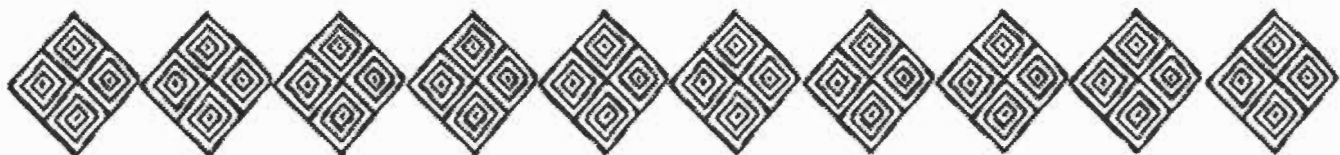


INDIGENOUS  
LAND RIGHTS  
READER

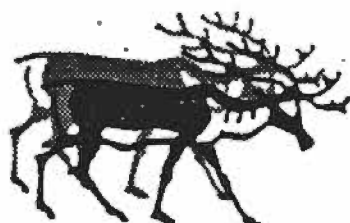
**500 YEARS OF  
RESISTANCE**



**A Project of the Third World Coalition and the Native People's Work Group**  
American Friends Service Committee • 1501 Cherry Street • Philadelphia, PA 19102



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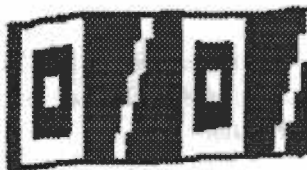
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Lance Hughes for "Native Americans for a Clean Environment."

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## INDIGENOUS LAND RIGHTS READER



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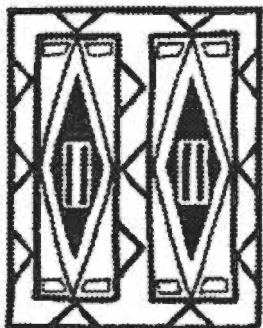
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American Friends Service Committee - 75th Anniversary  
Bread and Roses Community Fund  
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## INTRODUCTION



*Some of our chiefs make the claim that the land belongs to us. It is not what the Great Spirit told me. He told me that the lands belong to Him, that no people owns the land; that I was not to forget to tell this to the white people when I met them in council.*

Kannekuk, Kickapoo prophet, 1827

*It is time to change from a society based on conquest to a society based on survival. There are no more frontiers and there is nothing left to conquer. We must make the change if we are to survive, if we are to rebuild community and heal ourselves. And we must articulate a vision.*

Winona LaDuke,  
White Earth Reservation, 1992

Land. Our Mother. Our source, our sustenance, our survival. 1992 marks 500 years of Native resistance in the Americas. We have survived conquerors and colonizers, we have survived swords and guns and smallpox. Our land has been stolen, eroded, and destroyed. Our land base is much smaller today, and we are fewer in number; still, Creator continues to bless us with Life.

Land. It is the source for human survival. 1992 marks 500 years of western civilization's encroachment upon these lands—from the tip of Chile to the northern Arctic Ocean—the land, the water, the air are all suffering the excesses of development. Native People have resisted 500 years of oppression, but if the land dies, if the air and water are poisoned, all life on this planet will perish.

The *Indigenous Land Rights Reader* is a project of the Native People's Task Force and the Third World Coalition of the American Friends Service Committee. As part of our observation of 500 Years of Native Resistance and Survival, we choose to focus on the struggle of Native Peoples throughout this hemisphere to retain, preserve and protect our land.

The stories told in this *Reader* all pertain to our rights as peoples of this Earth to territorial integrity and self determination. These are stories that need to be told. They are about the continued violence and brutality—armed and institutional—waged against Native Peoples in these Americas. These stories document our continued resistance and struggle for survival.

Our resistance and struggle to survive encompass, yet go beyond human rights, land rights, civil rights. Our elders remind us that we must give thanks for each day; for the sun that shines, the waters that flow, for the air we breathe. We must give thanks for all things that walk, crawl, swim and fly, for the plants, the trees, the stones, the Earth. We have been instructed to protect and care for Mother Earth. Our responsibility is to make sure that life continues. We are part of the land, She is a part of us, we have not forgotten.

Our vision: five hundred years from now 'land rights' will be a foreign concept because our children's children will be living in harmony with all of Creation, caretakers of the Earth's bounty and beauty. Together we must make it happen.

Natives Peoples' Work Group, TWC



More than just an information resource, the READER is an urgent call to action. The struggles of Indian people challenges all of us to understand the importance of working toward sustainable societies that will enable their citizens to achieve fulfilling lives and at the same time care for the earth that nurtures all life. We see that therein lies the true guarantee for durable peace.

Finally, the READER is an inspiration. It tells stories of courage, determination and tenacity. While calling call us to support the struggles of Indigenous Peoples, it also motivates us to continue to work for justice for all people, to respect Mother Earth, and to respect diversity in the human family.

The Third World Coalition

It was an honor to work with this project and the people that made it possible.

Sandra Andino

*Editor*

September 1992

# CONTENTS

## 1 **CHAPTER 1: Northeast**

- 3 Is Canada Caught in a Colonial Power Play? The Occupation of Nitassinan.
- 7 Villages of the Dammed: The James Bay Agreement Leaves a Trail of Broken Promises.
- 13 Contaminant Cove: Where Polluters Defile Mohawk Land.

## 17 **CHAPTER 2: Caribbean, Central and South America**

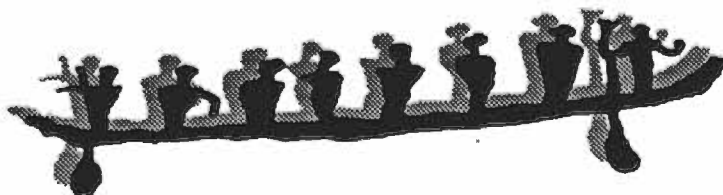
- 19 El Salvador, C.A. Cuscatlan, Land of Riches?
- 22 The Situation of Indian Lands in Brazil.
- 25 Battle for Vieques... US Navy Out!
- 27 Vieques: An Ecology Under Siege.

## 29 **CHAPTER 3: Central North America**

- 31 Chippewa Treaty Rights in Wisconsin.
- 33 White Earth Anishinabeg Land Struggle.
- 36 Omaha Tribe of Nebraska - The Blackbird Bend Case.
- 39 Cherokee Nation: Native Americans for a Clean Environment:
- 41 Northern Ponca Restoration Committee, Inc.

## 45 **CHAPTER 4: Southwest**

- 47 What is a Land Grant?
- 51 Tierra Amarilla Facing Three-Pronged Attack.
- 54 Atrisco Land Grant Testimony.
- 56 Havasupai Tribe Battles Destructive Outside Forces.
- 59 Big Mountain Legal Office.
- 64 The Western Shoshone Indian Rights Issue.
- 67 The Most Bombed Nation on Earth: The Western Shoshone People.



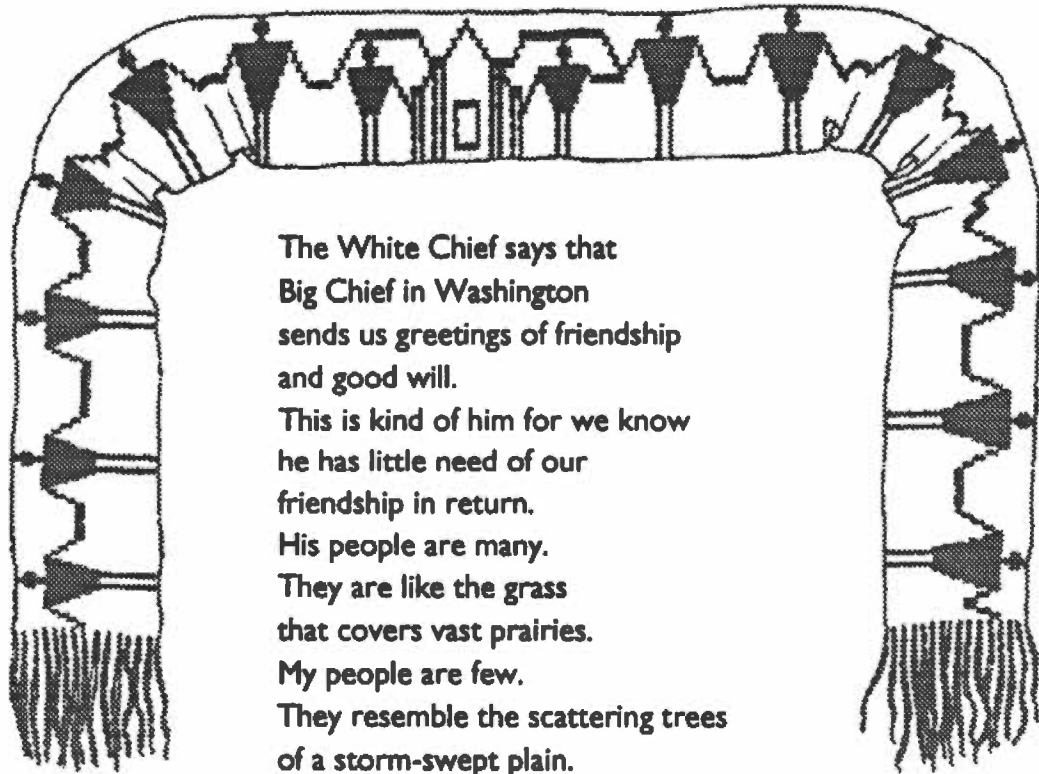
69 **CHAPTER 5: Northwest and Hawai'i**

- 71 Medicine Wheel: An American Stonehenge.  
74 Indigenous Rights, Jurisdiction and Colonial Intrusion in Alaska:  
A Brief Historical Overview.  
79 The Gwichin, the Porcupine Caribou Herd and Big Oil.  
81 Hawai'i's Story.  
84 What is Sovereignty?  
86 Human Rights, Justice, and Indigenous People.

87 **CHAPTER 6: Legislation on Indian Graves  
and Burial**

- 89 The Sanctity of the Grave.  
91 Supreme Court Rules on Indian Religious Freedom.  
94 Tribal Efforts to Protect Against Mistreatment of Indian Dead:  
The Quest for Equal Protection of the Laws.





The White Chief says that  
 Big Chief in Washington  
 sends us greetings of friendship  
 and good will.  
 This is kind of him for we know  
 he has little need of our  
 friendship in return.  
 His people are many.  
 They are like the grass  
 that covers vast prairies.  
 My people are few.  
 They resemble the scattering trees  
 of a storm-swept plain.

The Great — and I presume —  
 good White Chief sends us word  
 that he wishes to buy our lands  
 but is willing to allow us  
 enough to live comfortably.

