish" (Knack and Stewart 1999:274). None of the planning reports considered the effects of the project on Paiute

agriculture or the reservation economy, which still relied heavily on fishing. In 1904, Congress passed a rider allotting five acres of land to each Indian on the Pyramid Lake reservation. Each plot would be irrigated by a federally constructed irrigation system, purportedly making up for the loss of Pyramid Lake. As noted in the previous chapter, the irrigation system was never constructed because of the encroachment of white squatters on reservation land. The squatters would need to be removed to open the land for allotment, and these squatters were already tapping the existing irrigation ditch system that had been hand dug by tribal members. Reluctance on the part of the U.S. attorney to proceed with the evictions and congressional interference prevented this plan for expanding Pyramid Lake Paiute agriculture from going into effect (Knack and Stewart 1999).

The Orr Ditch Decree

To resolve questions of who was entitled to receive how much water, the United States filed a "friendly" lawsuit, *U.S. vs. Orr Water Ditch Company et al.*, Equity No. A3 (D. Nev. 1944*)*, in 1913 to adjudicate all claims for the Truckee River, including 2,000 private water users, 20 corporations and power companies, and several city water departments. Once the courts had apportioned water among all existing claims and the federal government diverted the rest for Newlands, any new water users would have to purchase one of these adjudicated claims.

The BIA and USBR allowed Department of Justice lawyers to handle both Indian claims and Newlands claims. Justice lawyers sought the minimal amount of water for reservation land irrigation. Indian Agent Lorenzo Creel argued that the Indian claim should be for water to maintain the fish supply (Knack and Stewart 1999). The attorney

in charge of the Indian section of the case asserted he had made no allowance for water to pass into the lake for the purpose of maintaining its level or preserving the fishery. When Creel checked with the Bureau of Reclamation, they acknowledged the eventual evaporation of the lake and the destruction of the fishery. Furthermore, they planned additional diversions to clean up any remaining "waste water," guaranteeing there would be no permanent inflow into the lake. They completely disregarded Indian rights and needs.

In 1926, thirteen years after the suit was filed, the federal district court appointed a special water master to prepare technical recommendations and established a temporary decree to handle diversion, giving two allotments to the Pyramid Lake Tribe, or about 20,000 acre feet of water, for agriculture. The Secretary of the Interior and Commissioner of Indian Affairs approved, but local Paiutes complained they were not getting their share. Agent Creel contacted Newlands Project Director Richardson, who claimed that upstream users were diverting too much, but that he could not shirk his responsibility to the farmers, so there was nothing he could do. Creel then threatened to file suit, which in turn caused Nevada Senator Tasker Oddie to approach the Secretary of the Interior, but the Secretary claimed the temporary decree effectively froze allocations, and he argued that there was nothing he could do (Knack and Stewart 1999).

By late 1920s the surface level of Pyramid Lake had begun to drop significantly. The Paiute people complained to the agent that at times no water was coming into the lake and the fish population was shrinking. A BIA field expert stated that diversion of water was a major cause of decline in the fishery. In 1931, the special water master finally addressed Indian complaints, saying his study indicated that it would require 10

times the amount of water currently available to meet obligations and supply all allocations. The river was simply over-allocated, and it was impossible to save the lake and meet all the other obligations for water (Knack and Stewart 1999). Agent Creel had appealed to the appropriate authorities, but he found no support. Congressmen, senators, and other federal officials brushed his comments aside.

With the election of Franklin Roosevelt and the Indian New Deal, the power to act moved from the agent to the newly elected tribal council, and the new superintendent, Alida Bowler, was more proactive. She ordered a study of the lake by F. H. Sumner from Stanford University. Completed in 1938, the study stated that the number of fish caught in the lake had declined by more than 60% in three years. If water diversions continued at the current rate, the lake would shrink to half its 1882 level before it reached equilibrium and would have half the density of sea water, meaning no freshwater fish would survive (Knack and Stewart 1999).

Winnemucca Lake, which had also been fed by the Truckee River, was 3.5 miles wide, 21 miles long, and 80 feet deep in the adjacent valley to the east of Pyramid Lake. In 1936, it had been designated the Winnemucca National Wildlife Refuge, but diversions at Derby Dam reduced the water level of the Truckee below the level of the channel leading to the lake. By the end of the 1938, the lake had completely dried up, desiccating a major Western wetland, which led to a massive die off of fish, waterfowl, and other wildlife (Rusco 1992).

The Lahonton cutthroat trout of Pyramid Lake, which had teemed in vast numbers, was well on the way to extinction, and by 1943, the species had died out completely (Rusco 1992). The tribe had to reevaluate their position. The failure of

restocking efforts; inadequacies of fish ladders; upstream pollution from cities, industry, and agriculture; irrigation; evaporation; and occasional drying up of the river had wrecked what had been an abundant source of subsistence and a commercial fishery. The tribe tried to make money selling licenses for sport fishing on the lake (Horton 1997). Though the trout had died out, Rusco (1992) notes that a similar variety from Summit Lake was reintroduced with the cooperation of the U.S. Fish and Wildlife Service and Nevada's Department of Wildlife. This did not approximate the previous natural abundance of Lahonton cutthroat trout because they could not spawn in the river owing to the dams and the lack of water. However, it did provide the tribe some subsistence and a means to raise money, even it was providing a fishing spot for a predominantly off-reservation people.

In 1944, the federal court finally handed down its decision. The *Orr Ditch* decree allocated all of the rights held on the Truckee River at that time, and although it included small allocations for Pyramid Lake agriculture, no water was provided to sustain Pyramid Lake or its fishery (Wilds 2010). The decree stipulates that any disputes were referred to Reno District Court, which is usually referred to as the *Orr Ditch* Court. The Newlands project was annually diverting about 250,000 acre feet of water from the Truckee River and in low water years this meant the entire flow of the river. This diversion was over and above the water they received from the Carson River, and the project sometimes diverted as much as 700,000 acre feet per year (Gremban 1994).

Once Lahonton Reservoir was full, the Truckee-Carson Irrigation District (TCID), which had been organized by the farmers to operate the federal dams and ditches of the Newlands Project, continued to divert water year-round to generate electrical power. The

massive and continuous diversion of water created substantial runoff from the Newlands project and inadvertently created a new wetland to the south of the project. This new wetland was dubbed Stillwater, and the Stillwater Wildlife Management area was formally established in 1948 (Sierra Club 1975:20).

The Pyramid Lake Tribal Council Takes Action

In 1951, the tribe filed a claim with the Indian Claims Commission over federal land dealings with Pyramid Lake and over the water rights issue under the *Winters* Doctrine. The *Winters* Doctrine, established in 1908 pursuant to the Supreme Court decision in *Winters v. United States* (207 U.S. 564, 28 Sup. Ct. 207 [1908]), states that when an Indian reservation is established, whether expressly mentioned or not, water rights are reserved to accomplish the purpose of the reservation. The date of these rights is the date the reservation was established, which usually predates any other water rights in the area. Within the appropriated rights system, this means that reservation rights precede all others and must be completely fulfilled before any other user gets any water. Most reservations were set aside for the development of Indian agriculture. Some have argued that water had thereby been reserved for Pyramid Lake agriculture, and therefore the tribe had no legitimate claim to additional water. However, the Pyramid Lake Tribal Council argued that since Agent Dodge had explicitly referred to setting Pyramid and Walker lakes aside as reservations for their fisheries, the tribe was entitled to sufficient water rights to maintain their fishery. This argument formed the foundation of the Pyramid Lake Tribe's suit before the Indian Claims Commission.

Janet Philips (personal communication 2010), an official for the Truckee Meadows Water Association, points out that prior to the 1970s, it was always "white

people vs. the Indians." The "Nevada Group," an association of Nevada water users, was actively opposed to the expansion of the Pyramid Lake Tribe's water rights. McCool (1994) refers to such interest groups as "iron triangles."

> Also known as a policy whirlpool, a subgovernment, or a subsystem, an iron triangle is an informal political alliance that forms to influence a specific public policy to its advantage. Consisting of congressional committees and subcommittees, administrative agencies, and interest groups, the tripartite coalitions influence the allocation of government goods and services in such a way that congressional committee members get credit for "bringing home the bacon" to their constituents, the administrative agencies expand their budgets, personnel, and turf, and the interest groups get what they want from the government. Thus the triangle works in a symbiotic fashion that creates advantages for all three participants; by helping one another, they help themselves. (McCool 1994:5)

In this case, the iron triangle consists of the Nevada Group, in association with USBR, and the members of the Nevada congressional delegation. The Nevada Group itself consisted of Sierra Pacific Power Company, the TCID, Washoe County Water Conservation District, Carson-Truckee Water Conservancy District, and the Nevada state government. The group wielded considerable influence, and they were able to apply considerable political power to achieve their ends and brush aside the Pyramid Lake Tribe's efforts to get more water. Iron triangles are often supported by organizations such as the National Water Resources Association, the Association of Western States Engineers, and the Western States Water Council (McCool 1994), who actively oppose Indian and federal reserved water rights. There are Indian iron triangles as well. Tribes with the backing of the *Winters* Doctrine, the Bureau of Indian Affairs, and the Committee on Indian Affairs can prove to be fierce opponents. In the past, Pyramid Lake was not a part of an iron triangle and they had little outside support. Over time, though, the tribe gained allies to support its efforts.

The Washoe Project

In the 1950s, the Bureau of Reclamation announced the new Washoe Project, which planned to build three new dams: Prosser Creek Dam, Stampede Dam on the upper Truckee, and Watasheamu Dam on the Carson River. These dams were intended to store seasonal floodwaters and water otherwise "wasted" by flowing into Pyramid Lake or overflowing Lahonton Reservoir during the spring runoff. The proposed Stampede Reservoir, with its 200,000 acre-foot capacity, would impound and divert to other users all the water that Pyramid Lake had been receiving between 1905 and 1967 (Pelcygar 1995). When the Washoe Project was proposed, the tribe hired a lawyer to testify before Congress. He spoke of the story of Pyramid Lake and the results of the Newlands Project. The congressman from northern Nevada at that time was Cliff Young, who assisted by including the Marble Bluff Dam and Fishway in the Washoe Project Act to help the *cui-ui*. He specified that flows from Stampede Reservoir be made available to Pyramid Lake. The enabling legislation also acknowledged that the lake had almost been destroyed as a result of the federal government's actions.

The Tribal Council had given tentative approval to the Washoe Project but was concerned about the effect on the lake. The Secretary of the Interior assured them in writing that the Washoe Project would greatly increase the amount of water the lake would receive. Based on this assurance, the Tribal Council approved the Washoe Project in 1964. However, studies completed in 1966 indicated that instead of gaining 200,000 acre-feet of water, they would lose 40,000, and the tribe withdrew its support (Knack and Stewart 1999).

Bill Veeder, an attorney with the BIA and an outspoken advocate for Indian rights, asserted that Stampede Dam would be the end of Pyramid Lake (Pelcygar 1995).

Veeder went on the offensive, which put Secretary of the Interior Stewart Udall in a difficult position because U.S. Senator Alan Bible of Nevada asserted great political pressure to build Stampede Dam. Udall was sympathetic to Indian concerns, and to address the situation he formed a task force in 1964 to examine water concerns at Pyramid Lake (Wilds 2010). Ultimately, Udall split his decision. He decided to build Stampede Dam for flood control, recreation, and to help provide inflows to Pyramid Lake, but he refused to allocate any water specifically to Sierra Pacific for Reno and Sparks until the Pyramid Lake situation was resolved. According to Pelcygar, part of the reason for Udall's decision was that Stampede Dam was going to be built above Boca Reservoir, and he had received some reports indicating that Boca Dam was unsafe. In the event of a hundred-year flood, Boca Dam could fail and cause enormous damage. Stampede Dam was built between 1966 and 1970, and the Marble Bluff facility was completed in 1976.

For the first time, a congressional body officially admitted that the federal government was responsible for the crisis at Pyramid Lake (Knack and Stewart 1999). This major victory was followed by compensation; two million dollars was specified in the Washoe Reclamation Act for development of fish and wildlife resources, and in particular for restoration of the fishery at Pyramid Lake. Congressman Clifford Young and Senator Alan Bible called for the project to be built but pushed for funding that led to the construction of the Marble Bluff Dam and Fishway and directed that flows from Stampede Reservoir be made available to Pyramid Lake. The tribe objected to the very end because the law only promised to maintain the "largest practical flow" into Pyramid Lake, which could be no water at all (Redhouse 1994).

The task force that Udall had created in 1964 to explore the Pyramid Lake situation resulted in the 1967 Operating Criteria and Procedures (OCAP) for the Newlands Project. The OCAP was a set of guidelines designed to impose some constraints on water use for the first time. "By this time, the Newlands Project had become known as being one of the most wasteful and inefficient, if not **the** most wasteful and inefficient projects in the country" (Pelcygar 1995:17). The philosophy behind OCAP was to maximize the use of the Carson River and minimize diversions from the Truckee to meet the irrigation needs of the project; however, the tribe felt this was still too lenient. TCID did stop diverting water for power generation in the winter, but they refused to abide by the rest of the guidelines. They denied that the Secretary had the authority to impose the OCAP on them.

After Udall's decision, the Washoe Project went forward but Pyramid Lake continued to decline. Stampede Dam was constructed between 1966 and 1970. Pyramid Lake reached its lowest point in February 1967, and the surface level was more than ninty-four feet below the surface level measured in 1891 (*Pyramid Lake Tribe of Indians v. Morton*, 354 F. Supp.252 [1972]). As the surface level lowered, erosion increased along the river channel near the mouth of the Truckee. To prevent further erosion of agricultural bottomlands, federal funding from the Washoe Project was used to reroute the river through a three-mile-long spillway to the nearest bedrock outcrop so the water could flow at a more leisurely pace into the lake and prevent further erosion. The spillway also included a more modern and effective fishway. This was a start, but larger challenges were on the horizon.

The California-Nevada Interstate Compact or the "Bi-State Compact"

In addition to disputes about water distribution between the Pyramid Lake Tribe, TCID, and the other users of the Truckee River, an uneasy truce prevailed between Nevada and California concerning the division of water between the two states. The three major rivers in western Nevada are the Truckee, the Carson, and the Walker, and each begins on the eastern slopes of the Sierra Nevada in California. Ninety percent of the water from these rivers is used in Nevada, but since the rivers all originate in California, the state of California would technically be allowed to divert all of the water on their side of the border, leaving Nevada with nothing.

Population growth on the California side of Lake Tahoe decreased the amount of water flowing out of Lake Tahoe into the Truckee River. Nevada leaders realized some sort of agreement was necessary to ensure the supply of water to western Nevada. With authorization by President Eisenhower, California and Nevada negotiated the Bi-State Compact to ensure a steady supply of water (Wilds, Gonzales, and Krutz 1994). The United States sent a non-voting representative to the negotiations who acted as chairman, and federal interests, including Indian interests, were not brought into the negotiations (Kramer 1987–1988). Once completed and passed by Congress, the agreement would be binding not only on the states but also on the federal government and, by extension, the tribes.

> After thirteen years of work, a document was drafted that not only limited the Indians' water to what the Orr Ditch decree gave them in 1944, but went beyond that by expressly preventing the federal government and the Indians from ever going to court to seek more water for Pyramid Lake. Henceforth, the Indians would have to apply to Nevada for any water saved by the Newlands Project, and the threat of the *Winters* Doctrine would disappear. (Josephy 1970:6)

The federal government's passive approach had allowed the states to divide up the waters without much outside input (Pelcygar 1995). The negotiations might have been an opportunity to allocate more water for Pyramid Lake or to overcome what had happened in the *Orr Ditch* case, but the federal government stayed neutral. The states of Nevada and California divided up water among their own interests, and all of the other water users would be satisfied at the expense of Pyramid Lake. The compact was written so that any additional water usage would have to come from the small amount of overflow water that was still making it to down to Pyramid Lake. In addition, and perhaps most important, most if not all past compacts between states (which require Congressional approval pursuant to the U.S. Constitution) include a provision that "nothing in this compact would affect the rights of the United States or its Indian wards (or words to that effect)" (Pelcygar 1995:47). But the California-Nevada compact included precisely the opposite provision. It said, in effect, "This compact would not be effective unless Congress in its ratification of the compact made it binding on the United States and Indian tribes" (Pelcygar 1995:47).

As he was leaving office in January 1969, Stewart Udall told the Office of Management and Budget (OMB) that the Interior Department opposed the compact principally because of its adverse effect on Pyramid Lake, citing the provision making it binding on the United States (Pelcygar 1995). The compact was also opposed by the Departments of Justice and Interior because it was contrary to their interests for federal agencies to be bound to agreements that the agencies had not had a hand in negotiating. The compact was brought before Congress for approval a couple of times, but because of Udall's position, it never even made it to a serious hearing or a vote in Congress.

The Nevada legislature swiftly took up the document and after brief hearings approved the compact. California took a different approach. After appeals from the Northern Paiute Indians, the National Congress of American Indians, and the Sierra Club, the California Assembly Committee on Natural Resources and Conservation was not willing to risk rejection by Congress and refused to approve the compact unless it was rewritten to preserve Pyramid Lake and eliminate the objections of the Department of the Interior (Kramer 1987–1988:1367).

To address these complaints, California Governor Ronald Reagan, Nevada Governor Paul Laxalt, and the new Secretary of the Interior, Walter J. Hickel, met on a private yacht in the middle of Lake Tahoe in the summer of 1969. They decided that rather than let Pyramid Lake decline, the lake should be drained to the point where the current flow would maintain it. The vertical level of the lake would be reduced 152 feet to a saline pond in the middle of a large flat devoid of life, would be unattractive to tourists and the recreation-seeking public, and would permanently destroy any economic value the lake might have to the reservation. "As Vine Deloria, Jr., Indian author of *Custer Died for Your Sins* and a former executive director of the National Congress of American Indians, put it: 'It was the same logic used by the Army to destroy a Vietnamese village—"We had to destroy the village to save it." It naturally followed that the only way to save Pyramid Lake was to drain it.'" (Josephy 1970:6). Both state legislatures joined the Indian cry of outrage and the suggestion was dropped.

The Pyramid Lake Government Task Force

Following this outcry, the Pyramid Lake Government Task Force was formed to investigate various issues at Pyramid Lake. The resulting study was as biased as it was

ineffectual. It concluded that Pyramid Lake had been slowly receding because of long-term climatic change since the Pleistocene and had probably dried up in the past between 4,000 and 7000 years ago. The writers of the final report repeatedly pointed out that there was no additional water available for Pyramid Lake.

> The Task Force also found that there is presently no outstanding water to maintain Pyramid Lake at its present or any other level; and, it further found that the depletions in the residual flows to Pyramid Lake have been caused by upstream developments and accompanying increased uses of water. These developments, in the view of the Task Force, will continue to increase in a gradual manner and cause even greater water demands on this stream system. (Pyramid Lake Task Force 1971:vii)

A consultant hired by the task force found that the largest volume of water that could be salvaged was from changes in the water management of TCID and the Newlands Project. These changes included lining portions of the canal system, automation of the district's delivery and distribution system, and abandonment of certain regulatory reservoirs. "The Task Force estimates that an average of 85,650 acre-feet of water per year could be obtained for Pyramid Lake by these procedures at a capital cost of $1,478,400, and increased annual operation and maintenance costs of approximately $60,000" (Pyramid Lake Task Force 1971:vii). In its final conclusion, the task force recommended that the suggested operational changes be implemented and paid for by the U.S. government, and after a period of study of the benefits of the changes, a reduction in the water usage by TCID could be implemented. However, the task force stressed that implementation of these changes might cause damage to wetlands in the Stillwater and Fernley areas. "It should be noted here, that although no definitive studies were undertaken to ascertain the nature or cost of such modifications in these wildlife and waterfowl areas, the 'betterments' or water salvage study group did submit a very rough

estimate that such modifications for the Stillwater area alone may run as high as $3,900,000" (Pyramid Lake Task Force 1971:35). They noted that any threat to these sensitive environmental areas could be made up by diversion from the water savings made by the Newlands improvements. The task force concluded that current water use was reasonable, including the 406,000 acre-feet/year, and any changes to the system as it stood would damage other aspects of the system, particularly Stillwater. Pyramid Lake had dried up before and would dry up again without massive federal investment as upstream users (Sierra Pacific) made greater demands on the system.

Critics noted numerous problems with these conclusions. The Sierra Club found no evidence that Pyramid Lake had dried up in the past.

> Detailed studies indicate quite the contrary. If it is currently [that is, during the twentieth century] drying up, this is because of the historic diversions of well over 200,000 acre-feet per year (AF/Y) of water from the Truckee River to the Newlands Project, together with lesser diversions for consumptive use upstream in the Truckee Basin. . . . It will be shown that . . . were it not for the diversions to Newlands, Pyramid's level would be very close now to its highest recorded level. At least two forms of life indigenous to Pyramid Lake survived any previous minima of the lake. Both are fishes: the cui-ui and the Lahonton cutthroat trout. The cui-ui is left only in Pyramid Lake, and the Lahonton cutthroat trout was exterminated in the Truckee Basin by man's activities in the 1930's. . . . Any persuasive argument that Pyramid Lake had dried up in prior geologic periods must explain how these two fishes could have weathered the desiccation or have been reintroduced into the lake. In the absence of such an explanation, we cannot accept the concept that Pyramid Lake has dried up, nor can we take seriously any arguments predicated on positions we have shown to be myths. (Sierra Club Pyramid Lake Task Force 1975:5)

More recent research corroborates these findings (Mensing et al. 2004). In addition, the report's findings overlook their own consultant's statement about the Newlands Project, "At no place or time have we suggested that an excessive use of 406,000 acre feet, measured after all reservoir evaporation and Truckee Canal losses and over deliveries have been taken care of, could be justified under today's standards of

beneficial use" (Pyramid Lake Task Force 1971:A-21). Finally, as a wildlife area, Stillwater had no more claim to "beneficial use" than the Winnemucca Lake Wildlife Refuge did.

A modified version of the compact that was completed in 1971 met many previous complaints but still did not address Pyramid Lake. It passed both legislatures and was brought up several times in Congress, but "The opposition from the Tribe and Departments of Interior and Justice was effective; six consent bills were introduced between 1971 and 1979, and none received a single committee hearing" (Kramer 1987–1988:1370).

The Endangered Species Act

> The Endangered Species Preservation Act of 1966 (P.L. 89-669, 80 Stat. 926) provides a means for listing native animal species as endangered and giving them limited protection. The Departments of Interior, Agriculture, and Defense were to seek to protect listed species, and, insofar as consistent with their primary purposes, preserve the habitats of such species. The Act also authorized the [U.S. Fish and Wildlife] Service to acquire land as habitat for endangered species. (United States Fish and Wildlife Service, 2011, p. 1).

The other users of the Truckee River had not paid attention to the needs or desires of the Pyramid Lake Tribe, but pursuant to the Endangered Species Act, the tribe was able to make their voice heard. The c*ui-ui* (*Chasmistes cujus*) was listed as endangered on the very first listing in 1967. Although the variety of Lahonton cutthroat trout native to Pyramid Lake had gone extinct in the 1940s, the transplanted variety was listed as "Endangered" in 1970, and this listing was updated to "Threatened" in 1975 (United States Fish and Wildlife Service 2015). These listings were important because they required the Secretary of the Interior to take action to save the *cui-ui* and, later, the trout.

Native American Rights Fund

In the late 1960s, the Ford Foundation was supporting nonprofit law firms such as the NAACP Legal Defense and Education Fund and the Mexican-American Legal Defense and Education Fund to benefit minorities, and they were considering funding a similar organization for Native Americans (Pelcygar 1995). At that time, Robert Pelcygar was working with California Indian Legal Services, which was trying to establish a national program. Following the lead and advice of BIA Attorney William Veeder, an aggressive advocate for Indian tribes, Pelcygar began working with lawyers for the Pyramid Lake Paiute Tribe. President Nixon had given a speech in 1970 on how the federal government had failed to fulfill its responsibilities and commitments to Indian tribes and cited Pyramid Lake as example. The Ford Foundation became interested in the Pyramid Lake case and others like it. The foundation gave this budding Indian legal organization a substantial grant with the stipulation that they use the money to work on behalf of the Pyramid Lake Paiute Tribe. With this grant, the organization moved to Boulder, Colorado, and became the Native American Rights Fund (NARF). Pelcygar, now working for NARF, became special counsel to the Pyramid Lake Paiute Tribe, working for and with the tribe's own attorney and mostly litigating on behalf of the tribe. His first case working with Pyramid Lake was *Pyramid Lake Tribe of Indians v. Morton*, 354 F. Supp.252 (1972).

From the outset, they worked out two and later three alternate tracks to secure more water for Pyramid Lake. The first was to reduce the amount of water being diverted at Derby Dam. They argued that even if the Newlands Project had a water right and the tribe did not, the project was still diverting too much water for three reasons: (1) it is wasteful, (2) it is inconsistent with federal trust obligations, and (3) it is contrary to the

Endangered Species Act. The second was the direct approach of asserting that the tribe has a prior right under the *Winters* Doctrine to maintain the fishery. This right was not recognized under the *Orr Ditch* decree, but the tribe argued that the right still existed. This led to *Nevada v. U.S*. The third track involved legislation, which ended successfully with the passage of the Negotiated Settlement (P.L. 101-618). The agreement resulted in significant changes in the use of the entire river system, but the tribe's other actions set the stage for the negotiation to be successful. The strategy was that if any one track did not work out, it was hoped that another approach would.

The tribe was well aware that the court in which a case is filed can make a difference in the outcome. In Judge Bruce Thompson's federal district court in Reno, TCID almost always won cases involving Pyramid Lake (Pelcygar 1995). These cases were then generally appealed to the Ninth Circuit Court of Appeals, where they were so regularly overturned that people in the Newlands Project referred to the Ninth Circuit court as the "Indian Court of Appeals." Pelcygar explained that the Ninth Circuit court is composed of some 20 judges, of whom three are assigned to any particular case. Since the three judges are seldom the same, a systematic bias in favor of Indian causes seems unlikely. The more likely explanation is that the problem is with the district court. Pelcygar and others felt they might get a more favorable decision the first time by filing suit in Washington, D.C. rather than in the district court in Reno. So the decision was made to file suit against Secretary of the Interior Morton and the Attorney General for not enforcing the OCAP in the federal district court in Washington, where they felt the tribe might get a less biased hearing. He points out that federal policy has now changed, and if

a case is filed against a federal official in a Washington, D.C. court today, the court will generally send the case back to the district where the complaint was made.

Tribe v. Morton (The Gesell Decision)

The tribe and NARF's first move was to get the federal government to enforce the OCAP (Pelcygar 1995). This first case for the tribe, *Tribe v. Morton*, 354 F. Supp. 252 (1972), was fundamental to everything that happened later. The tribe felt that the Secretary of the Interior had violated his trust obligation, and too much water was still being diverted to the Newlands Project. The tribe realized that neither the Newlands Project nor Derby Dam were going to be eliminated, but the blatant waste of water in the project while Pyramid Lake was drying up was too much to bear. Suggestions to reduce waste and improve efficiency in the project went unheeded or were discounted. TCID claimed that though they operated the district and its works under contract with the federal government, the works themselves were federal and therefore the responsibility of the federal government to maintain. In addition, suggestions to line the Truckee Canal were greeted with complaints that water through the canal recharged the underground aquifers used by the cities of Fernley, Fallon, and the Fallon Naval Air Station. Therefore, these communities felt it was not in their best interests to attain a higher level of efficiency. Importantly, the cities of Fallon and Fernley did not have water rights on the Truckee River but were tapping wells that they believed were being recharged by leakage from the Truckee Canal.

The case was filed in the U.S. District Court in Washington, D.C., and presiding Judge Gesell started out sympathetic to the government's position but clearly grew more and more outraged as the case went on (Pelcygar 1995). According to Redhouse (1994),

Gesell favored an out-of-court settlement and encouraged negotiations. The tribe and the Secretary of the Interior negotiated until 1972, when the Secretary unilaterally issued a new set of regulations to reduce waste in the Newlands Project. The tribe rejected these regulations because they did not reduce the amount of water being diverted from the Truckee and further abandoned a promise to consult with the tribe (Redhouse 1994). The judge rejected the new regulations, stating he had been "bamboozled" by the government. The Secretary then issued another set of regulations, reducing Newlands water usage from 406,000 to 378,000 acre-feet per year. The tribe rejected these as well because they would not stabilize Pyramid Lake, which was necessary to save the endangered species, and compliance with the regulations was voluntary, not mandatory. Gesell again threw out the regulations.

> The government became more and more desperate, and at one point the case was scheduled for trial, I don't know, in the fall of 1972, and I think largely in an effort to get out from under what was becoming an increasingly difficult situation for the government, the government decided to initiate the lawsuit to establish the tribe's *Winters* Doctrine rights. The government, unlike the tribe, had the option of trying to do that, by bringing an original action in the United States Supreme Court. So in 1972, the government filed a case called *United States v. Nevada and California*, in the original jurisdiction of the Supreme Court. And the purpose of the case was to establish the rights of the United States, principally [on behalf of the tribe] for Pyramid Lake, but for other governmental purposes as well as against the two States. (Pelcygar 1995:27)

The government then asked Judge Gesell to dismiss the case before him, stating that they had filed another suit to establish the tribe's rights. Gesell refused, noting that the problem was immediate and that it might take ten years before the case was decided by the Supreme Court. The government had a trust responsibility to the tribe that could not be neglected yet again.

In his February 1973 decision, *Tribe v. Morton* (354 F. Supp. 252 [1972]), Judge Gesell noted that enough water was being diverted for the originally proposed project area of 350,000 acres, but it had never reached that size. The landowners were using far more water than they were legally entitled to given the water rights they actually controlled, and the federal government had been letting them get away with it. Gesell's opinion called for a new OCAP with an immediate reduction in Newlands Project diversions from the 1926 contract quantity of 406,000 acre-feet per year (from both the Carson and Truckee rivers) to 350,000 acre-feet the next year with stepwise reductions thereafter, to achieve an ultimate level of 288,129 acre-feet per year. This was a landmark decision for Indian rights because, for the first time, the U.S. government was held to be responsible for the proper administration of its trust obligation to Indian tribes (Knack and Stewart 1999).

