

Native Water Enforcement From the Grassroots Up

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Indigenous peoples have endured a displacement of grand proportions and continue to adjust to the encroachment that followed colonization. Today, among remote tribal lands, a great deal of natural resources, including minerals, lumber and fisheries lie within their territories. The situation is misleading though: loss of traditional economics has forced an unavoidable burden on equating these resources with wealth, increasing with respect to surrounding population growth. Tribes existing in more populated areas, such as the eastern seaboard, have already suffered the consequences of expansion. In these cases, environmental policy on a nation level is usually missing and individual stewardship of land is the more common rule. I believe a variety of other social factors have influenced this change and one could certainly get into a discussion of human behavior, philosophy and economics, which is not the intent of this article.

Because Indian reservations exist as sovereign nations within a single, larger sovereign nation, considerable effort must be made in order to preserve identity. An important component of identity for native peoples is their environment, and so environmental questions have a direct relevance to the continuance of identity. In the past, native governments questioned any action at any level as to whether unborn generations would be affected. This required much deliberation and discussion which, in turn, took time. The rapid growth of industry has given modern native governments insufficient amounts of this time to deal with relevant questions in a traditional manner. As a result, native governments have either had to make uninformed and rushed decisions on issues affecting native lands or be completely excluded from the decision-making process. Today, many native peoples have established model environmental departments staffed with qualified scientists; their research has proven valuable for native and non-native peoples alike. Some worry that this use of non-native law and science is detrimental, diminishing the traditional spiritual role in decision-making. Nevertheless, a working government must be able to address contemporary problems that face their constituents. Traditional Haudenosounee (Iroquois) elders teach that these uncertainties can be dealt with

through an established paradigm.

The Haudenosounee, or People of the Long House, established a powerful democratic government among six individual nations (Onodaga, Mohawk, Seneca, Onieda, Tuscarora and Cayuga) in what is now upstate New York. In the early 1600's, the people realized that the inclusion of the expanding European population into the confederacy was not feasible. They reasoned however, that people sharing land can co-exist like two canoes on the River of Life. Moving down separate paths in the same direction we realize that stepping into a neighbor's canoe can capsize both. This relationship is illustrated in the Two Row Wampum or 'Gus-Wen-Tah' (Kaswenta) alliance that was used as a template for relationships and agreements between the Haudenosounee and other nations (see Fig. 1). Sometimes cooperation is necessary to insure both canoes stay afloat; much like the international effort to protect the Great Lakes, the U.S. and Canada have acknowledged environmental degradation knows no political boundaries. A partnership such as this does not diminish the sovereignty of either nation, but strengthens both governments ability to deal with international issues effectively. Following the Gus-Wen-Tah model, I believe there are three methods modern native peoples can make use of:

1. Requiring the federal government to fulfill its trust responsibilities as spelled out in treaty agreements;
2. The use of non-native procedures to create, modify and enforce policy governing stewardship;
3. A blending between Native ideas and methods and number two.

The first option is invalid to tribes lacking agreements with the federal government in the form of treaties. It is argued that tribes who receive goods and services from state governments have compromised their sovereignty by dealing with an entity lower than the federal government (i.e., other than another sovereign nation). This line of argument fails to consider that the federal government frequently delegates its authority to the states (i.e., education, transportation's, environmental quality

control. In addition, Native politics have customarily run on a much different time scale than modern problems, as explained earlier. Fluctuations in the environmentally damaging activities carried out by industry are often rapid and are rarely predictable, as industry responds to conditions in the marketplace. However, quick responses to increased environmental threats are a key component in finding alternatives. The federal government is rarely an effective mechanism to address such a situation because bureaucratic red tape precludes a quick response. The third option seems to afford the most practical solution. Considering the historical relationship that native governments have had with federal institutions, NGO's such as grassroots groups suggest an encouraging way to provide this use of non-native methodology. It is up to communities to determine the balance of these approaches to address a given situation, though. Most tribal leaders I know will use minimal amounts of foreign procedures, trying to avoid 'stepping' into a neighbors "canoe."

Atlantic States Legal Foundation (ASLF) was established in 1982 to provide legal technical and organizational assistance on environmental issues to NGOs and others, including Native Peoples in the US. Early on, we were the principal NGO bringing legal action under the citizen suit provisions of US environmental laws, particularly the Clean Water Act (CWA), the Emergency Planning and Community Response Act (EPCRA) and the Clean Air Act. ASLF plays an important role in pollution prevention; by setting deadlines and requiring the use of specific technologies and practices, we have achieved measurable reductions in the amounts of pollutants released. The cumbersome size of state and federal regulatory agencies has hampered the ability to scrutinize daily monitoring reports from every facility, leaving that duty to affected citizens. This was most likely the intent of the citizen lawsuit provision in the Clean Water Act of 1972, having allowed enforcement of federal and state discharge permits by a notice of intent to sue. In most cases, the facility agrees to settlement and avoids protracted litigation. As part of these agreements, money is usually granted for various environmental education and improvement projects in the area of concern. Sometimes litigation is unavoidable and ASLF must prove the violations in trial. In 1994, ASLF sent a notice of intent to sue, under violations of the CWA, to the Georgia-Pacific (GP) Corporation's Packaging Facility in Olympia, Washington. The violations included exceeding flow, oil and grease BOD, and pH limits as set in their Waste Discharge Permit. In the agreement that followed, GP was given a period of six months to comply

with their state permit or face fines per violation, paid to the state of Washington. In addition, GP funded environmental projects chosen by ASLF.