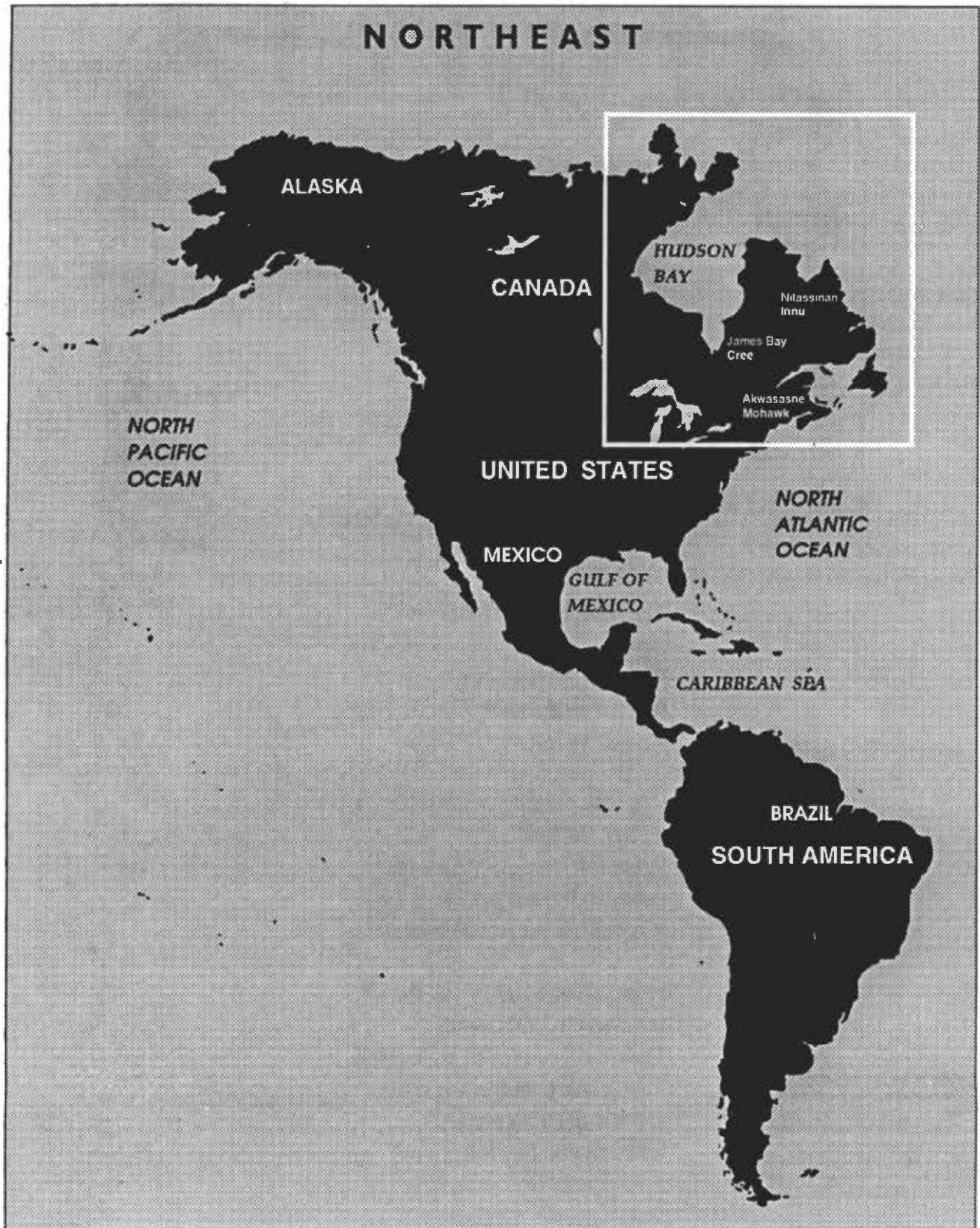
We shall consider your offer  
 to buy our land.  
 What is it that the White Man  
 wants to buy my people will ask.  
 It is difficult for us to understand.

How can one buy or sell the air,  
 the warmth of the land?  
 That is difficult for us to imagine.  
 If we don't own the sweet air  
 and the bubbling water,  
 how can you buy it from us?

Poem written by Chief Seattle of the  
 Duwamish tribe of the Pacific Northwest,  
 upon surrendering his land (Port Elliott  
 Treaty) to Governor Isaac Stevens in 1855.

Washington Covenant Bell, Iroquois.  
 Used as a covenant of peace between the  
 13 original colonies and the six nations.





## Is Canada Caught in a Colonial Power Play?

### The Occupation of Nitassinan

By Winona LaDuke



**T**hey call the land *Nitassinan*, "our land." Eastern Quebec and Labrador have been the home of the Innu for more than nine thousand years. Its face is austere beautiful—rocky ridges are pockmarked with lakes, scored by deep fiords, covered with moss, firs, and wild blueberries and partridge berries. It is bountiful to those who have learned its ways—caribou, moose, beaver, foxes and the Innu.

It is a home and a way of life that is being taken from them. Canadian armed forces and more recently NATO allies recognize another name. Goose Bay, the town and military base established in the area after World War II. Currently, five NATO allies—Canada, the United States, Holland, Britain, and West Germany—launch over eight thousand military flights a year. Their agreements with Canada allow that number to increase to more than twenty thousand flights a year.

The Innu are fighting back. "Militarism is a form of colonization which takes away our lives. That future is without hope for us," says Penote Michel. "But we will fight for our rights. I believe in nonviolence and civil disobedience. I am ready to go to jail, to take blows or die for our cause because I believe in the struggle for freedom of my people."

The Innu culture and economy and its religious and political systems are integrated with the ecosystem of Nitassinan. Like most northern indigenous people, the Algonkin-speaking Innu have fine-tuned and adapted their tech-

nologies and cultural practices to provide for their families in both a cash and noncash economy. For centuries, their lifestyle has been based on fishing, hunting caribou and other large animals, harvesting rabbits and small game, and trapping for food and sale of the pelts.

The Innu have never signed a treaty with Canada (or the previous colonial power, Great Britain) giving up any part of Nitassinan. Nor do they intend to. This has not prevented Canada's militarism and the militarism of NATO from destroying their land and their life.

But militarism is only completing the cultural destruction begun years ago. Most of the dismantling of Innu culture occurred over the last two generations. Where once the Innu spent eleven months of the year in the wilderness, now they only spend six months or less. They have been "settled" for thirty years in villages like Sheshatshit (pronounced *She-sha-TSHEET*), about twenty miles northeast of Goose Bay, and the closest Innu settlement to the base. The Innu use the village as a primary residence, but go back and forth to the woods harvesting for their families.

As journalist James Wilson describes it, the face of Sheshatshit is not different from other native communities across North America: "There are the same government-issued wooden houses—the newest with incongruous Georgian doors—strung out along makeshift roads. There are the same wrecks of stranded cars, and the same half-wild dogs. But out-

side many houses stand the traditional meat platforms where hunters store their game. There are caribou hides hanging up to dry and sometimes between the houses you will see a canvas tent, smoke wafting up from a chimney in its roof."

What is different is the rapid pace at which the nomadic Innu culture has been distorted into a more Western European mode completely foreign to it. Over the last thirty years, the Canadian government encouraged the Innu to "settle." They were given government welfare checks and their children made to go to Canadian schools. As one of the elders, Pien Penashue, looks back "The quickest way to kill a culture is to educate its kids in another culture." Elizabeth Penashue describes the disaffection the youth feel: "They are made to feel inferior in school. They are depressed and unhappy. They are unsure of their direction. Before they were proud to hunt with their fathers. Things fitted together and made sense."

The changes forced on their way of life have robbed most Innu of their identity and their role in their community. It has been a great loss. Rick Bauman, a Mennonite Central Committee member who works with the Innu, witnesses a father who struggles with alcohol and violence in the village transformed in the wilderness by his role as a lead hunter. The man describes his village life: "We get up, wash, eat, watch TV, eat and sleep again. Here, I am

the provider, yet I still spend more time with my kids. Here I have a role, an important place."

Elizabeth Penashue lives part time in Sheshatshit and part time in the country. She is one of the Innu elders who has been pushed to center stage in the struggle over the militarization of her homeland. She remembers walking and canoeing literally thousands of miles with her parents through Nitassinan, an area about the size of France, where the Innu

know every stream, every lake, every caribou calving ground. "Our land means a lot to me and my people, especially the animals we have depended on through our survival on our land. Our ancestors also had a deep respect for our land. They have never gone about destroying the land and the animals. They have killed with great respect. It is very hard for us to look on while the governments are treating our land in just the opposite tradition from our ancestors."

This Innu community, with support from all of the Innu across the territory, has united in the struggle against the base. Many of its women, like Elizabeth, her sister Rose Gregoire, Francesca Snow, and others, are leaders in the resistance against the base. These women and their families have led a string of occupations and demonstrations at the Goose Bay military base. They have stormed its runways and been hauled into court numerous times. At one point in the early spring of 1989, eleven women and

seven Innu men were imprisoned nineteen days in a provincial jail awaiting trial for occupying a military runway. They were acquitted when the Newfoundland court determined that they sincerely believed they were occupying their own land, hence not trespassing. By last summer, over two hundred fifty people had been arrested resisting the base.

The Goose Bay military base was built in 1941 as an outlying station linking North America and Europe during World War II. In 1952, the U.S. Air Force signed a twenty-year lease to use the base, and before the lease expired, the United States was lending its installations to the British Royal Air Force and its Vulcan bombers. In the mid-seventies, growing resistance to low-flying military flights over densely populated areas in European countries caused a number of countries to look greedily at the Canadian north for new training zones. By the 1980s, more than four thousand training flights were being carried out over the one hundred thousand square kilometer area. In 1989 there were eight thousand low-level flights a year between April and November-thirty to fifty a day.

In 1980, NATO's military committee sponsored a feasibility study for the construction of a fighter plane training center in Goose Bay. And, not to be outdone, then Canadian International Trade Minister John Crosbie announced in 1985 that the government would spend \$93 million to modernize the base, and encouraged new countries to join the war games in the sky. Great Brit-



ain, West Germany, Holland, and Canada are now using the skies of Nitassinan more intensely than ever, and the United States is permitted to use it for low-level flying, though it currently is not.

The NATO training base would have resulted in around forty-five thousand flights a year (over one hundred twenty "outings" a day), not to mention construction of ten bombing ranges and realistic replicas of landing strips, hangars, surface-to-air missiles, refineries, industrial plants, and other "enemy" targets.

Last summer, when the Innu learned of an "in principle" decision to go ahead with the full-scale NATO tactical weapons training center, they intensified tactics of resistance. As Rose Gregoire said, "If the NATO base is established, Nitassinan will be turned into a war zone and our nation will be utterly destroyed."

And they won. In late May, 1990, NATO announced that plans for building a tactical fighting center in Canada or anywhere else were canceled. With the changes in Eastern Europe and the Soviet block, NATO could not justify the training center. The Innu resistance had helped delay the decision for a critical two years. Had the decision been made in 1988, before many of these changes in Eastern Europe, there might have been a very different outcome.

