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This water is my water this water ain't your water: An easterner looks into the struggle over water between Indians and non-Indians on the Flathead Indian Reservation

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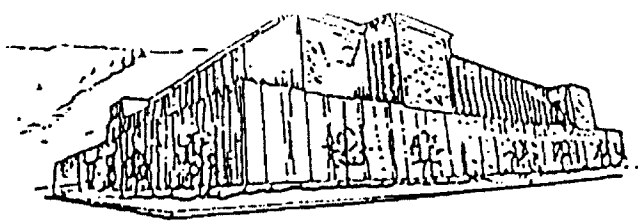
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**THIS WATER IS MY WATER,
THIS WATER AIN'T YOUR WATER**
An Easterner looks into the struggle over water
between Indians and non-Indians
on the Flathead Indian Reservation
A Professional Project

by
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B.A., Brandeis University, 1974

Presented in partial fulfillment of the requirements
for the degree of the Masters of Arts
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ABSTRACT

Matthews, Mark, M.A., May 1995

Water Rights on the Flathead Indian Reservation (50 pp.)

Director: Dennis L. Swibold



Tensions are high between Indians and some non-Indians on the Flathead Indian Reservation in Northwestern Montana because the tribes keep trying to expand their jurisdiction over non-Indian owned land within the reservation.

An issue that brings those tensions to a head is the fight over water rights. A common problem between non-Indians themselves, the question of who gets reservation waters is compounded when the two racial groups vie for it.

This paper explores that issue through the history of the reservation and how non-Indians came to live there; the history of western and reserved water law, and the negotiations between the state and tribes, the process which will determine how water rights will be assigned on the reservation.

During the study, the major participants are interviewed to determine just how race influences the development of policy by both the state and tribal government. These include tribal water administrators, a residents organization called All Citizens Equal, the administrative arm of the Flathead Indian Irrigation Project called the Joint Board of Control, and representatives of the Montana Reserved Water Rights Compact Commission.

The state government has already completed some reserved water negotiations with other Montana reservations. These compacts are discussed and used to demonstrate what the Flathead Reservation may look forward to, not to mention how it differs from the others.

The story is told through the eyes of an Easterner who is trying to figure out why there is so much underlying tension within the communities living in the physically beautiful and serene Mission Valley on the Flathead Indian Reservation.

The sun hits the alfalfa fields on the Rocking Y-3 Ranch about 8 A.M. in the summertime, making moving irrigation pipe at dawn a damp, cool job. But when it finally peeks above the thick backbone of the Mission Mountains, the mosquitoes thin out, the air quickly warms and a beautiful place turns into paradise.

I love this valley, as most people who live here do. Just being here is a special treat in life. To the east the snowcapped mountains, to the north the largest natural freshwater lake west of the Great Lakes, to the west a cold, clear river flanked by sagebrush flats and rolling hills. It's even got cowboys. And Indians.

Sometimes I forget I'm living on the Flathead Indian Reservation, which encompasses 1.25 million acres of high, wide and handsome country. The Salish and Kootenai tribes saved this land for themselves after giving away the rest of Northwest Montana to President Benjamin Harrison in 1855 when they signed the Hellgate Treaty.

I haven't met any Indians yet, but I see them driving around the neighboring towns of Ronan and Pablo once in a while. But, not very often in Polson, the town on the lake. Most of them live on tribal trust land, in the wooded areas in the foothills of the mountains, rather than in the farming valley.

And this moving water around with 40-foot lengths of aluminum pipe isn't as bad as my aching 38-year-old body makes it out to be. Starting near the end of May, the season runs into September. Enough time to earn some decent money.

Although a menial job, it's probably the most important one out West. Has been for a long time, at least since the first white man settled here. From what I've read, the Indians were more apt to move to the water than move it to themselves.

In the West, water makes the difference between desert and farmland, wilderness and civilization, wealth and poverty.

So it isn't any wonder that Westerners fuss over water as Easterners do their cars or back yards. Only difference is, out West no individual owns water, we can only use it. And the arguments over who gets to use it are thick enough without trying to figure out who might own it too.

First come, first use. That's the basic philosophy behind Western water rights. But, most of the arguments are about who came second.

There's a popular Montana postcard put out by the Duckboy Postcard Co. that accurately depicts the essence of the struggle over water rights out West. The caption reads, "Discussing water rights - a Montana pastime." The black and white picture shows two irrigators, standing beside a water ditch, trying to smash in each other's head with shovels.

Of course, in the early days, people tended to prove their points with sixshooters as often as they would with shovels when it came to discussing water rights. If it wasn't cattlemen shooting sheepherders, it was sodbusters shooting at both of them.

And if lawlessness prevailed today, there might be some shooting wars going on between Indians and non-Indians over water on the Flathead Indian Reservation.

Not surprisingly, the Indians want to take over the management of the reservation's water just as they've asserted their jurisdiction over other aspects of reservation life.

After decades of keeping their mouths shut and doing what they were told, the Flathead tribes, like other tribes across the country in the 1970s, began reclaiming rights that had lain dormant since the treaties were signed.

In the mid-1970s they created such a fuss by taxing docks and making up rules for shoreline use on the southern half of Flathead Lake, which is within the reservation boundaries, that the city of Polson sued the government to terminate the reservation.

The case was thrown out, with the court supporting the tribes' jurisdictional claim.

In the mid-1980s the tribes negotiated the second 50-year license with the Montana Power Company for Kerr Dam and its power plant, which are on the Flathead River within the reservation boundaries. While rent for the dam has jumped from \$1 million to \$9 million a year, the tribes will also begin operating and managing the facilities in 2015. They will also have the option to buy the facilities then.

A few years later they applied to Congress and received authority to manage the Mission Valley Power Company which serves the reservation.

And since I moved irrigation pipe on the Rocking Y-3, the tribes negotiated a deal with the state in 1990 to oversee hunting and fishing on the reservation, and sell their own permits.

In 1995 they won the right to set water-quality regulations for the reservation.

They soon hope to take over the management of the National Bison Range in Moise.

Some anti-Indian groups have fought the tribes over each of these, and other, issues. Now some non-Indians fear the tribes aim to control over the water on the reservation, use what they want then tell the non-Indians how to use the rest of it.