Solicitor General Erwin Griswold

When *U.S. v. Nevada and California* was filed before the Supreme Court, it was the responsibility of Solicitor General Erwin Griswold to represent the United States. Griswold, a former dean of Harvard Law School and a highly respected jurist, was outraged by the ethical breach of the government attorneys in the *Orr Ditch* case who had subordinated the tribe's claims in favor of the other party they were representing—namely, the Newlands Project. The Interior Department wanted to appeal Gesell's decision, but it is the Justice Department that makes the final decision in these cases. Solicitor General Griswold declared that the United States would not appeal Gesell's decision, and then he personally argued that the Supreme Court should take up the *U.S. vs. Nevada and California* case.

The lower-level government lawyers had originally framed the case in *U.S. vs. Nevada and California* ambiguously (Pelcygar 1995). They argued that while there had been a reserved right when the reservation was established, subsequent events such as the Reclamation Act, the construction of the Newlands Project, and the *Orr Ditch* decree superseded that right. They stated, without taking a position, that there was a dispute about the extent to which the tribe's rights may continue to exist and asked the court to resolve the dispute. Griswold and his staff studied the case and transformed it completely, arguing that the tribe's *Winters* Doctrine rights came into existence when the reservation was created, and those rights continued to exist. Nothing had happened in the interval to extinguish or diminish those rights. The Supreme Court declined to take up *U.S. vs. Nevada and California* and noted that the case should be filed in district court. Griswold remained a supporter of Pyramid Lake water rights and wrote letters supporting the tribe's opposition to the Bi-State Compact.

TCID Refuses to comply with the Gesell decision

When Solicitor General Griswold decided not to appeal the Gesell decision, Secretary of the Interior Rogers Morton was obligated to enforce Gesell's decision (Pelcygar 1995). Morten told TCID that they were using too much water; however, TCID refused to comply with the decision. They continued diverting water as they had done for the past fifty years. Secretary Morton then notified TCID that he was invoking his right to terminate the 1926 contract that authorized them to operate Derby Dam, the Truckee Canal, and other works of the Newlands Project, which were still officially owned by the United States. This was the first time the federal government had ever terminated a contract with an irrigation project (Pelcygar 1995). Under the terms of the contract, the

Secretary had to give them one year's notice, and Morton did. He noted that TCID would still be in control for the year, but he stated that any water diverted from the Truckee River over and above Gesell's OCAP would have to be returned to Pyramid Lake. The city of Fallon and TCID then filed suit, claiming that the OCAP designated by Judge Gesell was illegal and not binding on TCID, and that the Secretary did not have the authority to impose the OCAP or terminate TCID's contract. The Department of Interior considered sending federal marshals to take over Derby Dam and the Newlands works, but when TCID filed suit, the Secretary decided to await the outcome of the lawsuit. TCID continued to control diversions at Derby Dam. The suit went before Judge Bruce Thompson in Federal District Court in Reno. Judge Thompson decided to sit on the case for ten years until the federal case filed by the tribe that eventually became *Nevada v. U.S.* was finally resolved. *Nevada vs. U.S.* was decided in June of 1983, and in August 1983 Judge Thompson ruled that the OCAP was valid and the contract was validly terminated. In his decision, Judge Thompson had some choice words about Judge Gesell, but he did come down hard on TCID for taking the law into their own hands (Pelcygar 1995). TCID appealed to Ninth Circuit Court of Appeals, which affirmed Thompson's decision, and then to the Supreme Court, which denied their appeal.

Ten years had passed between Gesell's decision in 1973 and Judge Thompson's decision in 1983. Secretary Morton had warned TCID that they would have to replace any water illegally diverted, and in that time TCID had diverted 1,058,000 acre-feet of water in violation of Gesell's OCAP. This water would have to be returned to Pyramid Lake. This problem became known as the "recoupment" issue and is currently unresolved.

Asserting Winters Rights

Tribe v. Morton (the Gesell decision) was not predicated on a water right that was superior to that of the Newlands Project, but on the finding that the Secretary of the Interior had a trust responsibility to the Pyramid Lake Paiute Tribe and was required to utilize the full extent of his authority to minimize the extent to which the waters of the Truckee River were diverted (Pelcygar 1995). These waters were needed to maintain Pyramid Lake and its fishery. In the past, the Secretary had allowed TCID to run rampant, taking much more water than they needed and well beyond their decreed rights. Federal and tribal efforts to assert the tribe's 1859 *Winters* right to restore the Pyramid Lake fishery culminated in *Nevada v. U.S.*

In 1975, after twenty years, the Indian Claims Commission (ICC) finally ruled in *Pyramid Lake Paiute Tribe v. U.S.* (36 Ind. Cl. Cm. 256 [1975]) that under the *Winters* Doctrine, the tribe held a reserved water right for the maintenance of Pyramid Lake and the fishery with an origination date of 1859 and the establishment of the reservation. In addition, the Commission awarded the tribe $8,000,000 for having been denied the water it was entitled to under the *Winters* Doctrine to maintain the fishery, which was Agent Dodge's original purpose for setting aside the reservation. It also declared that the tribe's water rights were neither lost nor diminished, and the award was made strictly for damages *(Pyramid Lake v. U.S.,* 36 Ind. Cl. Comm. 256 [1975]).

In the following year, the tribe, supported by the Department of Justice, filed suit against TCID for water to maintain the lake and restore the fishery on the basis of the *Winters* Doctrine (Redhouse 1994). The tribe's claim that it had a prior right was confirmed in the ICC decision. The tribe recognized that until the *Orr Ditch* decree was revised, the reserved right could not be satisfied. Asserting this right would be a very

complex undertaking (Pelcygar 1995). The tribe would have to file suit against everyone with a water right on the Truckee River, and this totaled thousands of people. Following the Supreme Court decision to send down *U.S. v. Nevada and California*, the federal government filed suit in Nevada. In *U.S. v. TCID* it sued all 17,000 water rights owners under the *Orr Ditch* decree and their successors, including Judge Bruce Thompson, the federal district judge in Reno.

In 1977, however, the court rejected the suit against TCID, stating that the Secretary as trustee should have put forward the tribe's claim at the time of the *Orr Ditch* decree. The United States appealed to the Ninth Circuit Court of Appeals, which ruled that the *Orr Ditch* decree was final, but that there was a conflict of interest because the Department of Justice lawyers had represented both TCID and the Pyramid Lake Tribe. Technically this was only a partial victory, but for the tribe it was a complete victory (Pelcygar 1995). The court applied the principle of *res judicata* (an adjudicated issue that cannot be re-litigated) with regard to all of the water users except TCID. Basically it said that the *Orr Ditch* decree resolved all water rights, and the case was settled. The tribe could not assert its *Winters* Doctrine rights against the other water users. However, it also ruled that the Pyramid Lake Tribe and the Newlands Project having both been represented by the Justice Department lawyers constituted a conflict of interest, and therefore these two entities had not had a full and fair opportunity to seek legal recourse.

Pelcygar (1995) states that this decision actually suited the Tribe and their attorneys well. The Newlands Project was the largest diverter of water from the Truckee and had the most junior water rights in the system. A victory against Newlands would

restore enough water to sustain Pyramid Lake and the fishery, so the tribe strongly supported the decision. TCID appealed the decision to the Supreme Court.

John Hoffman (personal communication 2011), the Special Advocate for the State of Nevada, notes that the state had also gotten everything it wanted: the *Orr Ditch* decree was still intact. But, the decision left TCID out to dry. The decision upheld the current water rights system for all users except TCID which, as noted above, had the most junior rights in the system. The decision, as it stood at that point, left the tribe and TCID to fight it out. Hoffman met with the Nevada governor and the attorney general to decide whether to risk the gains they had made to support TCID in an appeal to the Supreme Court. The state decided to support TCID, and the case became *Nevada v. United States et al.* (463 U.S. 110 [1983]). Hoffman notes that Pyramid Lake also entered the case on the side of the United States, which was considered good by the state of Nevada because with their name on the case, the outcome would be clearly binding on the tribe. In addition, Hoffman was able to get other states with prior-appropriation water laws to file *amicus* briefs supporting the state of Nevada, including the state of Mississippi.

The state expended considerable effort to win the case. They hired Barrett Prettyman, a litigator who had considerable experience arguing before the Supreme Court. The granting of a *writ of suci* (allowing the case to be heard) was tricky. On the date the court was supposed to announce whether it would hear the case, Prettyman had called Hoffman to let him know that the decision had been delayed a week. Hoffman said that this was unusual and meant the court was deadlocked. The justices needed more time to court the undecided vote. One week later, Prettyman called to let Hoffman know that the court had decided to hear the case.

The state's lawyers decided to argue the case using the decision in *Heckman v. U.S.*, 224 U.S. 413 (1912). Following *Heckman,* when the U.S. litigates on behalf of an Indian tribe, the tribe is bound by the decision, no matter whether the tribe supported or even wanted the litigation to begin with. Hence, the Pyramid Lake Paiute Tribe is bound by the *Orr Ditch* decree. The Supreme Court ruling in favor of TCID stated that once such decisions regarding property were decided, they should not be reopened, as it may damage other parties involved: "we conclude that the Government is completely mistaken if it believes that the water rights confirmed to it by the *Orr Ditch* decree in 1944 for use in irrigating lands within the Newlands Reclamation Project were like so many bushels of wheat, to be bartered, sold, or shifted about as the Government might see fit" (*Nevada v. U.S.*, 463 U.S. 110 [1983]). The *Heckman* decision formed the basis of Chief Justice William Rehnquist's ruling, which has been criticized by William Scott, who says the *Heckman* argument "has lost much of its vitality" (1984:1077) since tribes were not adequately represented by federal lawyers in the past.

In his concurring opinion, Justice Brennen states that while the tribe is bound by *Orr Ditch*, their *Winters* rights as determined by the ICC court remain intact, and the 1859 date for their water rights is still valid:

> As a consequence, the Tribe retains a *Winters* right, at least in theory, to water to maintain the fishery, a right which today's ruling does not question. To some extent it may be possible to satisfy the Tribe's claims consistent with the *Orr Ditch* decree —for instance, through judicious management of the Derby Dam and Lahontan Reservoir, improvement of the quality of the Newlands Project irrigation works, application of heretofore unappropriated floodwaters, or invocation of the decree's provisions for restricting diversions in excess of those allowed by the decree. (*Nevada v. U.S.*)

According to Castile (2006), the Reagan administration was concerned about the success of Indian tribes in securing water rights through litigation and was trying to move

them away from litigation toward negotiation in settling disputes over water rights. Chief Justice Rehnquist, who was appointed by President Reagan, may have had this in mind when the court chose to accept the case. Indeed, in his critique of the case, Scott notes that "A review of Nevada's history reveals that the government was more concerned with acquiring water for the project than protecting the tribe's *Winters* rights" (Scott 1984:1080). In Western regions of limited water resources, many people fear that privately owned land and water titles are threatened by open-ended water rights reserved for Indian use by the *Winters* Doctrine, and the Court favored established property rights over historical inequity (Knack and Stewart 1999).

Conclusion

Pyramid Lake or *Cui-ui-pah* and the *cui-ui* have long held a central role in the life of many Northern Paiute people. The band who traditionally lived there was known as the *Cui-ui-ticutta* (*cui-ui* eaters) and had long lived well on the bounty of the Lake. The waves of American emigrants that began to settle around western Nevada and the Truckee River built dams and diverted the river for industry and farming until at times, no water reached the lake. The federal government encouraged and supported these efforts and complaints by Paiute people and agents were brushed aside or simply ignored. With the establishment of the Pyramid Lake Tribal Council, the tribal members themselves began to take control of the effort to save the lake.

The Pyramid Lake Tribe's efforts to use the *Winters* doctrine to save Pyramid Lake and its fishery began with their suit before the Indian Claims Commission in 1951. New dams and a water agreement by the states of Nevada and California that ignored the tribe's concerns pushed the tribe to lobby Congress and eventually file suit against the

Secretary of the Interior. The passage of the Endangered Species Act strengthen the tribe's position, but did not stop efforts to developing Nevada communities from working to draw more water away from Pyramid Lake. The tribe stopped the agreement and gained some concessions in water development, which gained them the support of Solicitor General Ervin Griswold, NARF, the Sierra Club, and organizations that supported their efforts. In consultation with NARF, the tribe developed two and eventually three strategies to save Pyramid Lake, but their first and strongest card was *Winters*. They carried their suit all the way to the Supreme Court where it was denied.

5. SOVEREIGNTY IN ACTION, PART II

The Supreme Court's decision in Nevada v. U.S. was a devastating blow to the Pyramid Lake Tribe, because they felt it was their best opportunity to achieve a permanent future for Pyramid Lake and the endangered fish. Tribal efforts under the Endangered Species Act were working, but these would end once the *cui-ui* and Lahonton Cutthroat Trout were removed from the endangered species list. The members of the Nevada Group continued to try to draw more and more water from the Truckee River, and the Pyramid Lake people had to defend what the gains they had made while they continued to pursue other approaches to saving Pyramid Lake.

Stampede Reservoir and the Solomon Decision

Due to Secretary of the Interior Udall's decision and the Endangered Species Act, Stampede Reservoir had been operated exclusively for the benefit of Pyramid Lake and restoration of the *cui-ui* from the time of its completion. The USBR did not enter into any water contracts with anyone else, including the Sierra Pacific Power Company. The water stored behind Stampede Dam was released each year to ensure the spawning of the endangered *cui-ui* (Knack and Stewart 1999:362).

According to the president of Sierra Pacific Power Company, Joe Gremban (1994), studies showed that without more water, particularly in times of drought, the cities of Reno and Sparks could not support much more growth. Sierra Pacific had been buying up water rights to sustain the development of the Reno-Sparks metropolitan area. This in turn supported Sierra Pacific's primary source of income, generating and selling electricity. To use the water, however, Sierra Pacific needed to store it. As it was, Sierra Pacific had the rights to the water, but any of its water that could not be used was simply

flowing downstream. Consequently, Sierra Pacific had lobbied heavily for the construction of Stampede Dam to store their water.

According to Pelcygar (1995), Sierra Pacific viewed Stampede Reservoir as "theirs"—that it was built for them and was going to be their source of water forevermore. It is a common misunderstanding that Sierra Pacific had paid for the construction. In fact, Stampede Dam was built by the Bureau of Reclamation and paid for by the U.S. government. Sierra Pacific had wanted to pay for it, because that would entitle them to the water stored in the reservoir. In 1976, Sierra Pacific, the state of Nevada, and the Carson-Truckee Water Conservancy District (CTWCD), a public entity created by Sierra Pacific to be the contracting entity for Stampede Dam, filed suit against the Secretary of the Interior, claiming that the Secretary was obligated under the Washoe Project Act to enter into a contract with them for water delivery. The tribe joined the case on the side of the United States.

The case was assigned to a visiting judge from Oregon, Judge Gus Solomon. Pelcygar (1995) notes that Solomon was a down-to-earth guy, and Sierra Pacific brought in a high priced lawyer from San Francisco who did not get along with Judge Solomon. Solomon ruled against them in 1982, the Ninth Circuit affirmed Solomon's decision in 1984, and the Supreme Court denied appeal. Solomon's decision (*Carson-Truckee Water Conservancy District v. Watt*, 527 F. Supp. 106 [1982]) states that even though the Washoe Project Act contemplated that this water would be sold for municipal use in Reno and Sparks, the Endangered Species Act took precedence. Under the Endangered Species Act, the highest priority was to be given to endangered species, and therefore the Secretary was authorized, if not required, to use the water as it was being used, for the

benefit of Pyramid Lake. Solomon noted that the Secretary was required to sell any water not used for other purposes, but since all the water was being used to fulfill his trust obligations to the Pyramid Lake Tribe and protect endangered species, there was no water to sell at that time.

Pelcygar (1995) points out that the Stampede decision changed everything because it changed the standing of the Pyramid Lake Paiute Tribe in water negotiations and ultimately led to a major political alliance between the tribe and Sierra Pacific Power Company. This in turn changed the situation on the Truckee and Carson rivers from everyone else being against the Tribe to everyone being against TCID. Pelcygar believes they would not have been able to make a deal later unless the court decisions had established exactly where everything stood, and ultimately, it meant that they had to make a deal.

According to Pelcygar (1995), water is important throughout Nevada, but for Reno, Sparks, and Fallon, "it's mystical, it's magical, it's all out of proportion." Sierra Pacific was obsessed with Stampede Reservoir. Without it, their communities could not grow. Thus, the Stampede decision was every bit as frightening, upsetting, and revolutionary to them as it was for the Pyramid Lake Paiute to have lost the reserved rights case (*Nevada v. U.S.*). Sierra Pacific was left without options. The decision blocked their efforts to access the water in Stampede reservoir, and only action by Congress could affect that.

The Bi-State Compact Is Revisited

On the national level, the political winds were shifting (Pelcygar 1995). Stewart Udall and Ervin Griswold were gone. In 1985, Ronald Reagan was president of the

United States and his good friend, Paul Laxalt, was the senior senator from Nevada and in an extremely powerful position. Laxalt was a strong supporter of TCID, Sierra Pacific, and the rest of the Nevada Group against the tribe, and he had taken a major interest in these water issues. James Watt was the Secretary of the Interior, and Laxalt had had a big hand in putting him there. Bill Coldiron, the Interior Department solicitor, asked the Justice Department to reverse its decision in the *Winters* Doctrine case. Interior issued a draft environmental impact statement for the OCAP, which eventually became the 1988 OCAP, and attached to this was a provision to eliminate any recoupment obligation. The tribe was able to persuade the Interior Department to delete that provision.

Senator Laxalt wanted his senatorial legacy to be the resolution of the water situation (Wilds 2010). He took a renewed interest in the Truckee-Carson issue, and through him efforts were made to reach a settlement. Former Pyramid Lake Chairman Tom Lance (personal communication 2010) says that Laxalt and the Reagan administration pressured the Pyramid Lake Tribe to negotiate a settlement. Laxalt helped establish negotiations between the various water users on the Truckee River, including the Pyramid Lake Tribe. However, Laxalt insisted that any agreement include would need to include the old Bi-State Compact "lock, stock, and barrel" (R. S. Pelcygar, personal communication 2011). The agreement had already been approved by two legislatures, and they didn't want to mess with it.

Joe Ely (1996) was a member of the Pyramid Lake Tribal Council at the time. The tribe had been negotiating through Bill Byler, a lobbyist from Washington, and Mike Thorpe, the tribal attorney. They brought a package to the council for approval. The package involved the California-Nevada Interstate Compact along with a mechanism to

settle any outstanding issues. The council was concerned because the Bi-State Compact was attached to the agreement, and they wanted it removed. However, most of the agreement was benign because it did not involve tribal issues. Byler and Thorpe were persuasive, and they felt they could take the agreement to Congress and they could remove the old compact from it before the agreement was passed. They could then discuss the particulars of the bill and shape it in a way that would be beneficial to the tribe. Failing that, they would kill the agreement. Ely (1996) states that it basically was an agreement to eventually agree, but many issues were still unresolved. Council members were still concerned, but based on assurances from the attorneys, they voted to approve the agreement. However, with the vote of the council, Ely notes that the local press went wild, saying that eighty years of water wars were at an end.

Many tribal members were opposed to a settlement or any concept of a settlement, and this conflict created a lot of animosity within the tribe (Ely 1996; Pelcygar 1995). A group calling themselves the Ad Hoc Committee had raised questions about whether the tribal council was doing enough to protect Pyramid Lake. Although the Ad Hoc Committee was composed of individuals who used violent language, they were raising concerns held by a majority of the tribal membership regarding the security of the Lake, and in reality, they had a legitimate complaint (Ely 1996). The tribe had taken a reasonable stance on negotiations with the states of California and Nevada, but two perceptions raised the concerns of a majority of the tribal members. Ely (1996) points out that because the council had to pay attention to things other than the negotiations, it was perceived that they were not paying any attention at all. There was also a perception that the attorneys had too much control.

With these concerns heightened, the Ad Hoc Committee brought a petition signed by a majority of the tribal membership and a lot of angry tribal members to very tense council meetings, saying, "What are you going to do?" Ely (1996) points out that the tribal constitution contains a provision that states if one third of the voting members sign a petition opposing a council resolution or proposed action, then the proposed action will stop until a referendum can be held to decide whether the council should be allowed to continue the action. The Ad Hoc Committee had also circulated a petition to fire Mike Thorp, the tribal attorney. Several council members felt it was important to have a series of public meetings with the tribal members to explain what was going on and what they were doing. The council then put together the required referendum on the Bi-State Compact and whether to continue to negotiate with the two states.

The initial meeting was very tense. The members of the Ad Hoc Committee and the membership wanted to hear from the council. The attorneys tried to explain what they were trying to do, but they were shouted down. Mike Thorpe, who had been handling the negotiations, resigned. Bob Pelcygar, who had been acting as special counsel for the tribe, stepped in as the tribal attorney. In the midst of all this, the tribal chairman, Mr. Wilfred Shaw, had a massive heart attack and died. A member of the Ad Hoc Committee was appointed the new chairman shortly after the death of Mr. Shaw.

According to Ely (1996), the public meetings successfully calmed the situation, and for the referendum, the Council put together a list of goals they would work to attain in the negotiations, if further negotiations were approved. This list of goals for referendum included whether to continue to negotiate with the states of Nevada and California, to support or oppose the inclusion of the Bi-State Compact in the agreement,

to secure enough water for the lake so the *cui-ui* would be able to spawn, to limit the amount of water that TCID would get.

In the referendum, the tribal members voted down support for the Bi-State Compact but voted to allow negotiations under the provisions of the negotiation package. The vote gave the council a mandate for further negotiations (Ely 1996), but this divided the Pyramid Lake community by sidelining those who opposed any kind of settlement (T. Lance personal communication 2011). Also, by voting down support for the Bi-State Compact, the other parties involved in the negotiations, such as Sierra Pacific and TCID, became concerned. They felt that the council had agreed to the compact before but were now bailing out, and this created hard feelings and recriminations toward the tribe.

According to Ely (1996), one of the problems with the Bi-State Compact was that in effect it precluded any water going downstream to Pyramid Lake. It recognized some uses as legally beneficial, and those uses were privileged. Only those uses specified in the *Orr Ditch* decree were recognized (Wilds 2010). Neither fisheries nor wetlands were recognized as being a beneficial use and therefore could not be used as a justification for allocating water. The compact would also have hampered efforts to repair environmental damage caused by the massive water diversion of the Newlands Project. In addition to causing the looming extinction of the fish in Pyramid Lake, Newlands diversions had depleted 85% of the wetlands in Nevada, eliminating habitat for hundreds of thousands of ducks, geese, cranes, pelicans, eagles, and other birds who lived there year-round or migrated along the Pacific flyway. The water that did make it to the remaining wetlands was agricultural runoff, and diminishing quantities concentrated trace elements such as arsenic, boron, and lithium, which poisoned the wildlife feeding in these areas.

The Pyramid Lake Tribe told both Laxalt and Sierra Pacific that if the compact was to be included in any settlement, all negotiations were off, and the tribe would devote all its efforts to opposing it (Pelcygar 1995). Sierra Pacific tried to get Laxalt not to attach the compact to the bill, but Laxalt was determined to do so before he left the Senate. Ely (1996) notes the interim council chair was opposed to any sort of negotiation and had chosen not to go to Washington. Instead, he had sent Ely and Pelcygar, and when they arrived, Laxalt sent word that he wanted to speak with them.

According to Ely (1996), it was April or May 1986, and Laxalt's term was about to expire. He introduced legislation to ratify the compact and end the water disputes once and for all. Laxalt was one of the most powerful men in the country. He was known as the "First Friend" because of his long friendship with President Reagan, and he was also very popular among his colleagues. The Republicans were in control of Congress, and Laxalt was on both the Appropriations Committee and the Judiciary Committee. Interstate compacts must go through the Judiciary Committee, so the compact was introduced as a bill and referred to the Judiciary Committee.

Joe Ely (1996) and Bob Pelcygar (1995) both remember sitting in a room across from Laxalt and the other members of the Nevada congressional delegation, with Laxalt leading the meeting. Laxalt made it clear he wanted the compact passed. Ely told him that that was not acceptable to the tribe because it would harm the lake, but that they would be willing to negotiate another deal that would replace the compact and be more fair and equitable. Laxalt pointed his finger in Joe Ely's face.

> I'll remember that finger 'til the day I die. Not a lot of people put their finger in my face. . . . He leaned over the table and says, "We're going to get that compact passed, do you understand me?" And I looked at him, and he says, "Do you understand me? We are going to get it passed. Do you understand me?" And I

> looked at him. We were looking each other in the eyes during this process, and I said, "Yes, I understand." And that was the end of the meeting. And we got up and left. (Ely 1996:92)

According to Ely (1996), he and Pelcygar decided at that moment that they were going to kill the compact. They knew the compact was damaging to the tribe, and no settlement could be made unless the compact was rescinded. He decided he was going to run for chairman to make sure it happened. It was the chairman who was going to sit across the table from Laxalt during negotiations, and "In order to make it happen, I needed to be chairman" (Ely 1996:95).

Joe Ely won the election, and with the support of the tribe he decided to oppose the compact. Pelcygar and Ely went back to Washington to hire a lobbying firm and a law firm to represent them. They had been referred to Attorney Burt Wides by Senator Edward Kennedy, who was an honorary member of the tribe and had a personal involvement with Pyramid Lake (Ely 1996). Wides referred them to the lobbying firm of Wexler, Reynolds, Harrison and Schule.

Working with the new law firm, they developed a three-pronged strategy (Ely 1996). (1) Laxalt had a reputation for integrity and was very well liked. He helped many people get their bills passed, and many people owed him favors. The tribe had to let people know he was misleading them in this case. (2) The tribe needed a more positive approach, so they had to let people know who the tribe was, their relationship to the lake, and what the compact would do to the lake. (3) Finally, they either had to lead the senator to a place where he had to withdraw the bill or they had to find some benign way to satisfy him without harming the tribe. The fisheries people went to Congress with a slide show of the lake they would show to anyone who was willing to look at it. He and

Pelcygar were trying to talk to anyone, but no one seemed to be willing. Ely states, "As far as they were concerned, we had lost in the Supreme Court. We could not be relied upon because we killed the last deal, even though we said we were going to go with it, you know, it was just this rag-tag group that nobody could trust and here we were trying to do this, so we had all these battles brewing" (1996:107).

The tribe's representatives spoke with the staff of every member of the Judiciary Committee. The Republican members of the committee recognized that there were problems with the compact because it was binding on the federal government, but they wanted to do a favor for Paul Laxalt (Ely 1996). Alan Cranston, a Democrat from California, opposed the compact because of its effect on Pyramid Lake, and brought the other Democrats on the committee with him. This effectively blocked the compact from moving forward. There are many mechanisms to block bills in the Senate, which worked for the tribe in this instance (Pelcygar 1995). However, Laxalt was also a senior member in the Appropriations Committee, and even without holding a hearing he was able to add a line to a major appropriations bill: "Congress hereby ratifies the California-Nevada Interstate Compact" (Wilds 1910). At the time, appropriations bills were being lumped together into continuing resolutions to fund the government (Pelcygar 1995). It was (and still is) a common way to pass controversial measures by attaching them to an important bill that wouldn't be vetoed.

Ely and Pelcygar found out about the provision when it came out of the committee. Through their lobbying efforts they were able to arrange a meeting with the chairman of the Appropriations Committee, Senator Mark Hatfield of Oregon. Senator Hatfield had a reputation for being pro-Indian, a devout Christian, and close to Laxalt

(Pelcygar 1995). Hatfield was not familiar with the compact and had voted to keep the provision in the bill in a close vote. He had taken Laxalt's word that the two states had already agreed to the compact, and some low-level federal bureaucrat was standing in the way. Ely (1996) found that he and Senator Hatfield shared a common religious bond. After explaining the situation, Ely and Hatfield spoke and prayed together, and Senator Hatfield said he would help. He would support the tribe in finding a solution. However, the provision was still attached to the appropriations bill and headed to the Senate floor.

Ely (1996) notes that the proceeds from a Grateful Dead concert on the reservation paid for the lobbying firm, and the lobbyists and their public relations campaign against the compact had been successful. There were editorials supporting the tribe in *The New York Times*, *The Washington Post*, *The Philadelphia Inquirer*, and the Eugene *Register-Guard*, and the Senate got press releases. There was widespread opinion that Pyramid Lake was getting a raw deal. Laxalt was getting trashed in the press and there was an uproar about Laxalt's tactics and the way they were trying to sneak things through. The lobbying efforts also helped the tribe pick up a champion, Senator Bill Bradley from New Jersey. He had a strong interest in water issues and had a staff member call Ely and Pelcygar to let them know he wanted to do whatever he could to help, including opposing Laxalt on the Senate floor.

> In the middle of it, Laxalt got one of these packets, and he was *furious*. Actually, he went personally over to the Bureau of Indian Affairs, to [Assistant Secretary of Indian Affairs] Ross Swimmer, to ask them, "Who in the heck is giving these people money? What funding is this coming out of to do this against me? Who is paying for these people?" And Swimmer told him, "They didn't have to take any money from us to do it." So it must have made him even more furious that it was independent, that we were paying for this all out of our own pocket, because he wanted to stop the funding and he was the senator, he could have easily said, "Freeze it, those people don't get another penny." But he had no place to attack,

> because the entire effort that we took when we took him on was financed by us, by ourselves, our own money independently. (Ely 1996:115-16)

According to Ely (1996), one of the lobbyists, Dale Snape, pointed out that Laxalt's *modus operandi* was that of a compromiser rather than a fighter. He suggested that there might now be an opportunity to work out a compromise. The tribe's representatives met with one of Laxalt's staff member, Hal Furman, and worked out a compromise. The tribe was able to revise the compact and also got $50 million for the benefit of Pyramid Lake. Since the tribe had successfully nullified the worst aspects of the compact, they now would have been happy to see it go through (Palcygar 1995). Laxalt called the president of Sierra Pacific, Joe Gremban, and the Nevada head of the Department of Conservation and Natural Resources, Roland Westergard, and told them he had reached an agreement with the tribe. They told Laxalt they would rather have no action be taken than accept the compromise that had been reached, and they asked him to withdraw the line from the appropriations bill (Ely 1996). At this point, Laxalt withdrew his provision. This victory was considered highly significant by everyone involved (Wilds 2010).

Following the defeat of the Bi-State compact, the tribe then put together their own settlement proposal and emphasized their willingness to negotiate (Ely 1996). They also began to file lawsuits in every situation that might involve the waters of the Truckee River. The tribe felt they were fighting for their very existence, and they wanted a settlement that would ensure survival of the lake. Ely also points out that the tribe's recent successes gave them credibility.