But the low-level flying continues. At the present number of flights, the ecosystem of Nitassinan is being destroyed. Currently jet bombers fly over the area at altitudes lower than those allowed almost anywhere else in

the world. The noise produced by military aircraft traveling at 10-250 feet is above the human pain threshold. Some flights are even lower—there are several documented cases of planes skimming the tops of trees at 50-100 feet, and eyewitness accounts of planes flying so low over lakes that they suck water from the water surface.

These low-level flights create terrifying, ear-splitting booms without warning in the otherwise unbroken peace of the north woods. The natural reflex to throw oneself on the ground is irrepressible. "What is most scary is that the jets come with no warning," says Innu Monica Nui. "In fact, you can see the treetops bending when they go over. If they pass over the tents, the tent canvas starts to shake also. A little girl about five years old was so scared that she fainted. After the jets went over, I heard a ringing inside my head for half an hour."

It is a war on the senses. Low-level flying has devastating effects on the sense of hearing, the nervous system, and the metabolism of most species living within the fragile northern ecosystem—the caribou herds, the beaver, the fish, the geese, and all the animals on which the Innu rely. The Innu people are desperately concerned about the impact of the

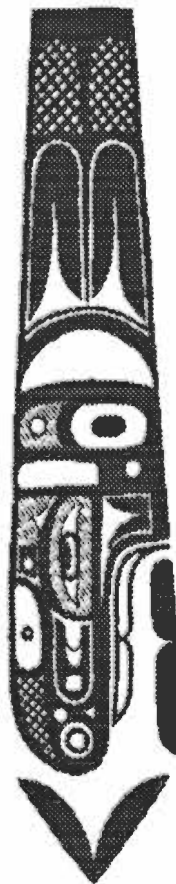
military on the ecosystem, but military and government authorities have done very little convincing research on the topic.

The George River caribou herd is the largest migratory mammal herd in North America, estimated to have over half a million animals. Stu Luttich, a biologist who has studied the herd for over fifteen years, says that the herd has stopped growing. "Mortality rates are increasing and the birthrate is declining." Caribou weakened by stress are easy prey for bears and wolves.

Though impact on animals and other members of the Nitassinan ecosystem is difficult to document, past studies show that low-level flying causes animals to change migration patterns or destroy their young.

Some of these flights have crashed. In late April and early May, two crashes (involving three planes) occurred, both within ten nautical miles of Innu camps or settlements. One crash involved an F16 airplane, which released hydrazine, a toxic chemical hazardous on contact and in the water supply, into the environment.

Countries that choose to do low-level flying can no longer justify such flights as part of NATO strategy. The Minister of Defense of Greece noted at the end of May that low-level flying is no longer a NATO defense tactic. Also in May, the British Common Select Committee of Defense recommended



that all flying below 250 feet be phased out and said that exporting low-level flights to other countries was not a viable option. But the low-level flying has still continued.

"The militarization, that's what you have to fight," says Francesca Snow. "It will destroy the land. It will destroy the animals, and it will destroy your life."

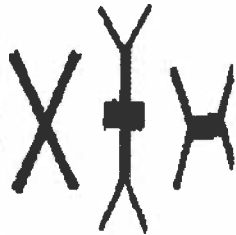
When the animals are destroyed, the people will be forced off the land-into wage work and welfare-and the very soul of the people will be destroyed. Alexis Joveneau, a priest who has lived with the Innu for many years, says that the people must be allowed to continue their way of life on the land. Joveneau issued a warning to the Canadian government: "You are not only destroying their lifestyle. You are destroying their whole life so that you may proceed with military exercises. You might as well build a psychiatric clinic right here. It will soon be overfilled."

"If the military goes ahead," said Innu Antoine Malec, "you will not see us cry. We will not cry. But our hearts will bleed."

In addition to the scrapping of the NATO center, the Innu and their supporters have had other major victories in their struggle against the militarization of their homeland.

In February, a Newfoundland provincial court judge refused to rule on a case where Innu resisters were accused of trespassing on a runway. The Innu announced on the morning of the trial that

they would no longer participate in the process, because the court and the Crown refused to hear testimony they felt essential to their case. They felt that if the court would not admit testimony showing how crucial the land is to their existence and how destructive the effects of militarization are to that way of life, it could not begin to understand and judge their actions. (Government



prosecutors insisted that the case be tried as an unlawful interference with the legal use of property.)

Judge Richard LeBlanc also felt it was not the place of the court to judge their actions. "I am not going to make a ruling on their guilt or innocence because I don't think I have that right. I am asking that the parties to this issue, and I mean the governments of Canada, of Newfoundland, and of the Innu people, get together and try to solve it. We could close our eyes and proceed, but that would not be justice."

As Rick Bauman commented, "The judge himself, in his unwillingness to make a ruling, recognized that the struggle for the Innu was far too large for his court. Governments could no longer expect a provincial court to be the arbiter of a question that concerned the survival of a people."

In another encouraging sign, the review panel appointed by Canada's Minister of Environment sent the environmental impact statement prepared by the Department of National Defence back to the drawing board.

But recent Canadian government overtures to meet with the Innu have been so much posturing. Bill McKnight, Minister of Defence, expressed interest in meeting with the Innu, but refused to meet them in Labrador when they tried to take him up on the offer. And he flatly refused to discuss a moratorium on low-level flying.

Although the militarization issue in Labrador has received almost no publicity in the United States, more information is available from the Innu Resource Center, General Delivery, Sheshatshit, Nitassinan, Labrador AOP IM0. Also contact the United States Department of Defense, urging them not to take advantage of their current agreement with Canada to fly in Nitassinan (they are currently not using this option). To contribute to the Innu resistance, write: Innu Defence Fund, c/o Assembly of First Nations, 47 Clarence St., Suite 300, Ottawa, Canada K1N9K3.

The Innu will continue opposing the military occupation of Nitassinan. It is their home. They have no where else to go, or to go back to. They will defend it peacefully, but tenaciously, until it is again their own.

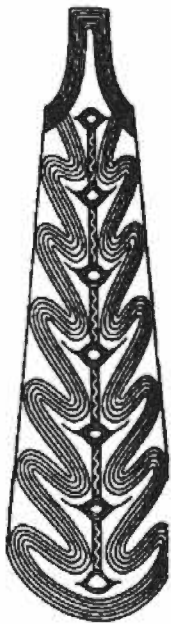
As Innu Penote Michel puts the challenge: "I don't want your sympathy. I want your strong and collective support against the oppression of your government. What we need is your resistance."

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## Villages of the Dammed

### The James Bay Agreement Leaves a Trail of Broken Promises

By Billy Diamond



In these days of public battle between the federal and provincial governments of Canada and the First Nations of Canada, lessons can be learned from the most important native rights battle of the seventies: the events leading to the signing of the James Bay and Northern Quebec Agreement on November 11, 1975. Land claims, now a battle cry for native groups across Canada, were at that point a Canadian novelty. Today the experience of the James Bay Agreement is a far from perfect model of Canadian native land claims.

Hydro-electricity is very important to Quebec, and the Cree homeland provides approximately 40 percent of Quebec's capacity of 25,000 megawatts. However, unlike some Scandinavian countries, where hydro-electric flooding is confined by mountain walls, in the Cree territory hydro-electric projects flood vast areas and devastate the land.

The La Grande Project has a total reservoir area of about 14,000 km<sup>2</sup>, of which about 10,500 km<sup>2</sup> is flooded land. If James Bay Phase II, the massive expansion of the Northern Quebec hydro-electric system currently being planned by Hydro-Quebec, is completed, this total will rise to 25,835 km<sup>2</sup> of reservoir, of which 15,519 km<sup>2</sup> will be flooded land. This is comparable to submerging the whole of Northern Ireland.

In 1970, Quebec Premier Robert Bourassa proposed the first James Bay Project, which consisted of three parts: the Great River Project, the La Grande Project and

the Nottaway-BroadbackRupert Hydro-electric Project. He announced his plans without consulting the Cree and Inuit people of Northern Quebec, whose lands and ways of life would be changed forever by those developments. The James Bay Project threatened to destroy eleven major rivers and upset the ecology of an area the size of France. It would permanently diminish the traditional Cree way of life.

It was up to us, the first generation of Crees out of high school, to counteract that threat. We knew our people had always occupied the Cree territory. My people wanted to protect the land and our way of life. We were the only inhabitants of the land, and our way of life depended upon the rivers continuing to flow and upon the forests and the animals continuing to thrive.

We found that Canadian law had few legal precedents of aboriginal rights. We also found that Quebec, under the terms of the 1898 and 1912 Quebec Boundaries Extension Acts, had an outstanding obligation to settle native "claims" to the territory. Quebec had never fulfilled this condition to its accession of Eastern Rupert's Land from Canada. Thus, Quebec's claim to all of Northern Quebec was in jeopardy because it had refused to deal with us. Quebec's claim to all of Northern Quebec is still in jeopardy because the James Bay Agreement has not been respected.

When we took the issue to court, our first occupancy and unique and continuous occupation of the land played a small

part in the proceedings. Quebec attempted to prove that because my people used implements and goods bought in stores, we are no longer indigenous people. Before the courts, however, our story was articulately and honestly told by our people. Through interpreters, our people related the way that they lived in harmony with the land and the wildlife and the resources around them. After six months of testimony, we won our case. It was the longest interlocutory proceeding in Canada and is a hallmark of legal precedent and judicial courage. Judge Albert Malouf recognized that we, the inhabitants, had rights that superseded the rights of Hydro-Quebec and the Quebec government, and an injunction was granted to halt construction of the James Bay project.

One week after that decision, the Quebec Court of Appeal overturned that decision in favour of the rights of Quebec society. The project would proceed. It decided that while our rights might be compromised by the project, the public interest of southern society was more important. The damages to us could be compensated for with money. Our feeling was that no one can buy a way of life and culture with money. We were ready to proceed in court, but we saw the need to limit the damages, see remedial works and have certain fundamental rights recognized. We decided to attempt to negotiate a settlement. We really had no other choice.

The James Bay and Northern Quebec Agreement took a total of two years to negotiate. We thought

that with the Agreement we had secured the means to adapt to damages caused by the La Grande Project and to the changes to Cree society that would surely result from increased contact with the larger society. The agreement index reads like a constitution of a new country and, in many ways, that is what it was meant to be. We set up the Cree School Board and took control of Cree educa-



tion, which had been administered from Ottawa. We set up the Cree Board of Health and Social Services and brought the responsibility for health services back from Ottawa to the Cree communities. We secured special measures for the administration of justice and for setting up a Cree police force. And, we set up a program which provides a guaranteed income, albeit a low income, for Cree hunters. The program encourages them to stay in the bush for at least 125 days a year.

The Agreement promised federal legislation for Cree self-government, and in 1984, nine years after the signing of the Agreement, Parliament finally passed the Cree-Naskapi (of Quebec) Act. This is a recognition of Cree sovereignty in the area of local government, is constitutionally enshrined, is vibrant, and supports the development of our communities. The Agreement also set up a special regime for environmental review of proposed future projects. This provided special measures to

build Cree communities and to give us a significant role in the economic development of the territory. But these commitments were made by government only to get us to sign the Agreement; they have been consistently ignored and breached by Canada and Quebec.