If Indians assert all their claims, there will probably be a new stacking of priorities for water rights. And those who lose out, both Indian and non-Indian, will probably hit the warpath like they did on May 29, 1987, when about 300 irrigators encircled the tribal complex in Pablo with their tractors, farm trucks and combines. They protested a court decision that forced the irrigation project to leave enough water in reservation streams to support fish populations. In prior years, especially during drought, some streams were sucked dry for irrigation purposes, tribal officials say.

After listening to officials from the BIA and shouting their dissatisfaction, the protestors peacefully dispersed. Indians say the protest was racially motivated. Non-Indians say it was all about private property rights.

The Indians say the law, which was written by non-Indians to originally protect the rights of non-Indians, is behind them. And the courts have agreed with them thus far on most issues.

As for the water, they were the first ones here, the Indians say. And it's hard to argue with them there.

But, according to the 1990 census, non-Indians make up about 85 percent of the reservation's population. Some non-Indian families have farmed the valley for four generations. Not surprisingly, they too think of the reservation as their home.

Arriving in the valley two years after the tractorcade, I first hear the grumblings about the tribes over the dinner table at a neighboring ranch house after a branding party during my summer as an irrigator. Exhausted by a day of wrestling calves to the ground and trying not to embarrass myself by laying my dusty head on the tablecloth in front of the dozen cowboys, I am roused to attention when the conversation drifts to a subject that affects my life.

"Think they'll shut off the irrigation water early again this summer?" my boss, Phil Difani, asks from across the table, as he brushes muffin crumbs from his thick mustache and pork chop sideburns. Difani bought the Rocking Y-3 in 1981 and generally sympathizes with the tribes. But he still doesn't want to lose his irrigation water to them.

"If they try, I swear I'll blow the damn locks off of the water gates and open them myself," says a man seated at the opposite end of the table. He hits his fist upon the tabletop just hard enough to make a teaspoon hop in the air.

I don't remember his name, but he has one of those Montana faces, crinkled by hours of toiling outside, a face literary critic Leslie Fiedler at first found so visionary and romantic when he arrived in Missoula to teach at the University of Montana, but later judged as best suited for staring into the wind and facing the harsh elements. In other words, he thought Montana ranchers were just dumb working stiffs, too ignorant to be inspired by the beauty of the land. A harsh judgment, I thought, coming from a literary fellow from New Jersey.

"If we hadn't gotten that rain last September, they would have cost me a third cutting of hay," the Montana face says. "And that would have cost me some money, I can tell you."

Now he has my attention. Like most people, when the subject of money rolls around, I perk up. If the water is shut off in August, that means I will be out of work sooner than I'd planned. But, I have no idea what he's talking about. Since everyone else at the table nods their heads in agreement and it seems that anything else said on the subject is going to ruin dessert, I ask a dumb question. "Why are they going to turn off the water?"

Old Montana face squints his eyes shut even further as he turns to me. "To protect the fish," he solemnly says.

"What fish?" I ask.

"The tribes' fish," my boss says quietly from across the table.

"Yeah, the goddamn tribes' fish," Montana face says, as he makes the teaspoon dance a jig again.

Nobody has been out picketing from their tractor seat lately but an underlying tension between Indian and non-Indian on the Flathead Indian Reservation remains. And the longer I live in the area, the more apparent it is .

A state senator tells about 100 anti-Indian demonstrators in front of the Lake County Courthouse that federal policies on Indian reservations conflict with non-Indian property rights. Angry protests erupt during a public hearing with an EPA official about giving the tribe authority to write clean water regulations. A hunter refuses to buy a tribal/state hunting permit and invites the game warden to arrest him. A rancher refuses to purchase a tribal wetland building permit. The state closes down casinos on the reservation because they can't agree with the tribes over gaming terms.

It seems the tribes are being sued by someone every other day.

Yet all the other struggles are small potatoes when it comes down to messing with peoples' water rights.

Many non-Indian ranchers, like those surrounding the Rocking Y-3, fear that if Indians are allowed to control the water, they will financially ruin non-Indians by diverting all the reservation water away from agriculture.

Plus the reservation towns want their drinking water cheap. Sailors on Flathead Lake want enough to keep their yachts afloat at their docks. Rafters want enough to get them through the Buffalo Rapids on the Flathead River. And the power company wants enough water to run its generators. Non-Indian

fishermen may be happy to have water in the streams, but they don't like having to buy an extra permit to legally fish.

Tribal officials say they are not out to bankrupt the farmers or ranchers, nor do they want to drive whites off the reservation.

They say the fears of non-Indians over water and other issues are a continuation of decades of miscommunication and mistrust between the two cultures.

And many tribal officials fear that the miscommunication will continue because non-Indians don't take the time to learn about Indian history and culture. The problem is compounded, they say, as more and more out-of-staters move onto the reservation.

Most newcomers, like myself during that first summer of moving irrigation pipe at the Y-3, won't even think they're on a reservation. Except for two small green signs, one north and south on major roads entering the reservation, nothing differentiates the land from any other part of Northwestern Montana, except maybe an absence of massive clearcuts on the mountain slopes.

And when they first see the bountiful lake, the river that runs for 26 miles through Indian country, the numerous creeks, streams, and ponds, they'll wonder, as I once did, what all the fuss over water is about.

As I began to attempt to sort out this conflict, non-Indians warned me I'd get no information about water from the tribes. That they guard the information like family secrets.

But this proved to be another misconception as a tribal hydrologist casually told me that half a million acre feet of surface water, two hundred thousand feet of ground water, and two million acre feet of lake water pass through the reservation in an average year. Most of the water comes from mountain snowpacks.

On the east coast they'd be irrigating rice paddies with that much water. But in this arid climate with soils that don't hold moisture well, both scientists and resource planners say there will never be enough water for every use.

But it seems to be the agricultural need for water that directly affects most people's wallets since the reservation's economy runs off cattle and wheat.

Except for a few private ditches, most of the agricultural water is delivered via the Flathead Indian Irrigation Project which was authorized by Congress in 1904 to water Indian allotments. However by 1920, the majority of the water users were already white homesteaders.

The project, managed by the Bureau of Indian Affairs, operates more than 1,300 miles of canals and about 10,000 structures ranging from major dams to diversion gates on individual farms. The water reaches about 125,000 acres of land, of which only about 8,000 are owned by Indians.