> I continued to say that we would fight this until there was none of us left, and so we did, and we scrapped. I mean anything that even remotely related to water, we

> got in the middle of it. We just became a nasty, mean thorn. But we were always with our hand out, saying, "If you want to negotiate, take our hand and we'll negotiate it." But in the meantime, we wanted to let them know that we were willing to fight this. (Ely 1996:143)

Harry Reid

On the night Harry Reid was elected to the Senate (Paul Laxalt retired from the Senate in 1987 and made a brief run for president), a newsman asked him what he would do for *northern* Nevada (his Democratic power base is in the more populous southern Nevada). Reid stated that he would work to resolve the Truckee River Water Wars. Reid and Joe Ely hit it off right away (Pelcygar 1995), and it completely changed the nature of the dialog. Laxalt and his staff had strongly supported the Nevada Group, whereas Reid opened up the discussion to other options.

Reid called on Wayne Mehl (1996), a senior staff member, to work on the issue. Mehl realized that no agreement could succeed without the consensus of Nevada, California, the Pyramid Lake Tribe, and the U.S. government, each of which had enough clout to veto any negotiated settlement. Sierra Pacific was included in the negotiations because they had such a large stake in water issues, and TCID was included as well. However, TCID was dependent on the Bureau of Reclamation and as such did not have the political power that other users had. The negotiations between Nevada and California went fairly quickly (Mehl 1996), and the division of water between the states eventually ended up much as it had been under the Bi-State Compact (Wilds 2010). The rest of the parties —most importantly, the Pyramid Lake Paiute Tribe and Sierra Pacific, along the rest of the Nevada Group—were still at odds.

The Negotiated Settlement

"Every time that we took somebody on or took on an issue, it was us against them. It was always the tribe by itself taking on Reno/Sparks, Sierra Pacific Power Company, TCID, Nevada, California. It was always us against—and they never broke ranks. And so we were always having to combat everybody" (Ely 1996:142). However, the decision that reserved use of Stampede Reservoir to save the *cui-ui* and the Lahonton cutthroat trout demonstrated that the tribe's interests could no longer be brushed aside.

Joe Gremban, the president of Sierra Pacific, was the first to break out of the pack. He called Joe Ely and they sat down to a cup of coffee at the Continental Lodge in Reno and discussed the situation (Gremban 1994). All the people who had negotiated the old compact were gone, and Gremban felt that new people with new ideas might be able to work out a solution. Sierra Pacific was the largest and most powerful corporation in the state of Nevada, with direct access to Harry Reid (Ely 1996). When a question came up, Gremban would call Senator Reid directly and talk to him about whatever they were discussing. Ely says he was not sure at first, but he later found out that Gremban was genuine and really did want to get the issue resolved.

Sue Oldham (personal communication 2010), the primary negotiator for Sierra Pacific, said there was considerable incentive to reach an agreement. As early as 1979, studies showed that without some kind of settlement, the area could not continue to grow. Nevada and California needed an interstate allocation agreement. According to Oldham, some people said that everyone was abiding by the old bi-state compact, but that was not the case. California was issuing permits on their side of the border, so an agreement was absolutely necessary for Nevada to ensure a reliable water supply.

Sierra Pacific had enough water for any normal year and for short droughts, but the company did not have enough water for an extended drought (Wilds 2010). To ensure continued growth in the community, Sierra Pacific had been purchasing water rights but had no place to store the water. Oldham said it was agreed that Sierra Pacific could release water from storage in the good years to use for a fishery. In dry years, they would keep it, build on it, and be able to use it.

But how often would Sierra Pacific need storage to cover drought conditions? And how often do the *cui-ui* need to spawn to ensure they not only survive but thrive? The power company said it would need the water one year out of every ten, and they doubled that and asked for two years out of every ten. The tribe wanted to enable the *cui-ui* to spawn seven out of ten years to ensure the survival and enhancement of the fishery. In drought years, water would be stored for Reno and Sparks, and in normal or wet years it would be released to allow the *cui-ui* to spawn. This way, even if the *cui-ui* were taken off the Endangered Species List, they would not only survive but thrive. The tribe said they wanted to reestablish the fishery, and the only way to do that was to have an agreement in place outside of the Endangered Species Act, to guarantee that Stampede Reservoir was there for them permanently.

Sierra Pacific and Pyramid Lake worked out the Preliminary Settlement Agreement (PSA), largely through the work of tribal attorney Bob Pelcygar and Sue Oldham, the negotiator for Sierra Pacific and later the Truckee Meadows Water Association (TMWA). This document formed the basis of the more inclusive Negotiated Settlement, which became P.L. 101-618. Gremban (1994) notes that whenever Pelcygar and Oldham reached an impasse, he and Joe Ely would take a walk together and work out

a solution. They even went fishing together. There was a great deal of trust between the two of them, and they were always able to work out a solution.

The *Orr Ditch* decree required that water flow in the Truckee be maintained at a constant rate for hydroelectric power generation (Wilds 2010). These rates had been established in 1915, when hydroelectric plants supplied 90% of the power used in the Reno-Sparks area. They formed a severe limitation on the management of the river because these rates had to be maintained year-round. By 1990, that percentage had dropped to 0.05% of the total, and as part of the PSA, Sierra Pacific chose to waive those rights. The water could then be used for the benefit of the fishery. This compromise encouraged new thinking about how water could be managed in the Truckee River and the Newlands Project and is one of the most overlooked benefits of the agreement (Wilds 2010).

After Gremban opened the negotiations, other players came to the table as well. According to Oldham (personal communication 2010), Gremban pushed the other parties to resolve their issues. As the others joined, however, it became more difficult to facilitate negotiations. After the tribe and Sierra Pacific had worked out the foundation of the agreement on their own, Senator Reid sent Wayne Mehl to help. Many agree that Mehl was a great facilitator and felt his presence added weight to the negotiations. Reid noted, "We found that one of the biggest stumbling blocks to resolving this decades-old problem begins with disunity in the Department of the Interior" (AP, 1987, p. 1). He noted that in particular the USBR, BIA, and Fish and Wildlife Service all had power over the allocation of water, but each had different aims and policies, and these needed to be coordinated. Oldham (personal communication 2010), who worked extensively with

Mehl, said that he told her they would "solve no issue before its time." Each issue had to be worked through in its own time, and once the underlying issues were taken care of, larger issues could be dealt with. Patience was vital, as everyone had to be allowed to work through their objections and concerns.

According to Oldham (personal communication 2010), Senator Reid made sure that the negotiations kept moving. Ely (1996) notes that, unlike Laxalt, Reid listened to what everyone had to say. When there was a stalemate in negotiations, Reid would call the parties involved. Oldham also notes that Reid used the "carrot and stick" approach to keep things moving. She notes that she had been on the "stick" side, and it was not a good experience. Reid also ensured that funding was available to meet the provisions of the agreement (S. Oldham personal communication 2010).

TCID withdraws

TCID withdrew from the negotiations in June of 1988 because they felt they were not getting anything out of them. They had been more successful in court and would pursue their interests there. In the past, TCID had enjoyed a privileged position as the first reclamation project, and with strong support from the USBR they had had considerable influence in past negotiations (Wilds 2010). Perhaps TCID felt that the agreement would fall apart without them, and Mehl (1996) notes that he, Harry Reid, Joe Gremban, and even Joe Ely were all disappointed that TCID had withdrawn. Ely (1995) felt particularly bad because TCID's withdrawal would mean that some issues would not be resolved, and part of his promise to the tribe had been to resolve everything. However, all of the parties involved felt the water issue was too important to drop the agreement. According to Mehl (1996), TCID later claimed they were thrown out of the negotiations,

but Mehl recounts that they came to a negotiation meeting at Pyramid Lake and told the other parties that they should go on without them. Mehl notes that at the time they were discussing reducing withdrawals from the Truckee. This entailed lowering the maximum storage in Lahonton Reservoir and instead holding that water in Stampede Reservoir, which TCID was not willing to support. In addition, "There were a faction of real diehards out there that said, 'Not one drop of water is leaving this place and going to Pyramid Lake'" (Mehl 1996:32). Gail Bingham, who mediated the subsequent Settlement II negotiations (see below), also points out, "many people in the Lahonton Valley . . . feel that the law is on their side and they will eventually prevail in the courts and that's the proper procedure, and that any political action would be against their interests" (1995:29). Mehl (1996) also states that had TCID stayed in the negotiations, the entire board might have been voted out in the next election.

Side Agreements

In the course of negotiating the settlement, the Pyramid Lake Tribe worked out numerous side agreements that became part of the overall settlement. Section 210 of P.L. 101-618 has provisions dismissing various lawsuits that were in progress at that time, preventing loss of land within the reservation boundaries, and granting the tribe ownership of the bed and banks of the Truckee River and Pyramid Lake within the bounds of the reservation. Anaho Island, a large island in Pyramid Lake and a national wildlife refuge, had been designated federal property. Through P.L. 101-618, sec. 210 (b), the island was recognized as a part of the Pyramid Lake Reservation, though it is still managed by the U.S. Fish and Wildlife Service. The Pyramid Lake Tribe was confirmed to have regulatory control over hunting, fishing, and recreation on the Pyramid Lake

Reservation, but this did not convey criminal jurisdiction to the tribe. The Secretary was also authorized to exchange "surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation" (P.L. 101-618, sec. 210(b) (18)). The Pyramid Lake Paiute Tribe would apply for and gain rights to all unappropriated waters of the Truckee River through the Nevada State Engineer. The Pyramid Lake Fishery and Wildlife Refuges were recognized as "beneficial uses" for the purposes of water appropriation, and the agreement provides for the purchase from willing sellers of water rights that can be dedicated to *cui-ui* restoration and water quality. It also provides for the purchase of water rights for the Stillwater Marshes. The agreement further stipulates that Pyramid Lake and the cities of Reno and Sparks would negotiate a water quality agreement. Finally, the agreement includes $40 million for economic development on the Pyramid Lake Indian Reservation.

The Settlement Goes to Congress

After two years of negotiations, the remaining parties reached a settlement. Once concluded, the agreement had to go through Congress, so Reid was involved throughout the process. Once the agreement was worked out, Reid began to line up support. Senator Bill Bradley from New Jersey, who had supported the tribe earlier, was a major help. As a member of the Subcommittee on Water and Power, he was dealing with other large projects that were creating issues in other parts of the country (Jensen 1995). Mehl (1996) notes that it was the more established Bradley that first introduced the bill in the Senate. They tried to attach the agreement to an omnibus bill designed to rework the Bureau of Reclamation that Bradley was trying to get through.

Wilds (2010:54) notes that TCID was able to convince Richard Bryan, the newly elected Senator from Nevada, and Governor Bob Miller to speak up for them. Bradley gave TCID ninety days to come up with some language to add to the bill (Mehl 1996). Possibilities included water banking, funds for a municipal water system, or funds for efficiency improvements in the Newlands Project.

> However, they drafted a piece of legislation and submitted it for inclusion, which essentially unwound the OCAP, and that was the one thing we couldn't do. . . . If you did that, then you changed the water allocation on the entire river, and it would simply tear the agreement apart. They had to have known that at that point in time. I mean, that's why they weren't in there in the first place, because we couldn't unwind the OCAP. (Mehl 1996:78)

When their new language was turned down, TCID attempted to defeat the bill or hold it over until the next Congress. They testified against the bill.

Mehl (1996), Pelcygar (1995), Ely (1996) and others all note that when they left the negotiations TCID had stated that they would not oppose agreement as long as it was neutral to them, and everyone except TCID felt that it was neutral. However, Section 209j of the agreement was added after TCID chose to testify before Congress. Section 209j required TCID to repay the more than 1 million acre-feet of water they had diverted over and above the 1973 OCAP for more than 10 years. According to Mehl (1996), this "recoupment" issue was between TCID and the Pyramid Lake Tribe and had previously been left out of the agreement for them to deal with separately. Everyone was upset with TCID for abandoning the negotiations in the first place, but when they opposed the agreement in Congress, Senators Reid and Bradley, the states of Nevada and California, the tribe, and everyone else was very angry with them (Ely 1996).

Senator Bradley's omnibus bill seemed to be stalled. Reid felt that the settlement needed to be resolved so he removed it from the omnibus and attached it to a settlement

bill for the Fallon Paiute-Shoshone tribe. That bill was shepherded through the Indian Affairs Committee by Senator Daniel Inouye of Hawaii.

> Senator Inouye was just about as honest and gracious an individual as I've met. He did a very good job. He did a good job. He was a little more difficult to keep on track because he was really very pro-Indian, and the Fallon Paiute-Shoshone Tribe attached to him and he to them, and we had to spend time convincing him that we weren't harming the Fallon Tribe as a result. One of the tougher things when you get back into the Senate and back into Congress is that when you're an underdog, it carries a little bit of weight, but when you gain a few successes back there, then you're viewed as the big guy. Fallon [Paiute-] Shoshone was playing the underdog role, so they needed a champion, and Inouye was their champion. But he'd been working with us for a while, so he tried to work out an equitable deal between both of us. (Ely 1996:188)

Once the foundation of the agreement was laid out, Reid kept the rest of the Nevada politicians informed. TCID had their chance to get something into the agreement, but they overshot. According to Lyman McConnell (1994), the former district manager for TCID, they approached the rest of the Nevada Congressional delegation to try to stop the agreement, and they were offered sympathy, but everyone supported the agreement. They made several other efforts to block or sideline the agreement, but Reid was able to head them off (Mehl 1996). Once the agreement passed the Senate, it went to Barbara Vucanovich, the Republican Congresswoman from northern Nevada, who shepherded the agreement through the House. Reid had kept Vucanovich informed so she was integral to getting agreement passed (Wilds 2010). The agreement passed the House at the last possible minute and went on to be signed by President Bush (Jensen 1995).

Settlement II Negotiations

Once the agreement was passed into law as P.L. 101-618, Reid and others felt that TCID should be given a chance to come back into the agreement. The region needed stability, and the best way to get that was to unify everyone involved (Bingham 1995).

Joe Ely (1995) and the Pyramid Lake Tribe opposed these negotiations, feeling that delay risked everything. Reid and others felt that the agreement would be more successful if all parties could be brought into the agreement. Many participants felt that without a place in the agreement, the Newlands Project would eventually be squeezed out of existence by other water interests (Wilds 2010). A major stumbling block was the inefficiency of the irrigation system.

Efficiency of the **Irrigation** System

As the consultants reported in the Pyramid Lake Task Force Report (1974), the Newlands Project irrigation system is very inefficient. As it stands now, each landowner owns a certain amount of water; however, they do not own the water the United States uses to get their water to them. For example,

> If TCID releases one acre-foot of water from Lahonton [reservoir] and I'm down on the end of the system, by the time I've got leakage in the canals and evaporation and everything else, I might not get more than half or two-thirds of an acre-foot. So they supplement this and release literally an acre-foot-plus in order to deliver an acre-foot of water to me. They're not guaranteed that. There's no guarantee that they're allowed to divert water to make up those losses; they're only allowed to divert water that's actually required to meet the water rights of the system. (Mehl 1996:39)

Since TCID refused to be involved in the agreement, the Bureau of Reclamation can mandate the efficiency of the system. They can increase the required efficiency level from 65% to 75%, reducing the amount of water released into the system. Had TCID remained in the negotiations, they could have negotiated a permanent efficiency level.

Gail Bingham, an expert in natural resource negotiations, was brought in as a mediator. The other parties were prepared to offer additional incentives to help reach an agreement, such as a water treatment plant to solve the city of Fallon's drinking water problem. TCID did not represent itself in the negotiations, but the farmers of the project

were represented by a broader organization, the Lahonton Valley Environmental Alliance (LVEA), which included the city of Fallon as well as environmentalists who were looking out for the Stillwater Marshes and Stillwater Wildlife Management Area. Carl Dodge (1994), a former state senator from Fallon and the largest landholder in the Newlands Project, was not a spokesperson for TCID but worked behind the scenes. LVEA's strategy was to keep the water in the valley, so they worked to prevent any reduction in the amount of water flowing into Lahonton Valley. They actively opposed any diversion of water to Pyramid Lake or anywhere else. According to Dodge (1994), they could decide later how to divide the water up for municipal, agricultural, and environmental purposes. This would directly benefit TCID and the Newlands Project because all water from the Carson River and Truckee Canal flows into Lahonton Reservoir and then through the Newlands Project to Stillwater and other locations in the Lahonton Valley. They believed that leakage from the system recharged the aquifers used by the Fallon Naval Air Station and the city of Fallon. Because of this recharge, they were opposed to any efforts to improve the efficiency in the delivery system, such as lining the ditches or installing piping.

Ultimately, no agreement was reached in these negotiations. At one point, everyone thought they had reached an agreement with the LVEA (Bingham 1995). However, when the LVEA representatives arrived at the following meeting, they said that they had not understood exactly what they had agreed to, and the opportunity passed. According to Pelcygar (1995), the Fallon interests were not willing to agree to decrease their dependence on the Truckee River. They saw it as their insurance policy. Mary Conelly, the director for Senator Reid's state office, who attended the negotiations but

did not participate, noted that the representatives for the farmers were opposed to any alternatives that benefited Pyramid Lake (Wilds 2010).

Wrapping up the Agreement

P.L. 101-618 was passed one month before Ely left office. At the first meeting after it passed, he was introduced to the "implementation team," which seemed to be composed of about fifty "suits," and he began to worry that what had been a fairly small team effort might find itself lost in the sea of suits (Ely 1996). He was worried that with this many people involved, an operating agreement might never be reached because too many people were involved.

Many other things needed to be accomplished to fulfill the conditions of the agreement. As specified, Joe Ely and Pete Morros, the Nevada State Engineer, worked out an agreement for all of the unappropriated waters of the Truckee River. This MOU (Memorandum of Understanding) states that once all water rights in the system are satisfied, such as in any year with above-average precipitation, any additional waters belong to the Pyramid Lake Tribe and will flow down the river to Pyramid Lake. The state granted the permit, but these rights have the most junior water rights in the system. This MOU has been contested by TCID. However, Hoffman (personal communication 2011) notes that there has been an evolution in relations between the tribe and the state, as the tribe worked through the state water rights system to secure these rights. Because of poor relations in the past, the tribe had been loath to go through the state process (Pelcygar 1995), but also under the agreement, these rights to all unappropriated waters would officially become part of the *Orr Ditch* decree. In addition the decree would be amended to provide that the Truckee River was now fully appropriated and no further

water rights can ever be granted on the river. Anyone wanting water rights will have to purchase them from an existing water user.

In addition, the ownership of the banks and bed of the lower Truckee and Pyramid Lake by the Pyramid Lake Tribe had to be established. This was a particularly sensitive issue for the tribe because the state of Nevada had previously tried to assert ownership (Pelcygar 1995). The tribe, in cooperation with the state, drafted a bill for the Nevada legislature confirming the tribe's ownership.

Another issue was the study of water quality and effluent from the city of Reno into the Truckee River. Under the Clean Water Act the tribe can set water-quality standards that must be met by upstream users. The water has to meet certain standards when it crosses the reservation border. This is generally measured in parts per million of pollutants. The cities of Reno and Sparks have to comply with these standards. The city's current waste processing does not meet the criteria established by the tribe. In a compromise, rather than invest in a very expensive new water treatment system, the cities of Reno and Sparks were the recipients of a $24,000,000 fund to purchase additional water rights that can be released to dilute the water from the waste treatment plants to meet Pyramid Lake water quality standards. McCool (2002) asserts that this is common in such agreements. The federal government supplies funding to purchase contested water rights which then allows resolution of some of these difficult issues. As TMWA water engineer Edward Marshal (personal communication 2011) phrased it, "the solution to pollution is dilution." The tribe was happy with the compromise because it puts additional water in the river. In addition, funding from Reno and Sparks was augmented to support efforts by the Nature Conservancy to re-channel and re-vegetate the Truckee

River banks, improving water quality and wildlife conditions along the river (Jennings 2010).

The agreement also included provisions for the forgiveness of the debt owed by TCID to the United States for the initial development of the Newlands Project, as well as funding to purchase water rights for the Stillwater Marshes and the Stillwater Wildlife Management Area. Finally, P.L. 101-618 called for the negotiation of an Operating Agreement. Negotiations for the resulting Truckee River Operating Agreement (TROA) took eighteen years, and the agreement was eventually passed through Congress and signed in 2008. However, the agreement could not go into force until all litigation has been resolved, and TCID did everything it could to oppose and delay the agreement.

The Truckee River Operating Agreement (TROA)

The Truckee River Operating Agreement, or TROA, developed slowly over eighteen years of negotiation. Senator Reid noted that the sovereign entities, the United States, Nevada, California, and the Pyramid Lake Tribe, were all required to be in on the agreement. Sierra Pacific divested itself of the water business and a new organization formed, the Truckee Meadows Water Association (TMWA), which included most of the staff from Sierra Pacific that had dealt with water issues plus others from Washoe County (J. Phillips, personal communication 2010). TMWA took up Sierra Pacific's role as major player in the negotiations.

Janet Phillips, of Sierra Pacific and later TMWA, noted that as the TROA negotiations began, the sovereignty issue was put on the back burner for at least 10 years while other things were being worked out (personal communication 2010). A small paragraph on sovereignty was inserted into the agreement as a place holder. She pointed

out the difficulty of negotiating with four organizations (the U.S., NV, CA, and the tribe) that can claim immunity with respect to any agreement or any other authority. "How do you then make the agreement stick?" The parties decided to work out the other parts of the agreement first, and then they would worry about sovereignty issues.

Phillips (personal communication 2010) notes that the first ten years were spent just "arranging the water," or working out how to operate the river more flexibly. Wilds (2010) posits that one of the most important aspects is "credit water." Once TROA goes into effect, water that would previously have been released to satisfy specific water rights downstream can now be captured and allowed to accumulate as credit water. This water can then be retained in storage and even exchanged between reservoirs until it is finally released to serve a beneficial use. This allows the river and reservoir system to be used more efficiently and flexibly.

According to Phillips, the interstate allocation also took a lot of time to resolve as issues were discussed in great detail. Questions such as evaporation rates and what happens if snowmaking operations cause snow/water to be blown into the American River Basin in California were the subject of long discussion. They also considered differences in losses if precipitation falls as snow and sits on the ground and then runs down into the river as opposed to simply falling as rain and running into the river. Phillips notes that two studies came up with 15% and 50% loss, two dramatically different numbers. Rather than fund another study, the negotiators finally decided with a flip of a coin between the tribal chairman and the man from California. They had negotiated toward a medium, and the coin toss decided the last 5–10% for the purposes of the agreement. "Sometimes there was no right answer" (Phillips 2010).

According to John Sarna (2005), who negotiated for the state of California, California let the negotiations proceed without substantive involvement initially, but after a couple of years they felt they should become more involved in the negotiations. The state of California was largely concerned with environmental issues, such as "in-stream" flow. They wanted to maintain a minimum flow of water in the streams to support fish and other wildlife. Efforts were made to make the agreement as inclusive as possible, and as many water users as possible were brought into the agreement (Sarna 2005). The negotiations took a long time because as new people were brought into the agreement, their issues had to be dealt with, and everyone's issues took time to sort out and compromises had to be made.

TCID was involved in the TROA negotiations for many years, but eventually they walked out again (Wilds 2010). At least three efforts were made to bring them back into the agreement (J. Phillips personal communication, 2010), but eventually they again decided to fight it out in court. In the past, the state of Nevada would have supported TCID, but Nevada and California needed to resolve the interstate allocation issue (Pelcygar 1995). According to Hoffman (personal communication 2011), Nevada supports TROA because the state sees TCID's existing rights as protected, but TCID sees the matter differently. Nevada would not have signed the agreement if it felt that TCID would be harmed. They made efforts to bring TCID into the agreement, but the irrigation district refused. The community of Fernley did stay at the table and worked out something for their benefit. Fernley was a tough issue because the community gets its water from the Truckee Canal, and the tribe would like to get rid of Derby Dam and end all diversions from the Truckee River (J. Phillips, personal communication 2010).

In the mid-2000s, the participants began to work on the sovereignty issue (J. Phillips, personal communication 2010). Once they reached an agreement, it had to be approved by all of the participating parties. It had to be approved by the U.S. Congress, and Pyramid Lake Tribe held an election to approve the agreement. The agreement also had to be approved by the Nevada State Engineer and the California State Water Resources Control Board. Many remedies for dispute resolution have been included into the agreement, but if all else fails, it falls to the *Orr Ditch* court for resolution. Nevada, California, the U.S. Congress, and the Pyramid Lake Paiute Tribe had to agree to allow the *Orr Ditch* court to be the final arbiter of any disputes. According to Phillips, this was a major concession on everyone's part.

For the Pyramid Lake Paiute Tribe, the sovereignty issue had been firmly resolved with the passage of P.L. 101-618. With that having been established, the tribe's position in the negotiations was that of an indispensable player. According to Edward Marshal (personal communication 2011), one of the primary water engineers for TMWA, under the TROA the level of Pyramid Lake will stabilize at 3850 feet, which is about half of its 1890 pre-diversion level, and some water could also eventually flow into Winnemucca Lake. Under TROA, the tribe negotiated a schedule to control diversions from the river, and through an MOA with the US Fish and Wildlife Service it gained control of the Pyramid Lake fishery (Pelcygar, personal communication 2011). Prior to TROA, the fishery was managed by the federal government under the Endangered Species Act. With this agreement, the tribe now manages the fishery.

The Truckee River Operating Agreement was passed by Congress and signed by all parties involved in 2008. However, for the agreement to go into effect, it must be

approved by the Pyramid Lake Tribe, the appropriate state agencies, and all litigation involving the agreement must be resolved. TROA has been approved by the Nevada State Engineer and the California State Water Resources Control Board. TCID is opposed to the agreement and is making every effort to oppose it (Wilds 2010). Hoffman believes that they are stalling.

> For the TROA to go ahead, all cases must be resolved. Rights to get unappropriated water must be dismissed. [Once the California State Water Resources Control Board gives its ruling] There will be an executive session and the Board will offer a draft opinion and open up for public comment. Each side will have time to state their concerns and then the state will issue a final decision, and then there will be an appeals process. This could take a long time. The briefs for the *Orr Ditch* case will be filed on Feb. 1 [2011] and will move slowly. TCID will delay as it works to their benefit. They will ask for discovery (which would be unusual in a case like this), which will require a reading, and there will be an opportunity to rebut that. If there is one loss in any of these, the whole thing tumbles down. . . . They have many avenues of attack to slow down the process, which is very expensive. They have filed cases in California and appealed the Nevada Engineer's decision, and filed suit against the Secretary of the Interior. All of these (or most of them) will be heard by Judge George in Las Vegas. (J. Hoffman, personal communication 2011)

The conditions for the ultimate success of the agreement looked good, but as Hoffman points out, they are by no means guaranteed. Some members of the Pyramid Lake Tribal Council expressed hope but were concerned that something could still go wrong. They did not want to do anything that might jeopardize the agreement (including talking to me), and with it the future of Pyramid Lake, the *cui-ui*, and the people themselves. It was just too important. Others expressed other reservations. The $40 million that had been set aside for economic development on the reservation has been sitting in the U.S. treasury for more than twenty years collecting interest and has doubled in value. The conditions of P.L. 101-618 state that the tribe can collect the money when the operating agreement is signed and the tribe has presented an economic development

plan. The tribe has submitted an award-winning economic development plan (PLPT 2011), and the TROA was signed in 2008, but federal officials have ruled that the funds cannot be released until the agreement actually goes into force. Skeptical council members say they do not think they are ever going to see the end to litigation. “It is never going to end” (Mike Thomas, personal communication 2010). Council members are dedicated to settling these issues and getting the agreement in force, but this also involves every other water user who has signed onto the TROA. Everyone was waiting to see how events unfold, but the TROA officially went into force on December 1, 2015.

CONCLUSION

When the TROA agreement came before the California State Water Resources Control Board for approval in the summer of 2010, Pyramid Lake Tribal Chairman Mervin Wright Jr. gave an introductory speech stating the tribe’s position and support for the agreement, and then he went home. John Jackson, the Water Resources Director for the Pyramid Lake Tribe, attended the meetings, but he sat back and watched as the lawyers for TMWA, USBR, BIA, the states of California and Nevada, and various water and wildlife experts testified before the Board, which finally approved the agreement in 2013. This is a good illustration of how Pyramid Lake Tribe is now part of the iron triangle of water users on the Truckee River. In terms of water, the tribe now stands on at least an equal footing with the other water users. TCID and the city of Fallon, which showed up with their lawyers to oppose the agreement, are now outside the iron triangle. They are not powerless, but their political influence and resources have been greatly reduced, both locally and federally.

It took incredible persistence and dedication on the part of the tribe to get to this point, and a number of factors contributed to the success of this agreement and the failure of previous efforts: (1) U.S. Senators and Congressmen; (2) federal legislation that gives tribes the same status as states; (3) lawyers; (4) money; (5) the U.S. trust obligation; (6) federal officials who fulfill their trust obligations; (7) support organizations such as the NCAI and NARF; (8) other friends who are willing to support tribal interests when it coincides with their own, such as the Sierra Club and Friends of Pyramid Lake; and (9) the determination and resilience of the tribal members themselves.

This study shows the tremendous influence that congressional members wield. Francis Newlands, Tasker Oddie, William Stewart, Patrick McCarran, and Paul Laxalt all used the considerable power of their offices to push the agenda of non-Indians at the expense of the Pyramid Lake Paiute Tribe. Oddie appears to have simply ignored Pyramid Lake pleas for fairness, whereas Stewart, Newlands, McCarran, and Laxalt actively worked to take land and water resources away from the tribe. They all clearly viewed the wishes of the predominantly white population of Nevada as more important than the survival of the Indian people at Pyramid Lake. McCarran and Laxalt both worked to undercut tribal efforts to defend their resources by cutting off federal funding, but few can top the ruthlessness of McCarran's efforts to remove tribal attorneys and supportive agents as he tried to give away reservation land.