The Squaxin Island Tribe received moneys from this case to collect and monitor data from the Deschutes River watershed, a traditional fishing grounds of the Squaxin people. The tribal hatchery releases about 8.5 million chinook, coho and chum salmon annually and enforces tribal regulations for harvesting fish and shellfish on tribal land. Salmon play an important role in Northwestern Indian culture, signifying the cycle of life, as well as an significant subsistence resource. The protection of spawning waters, including the Deschutes River watershed, is essential to ensure a healthy salmon recruitment. Draining the Western Cascade Mountain foothills and the Puget lowlands, the Deschutes has suffered increased stream erosion and reduced woody debris due to urban development and agriculture.

The EPA and the Washington Department of Ecology have created a framework for watersheds to receive Total Maximum Daily Loads (TMDL) evaluations in compliance with Section 303(d) of the CWA. Within this framework is the development of a "Water Quality Limited List" to determine unmet standards of a watershed. The tribe is hoping for admission of the Deschutes watershed to the list. The request would seem simple, providing there was sufficient evidence that the river does not meet numeric standards such as temperature, pH, etc. During the development of the 1994 list, the state of Washington decided that narrative standards, in addition to numerical standards, could be a basis for water bodies not meeting objectives. This decision is significant, allowing the Squaxins to include large woody debris and riparian canopy closure (narrative) in addition to temperature (numerical) as standards. Therefore, in this case, an effort to improve water quality within the reservation may be achieved absent of Squaxin-specific water policy enforcement. Jeff Dickison, biologist for the Squaxin tribe, recognizes there are problems with having every tribe assert jurisdiction over traditional areas. "Unfortunately, there are interest trade-offs by the state with respect to a given area. Tribal views may be irrelevant in some cases and must be weighted against areas already affected by industry." Currently, the tribe is considering a comprehensive plan to regulate and enforce water quality within tribal boundaries as an alternative to state and federal regulations. There lies another common obstacle: money. Dickison believes the main reason for not pursuing such a plan is the lack of funds for lawyers, scientists and

technicians needed to create the technical support for such policy.

The expansion of industry and the consequent pollution in the U.S. is not always one-sided. Many times native peoples, hiding under a blanket of sovereignty, have a lucrative advantage in regulating pollution. This was the case in *ASLF vs. The Salt River Pima Maricopa Indian Community* (SRPMIC). The Salt River Pima reservation lies very close to Phoenix, where they opened the Tri-City Landfill in 1972, accepting municipal solid waste from Scottsdale, Mesa and Tempe. The open dump was partially located in a dry riverbed of the Salt River and the mere existence of the landfill constituted a violation of the CWA and RCRA. ASLF was notified by citizens of the area that the dump was receiving illegal untreated septic tank pumping and possibly hazardous wastes which, due to the soil types, would easily allow leaching of contaminants into the groundwater and the nearby river. In addition, insufficient containment resulted in spring snow melts washing out the dump and transporting tons of garbage into the Salt River. The Arizona Department of Environmental Quality hampered ASLF's effort to investigate the claims, standing on their "voluntary compliance" program and organizing public "clean-up" days on the river as a solution to the washouts. After the fifth washout in 1992, and unanswered attempts to settle the matter, ASLF served a notice of intent to sue the SRPMIC and the cities. The SRPMIC continued to operate the dumps in violation of the CWA and RCRA, while the cities continued to use the Pima facility. Then, in January 1993, record rains and snow melt caused the biggest washout ever, washing 140,000 cubic yards of garbage into the river. Finally, in October of 1994 the SRPMIC closed and capped the landfill at a cost to the community in excess of \$2.4 million.

The litigation involved in this case has proven that environmental laws do apply on native lands. Questions about enforcement of the CWA, CAA and RCRA have resulted in a disproportionate amount of pollution on native lands. Recently, President Clinton and the EPA have realized the effects of environmental racism and have made a pledge to work for environmental justice in the U.S. This action follows that of the United Nations which has recognized the right of indigenous peoples to control and protect their remaining territories under Chapter 26 of Agenda 21, which addresses a need for native participation in political, economic and environmental dealings at the international and national level.

In 1992, the Haudenosaunee sent representatives to the U.N. Earth Summit in Rio de Janeiro to tell of our responsibility to protect Mother Earth. This summit invigorated the Haudenosaunee duty to resolve environmental problems within our territory and a set the groundwork to implement a plan to leave a healthy Mother for our future seventh generations. Leaders, scientists and citizens of all Haudenosaunee communities came together as the Haudenosaunee Environmental Task Force. The HETF was then sanctioned by the Haudenosaunee Grand Council and a restoration plan was presented to the UN at the Summit of Elders in July of 1995. Recently, the EPA awarded a Community-University Partnership grant to the HETF, Cornell University and the State University of New York College of Environmental Science and Forestry. This grant is designed to create a network of resources shared by a minority or low income community, and a university. The university gains valuable knowledge from a non-typical community while the community has access to usually unavailable support. Historically speaking, private and government organizations simply took what information they wanted from these groups for research reasons and never returned anything. Today, by creating this partnership, we can use assistance at our discretion, a refreshing concept in native politics. Some current HETF activities involve dealing with water pollution on the Awkesasne Mohawk Nation and establishing computer communications between Haudenosaunee communities.

The work of the HETF and ASLF exemplify the strength that can result from partnerships between Indian nations and citizens. Choosing the "right tool for the right job" is a critical process in continuing our assignment of protecting Mother Earth. Nyaw-weh.

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