Power users - both Indian and non-Indian, water users and non-users alike - pay for the project via a tax on their electric bills. Some have called it a classic welfare system for the rancher.

The prisms created by the sun glinting off the sprays of miles and miles of irrigation lines stretched around the reservation is a beautiful and reassuring

sight. It leads many landowners to assume that the state water right that accompanies the deed to their property is valid. But just because the state of Montana issued a water permit to them, doesn't mean the tribes, which are a sovereign nation, have to legally honor it.

And to complicate things further, the tribes aren't exactly sure themselves what their own water rights are. In a year or two they'll be hashing out the details with state and federal officials. The process, which won't begin for a couple of years, may take a decade to complete.

But this final determination will prioritize water rights forever, not just for as long as the grass grows and the river flows as in the old-time treaties.

If Indians coveted water for the same reasons non-Indian do - to use it to make money - an easy agreement to share it might be worked out. But nothing is easy here.

From the non-Indian point of view, land is useless without water. Consequently, the first white man who got to the water, claimed its use and protected it with his sixgun. The state still divvies up water that way - first come, first use. That status quo remains intact indefinitely until a particular use is terminated. Then the next in line can use it. In the meantime, latecomers wait their turns. If a creek runs dry before it reaches them, tough luck.

Now Indians, at least those culturally attuned to the traditional Salish and Kootenai ways, don't necessarily believe that resources exist for the sole purpose of being extracted and turned into cash. Clarence Woodcock, the softspoken keeper of the Salish cultural treasures in St. Ignatius, says a spiritual

order exists in which every facet of nature, including water, is dependent upon the whole.

Woodcock has helped transcribe many oral histories of the Salish elders in his capacity as director of the Flathead Culture Program. He says the Salish people view water as a vital force that cannot be relegated to a specific function like making alfalfa grow or generating electricity.

"The words I've heard the elders speak is that everything is one," he says. "That we're all connected in one way or another in the spiritual sense. That includes not only the people, but also the animals, the forces of nature, the water, the trees, the grass. Everything. We're all one, and we help each other. That's the way it is."

A good philosophy for environmental studies students at the University in Missoula, but a tough sell to a rancher trying to raise enough cash to meet the next mortgage payment.

A trip to the University of Montana law school library to do some research on Indian reserved water rights befuddles rather than enlightens me, but I think I understand the conflicting issues.

Ranchers say the government promised them water to go along with the lands sold on or around Indian reservations.

The Indian say they were guaranteed use of the same water under the treaties which set up the reservations.

As far as I can tell, the U.S. Supreme Court settled the issue in favor of the Indians in 1908 with the Winters Doctrine.

Around the turn of the century, enterprising farmers and ranchers in the Milk River basin diverted water into irrigation canals to offset the effects of drought that consistently hammered the area. With irrigation, crops flourished, people remained on their homesteads, and surrounding towns prospered.

The only problem was that their efforts effectively cut off the water supply to the Fort Belknap Indian Reservation.

So in 1908 the U.S. Government, trustees for the Assiniboine and Gros Ventre tribes who live there, sued the irrigators. The case eventually went to the U.S. Supreme Court, which handed down the most important decision on Indian water rights in history.

Called the Winters Doctrine, the ruling said that water had been reserved for Indians along with reservation lands, even though specific terms were not spelled out in the treaties.

After all, the court reasoned, if reservations were originally set up to be homelands to help turn Indians into farmers, then water played an essential element in achieving that goal.

The judges also acknowledged that Indians knew the value of water in their arid homelands and wouldn't have been foolish enough to sign a treaty unless they assumed water would be provided.

The case also established that Indian water rights were reserved forever, even if the water wasn't continuously used for the white man's idea of a

beneficial purpose, thus contradicting the traditional Western appropriative policy of use it or lose it.

Also, under the decision, Indians were given prior rights to the water up to the day the treaty was signed, or, if the reservation was on traditional homelands, from time immemorial. In other words, the justices acknowledged that, although not citizens of the United States in 1908, the Indians had been the first to live on the land and use the water, even if it was just to drink it and water their horses. They were first come, but last served.

Consequently, all appropriated water rights claimed by settlers who arrived after the day the treaty was signed were junior rights.

Moreover, the court said that state laws that came after the treaty dates did not supersede the Indian reserve rights. This assured that the federal courts and Congress would continue to formulate Indian reserved water policy.

But the battle over water at the Fort Belknap Reservation and others across the nation continues. The reason is that the states continued to acknowledge non-Indian claims to the same waters, while the federal government continually changed the rules of the reserved water rights game.

Worried more about developing the nation's industrial and agricultural strength in the twentieth century than it was about the Indians going broke on their arid reservations, the feds didn't give much thought to the water issue after the Winters Decision until the 1960s when water from the Colorado River was diverted to California, leaving Indian reservations in Arizona high and dry.

In 1963 the courts decided it was time to figure out just how much water Indian reservations were entitled to. Their verdict: enough water to irrigate "all the practically irrigable acreage (PIA)" on the reservation.

The decision was later interpreted to mean that a tribe did not necessarily need to use that water for agricultural purposes to keep it. In fact, it could use any part, or all of it, for industrial, recreational, or other purposes that promoted self-sufficiency. They could even sell it to buyers downstream.

But that decision settled nothing. In fact, in the 1970s things got more complicated when the states were allowed to stick their noses in the reserved water rights process.

In 1976, both the United States and the state of Colorado sued the Colorado River Water Conservation District, and the U.S. Supreme Court told the feds to abstain in favor of the state litigation.

As a precedent, the court cited the McCarran Amendment, a 1952 law which allowed state governments to join the U.S. in any suit pertaining to use of water of a river system, or to the use of water which the federal government owns. Since the government has, since colonial time, been the legal guardian for Indian tribes, it legally owned the rights to Indian waters.

This decision allowed Montana to set up its Reserved Water Compact Commission, a nine-member team composed of four private citizens, four legislators, and the deputy attorney general. This commission will eventually try to straighten out the mess on the Flathead reservation.

The commission has already agreed on pacts with the Fort Peck and Northern Cheyenne reservations, while negotiations are proceeding smoothly at the Rocky Boy and Fort Belknap reservations.

But those reservations, except for Fort Peck, were never opened to non-Indian settle like the Flathead. Consequently, negotiators predict a long, hard-fought battle on the Flathead.