Finally, the Agreement provided for monetary compensation. The Cree portion (another \$90 million was for Northern Quebec Inuit) is approximately \$130 million, to be paid out over twenty years. This is a Heritage Fund for future generations of Crees.

Considering all of the above, we approved the completion of the 1975 La Grande Project. We did not approve any other project. In fact, while we submitted environmental impacts for review, we withheld submission of our rights to such a process. Any future project would require Cree approval. That was the understanding of my people in 1975 and it still is today - no new projects without our consent.

Since 1975 we have negotiated three times with Hydro-Quebec to allow them to make changes to the design of the La Grande Project. In each agreement the principle was the same: "to compensate and remediate damages to our way of life and to our rights." We only accepted changes that we could live with and that would not destroy our way of life. We have had fifteen years of constant struggle to try to force Quebec and Canada to respect their commitments under the overall James Bay Agreement. If I had known in 1975 what I know

about the way solemn commitments become twisted and interpreted, I would have refused to sign the Agreement. I would have gone to the Supreme Court and we would have found other ways to block the project in the courts and on the ground.

Protection of the environment in Northern Quebec has been a farce. The regime set out in the Agreement does not work. It has not been well implemented because the provincial government has put almost no resources into it. Its representatives, because they are government employees, follow the party line. No independent expertise is brought to bear on environmental questions posed by development. There are no public hearings. There is no funding for third parties to study the questions. Moreover, Quebec wants to split the Great Whale Project into pieces for review, even though the pieces cannot be justified independently. Hydro-Quebec and the Government of Quebec want to act as the proponents of projects, as the evaluators, as judge and jury. Because of the lack of concern for the destruction of the environment, there are no Cree game wardens (almost no game wardens at all) in the territory as provided in the Agreement, and the traditional Cree way of life is in danger of extinction.

For Canada's part, the environmental protection process in the James Bay Agreement does not exist. Canada began to implement its environmental responsibilities in Section 22 in 1982-1984. In 1984, Quebec nationalists

working in the Quebec City office of Environment Canada found a way to interpret Section 22 so that Canada could avoid any and all obligations. To this day, the federal Department of Justice refuses to allow the Minister of the Environment to implement section 22.

Employment opportunities were to have been created for the Cree people so that we could become full partners in the development of our land. Except for the provision of institutional services such as education, health, and local government, this has not occurred. The fifteen years since the signing of the Agreement have been lost years in terms of developing programs for bringing Cree people into managerial and operational jobs on the hydro-electric projects.

Alternative employment opportunities, too, are being closed off to the Cree people. In the Agreement, we set up the James Bay Native Development Corporation, which was to open the door to joint ventures with the parent company, the James Bay development Corporation. This never happened. Instead, the James Bay Development Corporation has adopted a racist mandate to drive the Crees out of regional development. They want to close the Cree fuel sales business, called Cree Energy, by pushing us out of business at Radisson Airport. In their campaign against the Cree, corporation officers attempt to recruit local businessmen south of the Cree territory. Any successful

Cree commercial initiatives are carried out despite government interference and without government assistance. In forestry, my people have been trying since before the Agreement to set up logging and wood-processing plants. Rather than developing ways for forestry to be managed on a sustained yield basis, and in a way that is compatible with environmental protection and the Cree way of life, Quebec has illegally given forestry concessions to multinational corporations. The equivalent of one family territory (600 km<sup>2</sup>) is being obliterated each year by clear-cutting. The rights we gained in the James Bay and Northern Quebec Agreement to continue our traditional way of life are an illusion because the environment in northwestern Quebec is being destroyed.

Our rights guaranteed by the James Bay and Northern Quebec Agreement are being denied in other ways as well. Federal and provincial program cuts have resulted in a shortfall of 800 houses. The Cree People of Ouje-Bougoumou are still considered to be squatters



on their own lands by Quebec and Canada because the Prime Minister of Canada, Brian Mulroney, has not done what he said he would do, in writing in 1985, and recognize these people as a "Cree-Naskapi Act" Band. Three Cree communities still do not have the access roads which were to come from the Agreement. Also, the powers of the Cree School Board have never been



fully implemented. The list goes on and on.

Today Quebec announces that it will go ahead with another major hydro-electric development in James Bay II, first the Great Whale River Project and, in two years time, the Nottaway-BroadbackRupert Project. But before examining the potential impact of this development, it is useful to look at the unfolding impacts of the La Grande Project. At this moment, we have no idea how far the consequences of James Bay I have gone.

We know that our people cannot eat certain species of fish because they are contaminated with mercury. We know there are fewer and fewer geese each year. We know that whole fisheries have been wiped out, and that hunting, fishing and trapping areas have been severely reduced. We know that 40,000 non-native people each year use the hydro-electric infrastructure to hunt and fish in the region, without controls. We know there have been impacts on the wildlife of the region, and on James Bay and Hudson Bay.

Hydro-Quebec has carefully prevented public environmentalists and other scientists from learning the full impact of the La Grande Project. How can they build another project, cut more trees and flood more land without knowing this? We know about the destruction of the Amazon forests, but what about the destruction of the northern Quebec forests? Bourassa says he is going ahead with James Bay II. He says he does not need Cree consent to destroy our rivers and flood our land. But he is wrong. Cree consent is required, and



we want these projects stopped.

In the Great Whale River Project, Premier Bourassa intends to flood the lands of the Great Whale River Basin, the Nastapoca Basin, the Coates River Basin, the Boutin River Basin and the Little Whale River Basin in order to produce some 3,000 megawatts of electricity to be exported to the United States.

Each of these rivers has important fish populations, and each contributes to the ecology of Hudson Bay, which supports populations of beluga whales, seals, polar bears and arctic char. As well, rare inland freshwater seals depend upon this water. The flooding of Lake Bienville to turn in into the major reservoir of this project will destroy important wetland and ruin caribou calving grounds. And, it will release mercury into the environment which, for many years to come, will contaminate remaining fish, mammal and bird populations of the reservoir area.

The Nottaway-Broadback-Rupert Project, the next major complex after Great Whale River, will produce 9,000 megawatts of power when the ten proposed power plants are completed. As with the Great Whale River Project, these power plants will operate to supply the demand for electricity in the South. It replaces the natural cycle by draining

the reservoirs in winter and refilling them during the summer. The Nottaway and Rupert Rivers will be diverted toward the Broadback River system where, on the present channel of the Lower Broadback, the power plants will be mainly located. Water flow in the Lower Broadback River will, in winter be ten to twenty times the present natural flow. The plan is to build the upstream power plants first, and build others downriver as required.

Over a period of years, this increased flow will scour out the Lower Broadback River channel. Reservoir depth will fluctuate annually between six and more than eighteen metres, and, as the reservoirs are shallow, this will leave vast bands of mud around each reservoir. The impact of this project will be devastating. Many Cree families will lose the most productive parts of their hunting, fishing and trapping areas. Because the Nottaway-Broadback-Rupert Project is to be built in low-relief forested areas and in sensitive wetland environments, the project will cause mercury contamination of the fish in those reservoirs at levels as yet unseen in Northern Quebec.

These river basins form an intricate and complex pattern of wetland environments and small lakes. They are major nesting grounds for ducks, herons, and all of the other migratory waterfowl which come to our northern region every spring. The spilling of forty cubic kilometres of freshwater into James Bay and Rupert Bay every winter will have a negative impact on the trout, cisco and

whitefish populations as well as the snow geese that use Rupert Bay for a staging area during their migration.

For the Cree communities, local effects in addition to social problems and damages to the hunting and trapping way of life will include loss of community water supplies, contamination of local bodies of water, erosion and silting problems, and dangers to transportation. My community, Waskaganish, will be greatly affected by this project. Our very existence is at stake.

Besides all that, these projects do not produce clean energy from an atmospheric standpoint. The projects will allow Quebec and the northeastern United State to avoid implementing energy conservation as recommended by the international Brundtland Commission. In addition, the rotting vegetation from these projects will dump 100 million tons of carbon dioxide and methane into the atmosphere, contributing greatly to the greenhouse effect. Major power transmission lines will have to be built and will cut through our region as well as populated areas in southern Quebec and the United States.

The real crime about these proposed hydro-electric projects is that they are not needed, and there are much better investments available for the people of Quebec. It is only because of a few interested parties, including Premier Bourassa, that the projects are proposed at all. Hydro-Quebec is not a publicly regulated company, although it is a public company and has all of its debts un-

derwritten by Quebec taxpayers. Hydro-Quebec proposes to spend \$62 billion on mega-projects and related works over the next ten years. This is approximately twice the level of spending proposed by Ontario Hydro.

In Brazil, developers argue, the enormous population increase in the next century will require the power that they hope to get by flooding parts of the Amazon Basin. In Quebec, the population is expected to start declining by the year 2006.

Quebec presently uses the same amount of electricity as New York State, even though it has about one third of the population of that state. Yet, Hydro-Quebec is actually encouraging consumers in the province to use more electricity.

To increase the demand so its projects can be rationalized to the public, Hydro-Quebec has aggressively marketed electricity in the United States and has long-term agreements, which have still not been approved by regulatory boards, for at least 2,000 megawatts of firm power. Moreover, Hydro-Quebec sells electricity at well below cost to aluminum smelters which, incidentally, have been exempted by Quebec and Canada from environmental review. In 1984 when Premier Bourassa was reelected, Hydro-Quebec sold what it called "surplus electricity" to the United State at bargain basement prices. This was not surplus electricity; it was the margin of energy security, as

stored water in the reservoirs. The reservoirs are now 25 to 40 percent under capacity.

The alternative for Quebec will cost less than its mega-projects. If Quebec cancelled the U.S. contracts (it will lose money on them anyway) and implemented energy conservation, more employment would be created and eight rivers would be saved. Eight thousand megawatts of power can be accessed through conservation. As new technologies are developed using the sun, wind and perhaps fusion, it is likely that the cement and gravel pyramids in Northern Quebec will be monuments to the abuse that 20th-century man has heaped on the environment.

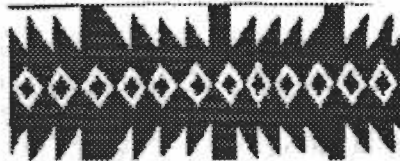
A major related question involves the financing of these projects, which is coming from North America, Asia and Europe. Any bank, bond fund, brokerage house or investment group looking to invest in the future hydro-electric projects of Hydro-Quebec should look at the global situation before it makes commitments. The environmental effects of these projects are reason enough to be concerned. Investors would be supporting mega-projects that will result in serious environmental damage. They must live with the consequences.