Senator Alan Bible and Congressman Cliff Young at least made attempts to mitigate the effects of Stampede Dam and the Washoe Project, but they still supported development at the expense of the Pyramid Lake Tribe. It was senators from other states, such as Edward Kennedy, Bill Bradley, and Daniel Inouye, that championed the causes of

Nevada Indian tribes. Harry Reid was the only Nevada senator to put the needs of the tribe on an equal footing with the other water users in the system. Of course, this was after the tribe had already defeated the Bi-State Compact and secured the use of Stampede Reservoir for saving the *cui-ui*. The tribe had already shown that its interests could not be ignored as they had been in the past.

The second factor involves those federal statutes that elevate the sovereign status of Indian tribes to the level of states in certain issues. The Endangered Species Act and the Clean Water Act in particular have given the Pyramid Lake Tribe leverage it could use to ensure the survival of the lake. These two laws enabled the tribe to push the Secretary of the Interior to fulfill his federal trust obligations and stand up for the interests of the tribe. It required lawsuits and the support of the Solicitor General, but the Endangered Species Act enabled the Pyramid Lake Tribe to save the *cui-ui*. In the process of saving the *cui-ui*, they saved the lake, their only real resource for survival, and so they saved themselves. The Clean Water Act has enabled the tribe to protect the lake from the abuses of careless and/or short-sighted upstream users dumping pollutants in the river, and in this case it has had the added benefit of increasing water flow.

The third factor is lawyers. Tribal sovereignty gives Indian tribes certain rights, but asserting those rights can be difficult. Because the court system has been the primary method of recourse for Indian tribes, good lawyers have long been a necessity. Even though lawyers are sometimes looked on with distrust, the importance of knowing exactly what the tribe's rights are and how they can use them cannot be overstated. Senator McCarran knew that getting tribal lawyers out of the way would greatly aid his efforts to give away tribal lands, and he was able to do so. Bob Pelcygar was occasionally

reviled for the skill and fervor with which he pursued Pyramid Lake interests. After the defeat of the Bi-State Compact, an angry Joe Gremban told Joe Ely he should fire Pelcygar (Pelcygar 1995). Another person even noted that the tribe was fortunate to have a Jewish lawyer.

The fourth factor is money. The fact that most Indian tribes in the United States rely on various sources of federal funding makes them vulnerable to coercion from federal officials thereby limiting the tribe's sovereignty. "If you want to go to court and be a real adversary against your opponent, then you need to pay for that yourself" (Ely 1996:45). The efforts of McCarran and Laxalt to cut off funding from the BIA are clear examples of this. Likewise, as Pyramid Lake Chairman Vince Alberts noted, federal grants and loans come with guidelines to which tribal governments must adhere. These can limit the options available to the tribe, and as such, no tribe is truly sovereign until they have their own money. Tribes usually need federal funding, and they have no control over the conditions the government can place on them. McCarran had successfully foiled the Pyramid Lake Tribe's efforts to evict squatters on the reservation, and Laxalt, like McCarran before him, tried to undercut tribal opposition to the Bi-State Compact by cutting off funding through the BIA. However, because the tribe had an outside source of funds, Laxalt was foiled and the tribe's lobbying efforts carried through.

The fifth factor is the U.S. government's trust obligation to Indian tribes. Although the government is well known for its failure to fulfill its trust obligations, the United States has vast resources and funds and it administers programs in nearly every community in the country. This gives the government power to influence events in any part of the country, whereas Indian tribes tend to carry considerably less influence in the

states within which they reside. The state of Nevada strongly supported the Nevada Group and its efforts to take practically all the water in the Truckee River. However, in *Tribe v. Morton*, the Pyramid Lake Tribe was able to force the government to stop favoring TCID and the Newlands Project at the expense of Pyramid Lake by limiting them to using only the water they actually had rights to. Chairman Tom Lance (2010 personal communication) noted that tribal officials need to regularly remind the federal government to fulfill its trust obligations.

The sixth factor in these events is the support of federal officials who want to see tribes treated fairly. Stewart Udall, Ervin Griswold, Judge Gesell, and Ross Swimmer were public officials who carried out the business of government while fulfilling the federal trust obligations. Most, like Secretary Rogers Morton, tend to follow the lines of power and influence in their appointed duties. Others make an effort to ensure that Indian tribes are treated fairly. Many Secretaries of the Interior had simply ignored the Pyramid Lake Tribe's pleas for water until Stewart Udall initiated the first OCAP to limit the waste of water in the Newlands Project. Afterward, subsequent Secretaries ignored Udall's initiative until *Tribe v. Morton* forced them to deal with Newlands under the direction of an angry Judge Gesell. Likewise, federal attorneys were making a half-hearted effort to secure *Winters* reserved rights for the Pyramid Lake Tribe until Solicitor General Griswold informed them how it would be done. Ultimately some of Griswold's efforts turned out to be unsuccessful, as when President Reagan's appointee, Chief Justice William Rehnquist, vociferously denied Pyramid Lake's efforts in *Nevada v. U.S.* Credit needs to go to those federal officials who stand up to power in the name of fairness.

The seventh element in this analysis is organizations such as NCAI and NARF that take the side of small and poorly funded Indian tribes and push against the status quo. As noted in John Pilgar's documentary *Pyramid Lake Is Dying* (1976), the world assumed that Pyramid Lake would dry up, the fish would go extinct, and the people would be lost. The injustice of the situation was clear and acknowledged as unfortunate by nearly everyone involved, but the death of Pyramid Lake was believed to be inevitable. In this case, NARF came in with funding and Bob Pelcygar, which helped the tribe take the fight to the centers of power in Washington, D.C. The tribe was not always successful, but they got the attention of people such as Judge Gesell, Ervin Griswold, Mark Hatfield, and Bill Bradley, which may not have happened otherwise.

The eighth part of this complex situation is organizations such as the Sierra Club and the Friends of Pyramid Lake, which provided support and expertise, pointing out the bias of reports such as that by the Pyramid Lake Task Force (1974). These organizations share concerns with the tribe and show up to testify at hearings in support of the tribe's positions. Chairman Tom Lance (personal communication 2010) notes that they sometimes overstep their bounds and at times have inappropriately tried to speak for the tribe, but they have been helpful.

Finally, and most important, are the tribal members. Even when things looked darkest, the Pyramid Lake people never stopped fighting to get water for the lake. In John Pilgar's documentary, *Pyramid Lake Is Dying*, Pilgar assumes that all is lost and marvels in disbelief at the attitude of tribal members: "These people still think they can win." And of course, they did win. Pelcygar (1995), Ely (1996), and the others who worked with the tribe all credit the tribal members for their determination and support in spite of the

enormity of their task and the setbacks they encountered. The tribe never gave up hope and continued to devote a large part of the little funding they had to keep fighting. In another sense, what other choice could they make? As Joe Ely pointed out "The *cui-ui* were an intricate part of our heritage, of who we are; we are the '*cui-ui-tacutta*' and there are three elements that make it up. One is the people, one is the fish, and one is the lake, and if you remove one of those elements, we cease to exist as a people" (Ely 1996:143).

6. INTERNAL SOVEREIGNTY AND PERCEPTIONS OF SOVEREIGNTY

This chapter explores two closely related issues, internal sovereignty at Pyramid Lake and perceptions of sovereignty of tribal council members and other people involved in the negotiations of P.L. 101-618 and TROA. Internal sovereignty is one aspect of tribal leaders' perceptions of sovereignty. Sovereignty refers to a specific set of features in which a group of people and their government are all-powerful in their own territory and fully independent with respect to other groups in their respective territories. Limited by treaties, Supreme Court decisions, federal statutes, and encroachment by states and other non-Indian actors, internal sovereignty, or the extent of control any Indian tribe has over its own reservation, is a complex issue for any Indian tribe.

Internal Sovereignty at Pyramid Lake

The Pyramid Lake Paiute Tribe (PLPT) is currently governed by a tribal council, consisting of eight council members representing the tribe as a whole and led by the chairman, vice chairman, secretary, and treasurer. Council members are elected to two-year terms, but the elections are staggered so each year, half of the council is re-elected. Regular seats on the council do not have term limitations. The chair and vice chair are limited to two consecutive terms in office. It is not uncommon for a chairman to serve his or her two terms as chair, be reelected as a council member, and later serve as chair again. The makeup of the council is governed by the tribal constitution.

The Pyramid Lake tribal government deals with topics of internal sovereignty on a regular basis, including passing tribal laws, approving new memberships to the tribe, setting up strategic plans for development and construction on the reservation, managing

tribal lands, allotting lands to tribal members, granting business licenses, collecting taxes, administering tribal enterprises, and a host of other activities. The council has also undertaken a number of substantive actions in recent years such as withdrawing numerous sacred sites from public access, including the Stone Mother formation, the Needles area on the north end of the lake, and an area known as the Bee Hives. The council also put forward two initiatives to increase voter participation. The first involved lowering the voting age for tribal elections to 18 years of age, and the other was to allow tribal members not living on the reservation to vote in tribal elections. Both of these initiatives involved adjusting the tribal constitution. Any change to the tribal constitution is a major undertaking because it requires a secretarial election: that is, a tribal election coordinated through the BIA and overseen by the Secretary of the Interior.

In another instance, a non-Indian businessman had been using tribal property for parking for his business in Sutcliff. The business and part of the parking area were on fee land owned by the businessman. He had been using it for a long time and was refusing to pay rent to the tribe for the use of their land. The tribal attorney pointed out that the tribe could build a fence along the property line or start towing cars that were parked on tribal land. The council discussed the issue and voted to take no action at the time. The businessman had been a good partner for the tribe on some issues in the past, and other, more important issues with this person needed attention. This was a minor issue they could readdress in the future.

Internal Perceptions of Tribal Sovereignty

There is no formal training for tribal members or even council members on the ins and outs of tribal sovereignty. Council members learn it as they go, with advice from

more experienced council members and tribal attorneys. I talked to six of the eight council members; two declined interviews. I spoke with two sitting council chairs (there was an election during my fieldwork), another former council member/chairman, and a former tribal secretary. All of the past and present members of the council with whom I spoke had a general understanding that tribes had some degree of independence and self-rule. Everyone was aware that the state of Nevada had tried at different times to assert authority over different aspects of reservation life, but the state did not have authority over the reservation or the tribe. Tribal authority was limited primarily by the U.S. government. Most also felt that the doctrine of federal trust responsibility protected them, though nearly all of them pointed out that it had often failed to do so in the past. Tribal officers have varying levels of knowledge of the details and limits of tribal authority. Most of the newer tribal officers were familiar with those aspects of sovereignty they have encountered in their tenure of office but were candid about those areas with which they were unfamiliar. One council member said:

> I really don't understand what exactly is meant by "tribal sovereignty," but this is what I see. The tribe should be able to make our own rules. The states don't have the right to come in and control things. We have our own Law and Order Code. We're protected from some outside intervention. People from the outside can't come in here. We have our own constitution and bylaws, but we still have to abide by the U.S. Constitution. Sovereignty is vague, but [it] protects us. (Charles Miller, personal communication 2010)

Former council member and chair Stanley Rogers pointed out that he had not grown up at Pyramid Lake, but he got a crash course in sovereignty issues when he became a council member and later chairman.

> I think one of the issues in understanding of the concept of tribal sovereignty is an academic one. . . . It's not taught in schools, it's not taught anywhere, per se. It's kind of a learned thing within your reservation, or within the tribe. . . . I never gave it any thought [prior to becoming a council member]. . . .So the creation of

> laws, the creation of taxes, the creation of policies and procedures that allow an entity to define itself and to operate itself was kind of a foreign notion to me. (personal communication 2010)

Several other council members had considerable experience and had a correspondingly greater understanding of the limits and the subtleties of tribal sovereignty. Their tenure on the council gave them a much greater understanding of what they could and could not do.

> My understanding of tribal sovereignty is that it is a limited sovereignty. . . . Our ability to exercise what is considered sovereign . . . began to be limited by what they call the Marshall Trilogy. Justice Marshall's decisions in 1830 or thereabout . . . that basically made Indian people wards of the government. I look at it as the sovereign right to exercise the free liberty of a lifestyle, a livelihood, and to enforce what laws are there. Sovereignty for the Pyramid Lake Paiute Tribe, as I indicated, is based on our constitution and bylaws, which is part of the Indian Reorganization Act of 1934. (T. Lance, personal communication 2010)

> Sovereignty is one of our most useful and powerful tools. Sovereignty and big brother [U.S.] both help and hinder us. We try not to think about the restrictions that come with it, though, and we live that way to the extent everyone does. Yes, we live in a free country, but there are some limits on that freedom for us as well as everyone else. I think that they really didn't expect us to use our sovereignty. (V. Martinez, personal communication 2010)

> It's for us to define what is right for us, and to put those procedures and polices into place to protect our best interest, the way we always have, and for everybody to have comity or to have respect for that. That's the hard part about sovereignty is to get the comity from outside jurisdictions, from outside entities, to respect our laws or rights. (S. Rogers, personal communication 2010)

Those who had been chair or had been on the council for a long time had the greatest understanding of what the tribe could and could not do. The chair was the only council member who was a full-time employee of the tribe; he was also the chief administrator for the tribal government. Although many tribal officials had been to conferences focused on tribal government and sovereignty, the tribal council chairman went most often. It was also the responsibility of the chairman to interact regularly with

various federal, state, and local officials as well as leaders from other tribes. Either the chairman or the vice chairman was also a member of the Nevada Inter-Tribal Council. Term limits at Pyramid Lake kept the office of chairman changing regularly, and at least two of the current council members had served as chairman while I was there. One was a tribal official with lengthy experience, and he had the greatest depth of knowledge of anyone with whom I spoke regarding sovereignty issues. The other was a fairly new member of the tribal council, and he chose to call on the experience of the previous tribal chairman in dealing with many issues.

One way that sovereignty is operationalized in the United States by maintaining a "government-to-government" relationship between the U.S. government and the tribal governments. This relationship is conditioned by a number of factors. According to one former tribal official, first and foremost is the tribe's legal standing. All the rights of sovereignty for a tribe come with federal recognition. Unrecognized tribes have no legal standing: "if it's not legal, it doesn't exist" (S. Rogers, personal communication 2010).

One chairman decided to present as much of an image of a sovereign state as he could. "I take people out a lot . . . especially [Washington] D.C. people. We'd take them out on the boat, and give them a ride. Make them feel good, and give them a police escort. Hey now, it's a diplomat from a foreign country. You act the part and you play the part" (S. Rogers, personal communication 2010). Although some in tribal government questioned this effort as being wasteful, he noted, "I don't think they're looking at the big picture."

> That's all part of that—political *ployness*, if that's a word—respect. You got a leader of a sovereign nation sends their escort . . . entourage . . . out to meet you. Out to pick you up and bring you back. I always liked to go because I always liked talking because if you've never been to Pyramid Lake there is absolutely

> nothing more spectacular than coming over the hill right by Sutcliff from Reno. If it was their first time, we always made sure that was the way we went. I don't know, it's just all little things. Little things can go a long way though. So, I don't know whether I did right or did it wrong. I took a lot of criticism, but I thought I did it right at the time. In hindsight I would probably do some things differently. I think you're only going to be as sovereign as you act. (S. Rogers, personal communication 2010)

Another former tribal chairman points out that this relationship is hardly balanced. "The Feds claim that the tribal chair is a head of state, but they don't acknowledge that position. If I have an issue, I don't speak with the Secretary of the Interior, but with a Department of Interior (DOI) or BIA solicitor, and that can be frustrating. I did meet the president in December, but it was just a 'meet-and-greet' situation, and there was no chance of actually discussing the tribe's situation" (T. Lance, personal communication 2010). He further noted that the actual decisions are made far away, and the tribe has to work with people who don't have the authority to make decisions.

He acknowledged that the tribe does have authority in the "government-to-government relationship, but we [the tribe] need to use tact and strategy. Members insist that the chairman fight on their behalf. I can come with weapons, insults, and be offensive, but what will it get? There are limits on what can be done." For example, "when the Army Corps of Engineers asks tribal permission to access the river corridor, we first want to say NO, because of how they've torn things up in the past, making things worse. However, to get work we want done accomplished, such as bank restoration, we need to deal with them. When we do, we talk to low-level people. A staff person talking to a head of state . . . hmmm." (T. Lance, personal communication 2010).

Other considerations limit the application of tribal sovereignty. One long-term council member pointed out, "We need to be mindful of the fact that we want to do

business with the outside world, and we want to be seen as a good business partner. While some people say, 'This is our land and we can do what we want,' sovereignty goes as far as business practices allow it to go" (V. Martinez, personal communication 2010). Many businesses will not work with Indian tribes because, as sovereign entities, tribes have immunity from lawsuits. In a business situation, if an Indian tribe refuses to pay debts, they cannot be sued unless they actually give permission for a lawsuit to be filed against them. Therefore, businesses have no way to ensure payment if a tribe decides not to pay. This has hindered economic development on some reservations. To work around this, the Pyramid Lake Tribe is working to establish a tribal Limited Liability Corporation (LLC) that can work with businesses and is liable for its debts. At the same time, the resources of the tribe that are not associated with the corporation remain protected by sovereign immunity.

Granting access to tribal land and business policies are matters of internal sovereignty, and tribes do have the authority to keep federal, state, and local agencies from entering tribal land. Because of the bullying and the disregard for the tribe's needs that was shown by outsiders in the past, the tribal government may be reluctant to cooperate with any outside government or agency. On the other hand, council members are well aware that reciprocity may be necessary to achieve the tribe's own goals. They are willing to work with businesses, but the tribe is understandably extremely reluctant to surrender any of their authority. Solutions such as the tribal corporation will give outside business peace of mind that they will be paid, but the resources and sovereignty of the tribe remain protected.

Tribal officials see and deal with limits on their sovereignty on a daily basis. "I

told the council, we have limited sovereignty, not true sovereignty. In true sovereignty, we would have the right or entitlement to take up arms, institute laws, enforce those laws, and punish anyone who violates those laws" (T. Lance, personal communication 2010). He points out, though, that the power of any Indian tribe to enforce its laws is very limited, particularly relating to criminal jurisdiction. Tribal courts and police have no authority over non-Indians or felonies. On most reservations in the United States, even if tribal police officers see a non-Indian person commit a crime on the reservation, they can only detain them and call the local police (or BIA police or FBI, depending on the nature of the crime and the victim) to come and place them under arrest. If the police or FBI decline for any reason, tribal police only have the authority to escort them to the boundary line and tell them not to return. Another council member put it this way, "To assert sovereignty means that when a non-tribal member comes into our community and commits a crime against an Indian, we're able to prosecute and we're able to deal with the judicial issue on our own. Just like if a tribal member commits a felony. We don't even prosecute for felonies, it goes to the BIA" (V. Alberts, personal communication 2010). In some instances, tribes have worked out agreements with the local (city, county, or state) police agencies to allow tribal officers to arrest non-Indians through cross-deputization or an MOU (Memorandum of Understanding). Non-Indian persons are then turned over to the local or federal courts for prosecution. These arrangements can be changed by mutual agreement or terminated by either party at any time. Even when these agreements are in force, tribal courts generally have no authority over non-Indians pursuant to *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). With the very recent exception of some cases of domestic violence, even in cases such as murder, if the

state or federal authorities decline to prosecute, all the tribe can do is ban that person from the reservation.

As noted previously, one area in which Indian tribes have gained authority is through the Clean Air Act and the Clean Water Act. One council member also pointed out that as the tribe has stepped up to take a larger role in the federal system of setting and maintaining water-quality standards to protect the lake, they placed themselves under federal jurisdiction if they violate their own standards.

> I was big on environmental, and that's great. The intent of it is noble, but we just recently, after 20 years got TAS—"Treatment as State"—designation by the federal government Clean Water and Clean Air Standards. So our water quality standards are superior. Everybody has to meet our water quality standards, so anything that's coming down the river [to the lake needs to meet tribal standards]. We do a multitude of testing, that's great, but the bad part about it is that we inadvertently subjected ourselves to federal authority by going with *Treatment as State*. Now the Environmental Protection Agency has authority if somebody [on the Pyramid Lake Reservation] violates standards. I fully supported all this stuff without thinking potentially of the ramifications towards the end. Rather than going, okay, we're going to set these standards. These standards may be higher or they may be lower, but they're our standards, and we need to enforce them. WE need to enforce them [rather than the federal government]. So indirectly, sovereignty is usurped little by little. (S. Rogers, personal communication 2010)

Even when tribes have the authority to set air- or water-quality standards that non-Indian governmental agencies must abide by, they actually cannot enforce them themselves. "Tribes can't enforce the Clean Water Act or the Endangered Species Act. Those are federal laws" (T. Lance, personal communication 2010). The Pyramid Lake Environmental Department tests the water in the lower Truckee and flowing into the lake to ensure that the upstream users are conforming to water-quality standards. If they find a violation, they call the Environmental Protection Agency (EPA), which can issue warnings and fines for noncompliance. Tribal officials with whom I spoke say that they have to rely on U.S. government officials, who are often not proactive. One tribal official

noted that they have to regularly remind the Secretary of the Interior to fulfill their trust obligations.

> That's something that was created by the federal government, becoming our trustee. They've accepted, and they developed and created that trust responsibility, that trust obligation. And so, no matter what they try to change, that concept of trust responsibility will always be on the table. We're constantly having to play that card with any agency that comes in to try to make a decision that we feel is going to hurt the tribe, the tribe's resources, or the ability to manage those resources (T. Lance, personal communication 2010).

The sovereignty of Indian tribes in the U.S. is compared by some tribal officers with that of the fifty states. Chairman Lance states, "States have the authority to legislate and enforce. Tribes don't have that same authority. In looking out for our people we are relying on the assistance and support provided by the federal government" (personal communication 2010). However, he also added, "The states are pretty sovereign, but they are limited too. Once you begin to accept federal dollars, that's where the catch is, they are attached to it."

Many tribal services are funded by grants from various federal agencies, and while grants are necessary to fund essential services and achieve many goals, accepting grants does open the door for federal control in how those grant monies are spent. "So basically when you apply for these grants and you're approved for these grants, you're opening your door for the federal government to come in and regulate. So, if you apply for grants, which is great, you are giving up sovereignty in the fact that they can come in to regulate and fine you. The feds have the ultimate say" (V. Alberts, personal communication 2011).

In addition, with every agreement the tribe enters into, tribal sovereignty is limited further by federal legislation. Former Chair Vince Alberts noted, "We're as

sovereign as the federal government allows us to be, and every time we enter into an agreement, that sovereignty is compromised again" (personal communication 2010). As noted previously, countries enter into treaties and agreements with other states with the understanding that they can withdraw from those agreements if conditions change. Tribes often do not have that option. Agreements like the TROA must be approved by Congress, and after that the tribe and states are bound by that agreement.

Although the agreement protects the tribe and the lake from noncompliance by the states of Nevada and California and other water users, in a very real sense it cuts into tribal sovereignty. If conditions change, the tribe is bound by the agreement and cannot force a renegotiation by withdrawing, but neither can the states or any other parties involved. The sole exception is the U.S. Congress, which has the power to void the agreement through federal statute.

Tribal officials also point out that court decisions and changes in federal policies can affect the application of tribal sovereignty.

> I talked about the Marshall Trilogy at the outset. I mean, *Nevada v. Hicks* (2001),[8] is another good example, and the recent *Carcieri* decision [*Carcieri v. Salazar*, 555 U.S. 379 (2009)]. There's always going to be a decision that affects our sovereignty, and the ability to exercise our sovereignty. It's almost like it's limited more and more and more with these court decisions. So, yes, definitely, federal policies, they change. Federal rule making that's promulgating regulations to implement laws and provisions of laws, and those things are constantly changing. It seems like whenever it appears that the tribes are gaining an advantage, those rules get changed. (T. Lance, personal communication 2010)

Another former tribal chairman pointed out that each change at the federal, state, and even city level has an effect. "When John Paul Stevens retired from the Supreme Court, I remember a lot of us were talking about it because we had lost a friend up there.

[8] Nevada v. Hicks, 533 U.S. 353 (2001)

He was somebody that understood, in our opinion, the Marshall Trilogy as the basis of federal policy. So we definitely lost a friend at that point. It's always worrisome about who is getting in there" (S. Rogers, personal communication 2010).

Council members are well aware that what happens in Congress affects the tribe. The tribe needs to be aware of issues that may affect them. Being aware of what it is going on in the country, and working with other tribes and Indian organizations, is important.

> We as leaders are continually gauging the political climate in America. We have learned over the ages that increasing our involvement in lobbying for what we need as nations with a united front usually wins the attention of one side or the other. As we grow as a collective voice we see more results and parties vying for our support in votes, so political tensions in America can sometimes be a catapult to getting more attention for our cause. Sometimes, however, when we are not watchful, we lose out on funding and support, so it works both ways, just as other special interest groups across America. (V. Martinez, personal communication 2010)

Chairman Lance also notes that the various federal agencies, such as the Bureau of Reclamation, the Fish and Wildlife Service, the Army Corp of Engineers, the Bureau of Indian Affairs and others have different directives and policies. These agencies pursue their directives even when it puts them in conflict with other agencies. However, different presidential administrations can and do have effects on how the government deals with Indian tribes.

> I can't say that our authority has changed with the changing political landscape. Our sovereignty has always been what it is. I think it has been recognized differently by different administrations. . . . I think our ability to assert and enforce sovereignty has been equal; it is only changed because of the way the government treats us. Some of the agencies have never changed, even though you've had different presidents over the past couple of decades. We're still being treated the same by some of the agencies. So even though you've had different policies that are made by executive orders that are issued by presidents, it doesn't really change or improve our relations with some of these agencies. . . . It's like what President Reagan did during his term in 1983, when tribes were litigating

> their water rights. The tribes were winning, and President Reagan didn't like that. He said, we need to negotiate with these tribes, we need to get them to compromise. We will reward the tribes who negotiate and we'll punish those who litigate. That was the beginning of negotiated settlements. In 1985, the tribe had a referendum and we voted to negotiate vs. litigate. It was a split vote and it divided our community. It divided our community, but the government got what it needed. It got an affirmative vote to negotiate. So we began negotiating. So that again is part of that manipulation that can occur with tribes, where the government knows what it wants. It knows that it has to work with the tribe in order to gain its water resources, or some form of water in the terms of a settlement and so that's what we did. (T. Lance, personal communication 2010)

Tribal leaders at Pyramid Lake are also aware that asserting tribal sovereignty is limited by general public opinion and public fears. Council members pointed out that trying to assert sovereignty in the face of adverse public opinion can invite a backlash. Disputes between the tribe and non-Indians are likely to make the evening news, and the local news crews seldom look closely at the tribe's point of view. If the tribe does not make their position clear, those opposing tribal efforts can appeal to fears of Indian "special rights."

> Yeah, the public won't let you. You won't get very far at all, if you don't have the public backing. So you have to pick and choose. I like what the California tribes did with gaming, Prop. 5 [1998]. They took it to the people. . . . Well, it went to the courtroom first and then they took it to the people, and they passed Prop. 5 by 65–66% or something like that of the people voted to approve it. Well, it's much harder when you're over 50% to say, "Hey man, we're going to spend millions of your taxpayer dollars now for a losing cause." Politically, you don't want to do that. Politicians don't want to do that. So you've got to be very careful . . . you've got to. We're no longer an isolated society either. (S. Rogers, personal communication 2010)

They noted that in the negotiations over the distribution of the Truckee River, it was necessary to get the tribe's perspective out to as many people as possible.

> As I stated above, being fearless, wise, and firm about what we need was the key. Getting people to understand our goals and to articulate them well was another key component to getting some of what we needed, and being willing to compromise when needed was another. Buying people into your ideas and beliefs is half the game. If they don't know, they can't relate to your plight and won't find

> a place to make compromise in their goals. We had great leadership [T. Lance] during the down-and-dirty stages of TROA, and they pulled us through along with great legal counsel who had our interest in mind. (V. Martinez, personal communication 2010)

Their efforts were successful. Beth Jennings, from the Public Works Department for the City of Reno, said, "Joe Ely, the tribal chairman, was quite the activist. He brought Pyramid Lake's concerns to the attention of upstream water users. We were doing what we do—developing. A community needs to grow or it is in decline. We tend to forget downstream. We went to a workshop in Nixon where he gave a very impassioned presentation. He is a very good spokesperson for the tribe. We have worked with Dan Mosely, his son John, and John Jackson. The tribe is making sure things are going on. Their attorneys are pretty good" (personal communication 2010).

One thing that becomes apparent when dealing with sovereignty issues is that lawyers are part of the process, though not everyone is necessarily happy with that fact. Lawyers are expensive, and working through agreements and settling lawsuits can take a very long time. Experienced ones can make a make a big difference, and bad ones can eat up time and money for little gain. One council member said, "I think a lot of it boils down to attorneys. We have attorneys now that have experience working in these settlements and these decisions, and we have developed a team of people that understand the way things are working because they have been working at them for a certain amount of time" (V. Alberts, personal communication 2010).

Another tribal officer noted that the National Congress of American Indians (NCAI) has a Policy Board, which is a group of attorneys reviewing cases coming up through the system; if they feel a case being pursued by a tribe will hurt the interests of other Indian tribes, they will approach them, saying, "'Hey man, we know it's up to you,

but it may not be good overall for the Indian people.' So once again, you have a group of attorneys and tribal leaders discussing, this is a fight we may not want to take on right now" (S. Rogers, personal communication 2010).

As noted, not everyone is always happy about the role that lawyers play in these processes. An engineer from TMWA noted, "TROA began as a small agreement of perhaps thirty pages, but then lawyers became involved and it ballooned to several hundred pages" (E. Marshal, personal communication 2011). As the litigation over the agreement continued to drag on, a tribal council member noted, "When's it going to end? It's like the only people that are making money off it are the attorneys" (V. Alberts, personal communication 2011).

Effective attorneys do not always get along with everyone. Robert Pelcygar, the attorney for Pyramid Lake through much of these negotiations, was considered a very capable advocate for Pyramid Lake. He had a reputation for being extremely aggressive and was instrumental in working out several agreements for the tribe. Wayne Mehl, the staff person designated by Senator Reid to facilitate the negotiations, noted that Chairman Joe Ely was the only one who could control him (Mehl 1996). His aggressive style created conflict with later council members and chairs, and the tribe eventually let him go.

Janet Phillips, a water master for TMWA, stated, "In some cases, lawyers become the final deciders because groups don't have the confidence to tell them, 'We will accept this'" (personal communication 2010). Importantly, she was not referring to the Pyramid Lake Tribe. Nearly all of the people with whom I spoke reported that leadership at Pyramid Lake has always been very strong.