Which leaves me wondering just how did non-Indians come to own almost half a reservation that was expressly reserved for the Indians after they graciously ceded more than 22 million acres of land to President Benjamin Harrison.

So just how did the white man gain a foothold on this last precious segment of the Salish and Kootenai homeland. Why steal the land of native peoples who once proudly proclaimed that they never once killed a white man in war?

That thought's on my mind as I approach the Jesuit mission at St. Ignatius where the imposing brick church is complemented so well by the craggy peaks of Mount McDonald looming to the east.

Inside the vaulted church, built during the 1890s, occasional visitors wander the carpeted aisles with upturned faces viewing the colorful frescoes that were painted at the turn of the century by Brother Joseph Carignano, who also served as the Mission's cook and handyman. A sea of robins egg blue

surrounding the drama of the angels, archangels and gods in the frescoes gives the church a feeling of tranquility.

Two paintings, the only articles differentiating this from most other Catholic churches, hang on the rear wall. One depicts the Virgin Mary with the baby Jesus, the other is of the Blessed Heart. Both Mary and the adult Christ with the heart aflame are Indians, dressed in traditional buckskins and blankets. Jesus wears a headdress, Mary a single eagle feather. The baby Jesus demurely peeks out of a papoose on Mary's back.

The Salish first heard of the Jesuits, or black robes, from Iroquois Indians who visited and occasionally lived with them in the 1800s. The first Indian agent on the Flathead Reservation, Peter Ronan, in a history of the reservation, wrote that, "A great desire arose in the hearts of the Flathead (Salish) tribe to learn more about the word of God and to have missionaries among them to instruct them in religion."

But as usual, the Indians tell another story. According to the official tribal history, the Iroquois told the Salish the black robes possessed a power. The Indians interpreted this as a power that would help them defeat their hated enemies, the Blackfeet.

The Indians were prepped for the arrival of the black robes by a vision that a man named Shining Shirt had experienced after his parents died during a buffalo hunt. While in the mountains praying, Shining Shirt dreamed of men dressed in black robes who brought a magic power to his people. The Indians mistook the Jesuits' black robes for fulfillment of the vision.

Outside the church I stroll through a log cabin, the missionaries first home in St. Ignatius, now a museum. While inspecting a wooden figure of Christ carved by the legendary Fr. Anthony Ravalli, S.J., who also served as a doctor throughout the mining camps of western Montana in the late 1800s, I eavesdrop on a conversation between the museum's curator and some visitors.

The curator, eager to talk, asks if anyone has any questions. When she finds everyone lives in Montana she tells some of the funny questions the tourists ask.

As everyone chuckles at the out-of-state foolery, I get tired of the provincialism. Even though I've been living in Montana a few years now I still don't know much. In many ways I'm still a tourist. So I ask the question that's been bugging me since I moved pipe on the Rocking Y-3.

"How did all the white people get land on the Reservation?"

The woman patiently smiles and looks over the rims of her glasses at me, immediately spotting me for a transplant.

Sighing, she cheerfully replies, "The Indians invited us to come live with them and teach them how to farm and ranch and live like the white man."

Sitting knee to knee with me in his cramped, closet-sized office at Salish and Kootenai Community College, Ron Therriault has a good chuckle when I retell the Mission anecdote.

He's all too familiar with Montana Sen. Joseph Dixon's Flathead Surplus Act of 1904 and how it cut up the reservation and allotted 80 acre parcels of

farm land or 160 acres of range land to individual Indians, and then opened the surplus land for sale to whites.

Congress, like the curator at the Mission, said they were trying to bring the Indian out of the dark ages and civilize him by teaching him to farm. But Therriault says there was a hidden agenda to strip the Indians of their last vestige of power - their communal land.

"If they could allot land individually to Indians," he says, "at some point there would be no need for the reservation because every Indian would have the land he needs.

"Plus, Congress, at that time, felt that individual ownership of land was the pillar that normal society was built on. But for the Indian it is the communal ownership of land that gives him strength. The U.S. argued the point that as long as the Indian has this value of communal ownership, then he has strength."

But the Hellgate Treaty, which set up the reservation in 1855, says nothing about selling surplus land on the reservation to non-Indians. It only stipulates that the President may, at his discretion, from time to time assign allotments of land to individuals or families.

Therriault says it was just another case of the government slipping a fast one by unsuspecting Indians. "Dixon had it opened on the basis that our treaty was the same status as the Omaha treaty which had a page and a half clearly stating how the reservation would be allotted and opened up," he says.

"Hell, we didn't even know what a Omaha was."

Just what the Indians lost was lamented by a group of full-blood elders back in 1947 during a study group with a professor from the University of Montana. Paul Charlot, son of Chief Charlo, described a valley teeming with livestock and wildlife.

"Before they opened up the reservation I could go anywhere and see cattle and horses all over the reservation," he said. "The cattle were plentiful. Everywhere you looked there was Indian horses mixed up with the cattle. They even had buffaloes, and they were the Indian's buffalo.

"Ever since they threw the reservation open we all went broke and the stock disappeared. There wasn't an Indian among the tribe who was poor like they are today. They had too much stock and they could not take care of it on the allotments that they got. So the Indian just gave up his ambition and sold their stock and got poor."

Therriault's father, Paul, was among those who lost the family allotment even though his land, like all others, was supposed to be kept in trust by the government for 25 years. After that time, Indians were to receive a deed for the land, become U.S. citizens, and begin paying taxes.

Few held onto their land that long thanks to a number of amendments to the allotment act. Under one amendment, if an Indian said he knew enough about the white man's ways to control his own financial situation, he was allowed to do things like lease his land or borrow money from local merchants.

The Indian who did so was declared "competent." But these none-too-competent Indians, who could sometimes barely understand or speak

English, were soon in debt to merchants who confiscated their allotments. The merchants in turn sold the original Indian allotments to non-Indians so that today, only 50 percent of the 1.25 million acres of the reservation is owned by the tribe, little of which is good farm land.

"My father sold his land because he was looking for a good weekend. But at least he got out of hock," Therriault says, shrugging off the memory of his family and the loss of half the reservation.

He shows little emotion when discussing the subject. He doesn't need too. If people look, they will see the abuse, and the honest ones will acknowledge it.