Hydro-Quebec's strength is also in question. Their bonds are guaranteed by the Government of Quebec, which is, in fact, directly involved in the financing of these projects. Investors should



be advised that the Cree have initiated legal proceedings in Quebec and the United States to prevent construction of the projects or at least substantially delay them. Before a decision is made to invest, there should be a clear review of these legal proceedings, the provisions of the James Bay and Northern Quebec Agreement, and of the ability of Crees and Quebecers to block the projects. Investors in Hydro-Quebec would also be best advised to look and see who really owns Northern Quebec: the Crees, Canada or Quebec. Potential investors should not underestimate us.

Sixty-five percent of the Cree People are under the age of twenty-five. These people realize



that hydro-electric development does not promote the long-term health of our way of life. They know that forestry must be controlled by the Cree people if it is to be made compatible with Cree hunting. These young people are the same ones who are being driven off the land, away from their family hunting territories. They see the confrontations at Kanesatake (Oka), Kahnawake, Akwasasne, Lubicon Lake, Restigouche, Rapid Lake, and with the Inuit of Labrador, the Indians of British Columbia and the Algonquins of Northern Quebec. And they realize that if the native people of Canada are to protect themselves and promote their way of life, they will have to do it themselves.

Current native reactions to government inaction stem from years of frustration, racism and neglect. The similarities between what is happening in South Africa and Eastern Europe and what is happening to native peoples in Canada are not exaggerated. Canada has a form of institutional racism and apartheid which is a shame to this nation and to the nations of the world. The "Intifada" in Canada by the native people is not an isolated event. This is the last generation of native people who will accept the indignity of having their rights ignored, their culture destroyed and their human rights lost.

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## Contaminant Cove

Where polluters defile  
Mohawk land

By John E. Milich



The St. Regis Mohawk Reservation meets industrial America at Raquette Point, a wedge of earth on the St. Lawrence River near Massena, New York. Mohawk Indians, who have lived here for a thousand years, call it Akwesasne, "the land where the partridge drums."

This was once a paradise, teeming with fish and wildlife, but when the St. Lawrence Seaway opened in 1959, booming commerce began to ravage the river's ecosystem. General Motors, Reynolds Metal, and other corporate polluters have inundated Akwesasne with chemical garbage defiling the Mohawks' sacred land.

"We look at this planet not as a mass of matter but as our mother the Earth, the nurturer of all life and our children," says Bear Clan Chief Tom Porter, who was until recently director of the Akwesasne Freedom School.

"A few years ago, we began to notice that our children would get rashes on their bodies and runny eyes, almost like a pink eye," Porter says. "The kids developed constant colds. It was like their immune systems had stopped working. We had no idea what was going on."

The Akwesasne Freedom School, widely known for its efforts to preserve the Mohawk language and culture, moved from Raquette Point in 1982 because of its proximity to GM's industrial landfill. Four years later, the well water at the present location a mile away tested high in polychlorinated biphenyls (PCBs). The

toxicity is largely responsible for an enrollment decline from ninety students to about thirty, and will force the school to relocate again in 1989. This time it will have to move off the reservation entirely.

GM, which supplies bottled water to the school and nearby homes, denies that it has knowingly fouled the environment. "At the time we were adding new PCB hydraulic fluid to our system, we certainly didn't consider it a hazard," says a company official.

"They knew about it," counters Tony Barnes, a veteran Mohawk guide. In 1975, he took two GM scientists on a boat ride to collect twenty-six samples at various depths in the St. Lawrence River. When the scientists returned the following year, Barnes says, they told him. "For about a thousand feet of shoreline, the marine life is dead."

The aquatic poisoning has since spread. "It makes me sad," says Barnes. "Almost half the reservation made its living from commercial fishing and guiding. People here used to eat fish three times a week or more all year. No way you can eat the fish any more."

Today, pollution is pervasive throughout Akwesasne. Raquette Point's breeze, pungent with noxious odors, carries airborne toxins onto the reserve. Cattle herds on Cornwall Island were decimated in the 1970s when Reynolds's fluoride emissions afflicted the animals with brittle bones and rotting teeth. Depletion of beef and fish sources has forced dietary changes on the Mohawks and may be linked to a

high incidence of diabetes among the community's 8,000 residents.

"We have a tremendous amount of PCB-contaminated material at this location," says Ken Jock as he conducts a boat tour of the inlet at Raquette Point known as "Contaminant Cove." Jock is an environmental specialist with the St. Regis Mohawk Health Services on the U.S. side of



Akwesasne, thirty-seven square miles of rolling hills carved by the St. Lawrence River and situated in both the United States and Canada.

PCB contamination at the nearby GM-Massena Central Foundry may prove to be the biggest PCB dump site yet uncovered. The insidious chemical is known to cause brain, nerve, liver, and skin disorders in humans, and cancer and reproductive disorders in laboratory animals. Five PCB-saturated lagoons and a larger number of sludge pits dot GM's 258-acre property.

GM used PCBs in its aluminum-casting process beginning with Massena's first production run in 1959. The company says it stopped using PCBs in 1974, five years before the chemical was widely banned from production. Government documents, however, confirm that GM was adding PCBs to its systems until mid-1980.

"Our problems became compounded," Ken Jock says, "when we found so many nearby factories polluting the St. Lawrence. A lot of chemical waste comes from upstream, too, because this river

is the sewer pipe of the Great Lakes."

Akwesasne is downstream, downwind, and downgradient in an industrial corridor that extends 100 miles west to Lake Ontario. Heavy shipping in the Seaway stirs up contaminated sediment, causing migration of poisons. The

reservation is within a few miles of six major industrial complexes discharging PCBs and a variety of phenols, polynuclear aromatic hydrocarbons, fluoride, mirex, and mercury.

"The combinations are synergistic, increasing the overall toxic effect," Jock explains. "It also makes it harder to trace the source. Readings have been taken in this cove, though, that show up to 3,000 parts per million of PCBs in the sediment and vegetation attached to it. Fifty parts per million is considered hazardous waste."

The Mohawks have mobilized to meet the crisis. Scientists and environmentalists, Indians and non-Indians alike, are waging an unprecedented campaign to assess the damage and demand a total cleanup. One major target is the Environmental Protection Agency (EPA), which is responsible for enforcing toxic-waste laws.

However, GM got a head start on the regulatory process in 1979 by employing a consulting firm to study sections behind the plant where PCB-laden sludge was dumped. On December 8, 1981, the Mohawks learned from newspaper reports that GM's water was

polluted with PCBs that might be trickling onto Akwesasne. The story came from New York State's Department of Environmental Conservation (DEC), which informed the media after rejecting GM's study and conducting a thorough investigation.

"We acted instantly," says James Ransom, director of the Environmental Health Program for the St. Regis Mohawk Tribe. "The day following DEC's announcement, we contacted the state health department and arranged for testing of residential wells. The following summer we started putting in our own monitoring wells."

For two years, GM refused to meet with Mohawk representatives. The corporation insisted that toxicity was minimal and that no damage had been done to Akwesasne. When the Federal EPA entered the picture at DEC's request in 1983, it assessed GM \$507,000 for illegal use and disposal of PCBs; it was the largest fine that had ever been levied for violations of the Toxic Substances Control Act.

As late as 1985, GM was operating its industrial landfill on the banks of the St. Lawrence without a valid state permit. DEC ordered the landfill closed, and it has since been temporarily capped. Nonetheless, the company continues to utilize its PCB-tainted lagoons, including a ten-million-gallon basin within twenty feet of the river. New PCB emissions are below hazardous levels, but little progress has been made toward eliminating past accumulations or the ongoing

ing chemical siege of Akwesasne.

When the EPA became involved in 1983, it added GM to its Superfund list. Superfund is the popular name for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which gave EPA authority to recover costs from polluters. The Superfund process is complex, protracted, and often ineffective. The first crucial step following Superfund designation is a remedial investigation, which is meant to serve as the "eyes" of any cleanup, locating and measuring toxic deposits. In 1985, EPA and GM agreed that the company could conduct its own investigation through a hired consultant.

The Mohawks questioned GM's ability to conduct an objective inquiry into its own pollution, and felt their concerns vindicated when a draft of the study was released in 1986. Subsequent phases of the investigation have not quieted Akwesasne charges that the report is inadequate in scope, methodology, and recommendations. Now, after five years of interminable Superfund procedures, the EPA's pace has suddenly quickened.

"We're beginning to question EPA's motives in pushing this whole study too fast," says James Ransom. "We feel that the driving force behind their work is to meet bureaucratic deadlines and quotas of completed studies, rather than trying to insure that the proper cleanup is done here." Akwesasne officials believe EPA's timetable will result in a white-washed Record of Decision, the

determining Superfund judgment that outlines strategy for cleanup. The Mohawks are challenging EPA's rush to close its books, supported by persuasive evidence that GM's own investigation lacks credibility.

Stephen Penningroth, a biochemist, performed an exhaustive review of the remedial investigation while on sabbatical leave at Cornell University last year, and concluded that GM's report "abounds in contradictions, imprecisions, and unwarranted conclusions."

"This kind of critical review of an RI [remedial investigation] is what the EPA should have done," Penningroth says. In preparing his report, "GM-Akwesasne: The Probable Poisoning of an American Indian Nation at a Superfund Toxic Waste Site," he accepted GM's laboratory data at face value but found that "the recommendations in the RI are not supported by a reasonable analysis or interpretation of the data."

GM collected approximately one soil sample per acre, and even less in river sediment bordering the site. Only one sampling was taken from river sediment downstream near Akwesasne. Penningroth contends that a statistically sound model needed for locating toxic "hot spots" requires construction of a three-dimensional sampling grid of about 11,300 borings per acre. A thorough probe may be cost-prohibitive, he acknowledges, but GM's investigation falls far short of meeting any reasonable standard.

"As of Phase 2 of the RI in May 1988, we were up to 500,000

cubic yards of PCB-contaminated soil and sediment," Penningroth asserts. "I suspect that's an underestimate by as much as a factor of ten."

Penningroth estimates that PCB-laced lagoons at GM-Massena contain some 200 times the total volume of PCB's spilled annually from capacitors and transformers, those areas of U.S. industry where PCB use remains legal. His review also disputes GM's human-health risk assessment, exclusion of the company's lagoons from the recommended cleanup, and the report's failure to address such chemicals as dibenzofurans and dioxin detected at the site.

Bill Walsh, staff attorney for the U.S. Public Interest Research Group in Washington, D.C., cites EPA's abysmal record it has cleaned up only twenty-four of 1,177 Superfund sites in eight years. Walsh attributes this failure in part to roadblocks that EPA has placed in the way of community participation in remedial efforts. Akwesasne's involvement in the cleanup is "virtually unique," he says.

The Mohawk demand for a role in the Superfund process has also been bolstered by the field work of a dedicated public official: Ward Stone, DEC's chief wildlife pathologist.

"The food chain is permeated with PCBs," says Stone. "Mink are completely lacking from Akwesasne, and they're extremely sensitive to PCBs. Frogs, mice, and shrews are loaded with PCBs. The PCB levels in snapping turtles and water fowl make

them unsuitable for human consumption or consumption by other wildlife."