> Some people complain that now that TROA is signed we shouldn't be paying lawyers. That money could be spent on other programs, but there is no way that we could not stay involved in any ongoing negotiations. We have to talk and everyone has to give something, though, in our case, it usually involves giving more, because we have already given a lot. If you don't talk, though, you get left behind. We were given a gift of money for economic development, and while it doesn't change our position, we were glad to have it. The Fallon people [TCID] were given something and they built a lifestyle around it, but things are always changing and the negotiations are going to continue, and we'll need the lawyers to stay involved. (V. Martinez, personal communication 2010)

One area of sovereignty that concerns some council members is the fact that the Pyramid Lake Reservation was formally established by executive order rather than a treaty. They feel that this weakens their position. "We never signed a treaty. Pretty much the government gave us our land back, and it was an executive order. So that's kind of scary too. We don't really have a treaty to back ourselves on a lot of issues" (V. Alberts, personal communication 2010). Another council member expressed similar concerns. "There's not a treaty, so with just the stroke of a pen, they can take this reservation from us. It's an executive order, not a treaty. We're not a treaty tribe" (C. Miller, personal communication 2010). Although the tribe does not have a treaty, Congress reserves the power to terminate any tribe by federal statute regardless of treaty. Their concerns are very real, but the IRA of 1934 prevents the federal government from alienating tribal lands without the permission of the tribe.

External Perceptions of Sovereignty

Other players in the negotiations over the distribution of water in the Truckee River and Pyramid Lake include the states of Nevada and California; TMWA, formerly Sierra Pacific but now combining the interests of the cities of Reno and Sparks, and Washoe County; the federal government, in the form of Senator Reid, his staff, and various federal agencies. Also participating in the negotiations was TCID, which was

supported by Churchill County, the City of Fallon, and by extension the Fallon Paiute-Shoshone Tribe. All of these organizations had an interest in the Truckee River and a stake in the negotiations, so any power wielded by the Pyramid Lake Tribe had a direct impact on them. Their perception of tribal sovereignty is very telling.

Sue Oldham was the attorney and chief negotiator for Sierra Pacific and later for TMWA in the water negotiations. She and Bob Pelcygar did a lot of the actual negotiating for setting up the P.L. 101-618 and TROA agreements. She notes that they (Sierra Pacific/TMWA) chose to respect the tribe's sovereignty, but they had to protect themselves from that sovereignty because the tribe could choose to bail out of the agreement. Some Indian tribes have a reputation for unreliability because after tribal elections, an incoming administration will sometimes undo everything the previous administration had done. She notes that the tribe has a voting population, and they are not a part of that voting population. "So if we were going to agree with them, we needed ways to be assured that we continued to get what we agreed to. That was where we agreed with the tribe to seek better legislation to be firm what it was we agreed to. So, any agreement needs to go to Congress to be binding on all parties" (S. Oldham personal communication 2010).

This situation presents two important points. The first is that outside agencies can "choose" to respect the sovereignty of the tribe, which means they can also choose not to. Hence, sovereignty is an issue to be decided rather than a given. Outside agencies have always had the option to ignore or fight the tribe's sovereignty, as the efforts of the Nevada Group demonstrate. Another option has been to appear to address tribal issues such as the Pyramid Lake Task Force. It appeared to fulfill federal trust obligations but

really supported the status quo. Mary Conelly, the director for Senator Reid's state office, stated, "The tribe got lucky in a way because the federal officials at the time and others actually had respect for tribal sovereignty and made sure it was respected. Things changed at that time because federal officials looked to ensure that sovereignty issues were respected" (personal communication 2011). These remarks reinforce Chairman Lance's comment that sovereignty itself does not change, but how it is dealt with by the various branches of the federal government can and does change over time. As noted by Biolsi, this is the result of the failure of the United States to support tribal sovereignty in the past, so respecting sovereignty became an either/or proposition. In the past, tribal sovereignty was often ignored by local, state, and federal authorities when it suited their purposes. Unlike in the past, today the tribe has enough leverage to ensure that their sovereignty counts for something.

P.L. 101-618 and the TROA have bound the interests of the tribe and the rest of the region together regarding water issues. Regardless of how they may have felt in the past, most people in the area now have a stake in the preservation of Pyramid Lake because their own water issues are tied into the agreements. For example, a water engineer for the city of Reno is working with the Pyramid Lake Tribe to reduce pollutants and keep the river clean. The agreements with the tribe are vital to continued development in the Reno/Sparks area, so they are working to be good neighbors.

> We've been working with John Jackson, the Pyramid Lake water director, and Dan Mosely, their environmental person. The tribe has told us they don't want effluent from the water treatment plant in the river because the river is sacred. We're looking for balance. . . .
>
> . . . The Truckee Meadows was originally divided up into ranches. Over time, many of those ranches were bought and sold, and many were developed and cut up into lots, and the streets were dedicated to the city or county. The water rights to the land the streets sit on still rest with the city, and we've spent millions

> on title searches to come up with the water rights dedicated to those lands for Reno, Sparks, and Washoe County, to put water into the river for flow and water-quality purposes.
>
> We're trying to get funds to make this happen. The local government oversight committee and the tribe have put up money to buy water rights. . . . We are buying up ranches and taking them out of service. We can then retire the water rights. . . . This isn't popular among the local population due to air quality issues. The land is now dry rather than in production, and there are dust issues. Working one-on-one with the tribe, they've been able to see that the Truckee Meadows is trying to make things better and remedy the ills of the past. (B. Jennings, personal communication 2010)

Ms. Jennings's statement was accommodating rather than resentful. Working with the tribe was part of the cost of doing business, and the tribe was working to help accommodate the needs of the city of Reno. In fact, a large part of the negotiations of P.L. 101-618 and TROA had been about trying to meet the needs of all the parties involved. Ali Sharoody of Stetson Engineering and Bob Pelcygar were noted for their creativity in reaching solutions to accommodate the various water users. Mary Conelly, Senator Reid's state director, notes that "The tribe played it well. They knew exactly what they wanted and they never forgot what that was. They didn't care if everyone else benefitted as well, even TCID. Pelcygar was very creative in looking for solutions to issues and ensuring benefits for other people involved in the negotiations" (personal communication 2011). In addition, Harry Reid was able to make funding available to get things done. This atmosphere has encouraged the city of Reno to look for creative solutions to meet their obligations.

> We're working to reduce non-point source pollution by controlling what flows into the storm drains. The storm drains are separate from the city sewer system. We've done a lot of outreach to industrial and construction sites to keep their wastes out of the drains. We are also investing in river restoration downstream. We're now working with the Nature Conservancy to restore parts of the banks and meanders to the river. The revegetation of meanders uses up a lot of the nitrogen and phosphorus. We got a $9.5 million Terminus Lakes grant to get water to the lake from the Bureau of Reclamation. Some has been used to get

> work done at Mustang, Lockwood, 102 Ranch, McCarran Ranch, and along the river below Derby Dam. (B. Jennings, personal communication 2010)

Several people mentioned that the tribe's efforts to accommodate others went a long way toward creating an atmosphere of good will. Importantly, however, the city is not doing anything they do not have to. Ms. Jennings noted, "There is a concern about pharmaceuticals and hormones, but those are not regulated right now so we don't treat for them" (personal communication 2010).

Perhaps one of the most informative comments came from Mark Lancing, a member of the Regional Planning Commission. The tribe had been willing to work with various other water users to achieve their goals, but other people had not been so willing.

> But the big problem in the negotiated settlement [P.L. 101-618] was always, always, always the Lahonton part and the irrigation district there, because they exist because of a federal handout in 1905. And, as a result, they have been, at least the perception was that they have been horrible stewards. They have never done anything to maintain or improve the ditch system that was put in place, so that by the early part of the last decade, the federal water marshal at the urging of the tribe weighed in with his estimates that upwards of 35% of the water distributed to the Newlands Project was being wasted.
>
> I, in the planning role, was less concerned about the claims by the Paiute and far more concerned about the whole Newlands Project, which should rank as the stupidest federal project in American history. It should be recognized as such, and we should do something about it. You're talking about 235,000 acre-feet of water to go to Newlands in a given year to grow alfalfa and melons in a desert. How is that a logical use of a water resource? And they waste 35% of it to boot . . . but I would tell you that of the parties, they are the ones—they're now, it may have been the Paiutes three decades ago, it's Newlands now—they are the fly in the ointment. They, you know, nobody likes them. They're just really sick and tired of the thinking over there that's so closed and so entitled, and maybe that's how people perceived the Paiute 30 or 40 years ago. I think the Paiute clearly repackaged that and I think they always sound reasonable (M. Lancing, personal communication 2011).

Lancing's perceptions of the Pyramid Lake Tribe and TCID were often echoed by others. In the past, the Pyramid Lake Paiute Tribe was seen as a problem for trying to save the lake and standing in the way of the Bi-State Compact, but once they had gained

some bargaining leverage by defeating the compact and gaining control of Stampede Reservoir to save the *cui-ui*, their position changed. Their willingness to work with the other water users gained them substantial good will. TCID, on the other hand, has created animosity through their efforts to derail P.L. 101-618 and TROA despite numerous efforts to bring them back into the negotiations. The general perception is that they want to go back to the time when they could use all the water they wanted.

> They're always going back to "what we want is what we had" way back in the '60s, and it's just not logical to think that. . . . And it's kind of sad because they have some of the same issues as the tribe had, which is they've been fighting with each other a lot longer than they've been fighting with the tribe. They're fiercely independent. They want what they want and probably can't have. In the negotiations we had before, they didn't agree on a position going in, and when we got down to something they said they thought they wanted, they just. . . . They're afraid to settle. They're afraid of what their neighbor is going to think. They're afraid of that. It's a lot easier to litigate if you live out in Newlands than it is to settle things and move on. (S. Oldham, personal communication 2010)

Many members of the TCID think they are entitled to the amount of water they traditionally use. They defied the Gesell decision for ten years because they felt that they were entitled to divert as much water as they needed. According to TCID, the federal government promised the farmers that they would be able to make a living, and P.L. 101-618 and TROA violate that promise. Rusty Jardine, the project manager for TCID, stated, "There are duties to all of the folks out here who came out here and received waters to apply to lands and created these homesteads and built their farms" (personal communication 2011). They say that promises made to them by Reid and others to protect their water rights are not being kept. The TCID website carries this statement:

> From time to time, however, a conflict may arise. When the federal government, acting through the Bureau of Reclamation, promulgates a rule or regulation, or issues an edict under those rules and regulations, which the District believes is arbitrary, capricious, unreasonable or contrary to law—thus violating the rights or impairing the interests of project water right owners—TCID must support the

> water right owners and oppose the action of the United States. (The latter scenario has unfortunately become more and more common during the last twenty years or so, as the federal government, in league with others, has sought to constrict agricultural use of water in favor of users that are more "politically correct.") (TCID 2015)

As noted above, TCID saw themselves as vital to any negotiation or agreement, and they felt that by withdrawing they were dooming the negotiations to failure. Perhaps they felt they would be called back and that this would give them greater leverage at the negotiating table. Former Nevada State Senator Carl Dodge (1994), the largest landholder in the project, points out that after the *Nevada v. U.S.* victory in the Supreme Court, the water users in the Newlands Project thought they were untouchable. However, since TCID chose not to remain involved, and the rest of the participants were able to reach an agreement without them, they had no role in shaping the final agreement.

Their influence and political clout to change the decision was smaller than they had anticipated for a couple of reasons. One factor is TCID's refusal to abide by the Gesell decision, and this has had lingering consequences for them.

> They just plain defied it. And boy, they've been the "black hats" with the Department of the Interior ever since that. And the story gets worse all the time, and the reputation gets worse. As new people come on, they get to hear these stories about this bunch of rebels out here in Nevada, defying the United States. And then the board, in retrospect, I can't be too critical about them, but at times, they probably weren't as farsighted as they should have been. . . . [The water users] still felt that there was no way these guys could touch them. Well, they began to find out as time went on. All of us did. (Dodge 1994:36)

For a very long time, TCID had the support of the state of Nevada and the Bureau of Reclamation. However, the Gesell decision combined with TCID's history of walking out on negotiations and their persistence in opposing every agreement has led to a climate where the rest of the groups involved have very little sympathy for them, and they are perceived as completely out of touch.

> I'm still surprised at the degree to which they don't understand where they get their water. You saw what happened in California [California Water Resources Control Board hearings]. Some of the testimony they presented was just bizarre. They didn't seem to understand how the system worked, how they got their water, how we were proposing to get our water. . . . And they sat in those negotiations for at least ten years, so they should have a better understanding of what we were doing than they at least proposed. Now maybe they're doing it on purpose just to confuse, and that is what a lot of other attorneys would say, but I'm not so sure. I think they really don't understand. I really don't. But I will say that people have tried over and over to educate, and they just use it. They're looking for things to zap you with. They're not looking to learn it. (S. Oldham personal communication 2010)

According to Wayne Mehl (1995), Lyman McConnell, the district manager for TCID, was a very good lawyer and really understood water. However, Mehl thought he was hamstrung by the politics within TCID and the Newlands Project. The TCID board was always looking over his shoulder and was likely to second-guess his every move, so he was never free to actually negotiate a deal.

The farmers of TCID are correct in that they were just doing what the federal agencies allowed them to do, and they made the most of the opportunity. When the Newlands Project was established, the Bureau of Reclamation, the Department of the Interior, the U.S. Congress, and the state of Nevada all saw the water of the Truckee River as a resource for them to allocate, and none of them worried about the impact on Indian people, whose rights and wishes they completely disregarded. The farmers felt that these resources were theirs to use, and many still feel that way. TCID felt that the *Nevada v. U.S.* decision vindicated them by upholding the *Orr Ditch* decree. They see the water that has flowed into the project from the Truckee Canal as "their water," and any attempt to limit their water usage is "stealing" their water.

> You know, I think there is a way to achieve everyone's interest being met, and we don't declare someone a winner and someone a loser, okay? And if you ask the people in this valley, it's kind of like the sentiment is, well, we're the loser. We're

> going to have taken from us over time our water resources and they're going to be used for other purposes elsewhere, including filling Pyramid Lake, among other things. (R. Jardine personal communication 2011)

In addition, Rusty Jardine, the current project manager of TCID, mentions a deep sense of resentment among many of the people in the district. Much of this resentment is directed at the Pyramid Lake Paiute Tribe. According to Patricia Zell (1997), a congressional assistant to the Senate Committee on Indian Affairs, TCID saw their interests as being inimical to those of the tribe, and they continued to be hostile to the Pyramid Lake Tribe's efforts. They take the tribe's efforts to get water from the Newlands Project to save Pyramid Lake personally. Chairman Lance stated bluntly, "They hate us over there." According to Mary Conelly, Senator Reid's state director, the Fallon farmers felt the tribe was their enemy.

> I believe that Lyman [the former district manager for TCID] is very concerned about what other people get, that he's not as focused in on "what we want" as "are they going to get something out of this too?" That he actually takes this probably far more personally than most others do. . . . Lyman does not care about the win-win. He wants to win and them to lose, and that's what makes it very difficult to negotiate with Lyman, because he's often as concerned about what the other guy gets as whether he wins. . . . I've seen it happen, I believe Lyman is willing to lose, as long as the other guy does too. And, I think that has hurt them many, many times. I mean, if the tribe got something, even if it didn't impact what they [TCID] wanted, I think he wouldn't go for it. (Conelly 1996, 2006:41)

TCID hopes to turn things around. Part of the reason for the Settlement II negotiations' failure was that there was an election at that time, and the Republicans gained control of both houses of Congress. Conelly and Barbara Vucanovich, northern Nevada's U.S. Representative at that time, both state that leadership at TCID made it clear that they felt this was their opportunity to have P.L. 101-618 either changed or repealed. TCID long held out hope, though Vucanovich pointed out that getting any kind of legislation passed is difficult and their chances were slim.

> They feel that they have been abused by the government, they have been made a lot of promises, they have given as much as they think they can. If you're saying, are they going to accept? I don't think so. So I don't see a lot of changes. I just don't know. I certainly don't think any more legislation is in the cards. They have talked so many times about filing suit. Well, they've lost the suits in every court, I think, that there is, so what are they going to file suit against, or what are they going to do? (Vucanovich 1995:56–57)

TROA limits TCID to the water for which they actually have rights, and it guarantees those rights and will deliver to them all of the water to which they are entitled. The only exception is in the case of an extreme drought, in which they will receive 1% less than they would normally receive, for which they will be compensated by the federal government as they would in any drought situation. Likewise, the Bureau of Reclamation has not entirely abandoned the Newlands Project. The diversion levels established in the present OCAP (1997) are not at the level designated by Judge Gesell. The recoupment issue of returning more than 1 million acre-feet of water to Pyramid Lake has never been resolved, though the United States filed a lawsuit for the recoupment of the water in 1999 as part of P.L. 101-618, this has been contested by TCID and lingers in court. The USBR has established a bonus system for TCID that rewards them for exceeding efficiency standards, and this bonus water can be used later or applied to recoupment by letting the excess flow down the river to Pyramid Lake (TCID 2013).

TCID still contested TROA at every opportunity and seemed to be holding out for a court victory to bring both agreements down. They filed lawsuits and appealed every decision regarding the agreements, even when some of the grounds for their suits had been labeled as "bizarre" by the judges (J. Phillips personal communication 2010), and they succeeded in delaying the formal implementation of the agreement by many years.

The members of TCID see themselves as ill-used, but I suggest this is largely a matter of perspective. They had been operating as they wanted and have made many assumptions based on lack of supervision. They seemed to view P.L. 101-618, and TROA as some kind of Democratic vendetta against them and they regularly appealed to Republican politicians for support. They removed themselves from the iron triangle, and now every other user of the Truckee River in Nevada and California, including the states themselves, has a stake in TROA. Regardless of who controls Congress, the political clout was all lined up against TCID, and through their own actions, they have managed to alienate many people who once supported them.

CONCLUSION

There is no formal training on the ins and outs of tribal sovereignty at Pyramid Lake, and new council members often get a crash course in tribal sovereignty during their first term of office. Despite their sometimes imperfect knowledge of sovereignty, they successfully manage their land and their internal sovereignty with only occasional uncertainty. They use those powers they do have to run the day-to-day affairs of the reservation and look out for the interests of tribal members. Council members, especially experienced council members, are keenly aware of the limitations with which they have to deal. Federal law and Supreme Court decisions have severely hampered their ability to deal with outsiders on the reservation. On the other side of the coin, sovereign immunity from lawsuit creates fear among some business people, making them reluctant to do business with the tribe. As the Council works to remedy these issues, they favor solutions such as a tribal corporation and Memoranda of Agreement or Understanding with other

agencies. These solutions address the issues in question but do not compromise the tribe's sovereignty. In so doing they act like any other government in the world.

Most council members pointed out that while they were aware of tribal sovereignty, they did not actually understand it until they sat on the council and had to put sovereignty into action. They all pointed out that it was a limited sovereignty, but a useful tool in a number of ways. Within the reservation boundaries, sovereignty enabled *Cui-ui ticutta* law and culture to remain predominant, even if Indian law did not apply to outsiders. They also point out that the more tied into the federal system they were, the less leeway they have. Grants were useful but invited federal oversight, and likewise, TAS (Treatment as State) status gave them the power to set clean air and water guidelines but also invited federal intervention. All of them were aware that sovereignty was a useful tool for dealing with outsiders, but it meant they depended heavily on the U.S. government fulfilling its trust obligations. To be useful, the tribe must often remind federal officials of their trust responsibilities.

Council members pay attention to state and federal elections and to government appointments. They are aware that tribal sovereignty will vary based on court decisions, presidential initiatives, and the whims of Congress. Likewise, the amount of respect given to tribes and their sovereignty varies by state, federal agency, and administration. These agencies can be heavily influenced by political pressure from above as well as pressure from the public. Council members understand that public perception and the perceptions of other agencies are an issue when trying to assert sovereignty. If they don't have good relationships with these other actors, they will not be able to get help in accomplishing their goals. As S. Rogers (personal communication 2010) noted, "You

won't get very far at all, if you don't have the public backing." Understanding how other people perceive Indian tribes and their tribal sovereign rights can be a useful aid in asserting tribal sovereignty.

Understanding exactly what rights a particular tribe has and what they can do with them is important for making the most of their limited sovereignty. This brings up the role of attorneys, which is contested among council members. Knowledge of Indian law and sovereignty issues is vital in dealing with challenges of internal and external sovereignty. A good attorney knows the extent of the law and how the tribe can use their sovereignty most effectively, but good attorneys can also be very expensive. The tribe has many needs, and money is a limited resource. Members often disagree as to where and how it should be spent.

Outsiders who deal with the Pyramid Lake Paiute Tribe have their own perspective regarding the tribe's sovereignty. Oldham's statement that Sierra Pacific chose to respect the tribe's sovereignty is particularly important. The fact that outsiders can choose *not* to respect the tribe's sovereignty reinforces Biolsi's (2001) point that the dismal failure of the United States to support tribal sovereignty in the past has promoted the idea that tribal sovereignty is something that can be either respected or circumvented. The Nevada Group made every effort to ignore and undermine the tribe's sovereignty in the Bi-State Compact, and when that did not work, they resorted to bullying and subterfuge under the leadership of Senator Laxalt. It was only when the Pyramid Lake Tribe gained enough leverage to force a negotiation that the iron triangle fractured and reformed to include them. The tribe's efforts to work with the other water users cemented their place in the new iron triangle and created a positive working relationship with most

of the other users of the Truckee River, as well as saving the *cui-ui*, Lahonton cutthroat trout, Pyramid Lake, and achieving several other important goals along the way. Most important, the agreements they reached should ensure the survival of the fish after they are removed from the Endangered Species List. With this, the tribe has avoided the "double bind" of needs-based sovereignty explored by Catalino (2010).

In a parallel to Lambert's (2007) account of the Choctaw experience, good public relations have created positive situations for the tribe. The efforts of the Pyramid Lake Tribe to find solutions to the needs of other water users created a situation in which the tribe and their sovereignty are viewed in a positive light by most people in Nevada and California, while TCID is seen as the "fly in the ointment" and a problem that needs to be dealt with. The intransigence of TCID and the Newlands Project is driven by their belief that their traditional use of the river was entirely legitimate. That water was "theirs," and it is being stolen from them by the Pyramid Lake Tribe and the U.S. government. In their view, the loss of Winnemucca Lake, Pyramid Lake, the *cui-ui*, the Lahonton cutthroat trout, and the economy of the Pyramid Lake reservation are simply the price of progress, and they do not see that they have done anything wrong. Their leadership holds the tribe as being primarily responsible for their troubles, and they seemed to be willing to do almost anything to stop TROA from going into force. Their attitude has lost them any allies or sympathy they may have had, and now they are seen as *the problem*. They seem to be holding on to the vestiges of colonial privilege, and they are willing to drag everyone and everything down in some sort of "last stand" to try to get their way.

7. WHERE SOVEREIGNTY LIES

This chapter explores the question of "where sovereignty lies" at Pyramid Lake. I first examine the question of where sovereignty lies for the Pyramid Lake Paiute Tribe. Three council members offered their thoughts on the question, and they offered a variety of responses. This lack of consensus may be the result of conflicting ideas about the composition and role of tribal government and tribal officials. I look at their concepts and how they relate to general ideas in the United States. As Jackson (2007) points out, this question has important implications for the foundation and legitimacy of government. Then I will look at the implications of the various views on sovereignty and discuss how these differing ideas may play a role in the factional conflict that is a part of tribal politics.

Factional conflict pervades much of the decision-making process at Pyramid Lake, which frustrates council members and sidelines important tribal initiatives. Siegel and Beals (1960) point out that factional conflict is generally the result of cultural change. The Pyramid Lake people were traditionally egalitarian foragers, and interviews suggests that at least some tribal members are still guided by family-centered traditions. In contrast, the tribal council is governed by a constitution based on American ideas of representational government, and this divergence may be driving the factional conflict at Pyramid Lake by activating traditional methods of social control. The Pyramid Lake Tribal Council is actively looking for solutions to the impasse caused by this factional conflict.

In the course of fieldwork, I never asked about tribal politics or conflict, but every current or formal chair and several tribal officials I interviewed discussed it at length

when I asked about sovereignty. This factional conflict conforms to Siegel and Beals's (1960a) description of pervasive factionalism. Using interviews with five tribal officials and council members, Joe Ely's oral history, and observations from council meetings during fieldwork in 2010 and 2011, I explore the perspectives on this conflict as well as the possibility that the current IRA tribal constitutional government is actually driving the conflict by creating hierarchy among a historically egalitarian people. Boehm's (1999) analysis of egalitarian societies suggests that they traditionally resist any form of hierarchy. As a result, I suggest that even though council members and chairmen conform to the ideals of egalitarian leadership, the regular duties of the tribal chair and council provoke traditional methods of social control from the reservation community.

Where Does Sovereignty Lie for the Pyramid Lake Paiute?

The question of the foundation of sovereignty elicited several different perspectives. Since this was not one of my primary research questions, I went back and spoke with several members of the tribal council about where they felt sovereignty lies. All three had served as council chairman. Their answers were very different. One tribal member who grew up at Pyramid Lake stated that political authority came from the families who traditionally lived at Pyramid Lake.

> I think the sovereignty or the ability to practice, to conduct interactions with other tribes or other bands rests with that family. It was usually the father that had the say. I think that the women, the mothers and grandmothers certainly had a role, but I think that was with the whole movement after Western civilization established their settlements. But I think for the most part, it always has been the decision of the men that governed the direction of the tribe or the family, because all these bands, 23 bands of Paiute were just families. The band here consisted of just four families. (T. Lance personal communication 2011)

A second council member was a tribal member but had not grown up at Pyramid

Lake. He noted that the people lived where the resources were. This falls along the lines of traditional use and Wendel Chino's thoughts that sovereignty lies in the lives and traditions of the people.

> My first instinct is to say it's the natural resources. It's the natural law that governs everything, that governs us. You know, go where the resources are. We live by the seasons. We live by what nature tells us to live by, and not necessarily what *we* want. It's what's provided to us . . . you have pine nuts in the fall, you have rabbits in the winter, you had fish in the spring. You have certain areas in the summertime. You have bugs, and roots, and flowers, and plants, and everything that you can use and eat. . . . So, back at first contact in 1839, all throughout those years how these different bands or different families operated . . . or they didn't operate, they lived. That's all they did, they lived. . . You went around to different areas to what provided the resources that best fit you. . . . Anthropologists call us the Pyramid Lake Paiutes. The way we call ourselves . . . I'm C*ui-ui ticutta*. (S. Rogers, personal communication 2010)

The third council member had been adopted out and raised by a white family. He served in the Marine Corps and later returned to his birth mother and the Pyramid Lake Paiute Tribe. His perspective seems in line with a more mainstream American upbringing.

> I definitely feel it lies within the people. . . I'm always praying or looking for the tribal members that have that idea . . . of pushing sovereignty to the fullest extent. In order for that to happen, you have to have that one person plant the seed and you have to have the group to protect it. And I think that's something that would definitely lie among the people, but I don't think the right person has come along and the right group of people have to come together to really make that happen. . . . I think it lies within the people, but you just hope and encourage the right person is going to stand up and the people are going to follow that person. (V. Alberts, personal communication 2010)

One thing you do not see here is consensus, but neither are the ideas conflicting. Two of the three felt that sovereignty lies with the people and the traditional resources, and from the perspective of the standard nation-state, this justifies their home at the lake and their control of the resource. These two members had also grown up away from the reservation. The council member who grew up on the reservation and also had vast experience working with tribal sovereignty, Tom Lance, points out that decision-making

was historically in the hands of the individual families and the heads of those families. This fits the historical record as well as the traditional model of egalitarian foragers and has relevance for our understanding of intra-tribal conflict.

From the perspective of the U.S. government, sovereignty at Pyramid Lake currently resides with the enrolled members who are living on the reservation and operates through the elected the tribal council. This is defined by the tribal constitution. The number of members on the council and their responsibilities are determined by the tribal constitution, and council members are elected by popular vote, as in typical American elections. Voting is limited to the available positions, those people who choose to run, and those who turn out to vote. If everyone does not vote, then there is a deliberate bias introduced by those choosing not to vote. They are choosing to take their voice out of the process. Also, if the most respected and capable people cannot or choose not to run for office, the possibilities for the group are limited. As noted by Chairman Lance, sovereignty traditionally lies with the family, and I believe for many at Pyramid Lake, it still does. I also suspect that this may also be a signal that other aspects of their traditional lifestyle, such as an egalitarian ethos, are still at work.

The Pyramid Lake people, as with the Northern Paiute in general, live in a desert environment where food and water resources were scattered and varied from year to year. The trout and *cui-ui* runs were times of plenty at the lake, but during the rest of the year, the people foraged widely. Each family was basically equal and independent, and traditional methods of decision-making allowed each group to decide for itself when and where to exploit the available resources. The flexible system of temporary leadership also allowed the best and most experienced leaders to take the lead in any cooperative task,

and when the task ended, so did their leadership role. Important decisions regarding cooperation among several families and bands required consensus, and one dissenting opinion could prevent that consensus.

As discussed in chapter 3, when the Paiute bands were pushed onto the reservation, they lost autonomy to the Indian agent. However, with the passage of the IRA, the tribe elected a council and took charge of most of its affairs. The sovereignty of the council designated by the tribal constitution has been recognized by the U.S. government. Tribal members were anxious to take control of their land and other resources, and council has been able to achieve many of their aims (Rusco 1988). The council has had considerable success in taking control of the reservation's resources and putting them to use for the tribe. This eventually ended much of the exploitation of reservation resources by non-Indians. The council has been instrumental in achieving many of the tribe's goals; however, the council is also the focus of continual and often serious factional conflict among the tribal members. This conflict creates great animosity and divisions within the community and hampers the tribe's efforts to assert its sovereignty vis-à-vis other organizations, including the United States, the state of Nevada, other Indian tribes, and other people and organizations.

The lack of consensus on sovereignty expressed by council members indicates that there are different perspectives among tribal members in general, and this brings up questions of legitimacy. Governments require legitimacy to rule successfully (Jackson 2007), and conflict is generated when ideas about sovereignty between the government and the citizens do not match. In the American colonies and revolutionary France, people used these ideas as the foundation for major changes in government. Although no major

revolution is brewing at Pyramid Lake, there have been efforts to modify the government to limit the power of some tribal officials, particularly the council chair.