"For the non-Indian we were supposed to be a vanishing race," he says. "Only we didn't vanish. But as long as the white man maintains that notion that we vanished, then we become invisible to him."

Today Ron Therriault holds the deed to his own land and pays local and state property taxes. Many tribal members do not pay property taxes because they put their land in tribal trust status. Therriault has that option, but he chooses not to use it.

"I enjoy paying property taxes," he says, "because it gives me the right to go to the county commissioner and tell him what's not right."

It is the completely opposite sentiment, not being able to participate in a government, that turns non-Indian ranchers like Del Palmer against the tribes.

"I can't vote in the tribal council election," the white haired, 74-year-old rancher says. "And I can't run for tribal council. All because of my race. Now that's taxation without representation.

"And if that's not racism, what is?"

After juggling the term Native American and Indian for a while, Palmer asks which is the politically correct term nowadays. He makes it clear he is not a racist, pronouncing the word "raschist."

But he isn't ready to give the Indians a chance to prove they can manage anything better than the state or federal governments, whether it be the National Bison Range or his irrigation water. He just thinks it is un-American that a minority of people, the Indians, should rule the majority, non-Indians.

Palmer's pink four-room home is cozy and neat. Potted plants flank the windows, while a stuffed owl and ring-necked pheasant decorate the living room. Pictures depicting four generations of the Palmer family are taped to a wall.

At a Formica table, Palmer studiously scrutinizes the local newspaper for any news on the tribes attempting to expand their jurisdiction over private landowners. A copy of the U.S. Constitution lies at his elbow.

The broad-shouldered, barrel-chested rancher, whose family moved to the reservation from eastern Montana in 1933, feels the Mission Valley is as much his home as any Indian's. He concedes the tribes should control their own lands and members, but they should have no jurisdiction over state, federal or

private lands. "Those lands were sold and the tribes were well paid for them," he says.

In the coulees of Palmer's ranch stand rows of towering weeping willow trees that he planted. He has also nurtured plenty of brush for birds and wildlife, especially ring-necked pheasants and Hungarian partridge. It is an alluring ranch, and Palmer is rightfully proud of it.

The crown jewels of his ranch are two spring-fed ponds that he dredged in the late-1960s, a few years before the tribes passed their wetland ordinances. The ponds, which offer nesting refuge to Canada geese, mallards and canvas backs, are stocked with five species of fish.

If Palmer wanted to dredge the ponds today he would have to apply for a wetlands permit from the tribes, which he would refuse to do. "I'd probably be dragged into court again," he says.

He has already been to court four times for shooting ring-necked pheasants on his property without a state/tribal hunting permit. The first case was dismissed. In two others Palmer was found not guilty by a jury of his peers. After bagging another pheasant in a hunt that he announced beforehand to state game wardens last fall, Palmer's fourth trial began this spring.

To fight the expanding tribal jurisdiction Palmer helped form a group called Montanans Against Discrimination 20 years ago. After a member suggested the group stand for something rather than be against everything, the group changed its name to ACE, All Citizens Equal.

Despite the fact the organization has a mailing list, Palmer says no official rosters are kept on ACE memberships. He estimates at least 1,200 reservation citizens belong to ACE. "There'd be more too," he says. "But the tribes use intimidation to keep people out, especially the local businessmen who deal with the tribe."

Tribal officials estimate there are only about 300 hardcore anti-Indian citizens living on the reservation.

ACE is affiliated with a national anti-Indian group named CERA, Citizens Equal Rights Alliance, which was founded by William H. Covey, a former resident of Big Arm, Mont., and former spokesman for ACE.

CERA's executive and advisory board lists members from almost every state west of the Mississippi, as well as New York. And a look at CERA's official position paper on tribal jurisdiction shows close philosophical links to Palmer's group.

One of CERA's affiliates in Wisconsin, which is fighting the tribes over fishing rights, has been linked to anti-Indian racist literature that was distributed in the state.

Last March, about 50 ACE members, many of them older ranchers like Palmer, attended a meeting in Polson to lambaste an Environmental Protection Agency spokesman over the EPA's recent decision to allow the tribes to develop water-quality rules for the reservation.

The ranchers fear the tribes will try to enforce water quality regulations that might hinder traditional agricultural practices, putting a financial burden on

them. Particularly irksome to ranchers is a federal Clean Water Act regulation that allows tribes to protect water sources used for religious and cultural purposes. Although it has never happened, the ranchers fear their agricultural income may be sacrificed in some instances for Indian spiritual values.

At the meeting, members of ACE repeatedly grilled EPA spokesman John Wardell about federal Indian policy and the government's "undermining of democracy."

Palmer's allegations that the water-quality decision was made in favor of the tribes because EPA's regional administrator, Bill Yellowtail, is a Crow Indian, elicited clapping and catcalls from the crowd.

At the meeting that Missoulian reporter Ron Selden described as "racially tinged," Palmer said, "Let's quit looking at (the tribes) as a sovereign government. There's no way 85 percent of the population will live under the thumb of 15 percent of the population."

But by basing his argument on racial grounds, Palmer exposes the fundamental flaw of his logic and rationale for fighting the tribes, says former tribal attorney Pat Smith.

"These anti-Indian groups say that what makes the situation on the reservations distinct is the racial aspect," Smith says. "But it's not a racial issue at all. It's a political issue between three governments: state, federal and tribal.

"Palmer is the one couching it in terms of a racial issue in an attempt to sidestep the sovereignty rights which were granted to the tribes by Congress."

But Palmer refuses to budge from his racial stance when discussing the issue. When asked if he would expect to have the same rights as a Canadian citizen if he moved to the Canadian province of Alberta, he shrugs off the question, saying the analogy has nothing to do with the situation on the reservation. Yet, by extending his logic, if a congressionally approved treaty with the Flathead nation can be ignored, why can't the U.S. ignore the treaty that delineates the international border and annex Canada?

When pressed, Palmer resorts to an argument that completely ignores 200 years of history and turns Indians like Ron Therriault into ghost spirits, bad memories that many whites do want to consider.

Palmer's solution to the problems on the reservation is simple.

"The sole answer to this problem is termination of the reservations," he says.

Palmer's group, ACE, has many supporters around the reservation, but its closest cousin and one that causes even more consternation for the tribes than ACE, is the Joint Board of Control, the administrative arm of the Flathead Indian Irrigation Project.