Akwesasne first came to Stone's attention in 1985, when Katsi Cook, a midwife on the reserve, told him about her concern that wildlife contamination might be contributing to a high incidence of birth defects in the community. Stone has since collected hundreds of laboratory samples from animals, fish, vegetation, and local waterways. His investigation led him to coin such names as "Contaminant Cove," "Biphenyl Brook," and "Dead Clam Cove" for previously unidentified locations at GM and Reynolds.

Stone is a legendary figure in New York, which is beset with more than a thousand state-superfund disasters. Anne Rabe, director of the Albany-based New York Environmental Institute, says that among grass-roots activists working on toxic-waste issues, "Ward is about the only person they feel they can trust at DEC. He's really on the side of the citizens, protecting the environment at all costs. Because of that he runs head-on into policymakers at DEC. There have been attempts to get him fired, but he has tremendous public and media support."

Stone's work at Akwesasne gained him EPA's 1988 regional

achievement award. However, DEC gave him a hard time for his breakthrough discovery of massive PCB levels at Reynolds, immediately upstream from GM.

"We've done a lot of sampling inside. Reynolds's landfill is heavily contaminated," Stone says, "and they've been polluting the St. Lawrence and Raquette rivers for many years. Reynolds is going to rival General Motors as a PCB source. It's rather incredible that they didn't know they had a problem. Reynolds denied it until April 1988 and really came after me." DEC officials were embarrassed for having long neglected the Reynolds discharges.

When Stone went public with his findings early in 1988. DEC Commissioner Thomas Jorling tried to silence him. "It made quite a splash in the papers, which I figured would happen," Stone recalls. "DEC investigated me more than Reynolds initially. They collected my data and gave it to others in the department to review. There was nothing wrong. It is correct."

Proof of enormous toxicity levels comes as no surprise to many area residents. "Before Reynolds or GM came to prominence, we knew there was a problem: it's just been difficult pinning down the culprit," says

Henry Lickers, a biologist who directs the Mohawk Council's Environmental Division on the reserve's Canadian side. He says the Canadian government has long regarded Akwesasne as "the most polluted Indian land in the country."

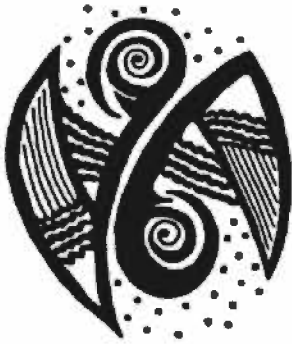
Lickers's investigation of fluoride's effect on Akwesasne cattle and agriculture led to a 1980 suit against Reynolds in which the Mohawks demanded up to \$400 million in damages. The Mohawks settled for \$650,000 in 1986 after legal expenses drained the tribal government's treasury. Lickers calls it "a travesty of justice."

The toxic assault from America's wealthiest corporations has devastated the Akwesasne nation. "It's heinous," Lickers says. "You have a people whose philosophy is intrinsically linked to nature and they can't use the environment. This is a crime against the whole community, a crime against humanity."

For more information write to:

Akwesasne Notes  
Mohawk Nation  
Roseveltown, NY 13583  
Attn: Doug George

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We know  
that the White Man  
does not understand  
our way of life.  
To him, one piece of land  
is much like the other.  
He is a stranger coming in the night  
taking from the land  
what he needs.

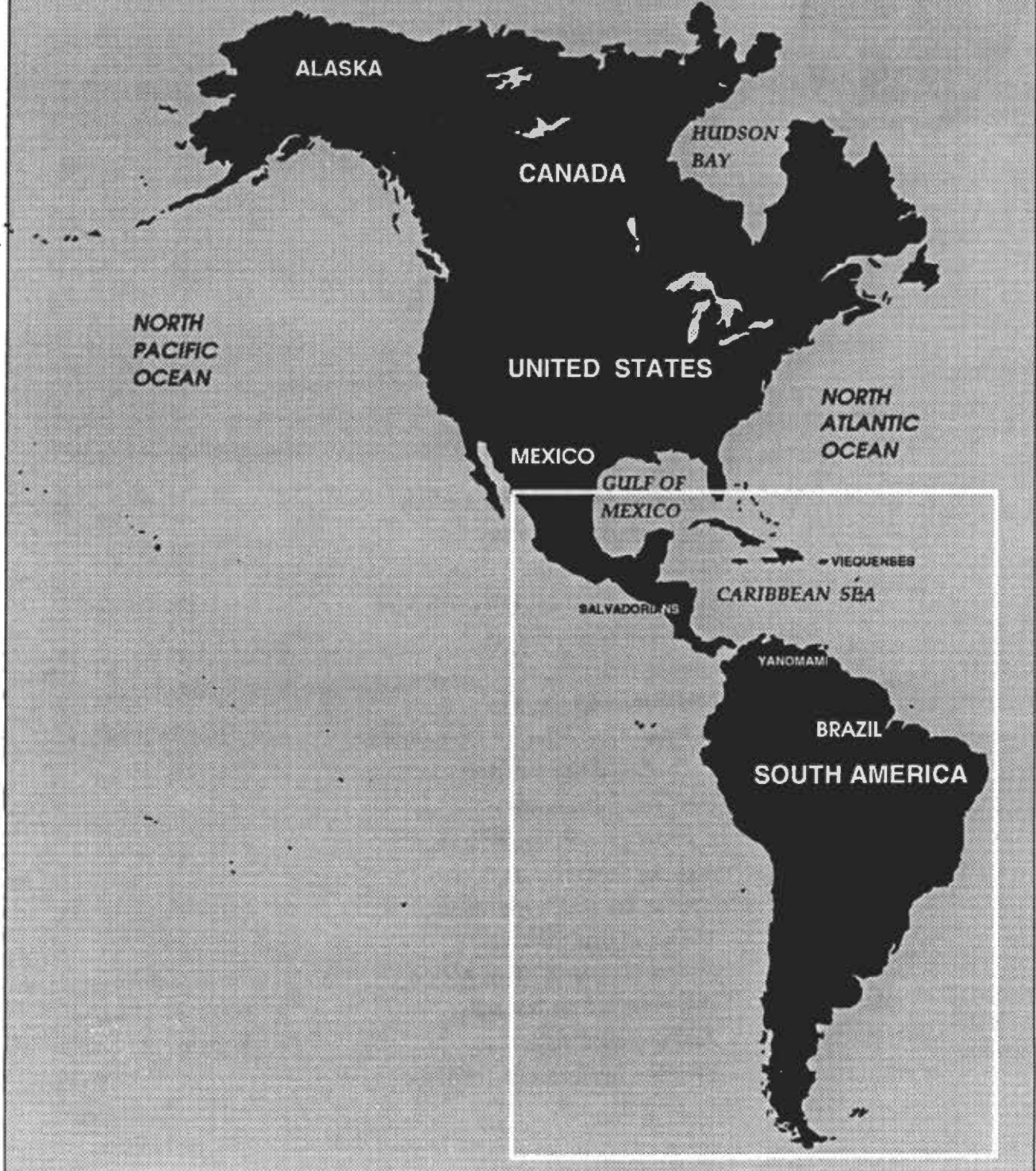
The earth is not his brother  
but his enemy  
and when he has conquered it,  
he moves on.  
He cares nothing for the land,  
he forgets his father's grave  
and his children's heritage.

He treats his mother the earth  
and his Brother the Sky  
like merchandise.  
His hunger will eat the earth bare  
and leave only a desert.

I do not understand —  
our ways are different from yours.  
If we should sell our land  
then you must know  
that the air is valuable to us,  
that the air passes its breath  
over all life that it maintains.  
The wind that gave  
my grandfather his first breath  
also received his last sigh.  
And the wind also  
breathes life into our children.



# THE CARIBBEAN, CENTRAL AND SOUTH AMERICA



## El Salvador, C.A. Cuscatlan, Land of Riches?

By Marta Benavides



October 1992 marks a very special date. For some nations it marks 500 years since the "discovery of the new world". Presently some find it wiser to refer to it as the "Encounter of two worlds". We, the people of the Americas, call it the "500 years of RESISTANCE," the clash of two worlds, the anniversary of the invasion by the Europeans. It was for us the beginning of colonization and colonialism, which to us has meant only oppression, exploitation, and repression. The South American writer Eduardo Galeano has documented the pillage and devastation that our continent has and still is suffering, and which he rightly calls the "opening of the veins of Latin America." When the veins of a body are opened, blood flows uncontrollably away from the self-contained system in which it thrives. It needs intentional and drastic measures to reverse it and to bring the body to life and health. Otherwise, the body, deprived of the nourishing blood, sooner or later, dies. There is no more life.

Historically, this is what the majority of the so-called third world nations around the world have suffered as the result of the colonizer bringing civilization and evangelism to our peoples. This system of bleeding our blood of all its human, natural, and cultural resources, has been maintained by force in our nations. The present expression of this is the astronomical foreign debt we carry on our backs. El Salvador, which translated means "the Savior," as baptized by the coloniz-

ers, went from a land of plenty and richness - in the original Nahuatl language was named CUSCATLAN - to a land of suffering and poverty. According to the United Nations, we are in the "hunger belt." Furthermore, we are second to Haiti as the most ecologically devastated nation in the continent.

El Salvador, CUSCATLAN, MY NATION IS BLEEDING TO DEATH. Our present situation is rooted in this 500-year history. Our people were killed to rob them of control of the land, which then we were forced to exploit and rape. We had to grow commodity crops for export to Europe. From our "milpas" (corn cultivated by the native people for their own survival), vegetable gardens, and a life in harmony with mother earth, we went to the production of indiao, sugar, coffee and cotton for export. Our blood has wet and fertilized our land, as our people were repressed and forced to abide by this new system of socio-economic relations, with nature and land. Our sweat produced riches to go in the foreign bank accounts of the fourteen families of El Salvador.

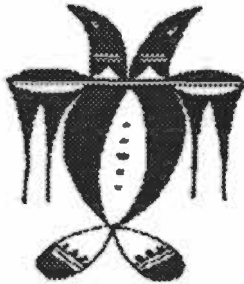
In this new order of things, 2% of the population owns 60% of our arable land which they use for their precious commodity crops. The poorest 20% of the people are forced to live with 2% of the national income. Salvadoran workers and peasants are poor economically, but rich in "ganas", the desire to work and transform the world. This is bad news for the rich, since we de-

mand a change of the vast inequality. To capitalism, our aspirations do not make for good business, i.e. for capitalism to be successful, the rich must become richer even in times of economic crisis for our poor.

We are told that the idea of changing inequalities is "terrorist and subversive."

We are told that our discontent comes from foreign ideologies. "It is the Cubans and Russians that are agitating and arming the discontent," they say. It's communism, which is atheistic and anti-democratic, the military assures us, and, therefore, "we need to be saved from communism." In a 1980 televised message to the nation, the defense minister told the Salvadoran people that this cleaning operation, might result in 1/4 to 1/2 a million people dying. But that it was worth it, if we were to save democracy and Christianity for western civilization. The number of murders, disappearances, and imprisonments increased.