The Pyramid Lake Tribal Council operates in some ways that are distinctive from traditional Paiute decision-making. The organization of the council is the product of the IRA, not local tradition. Similar to Robbins's (1999) critique (see chapter 2), the tribal council is set up according to a BIA template rather than according to traditional egalitarian customs of decision-making through general discussion and consensus, with a headman who acted as a facilitator (Fowler and Liljeblad 1986). At the council meetings I attended, tribal members often spoke up, and they were never interrupted, but general discussion to arrive at a consensus did not take place. Tribal members gave their opinions and regularly berated the council, after which the council made their decision based on majority vote among the council members, following standard parliamentary procedure. Some tribal members expressed suspicion of the council members' motives. People were aware of corruption occurring on other reservations, and some people raised the issue of corruption at council meetings regularly and loudly. The Public Comment section of council meetings was often a time of great tension.

Intra-tribal Conflict

Many chairmen and council members have faced serious conflict within the tribe as they worked to accomplish the tribe's goals. As discussed in the previous chapter, the tribal council in the late 1980s was working to save Pyramid Lake and its fish, and this idea was supported by every member of the tribal community. However, the council was also faced with the Ad Hoc Committee, a group that opposed almost everything the council did and actively worked to bring the agreement down and the council with it. Ely

recounts (1996:68) considerable reluctance to take on this group by trying to reason with them because he felt they were not reasonable. Very strong feelings were generated on both sides of any question.

> I want to describe this further. It's real important that you understand who this group was. First off, they were made up of people who were disgruntled about everything. You know how some people are just unhappy with life—period—and they're just disgruntled and they need an issue to attach to. Also, this group wanted power—I mean, really wanted power, and would do anything that it would take to gain power, and this group had elements within it, not the core group, but elements on the periphery that belonged to this group who were very concerned about water. And now they had an issue. They had a way to harm the existing council and perhaps gain power. They had something that they could legitimately scream and holler about to cleanse their soul and be unhappy about. Whatever it is that cleanses those folks' souls, and I assume it's being as unhappy as possible. [Third], they had a legitimate gripe, they really did. The council had not paid enough attention to this [Bi-State Compact]. . . . So they came at the council and they woke up the community and on the reservation that constant simmering concern about the lake, about the fish, about all of that, and they took a message out there and they said, "Look what the council is doing. We're in a place now where the opportunity is to solve this problem and the council, instead, is going to destroy you and destroy the fish and destroy the lake." And, it was alarming enough to get people to focus on what the council was doing, and not focus on this group, not sit back and say, "Well wait a second. This is the same group who was mad about this last year, and mad about that the year before, and always disgruntled and full of hatred, because they had focus now, and sort of panic-stricken, focused on what was going on about the water." (Ely 1996: 62–63)

Following the death of Chairman Shaw, a respected former council chair and member of the Ad Hoc Committee was selected as the new chairman to complete the rest of Mr. Shaw's term of office. The committee took this opportunity to try to undermine the tribal government. "[He] was just going crazy in there. He wanted to limit the powers of the chairman. I said, 'Wait a second, you can't eliminate the powers of the chairman. The powers are set by the Constitution'" (Ely 1996:128). As Ely pointed out, the only way to change or limit the powers of the chair was to change the constitution, which requires an election supervised by the Secretary of the Interior.

Ely was elected chairman in the next election, and he had the mandate to begin negotiations. He was in a strong position, but the Ad Hoc Committee was still at work.

> We defeated the compact now, so I was on solid ground with the water. The dissidents were still there, still trying to get petitions and to do whatever they could to dismantle this whole thing. So there was always controversy, because they always made it up, whether there was controversy or not. It was, "Yeah, he defeated the compact, but he didn't do it fast enough." Or, "They cut a deal on the side." You know, things of that nature. The rumor mill was going, so it was always controversial. (Ely 1996:131–32)

Once the tribe had negotiated the settlement and P.L. 101-618 was passed, Joe Ely's second term as chair was ending, and term limitations prevented him from running for a third. He took a job working out of state to help other Indian tribes negotiate water settlements. Ely says, "As far as my dissidents were concerned, they weren't happy all the way up to the very end. They were very happy to see me go" (1996:228).

Outsiders praised Ely for his ability to reach an agreement. Gremban (1995), Sue Oldham (personal communication, 2010), Janet Phillips (1999), and Beth Jennings (personal communication 2010) all said he was a very capable advocate, drove a hard bargain, and ultimately worked out an agreement that worked for the benefit of the tribe and the entire region. Ely was awarded an honorary degree from the University of Nevada for his efforts. There are many people at Pyramid Lake, including the members of the Ad Hoc Committee and their families, who are *extremely* critical of Ely, and the fact that he received so much praise from outsiders was likewise considered by some to be very suspicious. Interviews with a subsequent tribal chairman, Tom Lance, whose family member had been a member of the Ad Hoc Committee, regarded the negotiated settlement (P.L. 101-618) as an important achievement, but he was critical of elements of the agreement and very critical of Ely and Pelcygar. Chairman Lance notes that the *Orr*

Ditch decree was seriously restricted and limited in regard to water management, whereas the negotiated settlement brings greater latitude and greater flexibility, but he notes that in doing so, it can reduce the amount of water the tribe has access to in any given year.

> Well, I think looking back at it today and looking at the alternative, the option in place or in comparison to the Negotiated Settlement [P.L. 101-618], certainly the *Orr Ditch* decree is very restricted and limited with regard to water management. So the negotiated settlement brings greater latitude, greater flexibility, but in doing so, it's going to reduce the amount of water that the tribe may or may not be able to manage in any given year. This is based on what's available in the reservoirs and how the water status from credit water to firm water are interchanged, and so the flexibility and the latitude of the Truckee River Operating Agreement certainly gives a greater benefit to more people besides just the irrigators, including us here on the reservation as irrigators. Fishery, we got the fishery benefit and of course the drop reserves for the community of Truckee Meadows. By giving it more latitude and flexibility, though, you still have the same amount of water. So basically I think what you're doing is you're slicing that pie up and giving more parties a slice of that pie. And so in some years your slice may be big, and in some years you might not get a slice. . . . .
>
> I think in looking at what they've done and what they accomplished [Ely and Pelcygar], certainly negotiation and compromise is really the ultimate outcome. Now, having compromised, there's going to come a point where we have to ask ourselves, where are we at in comparison to what we would have been able to do with just Stampede Reservoir, that 1984 decision where we had won the use of Stampede Reservoir? Certainly with TROA and [P.L.] 101-618, Stampede will be held in perpetuity for the benefit of the threatened and endangered species, and that hinges on TROA being approved and amending the *Orr Ditch* decree. . . .
>
> I think when it comes to compromise and willingness to compromise, when you're standing there saying, "We'll talk to anybody, anywhere, at any time, about anything," that's a dangerous statement, a very dangerous statement, because that's what Joe Ely said. Norman Harry tried to come back in 1994 and say that in our Fernley negotiations, our second-round negotiations, and I'm sitting there and I said, "Well, wait a minute," and I'm thinking to myself, we're not willing to talk about anything, we're not willing to talk anywhere, any time. Because when you're talking about negotiations, it's one thing to have a Ninth Circuit Court mediation before you can litigate an appeal, that's a forced negotiation. That's one way of negotiation, but the other one is just getting to this point where we're not getting anywhere by trying to work things out through the courts—you win, I lose, I win, you lose—and nobody's gaining ground, okay. In some instances, for negotiations, the timing has to be right. I think that you want to talk about anything, no. No, because I'm not going to put up the entire resources of the reservation on the table and say, "Yeah, let's talk about all this too." I mean, to announce to the world that we're willing to compromise when we

> approved the Preliminary Settlement Agreement—that was the beginning. That was the beginning of further compromises that the tribe had struck. It's like in 1997 when we won the state engineer's decision on the unappropriated water. Shoot, before the ink dried on the order, our attorney, Bob Pelcygar, wants to strike a deal with the power company because the power company wasn't happy that we had won the deal with no strings attached. They wanted strings attached. So before the day was even over, Bob Pelcygar was already talking to the power company about getting us to put ourselves in the corner to compromise before we could just take and enjoy this victory, and we called him on that. We sat in the room and Janet Carson [Phillips] said, "Well, remember the other night when we talked?" Well, I had never had a conversation with Bob Pelcygar about this, but yet he's over there talking to the power company before he's talking to us, his own client, and so that's not very good. So those are the kinds of things that go on, and so you have to make sure that when you look at Joe Ely and Bob Pelcygar and look at what they were able to accomplish, there are other parties involved in this, not just those two. I mean they were the ones who set up the negotiation, set up the compromise, and there are other people on the other side that received it. So, for Joe Ely to be awarded an honorary degree from UNR for that compromise, it must have meant a lot to those people. It must have been worth that much for them to acknowledge it in regard to issuing him an honorary degree, because he was at it for four years. He was chairman for four years. That's basically how I look at it. You know of course we caught Bob Pelcygar doing some other stuff behind the scenes during his tenure with the tribe, and it was not a difficult decision when we finally ended our relationship with him. (T. Lance, personal communication 2011)

During the period of my fieldwork, Chairman Lance faced similar opposition to his every effort. A group of dissidents that he and other members of the tribal administration referred to as the "Taliban" did everything they could to hinder the efforts of the chairman and council. These dissidents, as they are more generally referred to, vehemently questioned almost every action of the chairman and council. They regularly accused them of every type of negligence and crime. I witnessed an elder stand up before the council during the public comment section of the meeting and berate them for the full five minutes of his allotted time. He accused them of incompetence and criminality of all kinds, and he used almost every negative Indian stereotype I have ever heard to describe

the council while he chastised them. The members of the council listened patiently without saying a word except to inform him when his time was up.

These dissidents also actively worked to have Chairman Lance removed from office. At one council meeting, they approached the council with a list of allegations against the chairman, including violations of his official duties, improper conduct, and causing illegal actions. They further stated that it was the council's duty to act on these accusations and insisted the council proceed with charges against the chairman (field notes May 7, 2010). In other meetings, they brought petitions to the council to have the chairman removed from office. The chairman noted privately that grounds for almost all aspects of these petitions were based on rumor and patently false, and he had spoken to the tribal attorney about his best course of action. The attorney said that the petitions were not carried out properly, and as such, the tribal council could not act on them. The chairman noted that this person and others had brought up all kinds of allegations in the past and that the council was forced to hold hearings on some of them, but on closer scrutiny, they were dismissed.

Finally, the dissidents came to the council with a properly prepared petition listing charges against the chairman and insisted he be removed from office. The vice chairman, who was presiding at the meeting, stated that although the petition was presented correctly, it could not be used to do what they wanted to do—that is, to remove the tribal chairman from office. He noted that a council member could only be removed by a two-thirds vote of the council. A motion was made and approved not to accept the petition because, though it was prepared correctly, it did not apply to a resolution or ordinance as required by tribal law. The council further moved to refund the fees paid by the

petitioners because the petition could not remove the chairman from office, nor could it require the council to remove him. This motion passed, and the vice chairman noted that assertions of wrongdoing require evidence and proof for the council to consider. This brought several comments from the petitioners and audience members, and the petitioners then polled the council members on their opinion of petition.

Also, it was not uncommon for dissident tribal members to sit in the audience and discuss statements made during the meeting, and sometimes mocking or dismissing the statements made by council members. In one case, during a discussion, one dissident made a threatening statement to the mother of a council member who had said spoken up in his defense. The council member, who was a very powerful man, rose from his chair and headed toward the back of the room where the dissident was located. Members of the audience quickly ran out to summon the tribal police officer who was posted outside the council chambers during council meetings. The officer came in, calmed the situation down, asked the threatening tribal member to leave, and the meeting resumed.

In another example, former council chair Stanley Rogers pointed out that the current IRA constitution requires a great deal of unnecessary paternalism from the U.S. government because the constitution requires seeking approval from the Secretary of the Interior for many actions when it is not actually needed. During his tenure in office, he and the council were trying increase tribal independence by modifying the tribal constitution.

> [We were working] to remove requirements for "upon approval from the Secretary," and opposition was just unbelievable. "Take that out? We need that. We need them to do that to protect us from *you*," meaning, from the Council. That flies in face of being sovereign. They'll use a lot of the argument, "Well, we're sovereign here, we're sovereign there." But yet, when we truly want to become sovereign, you get a segment of the population that says, "No, we don't want that

> because they're protecting us from [gestures] . . . I'm pointing at you, meaning the government, the tribal government." . . .
>
> One of the things that totally baffle me, and I don't know if I'll ever understand in my entire life, is the constitutional process that we undertook [previous paragraph]. We're asking them to vote on whether they like that or not, and it couldn't even get past the process of community meetings to get them to vote. I'm presenting the pros and cons of doing this, and allowing you to process the information that you do, and it's up to you. And how do you do it, you vote, but we could never get it to that point. To get them to vote. . . . I don't know, that just baffles me, and it still baffles me. I don't understand it. I imagine all of the chairs and all the councils probably faced all that. . . .
>
> One aspect of P.L. 101-618 was $40 million for economic development; however, the funds could not be released until the operating agreement (TROA) went into force. When I was in there, we were told we couldn't get access to it, but we could utilize it. We could leverage it. I'm not interested in pulling the capital investment out, the principal, or the interest on the principal. I was looking to that to utilize that as collateral for investments, for capital improvements, for economic development using loans, using that as collateral. This would be unencumbered by the restrictions of the agreement, but man oh man, talk about opposition to that one too. Because then I'd have the opportunity to run off to the Bahamas, go access my offshore account over there, or in Switzerland or something. (S. Rogers, personal communication 2010)

Local Discussion of Conflict

Tribal members and officials are very aware of these issues. At the first council meeting I attended (1/15/10), during the public comment portion of the meeting, a tribal member stood up and gave a team-style pep talk about getting along and working together. Most tribal officials with whom I spoke brought up the conflict, including a chairman who had only been in office for several months.

> One thing I've found out. You can save 20 kids from a burning bus, and people will ask you why you didn't save 25 kids. I just don't want to get bogged down in all of the tribal politics. They kind of pull you down and before you know it you're trying to field questions and answer questions that are just . . . these guys are talking about the same stuff we were talking about 3, 4, 5, 6 years ago, and it's not going to change. So let's keep moving forward and get some money going for the tribe. That's what I think needs to happen. (V. Alberts, personal communication 2011)

Chairman Lance (personal communication 2010) said,

> There are a few that always take the opposite stand to the council. There is a sense of jealousy and being oppressed by having to live here under paternal control. They complain that their rights are being violated. They are told to behave, but they are tired of it and don't want to be told what to do by their own people. They want progress, but say "no" to efforts to make changes. We're going to go forward, and we won't let them stop us [regarding the proposed Limited Liability Corporation (LLC)].

Chairman Rogers had looked through the tribal council meeting notes from twenty, thirty, and even fifty years ago, and he said councils had been trying to resolve some of these same issues even back then.

> And that's another thing, there's the mistrust. Which I think is based on oppression. It is an intergenerational form of internalized oppression. People don't realize that we're defeating our own purpose, like that proverbial worm in the can, or crabs in a bucket, when one tries to get to the top and the others keep pulling him down. That's what we do. I think that's because we've been oppressed so long, and we've internalized it, and it's just normal for us. It's normal for us to be dysfunctional because we don't know any other way. And so I think it's part of that social cycle that we need to address and try to solve the tremendous economic and social problems that continue to plague Indian reservations in the United States. That's what we need to try to do. We can't fix something if we don't understand it. We can't fix anything if we don't know what the base of the issue is. Have we identified it? Have we tried to identify it? I think some people have, but I think most people see the outcome rather than the issue . . . the end result rather than the cause. (S. Rogers, personal communication 2010)

I argue that this conflict interferes with the council's ability to act, and as the chairman Rogers asserted, it interferes with efforts to expand the sovereignty of the tribe itself. As noted above, the dissidents often seem to oppose tribal initiatives just because they are proposed by others. Old issues are constantly brought up, and there is a recurring theme of oppression—oppression by the federal government and oppression by their own people in the form of the tribal council. In the face of this bitter opposition, the council chair must often choose to play politics to make things happen and assert the tribe's sovereignty. These episodes of political maneuvering are sometimes successful, but often this only increases the bitterness of the opposition.

Factionalism

Conflict such as that described here is commonly referred to as factionalism. A group within a larger group that takes a different tack is a faction. Factional conflict at Pyramid Lake fits the model of pervasive factionalism as described by Siegal and Beals (1960a). Communities are often divided into opposing groups, such as political parties or moieties. Siegel and Beals (1960a) identify two types of factionalism: schismatic and pervasive. Schismatic factionalism involves two opposing groups whose conflict leads to an organized and sometimes permanent division in the society, such as the American Civil War or the Hopi groups that divided Oraibi village in 1906. Pervasive factionalism is marked by overt conflict within a group which can intensify and interfere with the achievement of the goals of the group. This type of factionalism involves conflict between transient groupings that are poorly organized, and that exhibit no organized leadership or means of enforcing loyalty within the faction. There are few consistent differences in policy or kinds of people who belong. Generally, the members of the group agree on the issues to be dealt with, but they disagree on how these issues should be addressed. The only clearly stated goal is to "bring down" the other faction. Such factionalism appears to involve a belief that the failure of the community to achieve agreed-upon goals can be traced to the failure of other members of the community to conduct themselves properly (1960b:399). It also reflects a complete or partial failure of mechanisms for resolving interpersonal conflict.

> The definition of pervasive factionalism . . . suggests that it is essentially a phenomenon of socio-cultural change. Hence, its origins could presumably be attributed to external pressures of various kinds which either create conflict or lead to the re-channeling of conflict along the lines of pervasive factionalism. On the other hand, a great many communities subjected to many different kinds of external pressures do not develop pervasive factionalism. Hence, it can be postulated that the development of pervasive factionalism depends not only upon

> the presence of a particular kind of external pressure, but also upon a particular pattern of strain within the community. (Siegel and Beals 1960b:399)

Elements of the situation at Pyramid Lake fit the model well, but others do not. As noted in above accounts, tribal members are clearly aware of the issue and just as clearly are frustrated by it. The factions are not organized and seem to change to oppose whatever council and chairman is in office at the time. Also, efforts often seem focused on "bringing down" the tribal chairman in particular. The members of the dissident groups regularly accuse the council and chair of immoral, unethical, and illegal behaviors such as giving water away, nepotism, corruption, and criminality of all sorts. Other aspects do not fit the model. For example, "pervasive factionalism is most likely to occur in societies similar to Namhalli and Taos Pueblo, that is, in societies where all or nearly all leadership roles are similar and are occupied by the same persons and where there is a ranked hierarchy of social segments bound together by reciprocal obligations" (1960b:407), whereas the Pyramid Lake people were traditionally egalitarian with shifting leadership roles. However, the Pyramid Lake dissident groups do seem to fit most aspects of the model.

The origins of this intra-tribal conflict may involve several factors. As suggested by Chairman Rogers, the documented history of oppression and disregard for the tribe and its members by the federal administration could be a component. However, I suggest exploring the issue from the perspective of sovereignty, and more particularly, from the question of "where sovereignty lies" may prove valuable.

Sovereignty Lies with the Family

For the U.S. government, sovereignty at Pyramid Lake lies with the enrolled members of the Pyramid Lake Paiute Tribe as represented by their elected tribal council.

However, after speaking with Chairman Lance, who was born and raised at Pyramid Lake, I argue that sovereignty lies elsewhere for the people at Pyramid Lake. Lance pointed out (in a quote provided above) that, traditionally, the band at Pyramid Lake was composed of independent families.

He asserts that sovereignty among the Pyramid Lake people and the Northern Paiute people in general resided in these independent families. Originally only four families were in the band at Pyramid Lake. Now there are many more. Even though Chairman Lance notes the situation today is not comparable to the past, he states that tribal politics are all about family (personal communication 2010). I suggest that the families that were the traditional political units are still vitally important to life and decision-making at Pyramid Lake, and I believe that in the minds of at least some of the people at Pyramid Lake, sovereignty still lies with these families.

The transition to a constitutional government in 1936 produced a marked difference in decision-making from the traditional system of consensus. The composition of the council and the rest of tribal government is determined by the tribal constitution. I suggest that the constitution creates problems in a couple of ways. First, the tribal constitution is the standard model offered to all Indian tribes with the passage of the IRA.

> Therein lies the issue with the constitution, which was based on the 1934 Indian Reorganization Act. . . . So, back then it was the standard boilerplate constitution pretty much given to everybody, and the large majority of tribes accepted it. They might have changed a little of the language here and there, but for the most part, they are pretty standard. You read any constitution, any tribal constitution, and it's relatively the same, and it's always got that language in there [requiring approval from the Secretary of the Interior]. (S. Rogers, personal communication 2010)

Although the tribal constitution was an improvement over the previous lack of representation, it did not accommodate the traditional Pyramid Lake and Northern Paiute

political systems. Chairman Rogers noted that the IRA changed the dynamic system of tribal leadership and decision-making.

> I think in the 1930s, that the Indian Reorganization Act really, really was one of the most devastating aspects of government interference with us. It allowed us to create the current government that we have, a constitutional based government. It made leadership a popularity contest rather than one of respect. So, I no longer had to respect you in order to be a leader, because I have enough people to vote for me. I can be the leader. It's not because I'm better, or the community thinks I'm a leader and they'll trust me to follow me. That took that away. (S. Rogers, personal communication 2010)

In addition to the crowding of families onto the reservation and loss of mobility, the adoption of constitutional government broke down one of the traditional methods of problem-solving exercised by all foraging peoples: "opting out." Traditionally, the four families were equally represented at any council, and since decisions were arrived at by consensus, no family was bound by any decision they did not have a role in crafting. Each family and individual could distance themselves from others to avoid conflict. Today, however, all tribal members are constrained by the decisions of the council, and the tribal chair and council represent every family and tribal member to the outside world, whether they like it or not. The traditional independence of the family is gone. However, this does not change the fact that families are still critical to life at Pyramid Lake.

For example, families at Pyramid Lake have had to rely on each other for security in ways that are not common in mainstream American culture. As an example, until the Pyramid Lake Paiute Tribe established its own police department in the 1990s, BIA police and the FBI were responsible for policing the reservation. In an interview in 1994, a tribal police officer noted that prior to the then recently established tribal police department, there had been no law enforcement at Pyramid Lake. That is not to say that

crimes went unpunished, but they often did not get adjudicated by the police and American judicial system. In the case of a murder or other serious crime, the BIA police or FBI would be called in because they had federal jurisdiction, but there were only two BIA police officers to cover the twenty Indian reservations in Nevada. The state is large, and some reservations are hundreds of miles apart. In the best of circumstances, it would take the police hours to arrive and perhaps even days to respond to a 911 call, depending on where the officers were, if they were responding to another situation, or if they simply had a day off. So anything short of the most serious crimes was simply dealt with by the families themselves. For example, if someone was beat up at a party, they did not call the police. They went home to get all their brothers and cousins and came back to square up with the offender. It is only with the recent introduction of the local tribal police department that calling the police—something most Americans take for granted—has even been a practical possibility. The tribal police officer added that now, it is often at this point, when the assaulted person returns with their entire family, that the tribal police are called in. Families needed to and were expected to look out for and support each other (Carey 1996).

Families at Pyramid Lake look out for each other in many ways. While attending council meetings in 2010, on several occasions I noticed council members speaking up for family members to ensure they were being treated fairly in dealings with the tribal government. One tribal official (L. Marks, personal communication 2010) noted that it is no secret that council members are under pressure from their families to look out for their interests, and everyone in the community is aware of this as well. Chairman Lance noted that families have influence, or think they do. Consequently, there is an expectation by

some that the council members will be biased in favor of their own family over the tribe as a whole.

There are ten seats on the PLTC today, but with the relocation of many Indian families to this reservation, many more than ten different families now live on the Pyramid Lake Reservation. Consequently, not all families are represented on the council. From what I observed and what I was told, the dissident tribal members were often from families not represented on the council. However, just because a family was not represented on the council does not mean that they were dissidents. Only some were.

I suggest, though, that because these families are still very independent; at least some feel that they are not represented *by* the council if they are not represented *on* the council. I believe that this is due to two factors. Because of the limited number of council seats, if a family does not have a member on the council, they do not have access to all of the information that the council uses in making any decision. They can attend meetings and ask questions, but unless they have attended every council meeting and asked many questions, they may not be privy to all of the information that has circulated prior to the meeting as well as any debates or compromises that may form the foundation of any decision. This information gap creates opportunities for rumor and innuendo. Many of the comments made by dissident tribal members at council meetings are requests for information. Comments heard at council meetings include:

- During the public comments section of the council meeting, a speaker asked for all information on all issues to be shared with all tribal members (field notes 2/19/10).

- A tribal member asked the council to make a public comment after every decision (field notes 5/7/10).
- Someone asked for the council to try to establish the agenda for the council meeting a week in advance (field notes 6/18/10).
- One vociferous elder noted, "We don't know what is going on." This same person stated that the constitution and by-laws were out of date and must be updated. He noted that the changes that the council had made were outrageous [he did not elucidate]. He further noted that if the council just kept giving water away, soon there wouldn't be any left (field notes 7/2/10).

Council members are well aware of the rumor mill and they have tried to counter some of the gossip by asking members to submit questions in writing. In response to the elder's statement mentioned above, a council member asked, "Why haven't you submitted this in writing? We want people to submit issues in writing."

As indicated by these comments, dissident tribal members were looking for information on how decisions were being made and what information they were based on. However, these demands for information were also often accompanied by accusations of selfish or criminal actions on the part of the chairman and/or council. In one instance, specific information was requested about an issue that had been discussed in executive session. Executive sessions are confidential council sessions that do not include the public. The vice chair explained that the entire council had to vote to release the transcript of an executive session.

The requests for information suggest that some of these dissident tribal members feel powerless and left out, and they are angry about that. This brings up the second

factor: family bias. They assume that the council members are advancing their own interests and their family's interests at the expense of the rest of the tribe. Technically, other tribal members could be taken advantage of and their rights circumvented without their knowledge, and this has happened on other reservations in the past (Robbins 1999). I saw no evidence of anything illegal while I worked at Pyramid Lake; however, there was clear evidence that council members tried to ensure their family members were being treated fairly by the tribal government. Dissident tribal members question the motives and information presented to them by those on the council, and no matter how open and straightforward any council member may be, that suspicion remains. Because most of the people working in tribal government are members of the tribe, each hiring and firing brings in the question of family bias.

From this perspective, each family that does not have a member on the council is not in a position to protect their family members from the bias of others. Because they are not represented on the council, and because council members can and do look out for family members, legitimately or otherwise, dissidents see themselves as being bypassed by the decision-making process and unable to look out for their own family interests. Therefore, the council is not a legitimate representative of their interests, and for them sovereignty does not lie with the council. Finally, because some council members clearly are looking out for family members, a small amount of privilege comes with having a family member on the council. Even if it is only temporary, a hierarchy has been created among a people whose traditional customs actively resisted the creation of hierarchy.

With this situation in mind, I suggest that at least some of the Pyramid Lake Paiute people still adhere to egalitarian values. Although there is certainly evidence of

oppression in the past and present, I believe that their response to the current formation of the tribal council is a reaction that a traditionally egalitarian people might make under these circumstances. Their traditions of family independence and solidarity are intact, but not every family can be on the council and participate in every decision, so they feel they are being "run over" by the others. Tom Lance notes that the dissidents feel oppressed and feel that their rights are being taken away or circumvented. This would make sense if families still see themselves as independent and self-sufficient.

I believe these substantiate the stresses suggested by Siegel and Beals's model. The first stress derived from the aggregation of Indians from various parts of northern Nevada and crowding them together onto the reservation. As foraging peoples, mobility was necessary to take advantage of scattered resources, and the fact that foraging was no longer possible resulted in another type of stress. Additionally, with the loss of mobility, one of the primary methods of resolving conflicts—"opting out," or avoidance—was gone. With the extinction of the Lahonton cutthroat trout and the near extinction of the *cui-ui* on top of the loss of foraging, the people's traditional economic and subsistence foundation was erased, resulting in the loss of self-sufficiency and independence of both old and new families at Pyramid Lake. This left very few ways to make a living at Pyramid Lake. Many tribal members work for tribal government and tribal enterprises. A few work at businesses owned by outsiders but based on the reservation, and others work at jobs off the reservation. Many others remain unemployed. Traditional methods of decision-making have been replaced by a tribal council that dissidents feel does not legitimately represent their interests. For them, sovereignty does not lie with individuals,

but with the various families. Therefore, because the families are not all represented on the council, the composition of the council creates a hierarchy where none existed before.

Egalitarian Ethos

If sovereignty does lie with the family for some people at Pyramid Lake, it is not unreasonable to suggest that other traditional values may persist as well. Some aspects of dissident behavior conform to traditional methods of social control practiced by egalitarian peoples. The Pyramid Lake Paiute people were traditionally a hunting and gathering people composed of egalitarian bands, and I argue that some people still maintain what Boehm (1999:43) refers to as an egalitarian ethos. He defines the egalitarian ethos as a set of focal values that guide hunter-gatherers and promote generosity, altruism, and sharing along with equality.

In his exploration of egalitarian foraging societies, Boehm notes that one of the primary values that egalitarian people protect is equality among the tribal members. "In my opinion, nomadic foragers are universally—and all but obsessively—concerned with being free from the authority of others" (Boehm 1999:68). He points out that egalitarian foragers are not intent on true or absolute equality, but on a kind of mutual respect that leaves individual autonomy intact. Foragers use social control to keep their society equalized rather than hierarchical by stressing the common good, one aspect of which is that material egalitarianism goes along with political egalitarianism. As such, generosity is stressed as well as impartiality, self-control, cooperation when appropriate, and humility (not arrogant or bossy).

Egalitarian societies are created and maintained by moral communities (Boehm 1999). In these moral communities, the members of the community judge the doings of

others by comparing their behavior to the idealized profiles of how people should behave. The members of the community, individually and in groups, then decide if an individual is socially deviant and in need of sanctioning. Boehm notes that everyone in these societies equally engages in evaluation of others' behavior, and if someone is found wanting, everyone also engages in ridicule or other forms of direct social pressure on individuals to reign in their behavior.

Every person in a foraging society is expected to be cooperative and generous, and humility is a major factor of life. Boehm points out that egalitarian peoples are looking for leaders who are capable, successful, and aggressive with outsiders, while at home they behave generously, impartially, patiently, respectfully, in a self-controlled fashion, and are focused on the common good.