JBC administrative assistant Bill Slack offers me a cup of coffee and a friendly, but cautious, greeting in the board's storefront office on the main street in St. Ignatius, about half a mile from the old Mission.

Slack pointedly avoids any sign of emotion as he discusses the goals of the JBC. Keeping his voice flat, he chooses his words carefully, using only the soft tap of an index finger on the tabletop to emphasize a point.

Chartered under state law in 1981, the JBC issues bills to irrigators for the operation and maintenance of the reservation's three irrigation districts. It does not run the Flathead Indian Irrigation Project, does not own any of the project's equipment, nor does it hire any of its workers.

However, the JBC says it is legally entitled to take over management of the irrigation system from the BIA, because the construction costs for the project have been paid back to the U.S. Government through a tax on Mission Valley Power Company clients.

The JBC has sued the BIA a number of times to take over the project, but it has lost every case. Now, its director, Alan Mikkelsen, plans to get the authorization to take over the project directly from Congress.

The JBC also thinks it should be able to manage the water to assure that farmers and ranchers aren't left high and dry.

The tribes don't necessarily want to run the dilapidated project, which one report said loses 55 percent of its water through seepage. They are content to let the BIA run it.

But the tribes will never let the JBC have any say about how the water is managed. If the JBC ever gets control of the water, tribal officials fear the irrigation project would revert to draining the creeks dry again, as it did in the 1980s, according to tribal officials.

The tribes took steps to stop that practice in 1985, a drought year, when they sued the BIA to keep enough water flowing in reservation creeks to safeguard the natural fisheries as guaranteed in the Hellgate Treaty. The treaty granted the tribes "the exclusive right of taking fish in all the streams running through or bordering said reservation." Obviously you can't have fish without water, the court concluded.

But this upset the traditional water allotment process for the reservation. The following summer, when water allotments were reduced to irrigators to keep water in the streams, the JBC sued the BIA to come up with a different way to divide the water, because non-Indian water users hadn't been consulted.

The federal District Court agreed with the JBC, but the ruling was overturned by Ninth Circuit Court of Appeals, which affirmed that "one of the essential purposes in creating the reservation was to preserve the Indian's right to fish." That meant the fisheries took precedence over agriculture.

The U.S. Supreme Court later upheld the ruling.

Despite the clearcut ruling, the JBC has sued the tribes over the same issue every year, except in 1993 when it rained a lot.

The following scenario is what has the JBC and most water users, even Indian irrigators, nervous.

Say a stream has a water flow measuring 100 cubic feet per second (CFS), and the amount of water required to preserve the fishery is 50 CFS of water. Since the instream flow, protected in the Hellgate Treaty, is the most

senior right, that leaves only 50 CFS of water to be divided among all junior rights.

If the tribes lay claim to the remaining 50 CFS under the Winters Doctrine, they must divvy up the water for use on tribal trust lands first, then to the original Indian allotment lands, many of which now belong to non-Indians. At the bottom of the list are those surplus lands that were originally sold to white settlers in 1910.

So, there's going to be a stacking of priorities, and if there's not enough water, the newest guy on the block loses out.

Tribal attorney John Carter, a non-Indian, knowingly laughs when he goes to get some court cases I've asked to see at the legal library in the Salish-Kootenai tribal complex in Pablo. When he places the three-foot-high stack of thick binders on the table before me, I laugh too.

Carter, like JBC's Slack, is friendly but also cautious. With all the mistrust between the two, I feel like a secret agent though I'm not affiliated with either side.

Since 1983, the JBC has filed 21 suits against the U.S. Government to which the tribes have intervened to protect their interests. From 1983 to 1993, the JBC spent about \$1.5 million on the suits. At least that was the tally of tribal attorneys who added up JBC's cancelled checks which are public records at the Lake County Courthouse.

Since the JBC has never won a case it brought against the tribes, tribal lawyers see it as a senseless waste of money.

"It's like pouring money down the drain," John Carter, a non-Indian tribal attorney says.

The JBC gets its funding from an administrative fee to irrigators of \$2.65 cents per acre. After paying its four employees, the rest of the money is used to bankroll the lawsuits.

"If they put that money back into repairing the irrigation system rather than using it to lose lawsuits, they might have more water to work with," Carter says sarcastically.

But the tribes, weary of being forced to squander their own resources in court, view the JBC as a relentless fly that, although having done little harm, is annoying. So in 1993 they attempted to swat down the JBC, taking it to court saying it violated federal racketeering laws and the Civil Rights Act.

The tribes contend that administrative fees collected by the JBC from tribal members and the tribes themselves are used to obstruct tribal interests.

Because the JBC spends little money on irrigation itself, tribal attorneys say it "schemes to defraud or to obtain money or property by means of false pretenses, representations or promises."

The tribes compare the JBC to labor unions, which under the Organized Crime Act, cannot collect dues from their members and then turn around and use that money to espouse political views contrary to those held by members.

Under the Civil Rights Act, the tribes say tribal members who own land in the irrigation districts have lost their freedom to associate or disassociate with the JBC, which they say is a political entity.

The judge dismissed the organized crime argument, saying the irrigation officials were exercising their right of free speech in formulating and carrying out governmental policies for the irrigation districts.

Happy to win a case against the tribes, the JBC showed some signs of reconciliation with an article in its newsletter. Noting that the tribes will now have to recognize JBC as a legal government entity, it said, "Hopefully we can start to work together on irrigation and water issues."

But the tribes aren't ready to lay down the fly swatter yet. Wary that the JBC will continue to challenge any jurisdictional gains the tribes make, such as the clean-water authority, they have appealed the Civil Rights part of the suit.

After talking to all the players in the scramble for water rights on the reservation itself, the outlook for compromise seems glum.

Both Indian and non-Indian say they want the same thing: to have their water rights recognized and protected, and to manage the water on the reservation. The only problem is they want to do it with the same water.

The tribes could continue the fight in the state water court, but a victory there depends as much on the talent of lawyers and the disposition of the judge as it does on fairness and justice.

So rather than roll the dice in court the tribes have opted to negotiate with the Montana Reserved Water Rights Compact Commission. That's a good move, according to Susan Driver, a legal counsel with the U.S. Department of Interior in Portland, Ore.