Our people responded by forming unions, federations, associations, and broad and diverse political coalitions. This movement became the Democratic Revolutionary Front. They held massive marches and strikes in demand for peace, justice and a stop to the repression. They issued a platform for a new government and promoted dialogue and negotiation to solve the crisis. Yet, the military received more aid, training, helicopters and bullet-proof vests, non-lethal equipment



they called this. Monsignor Romero demanded that the US administration not grant any aid, even for bullet-proof vests and radios, which he felt only served to encourage and systematize the repression. The paramilitary groups and death squads had a prominent and active presence anyway. Repression escalated to "scandalous" lev-

els, internationalists said, as if any death and repressive act is not. Monsignor Romero, from the pulpit, called and begged for the military to stop the killings. He demanded the soldiers not to obey their superior's order to kill.

"In the name of God, in the name of our tormented people whose cries rise up to Heaven, I beseech you, I beg you, I command you, STOP THE REPRESSION."

Soon after this, he was shot to death at the communion table.

While our people continued to devise massive non-violent actions, the repression continued, and any leader was hunted as if a rabid dog. The people's liberation army was finally born. They also, as had the Democratic Front, issued a platform of principles and government which they were willing to use as a basis for dialogue and negotiation to solve the civil conflict. Agrarian reform, an end to the repression and the paramilitary groups and death squads, and radical transformation of the social inequalities were key to this program.

The US continued to train, fund, and advise our military, who

then went and bombed our villages, burning the crops and fruit trees to the root. This is known as the "scorched earth policy." It means taking away the water from the fish. The "fish," being the guerrillas. It is hard for foreigners to imagine the destruction of our mother land, our rivers, and lagoons. El Salvador is a place where, as the result of our historical poverty and suffering, the FISH ARE THE WATER AND THE WATERS ARE THE FISH. Thus, to effectively stop the demand for deep rooted change, one must commit genocide against the people and their land.

Our people and our environment have been RAPED. Everything, from the land to the US sponsored agrarian reform, to the social, economic and political systems are eroding. Our foreign debt is mounting due to the military aid and loans to maintain the system of war against our people. One of every 5 Salvadorans is displaced, and 75,000 people have been murdered in the last ten years out of a population of 5 million. Twenty-five percent of the displaced people depend upon humanitarian aid. The national debt is large: 1/3 of the budget depends on the US, 1/3 depends on the "monthly remittances" of relatives in "exile", 1/3 depends on the export crops, which right now \$800 million is in deficit. This situation breeds extreme misery and corruption. Moreover, there is the direct suffering from the war, the bombings, the wounded of war, and the destruction of our environment. Prostitution has risen, and there are hundreds of rural

women with their children lining up on the sidewalks of the capital city, San Salvador, trying to make a living from selling pencils, shoe laces or bobby pins. They are part of the "informal economy", we are told. They are the orphans and the widows, just as our land is an orphan and a widow too. Our land is not producing, we must import much of our foodstuff. Right now about a third of our country could irreversibly become a desert in the next 10 years or less, unless we take immediate intentional measures to

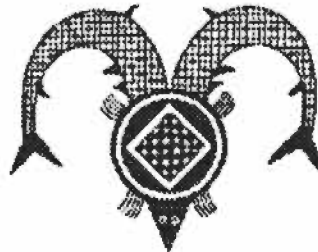
restore our rapidly deteriorating ecosystem.

The call is then for real and structural changes. To respond to this call, we must work for durable peace through a commitment to concrete justice. We must look for political solutions and have the political will to bring this armed conflict to an end. It is only then that we will be able to rescue our dying mother land and live in harmony with each other and nature. We must stop the bleeding of our nations, and restore the blood where it be-

longs. It is NOT ENOUGH to contain war. We must stop it for good. We must be about restoring and healing NOW!

MEDEPAZ  
Ecumenical Ministries for  
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Research Center  
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Mexico D.F., Mexico



## The Situation of Indian Lands in Brazil



### Introduction

**D**uring May and June, 1988, 180 Native people, representatives of 40 different tribes, maintained a vigil in the National Congress in Brasilia to press for recognition of their rights in Brazil's new constitution. Through the coordination of the Brazilian Indian Movement (Union of Indigenous Nations, or UNI), they succeeded in winning victories on several important measures:

- "original rights" to traditional lands, that pre-date the Brazilian state;
- "exclusive use of riches of the soil and waters," as well as their right to permanently remain on their traditional lands;
- that any hydroelectric dam or mining project that affects Indian lands can only proceed after authorization by Congress, in consultation with the impacted communities, and that a share of the benefits must go to the Indian people;
- the right to bilingual education in their Native language.

Unfortunately, the law most often applied in Brazil, and particularly on the Amazon frontier, is that of powerful economic and political interests. The machinery of the Brazilian government, through FUNAI, the National Indian Foundation, and the Brazilian military, has worked to erode the Indians' land base, and

to devalue their traditional cultures. In the past year, FUNAI has spent millions on advertising in the mass media, but says it cannot afford to pay doctors and provide medicines to fight epidemics in Indian communities.

### Indian Lands

There are currently about 250,000 Native people in Brazil, belonging to 180 groups. A study in 1987 by the Ecumenical Center for Documentation and Information (CEDI) and the National Museum found that only 73 of the 518 Indian areas in Brazil, representing only 14% of their total territories, had been legally recognized by the government. As we shall see in the following examples, the government's efforts over the past year have served to take traditional lands out of the control of the Indigenous populations.

### CASE ONE: The Yanomami

For more than a decade, an international campaign has been waged to secure recognition of traditional tribal lands for the Yanomami, a semi-nomadic people whose territory stretches across the border into Venezuela. The 15,000 Yanomami are the largest Indigenous population in the world still not in permanent contact with the national society.

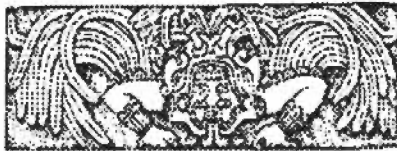
In 1985, the Brazilian military announced the establishment of the Calha Norte, or "Northern Basin" program, a joint project of "national security" and development. Calha Norte affects the region north of the Amazon River, within 150 km. (90 mi.) of Brazil's

borders with the Guyanas, Surinam, Venezuela, and Colombia. The military has refused to recognize the demarcation of large extensions of Indian territories in the border areas, and the document which created Calha Norte cautioned that "foreigners are trying to establish a separate Yanomami nation within Brazil".

Apart from geo-political concerns, the Yanomami lands are coveted as a treasure trove of mineral resources — gold, diamonds, tin, uranium, and strategic minerals. An advance guard of 40,000 gold panners has been encouraged to invade Yanomami territory, and allowed to remain by FUNAI and the Brazilian military, who are reportedly getting kickbacks from the miners. Behind the miners are multinational and Brazilian mining companies who have applied for preference right leases covering most of Yanomami territory. There have been violent confrontations between the miners and the Yanomami, and miners and soldiers have brought diseases like smallpox, flu, and venereal diseases, for which the Yanomami have no antibodies.

On September 13, 1988, FUNAI announced the demarcation of Yanomami territory as 19 separate, discontinuous areas, totalling about 10,000 sq. mi., leaving the rest of Yanomami lands as two National Forests and a National Park, which would remain areas of "permanent possession for the Yanomami".

However, only two months later, on November 18th, the government cynically annulled the demarcation decree with Inter-



ministerial Decree (Portaria) 250, which establishes that the National Park and National Forests will have multiple uses, thus opening them to development. This action will effectively take out of the Indians' control some 70% of their traditional lands, an area of nearly 24,000 sq. mi.

#### **CASE TWO: The Indians of Acre State**

There are 6,300 Native people in Acre and the surrounding region, pertaining to the Apurina, Arara, Iauanaua, Jaminawa, Kampa, Katukina, Kaxinawa, Kulina, Machineri, Masko, Nuquini, Papavo, and Poyanawa tribes.

The Brazilian military has intervened here, also, to block the demarcation of Indian lands. These territories lie within the border "security" zone, though not within the area of Calha Norte. The military-dominated National Security Council has agreed only to recognize the existence of Indian "colonies," villages with an advanced decree of acculturation in their eyes, even though there is no legal precedent for such a designation.

Caught in the middle of this controversy is the Interamerican Development Bank, which had agreed to pave the only road leading into Acre, but only after a "Plan for the Protection of the Environment and Indigenous Communities" was drawn up and put into

effect, in consultation with the affected communities. Now, it is doubtful that a meaningful protection plan for the region can be put into effect.

#### **CASE THREE: The Uru-Eu-Wau-Wau:**

The Uru-Eu-Wau-Wau are a group of perhaps 1,000 Indians who live in central Rondonia, a state which was heavily impacted by the World Bank's Polonoroeste colonization program. There are thought to be several bands of Uru-Eu-Wau-Wau who are uncontacted.

In 1985, in response to international criticism of the impacts of Polonoroeste on Native people, the World Bank pressured the Brazilian government to demarcate an area of 7,000 sq. mi. for the Uru-Eu-Wau-Wau. Though the land is legally protected, it has suffered invasions by lumber companies, cattle ranchers, gold miners, and farmers in search of land. Local politicians have circulated propaganda critical of the government "giving" so much land to the Indians, when so many small farmers are landless. There are strong political pressures to reduce the Uru-Eu-Wau-Wau reserve. Their situation is typical of Native populations who have been "protected" from the impacts of large-scale colonization, mining, and hydroelectric schemes in the Brazilian Amazon.

Other cases which have attracted international attention in the past year include:

- The Kayapo's campaign for international solidarity to oppose plans for the world's larg-

est hydroelectric complex on the Xingu River which would impact two dozen different Indian groups. In all, 40% of all Indian lands in Brazil would be affected by the network of dams planned for the Amazon region. World Bank funding for Brazil's Electric Power Sector would push these projects forward;

- The Tikuna's resistance to invasions by lumber companies, which resulted in the massacre of 14 Tikuna, and the wounding of 27, including women and children, in March, 1988;

- Illegal lumber sales on Indian reserves in Rondonia, with the reported collusion of the former President of FUNAI, Romero Juca Filho, who is currently under investigation;

- An epidemic of tuberculosis affecting the Surui and Cinta-Larga in Rondonia. Doctors and medicines are in short supply, and there is evidence that millions of dollars provided to FUNAI by the World Bank for Indian health programs has disappeared;

- Violence against Indian people in Brazil's Northeast, affecting groups like the Pataxo Hae-Hae-Hae and Xoko, where cattle ranchers have conspired with police to evict Indian people from tra-

ditional lands that now amount to only a few acres per family.

### Conclusion

Despite laws guaranteeing Indian rights, the Brazilian government has taken unusual measures to see to it that the land base that is the key to Native peoples' survival is eroded. With authoritarian Presidential and Military decrees in the name of "national security", Brazil is invalidating Indians' rights to lands they have occupied for 20,000 years.