These societies regularly proscribe any behavior that is politically overbearing. Boehm also notes that egalitarian peoples aggressively resist any individual who tries to assert authority over them or presents themselves as better or superior in any way. He refers to them as "upstarts," and upstarts threaten the autonomy of the members of group. "Upstartism" can take on many forms. They can be bullies trying to dominate others, or anyone who is selfishly greedy. They may be a respected leader who starts giving orders or a shaman who uses supernatural connections to manipulate others for selfish material or sexual gain, or maliciously harms others. An upstart may put on airs of superiority or may aggressively put down others and violate the group's ideas about how they should be treating one another.

Boehm notes that much social control is preemptive and subtle and involves most members of the group. The most subtle form is gossip. In gossip, a person's moral dossier

is constantly reviewed, and if they are found wanting, any faults are often embellished, and rumors circulate freely. If the actions continue, active sanctioning includes ridicule and direct criticism. Ridicule and mocking are also particularly effective in dealing with people who try to be bossy. Boehm notes that people in foraging societies will often go out of their way to flamboyantly disobey anyone trying to assert authority over them; otherwise, they often completely ignore them. If the upstart person does not respond, the next step is direct criticism of the person for anything they may have done or are rumored to have done. If the upstart person still does not get the point, they may be ostracized, socially excluded, and even expelled from the group. Finally, if they are seen to present a threat to the group, they may be executed by the group acting as a whole. Park (1934) notes that such executions have happened in the past among Northern Paiute people, such as against a shaman whom people felt had gone bad and became too dangerous for any one person to deal with.

I suggest that this egalitarian ethos still prevails at Pyramid Lake, and the various families living on the reservation form the moral community. The structure of the current tribal government and the other stresses of transitioning to reservation life have provoked them into conflict with these traditional egalitarian ideals. Dissident members see the council in general and the tribal chairman in particular as dominating upstarts. Gossiping about council members and their families, mocking them, directly criticizing them for actions (rumored or otherwise), actively working against the council, trying to remove the chair, trying to change the powers of the chair, and even shunning them are examples of traditional forms of social control in an egalitarian society.

Leadership, from *Poinabi* to Chairman

Examining the role of the tribal chairman will illuminate this conflict between hierarchical forms of social interaction among the Pyramid Lake Paiute and the political intrigue brought about by the institution of the tribal constitutional form of government. As noted, the PLPT was traditionally a foraging and egalitarian society, with no formal leadership, only task "bosses." Each family was independent and represented at councils that affected them. If consensus was not reached, the members did not act as a group. Individuals and bands could and did take matters into their own hands, but without the support of the larger Paiute group.

As noted in chapter 3, leadership was traditionally in the hands of *poinabi* and "bosses" or temporary task leaders. As Liljiblad and Fowler (1986) point out, *poinabi* were respected men who represented and extolled traditional values. These men acted as facilitators at councils, making sure everyone had a chance to have their say, and they repeated everything to make sure everyone understood. They voiced their opinions but had no real say in what anyone else actually did. Once a decision had been made, the task leaders were only temporary. They were the most experienced and respected in the area of the endeavor, such as the *un'nu* or "Rabbit Boss," or the "Antelope Boss." These leaders acted with authority, but only during the event they were leading. Otherwise, they were like everyone else. When the Pyramid Lake people found out that Ormsby was leading a group of men to Pyramid Lake to attack them, it was Numaga, an experienced and respected war leader, who led the attack that devastated Ormsby's militia. In the council discussing attacking the white communities, however, his voice had carried no more weight than any others, and he had to go on a hunger strike to show how strongly

he believed it was a mistake to attack them (Ferol 1985). These events are consistent with Boehm's thesis.

Egalitarian Virtues

In many ways, all of the tribal leaders with whom I spoke espoused many of the ideals noted by Boehm as egalitarian. Nearly all of the council members and chairmen made note of their efforts or the efforts of others to stand up to outsiders, to be understanding of others, and they expressed humility and discussed their focus on the well-being of the tribe as they described their efforts to assert the sovereignty of the tribe in dealings with outsiders. They discussed their willingness to confront outsiders and frequently mentioned specific events in which they had stood up to powerful government officials. Chairman Lance related an episode in which he was standing with other tribal leaders meeting with President Obama. Someone noticed a bandage on the president's hand, and Mr. Obama said that it was a minor thing and that he had excellent healthcare. At this, Chairman Lance said prominently, "Well, we don't!" He also stated that in negotiations, "We want to be candid, not blunt, but right to the point. I've had others try to bullshit me. We give equal pressure back, so they harder they push, the more we push back. I've been insulted by Senator Reid and I've insulted him back" (T. Lance personal communication 2010). In another instance, Joe Ely's sister, Sherry Mendez, related that "Joe Ely was a stubborn man. He held his ground in negotiations with Laxalt and Reid, and there was lots of pushing and shoving at the time, and sometimes, Laxalt and Reid walked away angry, but it was successful" (personal communication).

Another former chair noted:

> I'm not afraid to draw a line in the sand. If you feel it's right, I feel that we should just respectfully disagree. There are no more concessions here. We can't do any

> more concessions. We're all concessioned out, here. We need to stop this. We can't go any further, so you need to come to us with concessions. Because that is the way I feel that we've given concessions . . . that we give concessions. That's all we do. Our attorney calls it negotiating. I didn't agree with him on a lot of different things in that aspect. . . . I've become worse over the years, too. I'm less willing to be negotiable on a lot of things, but that doesn't mean I'm entirely [unreasonable], just because I said, "this has to stop here." If we can come to an agreement that is mutually beneficial, beneficial for us, then you get into that . . . I feel you always have to have consideration of losing the battle but winning the war. You always have to have that in mind. I think we should draw that line in the sand more often. (S. Rogers, personal communication 2011)

Humility

The various council members and council chairs with whom I spoke all voiced expressions of humility. All of them discussed the importance of the tribe and respect for tribal members in general, and although there was no love lost on the dissidents, they did treat them respectfully in person.

> But I am a single player in a multitude of players in the whole thing, and I don't want to leave the impression at any moment that it was by my will, or the tribe's will, that we were able to get all this accomplished, because on our own we were able to get little of it accomplished, and that there were a lot of smart people, dedicated people, people who had creative ideas who made this whole thing happen. It was really a collective effort, a very collective effort, and not just one individual or one tribe, or even half a dozen individuals. It was a lot of people that made this work. (Ely 1996:180)

> But I think behind the whole thing were those people, the membership, including those ones who signed their name, because they're the ones who kept after this. They're the ones who laid out the parameter. They're the ones who wouldn't let us off the hook. They're the ones who, when they decided that we were going in the wrong direction, who were ready to come to the meetings now, who were ready to make sure that they kept our feet to the fire, and didn't just say no when they had the opportunity. When they had the opportunity, and when we flat laid it back on them, and they had an opportunity to say, "No, don't negotiate," they didn't say that. They said, "Negotiate, but do it like this." And they kept an eye on it. You know, about a year after I left office, they did have a vote on it. They had a referendum, and it passed by over two-thirds. And so we obviously delivered what they wanted, and they obviously paid attention, because they knew what it was there. And it is really to their credit, because although we weren't willing to sell the farm, when this all started out, we weren't sure what part of the farm was for sale. (Ely 1996:225-26)

Another former chair stated:

> I mean, I've been called a "sellout" so many times. But in the end, when you look at what has happened and what we've gained from whatever we've settled, it's not about me. It's about my children and it's about my grandchildren wherever they may be. So I don't think about it in that regard, where it's just about me. It is about others and it is about the rest of our tribe. So I can't put myself in the front of every decision, and in fact, I'm probably in the back and somewhere in the trenches or somewhere in the back of the line, when it comes to these decisions because it's not about me, you know. That's what I have to say about that. (T. Lance, personal communication 2011)

And a third former chair said:

> Every individual is an expert at something or another. I'm certainly no expert at anything, and being elected into that position [chair], everyone expects you to be an expert in everything. . . . I've always tried to understand, and I don't mean I always make it me, it's just my experience. I've always tried to understand that a lot of these people, perhaps that might be the only way they know how to communicate, and then we can go back into social issues and social conditions, leading to maybe that particular theory. Maybe they've had bad luck and misfortunes every step of the way too, and that's how they communicate. That's just how you communicate. My Dad told me one time, "Just stand there, smile, and thank them afterwards, because maybe you just made that person's day. You don't know what that person's gone through, you don't know what that person's life is, and you don't know what that person is, and to judge . . . who made you judge?" (S. Rogers, personal communication 2011)

Although tribal leaders adhere to most of the egalitarian ideals identified by Boehm, the current constitution puts tribal leaders into a difficult role. In many ways, it puts the chair on collision course with tradition. The chair and council members must use their judgment to look out for the best interest of the tribe, and active council members must push for what they see as best for the tribe, despite opposition. This regularly puts the chair and council in the role of upstart as defined by Boehm (see above).

Council Chair as State Leader

The current tribal government is organized as a quasi-sovereign nation-state with offices that have specifically delineated functions. The chair at Pyramid Lake not only

leads the council in discussion but is also the chief administrator of the tribal government. As the chief executive officer, the chair is expected to look out for the best interests of the tribe and work to get things done in spite of the incessant opposition. The chair is the only member of the council who is a full-time employee of the tribe and supervises the day-to-day workings of the tribal government. They are responsible for carrying out the directives of the council. The chair has considerable influence in the actual administration of tribal government and must make decisions regarding the use of tribal resources on a regular basis. The chair is also the tribe's primary representative to the outside world, and represents the entire tribe to the federal government, the state of Nevada, the Nevada Intertribal Council, and other organizations.

Stanley Rogers notes that it is usually the chair, as the chief administrator, who is in the position to respond to problems facing the tribe. It is his job to examine the problems, formulate solutions that will benefit the tribe, and take them to the council for approval. The chair then becomes the driving force behind these efforts. This can mean making decisions and pressing the council to make decisions that are important, but not necessarily popular. Tribal officials faced this opposition on numerous occasions but successfully worked around it, much to the anger and frustration of the dissidents that opposed them. As such, the chairman often becomes the focus of the dissidents' ire.

Joe Ely pointed out that he was a fairly aggressive chairman. In his effort to negotiate an agreement to save the lake, he used every tool available to him.

> I read the Constitution over and over and over, and I read the bylaws over and over and over. I knew how to maneuver them and within them, and I also realized that we had a very clear division of powers, that there was an executive branch and a legislative branch, and I knew how much power I had, and I used it. I removed people from committees and I abolished committees and I started committees, and I did different things that were fairly controversial, and when the

> council or the legislative branch would come back to nail me on that, I would show them where they didn't have the power to do it. So there was this struggle going on all the while, because I didn't intend as chairman to sit back and let four years float by or five years float by. I wanted to get something done. And so I was controversial. And to get it done sometimes you have to do things and sometimes that means firing people, and removing politically powerful people. So there were all those things that were going on as well. (Ely 1996:132-33)

In another instance, Chairman Lance was confronted by a non-Indian landowner who was taking advantage of the tribe. Fred Crosby was the owner and operator of Crosby's Lodge, a well-known restaurant/bar/store at Sutcliff, the northernmost community on the western shore of Pyramid Lake. The lodge sits on fee land that had belonged to John Sutcliff, one of the original squatters at Pyramid Lake who had gained legal title to the land. The land was later purchased by the Crosby family, who established the lodge. Crosby and his family are not members of the tribe, but they are very much members of the reservation community. Crosby knows and does business with many tribal members.

Beginning in 1985, Crosby had leased a strip of land adjacent to his property from the tribe for $700 per month and established a trailer park there. Tribal Property Manager, Lisa Marks (personal communication 2010) notes the lease was extended a couple of times, but the last lease expired in 1992. At that time the rent had been $900 per month, and Crosby continued paying that amount. The yearly leases had been the result of tribal efforts to get the land back. The tribal administration had made efforts to end Crosby's tenure on the land; however, he did not want to give up the property. Marks notes that Crosby would come in and berate the council, and with the support of friends on the council, he was able to resist their efforts. As tribal administrations changed, they finally gave up trying to get the land back, and the issue was forgotten. In 2008, Marks came in

with practical experience in property management. She and the newly hired tribal comptroller began asking what the $900 per month from Crosby was for. Calls were not returned, and Marks went to see Crosby in person at the lodge. When asked about the payment, Crosby said it was for a trailer, but when asked about the lease, he said he could not find it. Marks finally located a copy of the lease in the BIA offices and realized it was for the entire trailer park.

Marks points out that under federal regulations, the tribe needed to negotiate a new lease for the property at fair market value, which had to be approved by the BIA. The Appraiser for the Office of the Special Trustee needed financial information from Crosby to be used in the negotiation of the new lease. Crosby refused to supply the official documentation necessary to negotiate the new lease. He claimed that the tribe didn't need the information. The tribal council was uncertain of their position and gave Crosby the benefit of the doubt. He stated that the trailer park brought in $6800 per month and that other RVs and trailers that were sitting on the lot were not part of the park and did not bring in any money. However, once the tribe was able to get the proper documentation, an official audit by the tribal tax department revealed that those "empty" trailers and RVs were being used as a motel, with each renting out for $100-$150 per night. Together they were bringing in $50,000 per quarter (not including the revenue from the trailer park).

Dan Allen, the real estate specialist for the BIA Western Regional Office, gave a presentation to the Tribal Council showing that Crosby was wrong and laid out the options available to the tribe (Marks, personal communication 2010). The tribe took over part of the trailer park in August 2009, but Crosby was able to maintain control of the

remainder of the park for free with the stipulation that he supplied water to the rest of the park until the tribal water system could be extended. In addition, the tribe had until January 2010 to negotiate a new lease. As the tribal property manager and the BIA worked to determine a fair market value for the lease, Crosby still refused to supply the necessary financial information, so negotiations went back and forth with no result.

Finally, the trailer park officially made it to the agenda for the next council meeting. Crosby showed up at the meeting with the support of many of his tenants. Some dissidents supported Crosby against the council. Many of the dissidents repeated a story that Crosby's father had distributed the meat from a cow killed on the road to tribal members back in the 1930s as an example of the Crosby family's benevolence. Other tribal members pointed out that the donation of one cow back in the 1930s did not justify letting Crosby do whatever he wanted now. The real estate officer stated that Crosby had never really done anything for the tribe. He sold daily use permits for camping and fishing on Pyramid Lake, and that money went to the tribe, but he did not employ any tribal members.

Some council members still wanted to support Crosby. One pointed out that Crosby had been a good partner to the tribe; however, the tribe should have intervened earlier. "He pulls in a lot of money and he has been a good business partner for us in the past, but he should have been honest about the amount of money involved during the negotiation" (V. Martinez, personal communication 2010). The turning point occurred when the tribal attorney invoked attorney-client privilege, which would take the council into executive session. There was some reluctance, and it took three votes, but when the tribal attorney reminded them that they could not be present while Crosby was discussing

the issues with his attorney, so he should not be present while the council worked with theirs. The council agreed and went into executive session. In private, the council passed a resolution to take over the trailer park if an agreement could not be reached. The officer noted that here the council members were not influenced by the members of the audience.

> No one paid attention for 18 years. The tribe estimates that Crosby made $2.6 million through his rental properties on the lake. Crosby didn't want to pay fair market value. He's shown up at the meetings and talked about working together and played on people's emotions. Some council members are friends with Crosby, and it was difficult for them, but when we discussed that it was their job to put the interests of the tribe first, they voted to press for fair market value. (T. Lance personal communication 2010)

Marks (personal communication 2010) notes that Crosby was angry, and said he would not pay any money to the tribe. The trailers on the property belonged to him, and he began to move them to his own property and began digging trenches for gas lines. The tribal real estate office called Washoe County to see if Crosby had permits to dig and install new gas lines. He did not, so a Washoe County official came out and shut down his work until the necessary permits were secured. Crosby then called Marks and offered a "truce." The real estate officer notes that the tribe now operates the trailer park, and the funds received from the park were to be used to redo the Sutcliff water system.

These are two examples in which tribal chairs had to resort to political maneuvering to achieve a goal for the benefit of the tribe. As chief executive of the tribe, it is the obligation of the tribal chairman to confront issues that the tribe faces, devise solutions, and bring them to the council for approval. As exemplified by the several tribal chairs with whom I spoke, an active tribal chair needs to act as an agent of change in the process of simply doing the job. In a sense, the tribal constitution creates conflict with the traditional egalitarian ethos of the people and incites dissent. I suggest that such an active

tribal chairman, as the leader of the council over which dissidents feel they have no say or control, is seen as a dominating figure. Therefore, in true egalitarian tradition, the council chair is regularly a person to be brought down. All of the council chairs with whom I spoke had encountered some or all of the sanctions noted by Boehm.

Egalitarian Sanctions

As noted above, gossip is the most subtle form of social control. Several persons noted this was common at Pyramid Lake, and no one seemed to be exempt from gossip and criticism. Gossip at council meetings I attended usually involved the tribal chairman, council members, tribal lawyers, and Harry Reid, among others. One dissident elder stated at a council meeting, "If tribal council and lawyers keep giving away our water, soon Pyramid Lake will be a dead lake like Honey Lake. Harry Reid, in particular, is giving away our lake and water rights. The people in power now don't know that they are to protect all of the natural resources of the Reservation" (field notes 8/6/10). The statements were commonly directed at the council in the form of direct criticism in the public comment portion of the meeting, and sometimes quietly circulated among the audience members during other parts of the meetings.

One major component of gossip that I heard at council meetings was that council members were favoring themselves or their families at the expense of other tribal members. "Gray areas need to be addressed. . . . You should look out for tribal members first" (field notes 2/19/10). Another tribal member noted that there were rumors of collusion, and concerns about favoritism. One person in particular shared a rumor that the chair's son had broken into the school, but it had been hushed up, "My son would be in

jail" (field notes 3/19/10). Another rumor circulated about a tribal committee member writing bad checks to the tribal store.

In a more serious example, a rumor had been floating around that the chairman was holding up distribution of the $40 million in economic development funds from TROA. Dissidents were arguing that, since the agreement had been passed by Congress and signed by all parties, the money was available, and the council chair was holding up distribution. There was also a rumor that the chair had promised that the funds would be released per capita—that is, divided equally among the tribal members. However, PL101-618 states that these funds could only be used for economic development according to the economic plan developed by the tribe, and the law explicitly states that the principal cannot released per capita (sec 208(a)(4)).

Chairman Lance and the tribal attorney were aware that the dissidents would not take their word for it, so the chair requested information directly from the director of the Office of the Special Trustee for American Indians (OST) within the Department of the Interior, who administrates the TROA funds, to clarify the situation on funding. The chairman read the OST's response in the council meeting (field notes 4/2/2010). The response noted that the funds could not be distributed until all pending lawsuits were settled. They estimated this could take two to five years. The money was being held in the OST's accounts and was earning interest. In fact, the amount had more than doubled. The funds would be released when all TROA litigation was settled and would be spent according to the economic development plan developed by the PLPT. The letter further stated that the funds could not be distributed per capita. The chairman noted that this statement regarding delay of distribution referred to the original funding provided by

Congress; however, there was a question about the accumulated interest. The law is not specific in that regard, and the chairman stated that they were trying to get an opinion regarding this. The chair noted that they were in discussion with the OST, and the OST had said that the tribe may be able to claim economic hardship and get the interest released to the tribe.

At a council meeting a few months later (field notes 11/5/10), the Tribal Planner stated that Harry Reid was committed to getting the interest portion of the funds released, but it was held up in the Justice Department pending the TROA appeals from TCID, Churchill County, and the city of Fallon. Rumors that the chairman had stopped the payment were false, and other rumors intimated that the Bureau of Indian Affairs was holding things up. The vice chairman reported at a later council meeting (field notes 2/4/2011) that they had had a conference call with a DOI solicitor regarding access to funding from PL101-618. The vice chairman said that the agreement was signed, the economic development plan was completed and had been submitted to the BIA, but the one-time payment for economic hardship was off the table. TROA was operating under appeal at the moment, casting doubt on whether the agreement would go into effect.

The second level of sanction is mockery and direct criticism. I noticed the occasional cutting remark at council meetings, but direct criticism was very common and most clearly exemplified by the numerous examples of accusations made at council meetings. This also goes on when council members are out in the community. The council members with whom I spoke were all trying to do the best job they could, and while they took the criticism gracefully, it was evident that it affected them.

> The chairman is holding a community coffee meet-and-greet type deal, Saturday, I think. . . . In my experience, that was so hard when you got out there. . . . I don't

> mind hearing negative things, having, in my opinion, healthful debate. Regardless, but it just gets so personal, and you get yelled at, and you just get beat up, and you don't want to put yourself out any more in that position. And unfortunately, that affects the whole tribe. (S. Rogers, personal communication 2011)

Boehm notes that ostracism, expelling, or even killing members who consistently upset the system were the most severe sanctions. There have been no executions of leaders at Pyramid Lake, and no one I spoke to ever said they had been shunned or ostracized. However, many discussed the difficulties of holding an office in the tribal government.

Joe Ely, Bob Pelcygar, and the council were successful in using the powers available to the tribe to ensure that more water would reach Pyramid Lake, and that the lake would be saved as a viable resource for the tribe. However, their success was not without repercussions. Joe Ely's efforts ensured the passage of PL 101-618, but this did not endear him to many of the Pyramid Lake community. Ely states, though, that several council members lost their seats on the council following the act's passage. Ely had served two terms as council chair and was not eligible to run again. After he left office, he took a job with Stetson Engineering, working on water negotiations with other Indian tribes. He currently lives in Mesa, Arizona. Bob Pelcygar remained for a time, helping to negotiate the TROA agreement, but after a time he also left. Ely does note, however, that in a referendum the following year, PL101-618 passed by a two-thirds margin, so the people did approve of the final agreement.

> I think the tribal council did a good job during this process. They were very supportive. It was tough. They made tough decisions. And one thing that's real important is the council made some very tough and difficult decisions, and ones that weren't popular. And they did it. And they paid for it. They paid for it, because in that last election, a lot of them lost. And there were very unsavory pictures drawn of them. You know. I'm not talking about actually drawn, but

> there were characterizations of them. And it isn't true. They actually acted as leaders, and they got it done. I think that was real important. (Ely 1996:224–25)

As mentioned earlier, outside the reservation community, Ely gained a reputation as a skilled and respected leader, and he was granted an honorary degree from the University of Nevada, Reno. Word of this did not endear him to the reservation community and instead created suspicion. Praise and honors from outsiders bring up serious questions about loyalty and whose side the person is on. Another council chair committed suicide shortly after being praised by the governor of Nevada for his advocacy of Pyramid Lake and veterans issues and his appointment to the Nevada Commission on Tourism. The real estate officer who led tribal efforts to deal with Crosby left shortly after that situation was resolved, noting that council members could be very condescending.

Chairman Rogers also left right after his term of office and did not return to Pyramid Lake for several years. As shown below, social isolation or basically being shunned had been an issue for him, and he is not ready to return to politics.

> I left from here in 2003 right after my term. I'm back and I'm actively engaged in the community again, because I see everybody, and everybody's talking to me again. They're friendly and funny, and we just have a good time all the time. I always like to think of myself as a pretty easygoing guy. . . . Everybody's pressuring me because election season is here and choices. "We're not quite sure who's going to be running or anything." Oh, I'm running. I'm running *the other way* still. Another one is, "Aren't you even going to throw your hat in?" Oh man, I lost my hat a long time ago, and I haven't bought another one yet. (S. Rogers, personal communication 2010)

These incidents indicate that dissidents and even fellow council members have made life difficult for tribal officers of all sorts. Many were voted out of office after difficult decisions, and many left the reservation after their terms of office. This is not to say they were formally ostracized from the tribe, but there is clearly a trend of officials departing after encountering the negative sanctions directed at tribal officers. Many

former chairs have taken jobs off the reservation at the end of their terms, which sometimes led to new rumors. One former chair noted that Joe Ely got a job with the water people. "You'll probably hear about that, too. It's perception, but you make contacts too, constantly, and you have opportunities. Why not take them?" (S. Rogers, personal communication 2011).

Negotiate vs. Litigate and Other Issues

A few more points relating to egalitarian tradition and dissident actions reflect on this subject. As noted by Boehm (1999), political egalitarianism goes with material egalitarianism. In most egalitarian societies, leaders are often the poorest people in the community, and this observation may help to explain the efforts of dissidents to derail negotiation in preference to litigation. Many clearly saw negotiation as fraught with uncertainty and risk. As noted, mistrust is a major issue, as it is necessary to trust those engaged in negotiating to fairly represent the community and secure benefits for everyone. Without trust, the question about who benefits or loses more than anyone else always arises. Dissidents might see litigation as much more secure, because it is all or nothing. Everyone is in it together, and either the entire community wins or the entire community loses. There is no chance of additional risk or benefit for any individual. Such reasoning may also apply to the push by dissident tribal members for per-capita distribution of funds. Large amounts of funds administrated by the tribal government give rise to concerns about corruption and Swiss bank accounts. We have already seen how the rumor mill demonstrates people's concerns about graft, regardless of how outrageous some of the claims seem to be. There are too many examples of corruption among non-

Indian and Indian officials in the United States to regard their concerns as entirely unfounded (Volz 2014).

The council and tribal members on the whole seem to be reluctant to support anything that might only benefit one person or a small group of people. As a part of economic development, one chair with a background in computer science wanted to open up a data center on the reservation. The tribe would be able to take advantage of negotiated access to fiber optic cables running across the reservation and tribal sovereign immunity from state taxes.

> I've always wanted to do a data center, a call center, or something like that. And before I could get any further, "Nah, we know why you're pushing it so much, because you're going to benefit!" I'm pointing at you, because he was pointing at me, "Because *you're* going to benefit!" And then it took off on a tangent. I was using me as an example of I had this knowledge of this particular thing, and this is what possibly you could do. I made that mistake, because that took a lot of steam out of a lot of stuff right there again, especially for the naysayers. . . . Really, all we need is the capital to build this thing. We don't have to pay taxes, we don't have to pay for land, we don't have any of the costs associated with owning the same piece of property out here. So it makes a pretty positive business venture, potentially, because there are a lot of benefits, but we need to get that land [allocation] first, and there is nothing in place that allows me to do that. And then after that, since I'm on the reservation, I can take advantage of the small SBAs, a small disadvantaged minority business, the small business contracting opportunities, set asides and things like that. In a hub zone there are a lot of benefits in it, but I can't even get that far because there are really no incorporation codes, there's no business codes. But we do have an economic development plan to spend our money that is supposed to be laying the foundation for the future of the tribe. So, it's backwards. And I think that is part of our overall issue. That's what I used to tell everybody. Man, my ideas aren't new. You can go read the minutes from the 1950s & 60s. These guys back then were talking about stuff like this, and here we are 50 years later, we're still talking about it. Yeah, there's a few little things, but we don't have that foundation to build on. So we don't have any lasting economic impacts . . . and up to this point, nobody except for administration, the different chairmen [have tried]. And, they've gotten to a certain degree, but it's always muted, "this is what the chairman wants. This is what they are trying to force on us." (S. Rogers, personal communication 2010)

As noted earlier, council members are well aware of the difficulties of tribal politics, and they are working on ways to deal with them. Any major changes that involve the tribal constitution are difficult because they require a secretarial election. Even the process of lowering the voting age to eighteen was a major undertaking that took years. However, the council and community are not dragging their feet, and they are looking for solutions.

> One thing we'd like to adopt is project planning or strategic planning. Setting up longer plans with long-term goals would eliminate some of the chaos at the changing of the guard [after each election]. In the past, some programs were cut with the entry of the new administration and didn't get a chance to reach fruition. This would allow for some longer-term projects. The LLC is part of that. It will allow for some more business options. It is going to cause holy heck, though, because people don't understand. They're afraid the business will run amok with the money and they will lose out when things fall apart. My biggest concern is that the LLC will be making money, but we'll wind up paying it all out to creditors for the loans necessary to make it happen. We'll see what happens. (V. Martinez, personal communication 2010)

Another council member relates:

> I don't know if I told you that I started with the constitution and business codes and everything else like that. I talked to a lot of people, and we got a lot of good feedback, and got ready to really get it out there, doing it from the community level and be partners. If you can get the right people and a lot more people believing, a lot more people interested, and lot of people coming out that won't be attacked. . . . I've been toying with the idea of going from the community side. . . . We knew that back then, that it has to be community driven, but somebody needs to step up and take it. I think, maybe this time, I should take a different approach and do it from what I always thought, from the community level and work its way through, because I'm not involved in anything. (S. Rogers, personal communication 2010)

In a third example, several councils and chairmen had made efforts to change the tribal constitution to increase sovereignty and increase tribal member participation by lowering the voting age and allowing enrolled tribal members who lived off the reservation the opportunity to vote in tribal elections. Eventually, the measure to lower

the voting age passed, but the other measure to allow non-resident tribal members to vote in Pyramid Lake tribal elections failed in 2011.

Despite the presence of conflict, Siegel and Beals (1960a) point out that pervasive factionalism does not imply that the society is unstable. On the contrary, the need for the preservation of the group is always recognized, and such societies have extraordinary capacity for self-maintenance in the face of external pressure. They also state that it is not easy to deal with persistent factionalism. In the cases they studied in India and at Taos Pueblo, conflict seems to persist despite efforts to deal with it (Siegel and Beals 1960a). Dozier (1966) notes, however, that Santa Clara Pueblo was able to resolve nearly 200 years of political and religious conflict by adopting a constitutional government. Norcini (2005) notes that adopting a constitution changed the relationship between the Summer and Winter factions and offered an arena for the discussion of compromises that had not been available before. Although disputes did not end entirely, and a conservative-progressive divide still exists, both of these authors point out that separating the political and religious affairs of the pueblo resolved many of the issues that had plagued the community for nearly two centuries.

CONCLUSION

"I lose my sovereignty when I have to depend on you" (S. Rogers, personal communication 2010). Chairman Rogers was making a statement on how the tribe must rely on the BIA and Secretary of the Interior to represent the tribe and ensure its sovereignty. The truth of this observation for Indian tribes has been documented throughout most of American history, but currently the effects can vary dramatically as different administrations adopt different perspectives. But I also suggest that the mistrust

of this interdependence could just as easily apply to the various families at Pyramid Lake, who do not trust others to look out for their interests.