"Adjudication can take forever," she says. "And sometimes what you end up with is a piece of paper saying you have a right to the water, but no way to get at that water. What most tribes need is wet (usable) water, and through negotiations they can sometimes get money to help deliver that water."

So far, since 1978, Congress has authorized 13 negotiated Indian water settlements nationwide. Two of those settlements were for the Fort Peck and Northern Cheyenne reservations in Montana, leaving five more in-state reservations to be attended to.

Negotiations between the state and the Rocky Boy's and Fort Belknap reservations have already begun.

The Blackfeet tribe, because of its high number of "practically irrigable acreage," a yardstick for quantifying Indian reserved water, has decided to try its luck with the water court.

The Crow Reservation, like the Flathead, is a checkerboard of non-Indian farms and ranches and has been given low priority by the commission because of the same difficult situations as on the Flathead.

Those furthest from the situation, the people on the state negotiating team in Helena, are more optimistic about working things out than the tribes or

the irrigators. Their confidence stems from the success they've had so far in satisfying both Indian and non-Indian participants.

They are particularly pleased with the Northern Cheyenne compact, as are the Indians themselves.

For years engineers have warned that the Tongue River Dam might wash out, leaving the state liable for an estimated \$5 million in damages. The tribe was able to use federal money for dam repairs as a bargaining chip to get the state to agree to give them 90,000 acre feet of water they wanted, even though its historic "practically irrigable acreage", is minimal.

According to Cheyenne tribal attorney Cal Wilson, all parties won. "The tribe used the dam to get their water," he says. "The state used the tribe to get money to repair the dam. Everybody used each other, but in a good way."

In the meantime, all non-Indian existing water rights were protected. And the Northern Cheyenne got management of all water on the reservation.

Assistant Attorney General Harley Harris, who was on the state negotiating team, says the Northern Cheyenne timed negotiations well because the new conservative Republican Congress may not be handing out money so freely to help settle Indian water claims.

"I think they (Northern Cheyenne) realize they took advantage of a window of opportunity for Indian water rights, especially ones that are funded," he says. "That window may have closed last Nov. 6th."

Meanwhile, at the Fort Peck Reservation, near the northeastern corner of the state, Tribal Chairman Caleb Shields is also satisfied with the compact he

helped negotiate for the Assiniboine and Sioux tribes. The reservation, which borders the northern shore of the Missouri River, got the 1 million acre feet of water it was looking for, some of which it may sell to downstream water users.

"I think we benefitted by being the first tribe the state negotiated with," Shields says. "I think they wanted to show they could successfully negotiate with Indians."

The compact with Fort Peck, another checkerboard reservation, also established a permanent board to resolve future disputes over water.

But unlike the Flathead, Fort Peck does not use water to generate power, nor does it have a massive irrigation system feeding water to reservation ranches.

The major issue on the Flathead will be control of the water, and the state is not looking forward to trying to find a common ground between the tribes and the irrigators when negotiations begin in earnest in a few years.

Montana Deputy Attorney Chris Tweeten, well aware of the animosity that's been stewing on the reservation for years, hopes he'll meet some farsighted leaders at the negotiating table. Tweeten, chairman of the compact commission, compares the situation on the Flathead to that in the Middle East.

"There's a long history of hostility that requires some softening of positions on both sides," Tweeten says. "I don't predict it's going to happen, but I think it's certainly within the realm of possibility.

"If the Arabs and Israelis can get together, then anything's possible."

Harris, the commission's negotiator, agrees. "What you're seeing today is a manifestation of years of policy, which began 100 years ago, going in one direction for the substantial non-Indian population. Now, their property and political interests in water and the management of water are being threatened. This poses a threat to their historical hegemony.

"My frustration is that it's a 100 years in the making and it's not going to be resolved overnight."

But the forecast for long negotiations doesn't faze Clayton Matt, the tribal water administrator. Matt thinks it is time to change from the Western individualistic exploitative philosophy that has brought woe to so many regions of the West this century -- non-Indian, as well as Indian -- to a more communal, holistic approach, no matter how long it takes.

Both the state and the tribes have a somewhat dubious record of managing resources and protecting the environment. The state refuses to give its water and air quality departments enough staff to monitor offenders, plus it recently loosened water quality standards on some streams for mining purposes. On the other hand, the tribe once ran a sawmill that leached pollutants into the Flathead River.

But Matt says a soon-to-be-released tribal management resource plan will make sure that never happens again. He says the plan will monitor how each use of a resource will affect all others. For example, before a tree is cut, managers will study how it will affect the surrounding vegetation, the soil, the wildlife, the water? If they see an adverse impact, the tree won't be cut. The

tribes' recent refusal to extend a lease for a Exxon and Conoco gasoline pipeline cutting across the reservation because of a history of leaks may be an example of the new approach.

Matt agrees with state negotiators that it may take at least a decade before the final battle over Flathead water is settled once and for all. But he is in no hurry. He is not only secure in the sovereignty of his people over the reservation land, but also their legal right to watch over the wildlife, the fisheries, and the water as well.

He has seen non-Indians come and go from the valley, but the Indian will always be here.

"We've waited 100 years," he says. "We can wait another 10."

As I pull into the ranchyard of the Rocking Y-3, two young boys come bombing out of the house to greet me. As they race toward the gate of the picket fence they could easily be mistaken for Indian youths because of their brown skin and black hair. But upon jumping up for a hug, their round doe-sized eyes radiate their South American heritage. Gabriel, seven, was born in Mexico, while his brother Miguel, eleven, is from El Salvador.

Next out of the house are their ashen-haired, pale-faced teenaged sisters, Katya and Chipeta, the natural daughters of Phil and Holly Difani.

In 1981, the Difanis moved from a mountain ranch near Aspen, Colorado to this 2,500 acre spread that straddles the north slope of the Valley View Butte in the middle of the Mission Valley, about 5 miles south of the Kerr Dam. The

Rocking Y-3 incorporates a number of fee patent allotments that were sold to white homesteaders in 1910.

During the summer the mother cows and their calves, plus a half dozen bulls, range the natural grasslands on the butte, while the flatland fields are irrigated for alfalfa and hay. Phil Difani was one of the first irrigators in the valley to convert from electric pumps to a more efficient gravity fed irrigation system. The water is self propelled into the sprinkler system by the long run down the hill from a ditch that traverses the midriff of the butte.

The horses, milk cows, sheep, goats and llama graze in paddocks in front of the house. The farmhouse, barns and stables nestle at the foot of the butte beneath an old plum, apricot and apple orchard. Behind the house, near the sheep paddock, is a stack of wood and a wickiup sweat lodge. Near the driveway, the soil of the large vegetable garden, freshly turned, awaits planting.

A visit to the Rocking Y-3 is more than a homecoming for me. After listening to all the rhetoric and pessimism in my study of the struggle for water and power on the reservation, the ranch is like a sanctuary. It's a busy, optimistic world where people work hard to get by and aren't always looking over their shoulders to see how their neighbors are prospering.

After talking to Phil Difani for a few minutes, I realize the answer to the riddle of power and water in communities like this, resides at people's homes, not in governmental or organizational offices.

After the greetings, the boys race off to the chicken coop to collect eggs, while the girls go feed the sheep and goats. Difani and I head into the house where he's cooking dinner.

"Been a single-dad for a week now while Holly's visiting family in Colorado," he says.

Difani has no Indian friends, he explains as he dices some potatoes for the beef stew, made with homegrown meat. "Just haven't run into any, I suppose," he says. And, except for a visit to a pow wow or two, he says he isn't very culturally influenced by either the Salish or Kootenai.

But he, like Del Palmer, is fully aware that he is living on a reservation. However, unlike people like Palmer, he is ready to accept the stipulations which come with that privilege.

"This is their place and they have certain rights over the resources and wildlife that were guaranteed through the treaty," he says, after sipping the beef broth. "And until Congress decides to take the reservation away from them, it's theirs."

Difani, who still sports thick pork chop sideburns and a mustache he wore when I moved irrigation pipe on the Y-3, seven years ago, considers himself a moderate when it comes to reservation politics. He once ran for a seat on the Joint Board of Control, but didn't do much politicking and lost.

"I could talk a good talk, but I didn't have the energy to address the issues," he says. "The real reason I ran was that only one other guy was running and I wanted to make an election out of it."

Like many residents of Montana, Difani is a transplant. Raised in California, he worked summers as a smoke jumper in Missoula and winters in the mines in Butte. He and his wife, Holly, married after meeting while hiking in the Grand Canyon, and started raising cattle on the Colorado ranch where the girls were born. They adopted Miguel and Gabriel after moving to the Y-3.

Although he says the tribal government isn't affecting his life any differently than the state government would when it comes to issues like instream flows or water quality, it doesn't mean Difani is happy with everything the tribes do.

"I don't like their decision making process," he says. "The tribes make decisions without getting any public input and they end up stepping on a bunch of toes.

"I don't think they're acknowledging the reality of the situation with the non-Indian majority being here."

When the kids return from chores there is a slight pandemonium of action as toys are pushed aside, the table is set, and dogs marched outside. Amidst the orders to children and animals Difani keeps up a running commentary on reservation politics.

One thing he makes clear is that, as an irrigator, he is beginning to feel out of touch with the JBC. "The JBC says they are saving us money and getting us more water by spending all that money on those court cases. But I don't follow their rationale any more.

"I feel the irrigators are caught in the midst of a power play between the JBC and the tribes."

Although Difani would like to see the irrigators gain control of the irrigation project, he points out that the JBC hasn't produced any budget explaining how they'd run things more efficiently or where they'd get the money to repair the infrastructure.

"I'm getting tired of all the legal sparring," he says. "It just isn't taking us anywhere."

However he is adamant that he doesn't want the BIA to run the project any longer.

"They are completely incompetent," he says.

As for the tribes taking over the project, he thinks he could live with that proposition.

"If the tribes do get control of the project, at least the buck will stop in Pablo, and not be shuffled off to Portland or Denver or Washington when you have a complaint. That's the good thing about dealing with the tribes and not the BIA."

Difani has heard all the rumors about the tribes wanting to run the whites off the reservation by cutting off their water and taxing them with heavy user fees in other areas like recreation and hunting. But he doesn't buy into them. He even thinks leaving instream flows to protect the fish is just.

For him, the secret for success for making sure everyone gets enough water in the future is cooperation between the tribes and non-Indians.

"If we can get together with the tribes on the water thing we'll probably be better off since Congress is more liable to give money to a project that shows Indians and whites getting along with each other," he says.

But the stew is ready now, glasses of milk are already poured and hungry kids are seated at the table. It's time to forget politics and concentrate on important things, like what was studied at school that day or who hit the home run during recess. As he sets the stew on the table, Difani offers one last observation.

"The Indians were ripped off to begin with, but that was in 1910," he says. "I don't particularly feel responsible for what my grandfathers did back then.

"But from the Indian point of view, I think they feel their grandfathers gave too much away and they don't want to do it again.

"That's why a moderate Indian whose willing to compromise with the non-Indians has no chance of winning an election for the tribal council today.

"I just wish the tribal government would open up to the non-Indians more."

With that statement the children reach for our hands to form a chain around the table for a silent Quaker blessing. Small brown hands, tender white hands. Color seems to make no difference once you're holding a hand.

It's a simple lesson I wish I could bring to those officials, administrators and organizers who are so intent on protecting the interests of their constituents. Maybe it's time they show as much zeal in protecting the interests of the opposing party as well.

Indians have experienced overwhelming oppression in the past. They were forgotten, considered non-beings, became invisible. Now they are asserting rights and many non-Indians living on the reservation now fear that same oppression will be turned on them, as they are sacrificed by their elected officials to right the wrongs of their grandparents.

But if more non-Indians acknowledged the past, Indians would become real people again. No longer ghosts, they might be more inclined to acknowledge the lives and aspirations of non-Indians when making decisions on their land.

This valley is too beautiful to be defiled by more human strife, no matter what color the participants skin is.

White hands, brown hands, black hands, yellow hands. They all can feel the coolness of water, they all can form the sacred chalice that carries the water, and life, to lips. These are my thoughts as the squeeze of hands pulsating around the table signals the end of the prayer, and we reach to pass the food around.

"They're turning on the water in a couple of weeks," Phil Difani says, as he ladles stew into Gabriel's bowl. "You want to come back and move pipe this summer?"

The children all look to me with anticipation in their eyes, but although my heart says yes, I decline.

There's too many more stories to unravel. Too many people to meet.

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