The tribal constitution has provided an avenue for the tribe to take control of the reservation and its resources, and they have successfully achieved a number of their goals. However, some evidence suggests that changes in the community relating to the current tribal constitution also create the persistent factionalism that often paralyzes the tribal government and sidetracks important decisions. Some tribal members have suggested that this is a reaction to oppression. There is clear evidence of oppression from non-Indian individuals as well as local, state, and federal governments, and there is discussion of local oppression currently, so this cannot be dismissed. However, I suggest that other factors may also play a major role in creating the current situation. As noted by Chairman Lance, there is no real comparison to the traditional egalitarian decision-making that prevailed in the past. The foraging lifestyle and conditions that supported that kind of decision-making are gone. However, the "crabs in a pot" analogy has come up on a number of occasions during conversations with tribal members at Pyramid Lake. The reaction to Joe Ely's honorary degree, Chairman Lance's remarks to President Obama, conflict over distribution of money, and the question of negotiation vs. litigation all suggest that the egalitarian ethos is alive and well among some of the Pyramid Lake people.

I suggest that this impacts the tribe in two ways. First, the current tribal government operates much like the U.S. government in terms of assuming that sovereignty lies with the individual tribal members, each acting and voting independently. However, as noted by Lance, all politics are family politics, because

families and family interests are still at the center of political life at Pyramid Lake. In one sense, it could be argued that families looking out for their members are a part of this conflict. At least for some people at Pyramid Lake, it can be argued that sovereignty still lies with the families who live there.

Second, since the council is composed of ten members (including the chair and vice chair) not all families can be represented on the council. From this perspective, some families are excluded from the process of making decisions but are still bound by those decisions. Some families not represented on the council feel disempowered and at the mercy of those who are. The hierarchy created by this arrangement engenders conflict with the egalitarian ethos still held by many tribal members. Opting out, the traditional method of dealing with this kind of conflict, is no longer a possibility, causing traditional methods of social control to kick in, in an effort to equalize things. Some members of those families without a voice on the tribal council sometimes actively work to oppose the government because they do not trust the other families on the council to act fairly. Gossip, mockery, criticism, and ostracism are traditional sanctions employed to level the playing field.

Mistrust of the council in general, and of the chairman in particular, pushes the dissidents. They are willing to forgo increasing tribal sovereignty vis-à-vis the federal government to counter the influence of the council and chairman, as exemplified by the remark, “We need them to protect us from you.” So groups such as the “Ad hoc committee” and the “Taliban” do everything they can to oppose the council in general and the chair in particular to gain some kind of control. The identities of the dissidents change over time because the members of the council change. Every election creates new

dissidents from families who are not on the tribal council. It also creates new "upstarts" of the chair and council members the moment the election is decided. Finally, it indicates that the dissidents are not going to go away anytime soon.

The Pyramid Lake Paiute Tribe has transformed from independent and egalitarian foraging families to a hierarchical and communal nation-state within a capitalistic society in less than a century. I suggest that, despite the new official tribal organization, at least some of the tribal members at Pyramid Lake still retain many of their former traditions, such as independent families as an organizing principle and an egalitarian ethos. I also suggest that under the current organization, the creation of even temporary hierarchy by the election of council members is activating traditional leveling mechanisms and creating some of the issues seen at Pyramid Lake.

Siegel and Beal (1960a) note that persistent factionalism such as exhibited here is the result of sociocultural change, and the changes the Pyramid Lake Tribe are working through would seem to qualify. Although persistent factionalism tends not to destabilize communities, factional conflict can hamper the ability of the community to act as a group for long periods of time. Dealing with factionalism is difficult, even when the group is actively trying to solve the problem. However, members of the tribe and the council are actively looking for solutions. In the meantime, however, the negative aspects of factional disputes undermine the council's efforts and drive away capable tribal members who would rather avoid the conflict that goes with being in a position of leadership.

The council and members of the tribe have not given up. They continue to look for new ways to assert the sovereignty of the tribe through endeavors such as the tribal corporation and MOUs that do not compromise the sovereignty of the tribe. They also

look for solutions to the factional conflicts that disrupt those efforts. One council member stated it most clearly: “We are here, and we intend to stay” (V. Martinez, personal communication 2010).

8. CONCLUSION

Taiaiake Alfred (1999) has suggested that applying the concept of sovereignty to Indian tribes is inappropriate, and in the past this may well have been true. Human societies have operated without this idea for untold centuries, but currently things are different. The European concept of the sovereign state is the standard against which the political self-determination of any group of people is currently measured worldwide. In the United States, Indian tribes are either federally recognized or, legally, they do not exist. Those that are recognized are regarded as quasi-sovereign and exercise the rights reserved to them under the umbrella of tribal sovereignty. If a tribe decided to identify themselves as something other than sovereign, they would still need to use the language of sovereignty when dealing with the U.S. government, states, and other entities. It is the only language these organizations understand, and Indian tribes have used that language very effectively to assert their political rights since the 1960s.

Although tribal sovereignty is limited and changes through time, it provides Indian tribes a foundation on which to govern themselves and deal with the federal government, the states, local governments, businesses, and other organizations. Internal sovereignty allows each tribe to establish its own government, administrate its land and resources, and decide who is a citizen and who gets to vote. External sovereignty gives tribes the right to make agreements and use the court system to pursue redress for the wrongs done to them. It does not give tribes complete independence, but it does provide them with certain immunities from state and local control. Indian tribes have used their sovereign rights to address their own problems and have developed innovative ways to take advantage of the resources and rights that they do have.

The Pyramid Lake Paiute Tribe is no exception. Despite a sometimes imperfect understanding of tribal sovereignty, they have very effectively used those rights reserved to them as a recognized Indian tribe to save the sacred Pyramid Lake, the endangered *cui-ui* and Lahonton cutthroat trout, and the economy of the reservation. It took great determination, there were many setbacks, and most outsiders regarded their efforts as hopeless in the face of the progress of modern American society. Tribal members persevered even while they wrestled with questions of an identity forced on disparate independent families by the federal government as they were crowded onto the traditional home of just a few of those families. These questions involve impassioned struggle over the composition, role, and authority of a legitimate tribal government. Despite all of these questions, the Pyramid Lake Paiute people won. TROA, the Truckee River Operating Agreement, officially went into operation on Dec. 1, 2015. Pyramid Lake is saved.

This case study presents an important perspective on the role of the modern anthropologist. The members of the Pyramid Lake Tribe are more than capable of taking care of themselves, but as anthropologists we may be able to put their struggles into a different context. American Indians and other indigenous peoples around the world must deal with the dominating power of the modern states that the colonial era has left them. The situation of each of these groups is unique in many ways, but they also share at least some similarities as indigenous minorities dealing with powerful nation-states. Likewise, most tribes retain at least some of their traditional beliefs and customs that provide them with their independent identity. The customs of any group of people do not exist in a vacuum, but in the context of their everyday lives and the struggles they face individually and as a group. It is in this light that anthropologists can make a significant contribution.

As shown here, the Pyramid Lake people are asserting their sovereignty and struggling over serious issues, both internal and external. Every other indigenous group of people in the world must deal with some form of these same issues. As we as anthropologists become conversant with and about American Indian tribes in the context of the current issues they face, we can help give voice to their changing lives as contemporary indigenous peoples.

Pyramid Lake and Sovereignty

The members of the Pyramid Lake Paiute Tribe have effectively asserted their sovereignty both internally and externally. They have explored many aspects of their sovereignty in their efforts to save Pyramid Lake, and the other governments, organizations, and agencies they have dealt with in this process have explored them, too. The only thing that tribal sovereignty seems to ensure today is the right to a seat at the table. Tribal sovereignty gives a tribe certain rights, but there is no guarantee that those rights will be respected. As Lambert pointed out, rights become "rights claims" when they are contested. The iron triangle of Nevada water users opposing the Pyramid Lake Tribe actively contested, ignored, or worked around the tribe's rights until they ran out of options. This example gives new support to Wendell Chino's claim that sovereignty is power. Once the tribe made it clear that nothing could be accomplished without accommodating their needs, the iron triangle fractured and reformed to include the Pyramid Lake Tribe. The tribe not only saved Pyramid Lake and the fish, but with the leverage they gained, they were able to work out side agreements to achieve several other important goals. This took a tremendous amount of determination and a long-term commitment to doing everything possible to save the lake.

The Pyramid Lake Tribe had many assets in their long battle to save Pyramid Lake. First and foremost was the dedication and determination of the Pyramid Lake tribal members. Even when the rest of the world was convinced that Pyramid Lake was doomed, the tribal members persevered and dedicated a substantial portion of the very limited resources they had to the cause. The second factor was lawyers who were able to make the most of the tribe's legal authority. The third factor was the support of organizations such as NARF and NCAI, who provided assistance and support at important junctures. The fourth was federal judges and officials who saw the fairness of their cause and asserted federal trust obligations. The fifth factor was the federal trust obligation itself, which served the tribe well when federal officials actually acted on it. The sixth factor was money. The tribe was able to provide their own funding in the crucial phase of fighting the Bi-State compact, which gave them leeway in opposing the compact. The seventh factor was the support of senators and congressmen who were sympathetic to the tribe's cause. They probably hold the greatest power to help or harm the tribe in their endeavors. The eighth factor was federal legislation that gives tribes status similar to that of states, such as the Clean Water Act and the Endangered Species Act. Finally, the ninth was other friends and organizations that were able to support tribal interests when they coincided with their own, such as the Sierra Club and Friends of Pyramid Lake. The tribe was able to take advantage of all of these factors in their efforts to save Pyramid Lake and the *cui-ui*. Although these are the factors that served the Pyramid Lake Tribe in their fight, others may be available to other tribes in their efforts.

As Tom Lance pointed out, the sovereignty of the tribe has not changed—what has changed is how other entities and agencies treat the sovereignty of the tribe. The tribe

has no more rights than they previously had, but the relationship with the states of Nevada and California, TMWA, and some federal agencies and businesses has changed. The tribe's legal efforts paid off, and the other users of the Truckee River realized they could not get the water they needed without respecting the sovereignty of the tribe. Also, because the tribe was willing to work with the other water users to meet their needs, those other entities are more willing to work with the tribe to meet tribal needs. TROA is in operation, but the relationships are not set in law and will likely change in the future as conditions change.

Perceptions of Tribal Sovereignty

While tribal sovereignty is idealized as a government-to-government relationship, council members are well aware that it is an uncertain and unequal relationship. The members of the Pyramid Lake Tribal Council see tribal sovereignty as a valuable tool, but most people on and off the reservation have only a very general idea of what tribal sovereignty means. Council members are well aware that tribal sovereignty is a limited form of sovereignty, but most council members only begin to learn the details as they take their place on the council and begin to use it. This can create uncertainty because the extent of the tribe's powers are not always clear for a number of reasons. Court decisions and acts of Congress can change them at any time. The use of these powers is also contested by other members of the council or individual tribal members. The council regularly calls on their tribal attorney, the BIA, and other federal officials to unambiguously define the limits of what the tribe can do. Councils assert their sovereignty as much as they can, but it is often limited by practical considerations. Tribal resources are limited, and the tribe needs to maintain relationships with the outside world

to serve their own needs. In addition, the need for the funding of various tribal services gives outside granting agencies the right to regulate how the money is used. Tribal sovereignty is compromised in a number of ways, but it still provides Indian tribes with tools to achieve necessary ends.

Outsiders view tribal sovereignty as a problem to be dealt with. In the past, states, federal agencies, and even individuals often simply ignored tribal sovereignty with minimal repercussions. With the creation of the Pyramid Lake Paiute Tribal Council in 1934, the Pyramid Lake Tribe was able to begin acting on its own and take control of the resources of the reservation. However, by that time much had been lost, and getting the resources of the reservation back under the control of the tribe has required a long and difficult effort.

Even recently, though, when trying to press for passage of the Bi-State Compact, the Nevada Group of Truckee River water users tried to avoid and undermine the tribe's sovereignty to get more water for themselves. The tribe was able to defeat this effort and make it clear that there could be no solution to regional water issues without respecting their sovereignty. Once this was established, the tribe worked with the other water users to meet their combined needs as well as to save Pyramid Lake. Through this relationship, the tribe was able to solve several other issues that had troubled them for some time: ensuring that the bed and banks of Pyramid Lake, the bed and banks of the Truckee River on the reservation, and the federal wildlife preserve of Anaho Island were all acknowledged as part of the Pyramid Lake Reservation; officially recognizing the tribe's right to control hunting and fishing on the reservation; and applying for and receiving

rights to all of the unallocated waters of the Truckee River. All of these were confirmed in the PL101-618 and TROA agreements.

Where Sovereignty Lies

The PLPT has achieved some extremely important goals by asserting tribal sovereignty using the IRA constitutional government they adopted in 1936. I suggest, however, that many people at Pyramid Lake still see sovereignty as being invested in individual families rather than the tribal membership as a whole and embodied by the tribal council. Most members agree on the overall goals they wish to achieve, but there is often extreme disagreement on the best way to assert tribal political power. The council is working to accomplish many goals, but factional disputes regularly sidetrack their efforts on some issues. These disputes are marked by distrust of the council and chair and fit the model of persistent factionalism laid out by Siegel and Beals (1960a), who assert that this is a result of sociocultural change. I suggest that transitioning from independent and egalitarian foraging families to individuals in a sedentary communal/capitalist state is a significant example of sociocultural change, and the cultural adjustments to this transition will probably take considerable time.

Some tribal members have suggested that the foundation of the problem in tribal politics is oppression, others have suggested jealousy, and neither of these can be ruled out. But I believe that at least part of the problem rests on the idea that for many at Pyramid Lake, sovereignty still lies with the independent families that were pushed onto the Pyramid Lake Reservation. I also believe this is an indication that other traditional customs such as egalitarianism may still hold some sway. The tribe did adopt a constitutional form of government. However, I suggest that the organization of the

council conflicted with the egalitarian ethos of the Paiute people because the tribal constitution limits representation and establishes a designated leader in the form of the tribal chairman. Since every family cannot be represented on the council, only some families have a say in tribal policy at any one time; thus a hierarchy is created in a society where everyone was traditionally equal.

Boehm (1999) notes that egalitarian societies operate on a system of consensus and mutual respect, and the traditional form of informal leadership that prevailed at Pyramid Lake fit that pattern. The hierarchy created by the tribal constitution causes a backlash against council members that is marked by gossip, mockery, severe criticism, and sometimes even social ostracism. Boehm points out that these are typical ways that egalitarian societies deal with "upstarts," or people who try to push others around and exploit their position for personal gain.

The tribal members are well aware of the problem of tribal politics, and they are frustrated by it. Even when groups are trying to solve the problem of persistent factionalism, it can be very difficult (Siegel and Beals 1960b). The tribe is always looking for solutions and is currently trying different ways to continue to assert their sovereign rights and resolve the factional conflict. For example, they are working to establish a tribal corporation and changing the by-laws of the tribal constitution to encourage more people to participate. They are not giving up.

It Is Over

The TROA officially went into effect on December 1, 2015, and the future of Pyramid Lake is secure. Even if the *cui-ui* and Lahonton cutthroat trout are removed from the Endangered Species list, the Pyramid Lake Tribe has access to the waters of

Stampede Reservoir, and a commitment to maintain the lake at a minimum level. A water engineer from TMWA has suggested that some water might eventually flow into Winnemucca Lake again (E. Marshal, personal communication 2010). The people at Pyramid Lake were holding their breath until the agreement actually went into force. The issue was that important. At least two members of the Pyramid Lake Tribal Council declined to talk to me or would only talk very briefly because they did not want to take any chances that anything they said would jeopardize the agreement.

TCID has fought this every step of the way and continued to fight it with the support of the city of Fallon and Churchill County until they simply ran out of money to keep filing lawsuits. Despite numerous efforts to bring them into the original agreement and later into the operating agreement, they were throwing everything they could at TROA in a "last stand," hoping that the agreement would fall apart. They see themselves as victims and point out that they were just doing what the federal government allowed them to do. They longed to return to the days when they took all the water they wanted and everyone left them alone.

Despite the TCID's beliefs, the USBR has not abandoned the Newlands Project. The diversion levels established in the present OCAP are not at the level designated by Judge Gesell in his decision. The Recoupment issue of returning more than 1 million acre/ft of water to Pyramid Lake has yet to be resolved. The USBR has established a bonus system for TCID that rewards them for exceeding efficiency standards, and this bonus water can be used later or applied to Recoupment by letting the excess flow downriver to Pyramid Lake.

The process had gone on for so long, though, that everyone was wondering if this was all going to work. At Pyramid Lake, one council chairman told me that even after all the trouble they had gone through, it felt like they were never going to see the funding for economic development. A sense of hope and dread had pervaded discussions of water. Perhaps everyone can take a deep breath now.

Further Research

This research explores the concept of tribal sovereignty in one place at one time. The general parameters of tribal sovereignty are familiar, but the details and the actual authority that Indian tribes have can change from state to state and from one day to the next owing to court decisions and acts of Congress. Due to a variety of circumstances, what works for one tribe may not work for others. Tribes are well aware of this and have used great creativity in asserting their sovereignty in different places at different times. The Pyramid Lake Paiute Tribe's efforts detailed here deal primarily with the tribe's assertion of water rights in the West. Their efforts required court decisions, working through the tribal council, and working through Congress to gain sufficient leverage to get what they needed in a negotiated settlement.

Indian tribes across the United States constantly strive to solve the many problems that confront them, and every effort gives them additional insight about what has worked and what has not. Many tribes have followed the Seminole's example in establishing gaming as a means of raising revenue. It has worked amazingly well for some and produced dismal results for others. Every additional example of the assertion of tribal sovereignty helps to provide a practical understanding of how it works and what the limitations are in different places around the United States. Because tribal sovereignty

involves nearly every aspect of American law, every example will be relevant to some other tribe somewhere. Each effort, successful or otherwise, adds to the knowledge base that others can draw on.

In comparing other examples of tribal efforts, some of the questions that I argue need to be addressed include (1) What tools did the tribe in question use, such as lawyers, federal trust status, or the Clean Water Act? (2) What issues did they encounter? (3) Were their efforts successful? (4) If not, why not? (5) How did the various participants see the tribe's efforts to assert sovereignty? (6) Are any other outstanding factors involved?

Even though the Pyramid Lake Tribe has used the standard IRA tribal council to achieve many important goals, factional conflict has limited its effectiveness in some areas. I have suggested that the standard IRA constitutional government creates conflict with the egalitarian traditions of the Pyramid Lake people and drives factionalism. This is not proven, however. Understanding the foundations of this conflict may provide other avenues for addressing the conundrum of tribal politics at Pyramid Lake. I have suggested that part of the problem is that sovereignty lies with the family for many tribal members, but my sample was very limited. A more comprehensive study of these questions is needed, and it can begin with how more tribal members see the question of "where sovereignty lies." Do some tribal members adhere to an egalitarian ethos? Some tribal members mentioned oppression and jealousy as being part of the problem. Discussion of oppression took the form of internalized oppression, and specifically oppression by the council, as driving the problem. Further exploration with a wider variety of tribal members could provide a much greater understanding of these ideas.

The interface between traditional governments and IRA governments on U.S. reservations would also shed light on these issues. As noted by former chair Rogers, most tribal constitutions are variations of the standard IRA model, but not all tribes with IRA governments experience the issues faced by the Pyramid Lake Tribe. What is different for those tribes who experience issues of factionalism and those who do not? Questions that might be addressed for any individual tribe include:

1. How does the tribe's traditional system of decision-making compare to the current tribal government?
2. How much have they modified the standard IRA tribal constitution to fit their needs?
3. Are "tribal politics" a problem?
4. If so, is factionalism an issue?
5. If factionalism is an issue, is it pervasive or schismatic?
6. If not factionalism, what other forms do tribal politics take?
7. How did the tribe traditionally resolve internal conflict?
8. What were the traditional methods of decision-making?
9. How did leadership traditionally work?
10. How did traditional methods of social control work?
11. What was the traditional foundation of political organization, or where did sovereignty traditionally lie?
12. How similar is the current IRA government to the traditional form of decision-making?

13. Youngblood discusses a spiritual foundation for sovereignty in some tribes (Swaggerty 1979). No one mentioned this at Pyramid Lake, but could it be an issue for another tribe?

14. Seigal and Beals (1960a) mention traditional hierarchy and reciprocal relationships as factors in factionalism in their study. Again, these were not issues at Pyramid Lake, but could they be issues for another tribe?

15. What issues are unique to each tribe?

The evidence I have explored that suggested a conflict between traditional methods of decision-making and current IRA constitutional governments as the foundation of pervasive factional disputes is compelling but not conclusive. If the question of "where sovereignty lies" could be shown to be a causal factor, it might help to address the issue of "tribal politics." It seems extremely improbable that a return to independent families would be workable or be accepted by the U.S. government; however, a tribe might find some way to reconcile the two forms of government. Constitutions can be rewritten. If a tribe decides to change their constitution to reflect more traditional methods of decision-making and values, it would be a difficult process, but it could be done. For example, the Pyramid Lake Tribe could expand the size of the tribal council to fifteen or twenty to give more people (and more families) a voice on the council. They might also change the role of the council chair by separating it from the job of chief executive. This would be a closer fit to the traditional method of decision-making, though it may bring problems of its own. There may be also other ways to accommodate traditional values, such as egalitarianism and a constitutional government. Ultimately, only the tribal members themselves can decide what serves them the best.

International Implications

Michael Brown (2007) notes that many indigenous people around the world look to the Indian people of the United States as the model of success in fighting for their rights. Many contemporary nation-states have indigenous minority populations, and this has proven to be the foundation of much conflict. In addition, many governments throughout the world follow the lead of the United States in dealing with their indigenous people (Brown 2007). Hence, exploration of the American model should be relevant not only to former British colonies but to other indigenous groups of people fighting for their rights.

The dynamic processes through which colonialism created a world characterized by state sovereignty meant that in the former colonies indigenous peoples fell under the control of the dominant group of whatever former colony and (now) modern country they inhabited. However, self-determination of peoples is acknowledged by Article 1 of the UN Charter, and the passage of the UN Declaration on the Rights of Indigenous Peoples brings the status of the many and various indigenous peoples around the world into question (Jackson 1990). Not all nations have signed the declaration; the United States did not sign until 2010, and some of those who have signed may never implement it. Some may, however, and if they follow the lead of the United States, as Brown notes that many do, then the American Indian experience will be relevant there. The Pyramid Lake case offers one solution achieved in one place at a certain point in time, but it can serve as an example for indigenous people elsewhere.

A Final Note

The Pyramid Lake Paiute Tribe's efforts have created a secure future for Pyramid Lake. The water in Stampede Reservoir will be released to ensure the *cui-ui* can spawn naturally in the Truckee River, and TROA ensures that this will not stop even if the species is removed from the endangered species list. In addition, the huge fish (up to 40 lbs.) that once thrived in the lake have returned (Kemsley 2013). An inland taxonomist found that the extinct variety of Lahonton cutthroat trout had been transplanted from Pyramid Lake to a stream on Pilot Peak along the Nevada-Utah border early in the twentieth century (Schweber 2013). The U.S. Fish and Wildlife Service was able to create a brood stock from the Pilot Peak fish in 1995, a few years before a wildfire devastated Pilot Peak and destroyed the stream. In 2006 they began planting the stock from Pilot Peak into Pyramid Lake, where they have done well. It is not unusual today for fishermen to catch 20+ lb trout, and this has attracted fishermen from around the country and boosted the economy of the reservation and surrounding area. The latest reports are that the fish have now naturally spawned in the lower Truckee River for the first time since the local extinction in the 1940s (Schweber 2014).

PLPT's efforts have led to the saving of the lake, and also to the restoration of the Truckee River. The water quality agreement between PLPT and the cities of Reno and Sparks requires them to maintain a high level of water quality. The current system of water treatment does not meet that level, and upgrading to a reverse osmosis system would be extremely expensive (Beth Jennings, personal communication 2010). As a result, the city has gone to great lengths to add additional fresh water to dilute the existing pollutants.

The cities of Reno and Sparks, the Nature Conservancy, the Fish and Wildlife Service, and the USBR have all worked to make changes to channels, and dams have been built to help facilitate the natural spawning of the trout. Mickey Hazelwood, the Truckee River Project Manager for the Nature Conservancy, states:

> The Pyramid Lake Tribe is a great group, and they made all this possible with their court battles. Early work was mostly at the policy level involving in-stream flows and working with flow regimes to deal with the spring spawning run. This was good for the fish, but benefitted revegetation as well. At Lockwood, we did the earth-moving in 2008, and we're going to remove the irrigation this year [2011]. There is still some fencing to keep the deer out of the bitter brush and golden currents we planted until they are mature enough to survive. The Nature Conservancy has been working in this area for fifteen years and in 2002, we acquired the McCarran Ranch. It was a beginning on a small scale, and the stakeholders were Reno/Sparks, the BLM [Bureau of Land Management], USBR, and others. We still maintain a relationship with all these groups.
>
> The restoration we're doing is restoration of natural processes rather than to some early state. Natural filtration has proven to reduce some pollutants. We're not working for Pyramid Lake, but money from the city of Reno came from the sewer fund to help with pollution. One mark of success in these efforts is to ask the fishermen. They report that the areas have been restored are the hot fishing spots.
>
> The old channel was straight and deep, but our plan was to reconnect the river to the flood plain and restore the vegetation which was willow dominant. There had been a lot of changes over time. The flood plain was cleared for agriculture, and later in the 1950s and 1960s, the Army Corps of Engineers straightened and widened the channel for flood control, by deepening the channel and removing rocks [Truckee River and Tributaries Project 1954]. This led to erosion and down cutting which lowered the water table by three to four feet. This led to vegetation changes, and if you consult photos over time, there is a mass disappearance of cottonwoods and willows.
>
> We can't raise the bed of the river, but we can add rocks to create riffle structures to aerate the water and create habitat. On the steep banks, there is not much habitat, so, we lowered the surrounding flood plain and introduced riffle structures which help with revegetation. We took the material from the banks and built uplands, and we increased the sinuosity of the river by creating meanders. In the new flood plain, natural revegetation took over pretty quickly. In the uplands, we pursued revegetation more aggressively by adding brush and cottonwoods, but it takes three to four years for the complexity to return. We pursued that with watering and fencing, which we will remove later. We have preferred species that we plant, a lot of cottonwood and willow, but once we get the land work done, there is a lot of natural revegetation by native species. Cottonwoods have come back in abundance in the restored areas.

> We've partnered with the Region Flood Management Project and the Restoration Project is part of the Flood Management Program. The Corps of Engineers has changed its Flood Control Policies. Funding has come from all over, such as the USBR, the cities of Reno and Sparks, Nevada Department of Wildlife, Washoe County, Flood management Project. (M. Hazelwood, personal communication 2011)

The Nature Conservancy's purchase of the McCarran Ranch showcases their first efforts at restoration along the Truckee. In an interesting twist of irony, the McCarran Ranch Preserve includes the house Senator Patrick McCarran grew up in. The Conservancy has worked with Washoe Country on river restoration project at Lockwood and is currently working with the BLM on additional projects at Mustang and 102 Ranch and with Nevada Energy (formerly Sierra Pacific Power Company) on a river restoration project. All of this work only occurred because the Pyramid Lake Paiute Tribe fought to save Pyramid Lake.

APPENDIX A: INTERVIEW QUESTIONS

1. How do you, as a member of the Pyramid Lake Tribal Council, understand the concept of tribal sovereignty?

2. What does it mean to be sovereign or to assert sovereignty?

3. How would you like to see tribal sovereignty work?

4. The classic definition of sovereignty involves a one-to-one relationship among the land, the people, and their political power; how do you think this relates to Pyramid Lake?

5. What kind of struggle has the effort to save Pyramid Lake been?

6. Do you see the effort to save the lake as a question of sovereignty? If not, how would you frame the struggle?

7. How do you see your status within the federal system and in relation to other entities, in particular the states of Nevada and California; the cities of Reno, Sparks, and Truckee; and other organizations such as Westpac Utilities or TCID?

8. Have the changes in federal policy and court decisions affected your ideas of tribal sovereignty?

9. Do you think that other people have different ideas about sovereignty and tribal sovereignty?

10. What does it mean to be sovereign in practical terms?

11. What kinds of options, as a federally recognized tribe, do (or did) you have to accomplish your goals?

12. How do you feel that your heritage fits into this fight for water?

13. How have the actions taken by the tribe differed from the ideals you hold regarding sovereignty?

14. The changing nature of federal policy has pushed the tribe to many different strategies over time to achieve its goals. What factors did they choose to take into consideration when deciding to assert sovereignty?

15. How have the priorities of the tribe affected sovereignty decisions in the past?

16. Hostile political climates have long delayed achievements in the past. Do you think that the changing political climates have affected the tribe's approach to asserting tribal authority?

17. Do you think you've been treated fairly in negotiations and settlement?

18. What circumstances or conditions do you think were necessary for the tribe to be successful in the negotiations this time, but were not there in the past efforts to secure more water for Pyramid Lake?

APPENDIX B: CONSULTANTS

Name or Pseudonym	Position	Date of Interview
Alberts, Vince	Tribal Council chair and member	August 7, 2010
Conelly, Mary	Director of Senator Harry Reid's state office	February 15, 2011
Hazelwood, Mickey	Truckee River project manager for the Nature Conservancy	May 15, 2011
Hoffman, John	Special Advocate for the state of Nevada	January 14, 2011
Jardine, Rusty	Project manager for TCID	June 15, 2011
Jennings, Beth	City of Reno Public Works Department	November 1, 2010
Lance, Tom	Tribal Council chair and member	June 17, 2010
Lansing, M.	Regional Planning Commission	February 24, 2011
Marks, Lisa	Real estate manager for the Pyramid Lake Tribe	July 1, 2010
Marshal, Edward	TMWA water engineer	January 18, 2011
Martinez, Valerie	Tribal Council member	September 17, 2010
Miller, Charles	Tribal Council member	July 30, 2010
Oldham, Sue	Primary negotiator for Sierra Pacific	November 21, 2010
Pelcygar, R. S.	Attorney and negotiator for the Pyramid Lake Tribe	February 22, 2011
Phillips, Janet [Carson]	Sierra Pacific and later TMWA	September 13, 2010
Rogers, Stanley	Tribal Council chair and member	December 3, 2010
Thomas, Mike	Tribal Council member	August 17, 2010
Williams, Cecily	Tribal Council member	November 5, 2010
Wood, Mary	Tribal Council member	November 15, 2010

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