At the center of these controversies is FUNAI, a corrupt agency of the Brazilian government with close ties to the military. Without a strong articulation by Native people themselves, through the Union of Indigenous Nations (UNI) and support groups, the Brazilian government is unlikely to comply with its own laws protecting the rights of Native people.

### What you can do

1. Write telegrams and letters expressing your views on the above situations to the following officials:

President Jose Sarney, Presidencia Brasilia DF, Brasil. (Telex 61 3117 PRDF);

Enrique V. Iglesias, President, The Interamerican Development Bank, 808 17th St. NW, Washington DC 20006;

Barber Conable, President, The World Bank, 1818 H St. NW, Washington DC 20433;

Please send a copy to the South and Meso-American Indian Information Center.

2. The Union of Indigenous Nations (UNI) urgently needs your direct support. Money is needed for office expenses, transportation, and publications. UNI is currently engaged in diverse projects including a Center for Indian Law, a Center for Sustainable Resource Development, and the weekly Indian Radio Program, which is sent to more than 100 Indian villages with the latest news updates and cultural programming.

Donations to UNI may be made to their legal entity "Nucleo de Cultura Indigena" by international money order or cash. For more information, contact SAIIC.

3. Support the South and Meso-American Indian Information Center through a direct donation, by volunteering your time, and by subscribing to the SAIIC Newsletter for the most complete information on Native peoples' fight for physical and cultural survival, in their own words.

For more information:  
South and Mezo American Indian Information Center (SAIIC)  
P.O. Box 28703  
Oakland, CA 94604  
(415) 834-4263  
FAX: 834-4264

## Battle for Vieques... US Navy Out!



*The following is a report from a member of the Free Puerto Rico Committee who spent the weekend of April 25, 1989 on the island of Vieques. This was less than two weeks after US marshalls attempted to evict Maria Velazquez and Carmelo Matta from their home and land, which the US claims is the property of the US Navy.*

**O**n April 25, 1989, I arrived in Vieques on the ferry from the main island and was picked up and driven up the hill towards Carmelo's land by a fisherwoman. On the way up we stopped and she told me, "This is the imaginary line." All I saw was a one-foot wide ditch. I looked around and saw very fertile land and houses in all directions. We drove further up the hill where two signs lined the road "Monte Carmelo" and "Marina fuera de Vieques" (Navy Out of Vieques). Then I saw the two burned-out skeletons of a van and a truck. All that was left after the fire were rusted metal frames.

Although the Navy had burned their belongings, Carmelo and Maria still live in their house. Their supporters were building tents for people to stay in to provide 24-hour security to ensure that bulldozers do not come to tear down the houses within the "imaginary line." Thirty people were busy at work putting up tents, making outhouses, or preparing food. In an otherwise empty house, there were some appliances. Everything else had burned on the trucks. I joined in the work and learned how to ex-

tract snails from their shells with a hairpin. I was very fortunate to be able to assist the family and to listen to the history of both Vieques farmers and fishermen. Most poignant was the description of the attempted eviction and burning.

For a few moments I thought it was the 4th of July as I heard explosions. Then a helicopter flew over the house, having just completing target practice to the east of "Monte Carmelo."

That afternoon Maria Velazquez talked about their struggle and the events of April 14, 1989. She spoke of the government officials who came to their house in 1986 and told her, "This is Navy land." Her reply, "this is not Navy land. We have lived here since 1976. We do respect your fences, but there are no fences here . . . they told us that we had to leave and if we didn't they would bulldoze down our house." On the day of the eviction, dozens of people from Vieques came to give support and to try to stop the eviction. Carmelo, a Korean War veteran who has had open heart surgery, collapsed and needed first aid given by a paramedic.

People then noticed a small amount of smoke coming from the van. Maria said, "Please get the fire trucks . . . there was smoke with no flames." She demanded that they "move the truck." But as she told me, "They let the trucks burn . . . they accused us of setting the fire with gasoline soaked rags, but we were on the other side of the road and the only person near the van when



the smoke was seen was the US government housing official."

The next day I joined a demonstration at the entrance to the Navy compound. Upon return, I interviewed Carmelo. "When I was four we had to move from our land which was to be occupied by the US Navy ... I was a veteran of the Korean War and in 1976 came to live here ... I came for one reason, for peace. I was positively sure I would not be harmed. No man can be the owner of any other person. I have a right to live in peace and that is why I am here, to live in peace. The US Navy has chosen to fight a war against me. I have to fight for my family ... I ask for all the people in the world to help me, Carmelo. That is why today people are guarding my six acres."

In response to Carmelo's plea, 300 people have moved inside the "imaginary line" in solidarity with the families that live there. In addition, weekly demonstrations have been called to support those who live within the "imaginary line" and to protest the US Navy presence in Vieques.

1942: Thousands of Puerto Ricans living on Vieques are forced to move as the US Navy seizes two-thirds of the land on this small island off the coast of Puerto Rico. Carmelo Matta and his family are forced from their farm to a few acres in the middle of the island.

1942 - 1945: Residents of Vieques are evicted and move to the main island of Puerto Rico or to the nearby Virgin Islands.

1963: Maria Velazquez moves to Vieques, after growing up in the Virgin Islands and the US.

1976: Carmelo and Maria move and build a house one-half mile away from US Navy fences.

1976 - 1986: Thirty families live near Carmelo and Maria, some have lived there for over 50 years.

1986: The US Navy declares that Navy land extends up to 4,000 foot perimeter - outside of what is called the "imaginary line."

1987: Carmelo and Maria are told that they will be the first family to be evicted.

Feb. 1987: Carmelo is given the wrong address for a Federal Court hearing. In his absence the US Judge orders Maria and Carmelo to leave their land within 40 days.

April 14, 1989: Three US marshals, a housing official, five Navy seamen, a van and a truck arrive at Carmelo and Maria's home. The eviction begins with the seamen very carefully removing the family's belongings from the house and filling up the trucks with furniture, clothes, and hundreds of books.

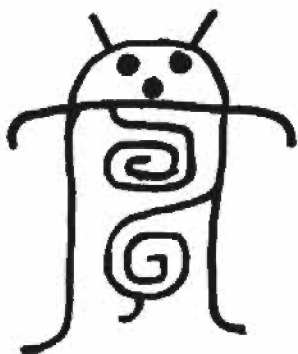
3:00 p.m.: Smoke is seen coming from the van. A meager attempt is made to put the fire out with a small fire extinguisher. Carmelo, Maria and others who have come during the day to support them, ask the marshals to put the fire out. No response! As the fire starts to spread, they demand that the marshals move the truck to prevent it from being burned as well. No response! The fire department is called but cannot drive up the hill - the road is blocked by police and government vehicles.

6:00 p.m.: The family's belongings are in ashes.



## Vieques: An Ecology Under Siege

By Roberto Rabln, Vieques Historical Archive



The most alarming contaminating factor in Vieques, and also the oldest historically, is the US Navy. The fifty years that the Navy has been operating in Vieques can be classified as "a half century of environmental disaster."

The Puerto Rican environmentalist Neftali Garcia in his work "Historical and Natural Consequences of the US Navy Presence in Vieques" affirms that the military practices have produced serious destruction of the "mangroves, lagoons, beaches, coconut groves and other natural resources...the Navy destroyed the coconut groves of Bahia Tapan, Bahia de Chiva, Punta Brigadier, Puerto Negro, Punto Diablo and has begun the destruction in other areas like Bahia Salinas del Sur."

Professor Jose Seguinot Barbosa, Director of the Geography Department of the University of Puerto Rico at Rio Piedras, in his study entitled, "Vieques, the Ecology of an Island under Siege" (1989) maintains that "the eastern tip of the island (where the Navy carries out its bombing practice) constitutes a region with more craters per kilometer than the moon." In the same work the distinguished geographer states that "the destruction of the natural and human resources of Vieques violates the basic norms of international law and human rights. At the state and federal level the laws pertaining to the coastal zone, water and noise quality, underwater resources, archeological resources, and land use,

among others are violated."

The Viequense engineer, Rafael Cruz Perez, in an article entitled "Contamination Produced by Explosives and Residues from Explosives in Vieques, Puerto Rico" (*Dimension, Magazine of the Association of Engineers and Surveyors of Puerto Rico*, Year 2, Vol. 8, Jan. 1988) describes three sources of contamination that result from the Navy's activities in Vieques: 1) the chemical composition of the missiles' charge and the composition of the reaction; 2) the particles of dust and rock that are thrown into the atmosphere as a result of the projectile's impact or of the explosion; 3) metallic residues left by the projectiles when they fragment, as well as the scrap iron used as targets in the bombing area.

Cruz is an environmental consultant with vast experience in the field. He was an artillery officer in the US Army and worked in Vieques studying the environmental effects of the artillery practices that are conducted there. He describes the situation of Cerro Matias and other adjacent sectors (the Navy's bombing zone) like "a battlefield during the First World war, where the ground and a great part of the vegetation has been reduced to dust (...) you see the bomb fragments and pieces, as well as the bombs that didn't explode (...) scrap iron that is used as targets (...) Cerro Matias can be considered in its fundamental characteristics as a giant deposit of solid waste."

The Viequense engineer adds in his article that "according to

the information provided by the US Navy, this material is never removed, instead it is detonated or simply covered over with dirt (...). As a result of the effects of the explosions, the sea breezes and natural atmospherization, the metals are oxidized or decomposed changing in an accelerated form into products that contaminate the environment."

"In the same study we find (...) that the concentration of the contaminants (TNT, NO<sub>3</sub>, NO<sub>2</sub>, RDX and Tetryl) in the sources of drinking water in the towns of Isabel segunda and la Esperanza, are the same or similar to those found in the ponds and lagoons in the bombing area in Cerro Matias. The study does not explain how these substances reaches the water sources, located

more than fourteen kilometers from the bombing area."

"It is clear from all the above," the author points out, "that components resulting from the explosions in the bombing area in the east of Vieques are transported by diverse mechanisms toward the civil area in the center of the island (...). In the case of the explosion of pieces of artillery, missiles and bombs, there exist various factors which, directly or indirectly, increase the facility of movement of these contaminants (...). The cloud of contaminants generated by an explosion is dispersed by the effects of the prevailing winds in the explosion area (...) the fine particles become part of the atmosphere, and are transported through the air over great distances (...) we find that the ef-

fective concentration of particles over the civil area of Vieques exceeds 197 micrograms per cubic meter and therefore exceeds the legal federal criteria for clean air." The scientific studies confirm what every Viequense knows from birth: that the presence and activities of the US Navy result in an environmental crisis with serious consequences for the human and physical geographic health. An obvious solution will be to end the overwhelming source of contamination in Vieques: US Navy out of Vieques!

Reprinted from the Vieques Update, a joint publication by the Vieques Historical Archives and the U.S. Puerto Rico Solidarity Network (USPRSN), P.O. Box 350, Jerome Avenue Station, Bronx, NY (212) 601-4751.

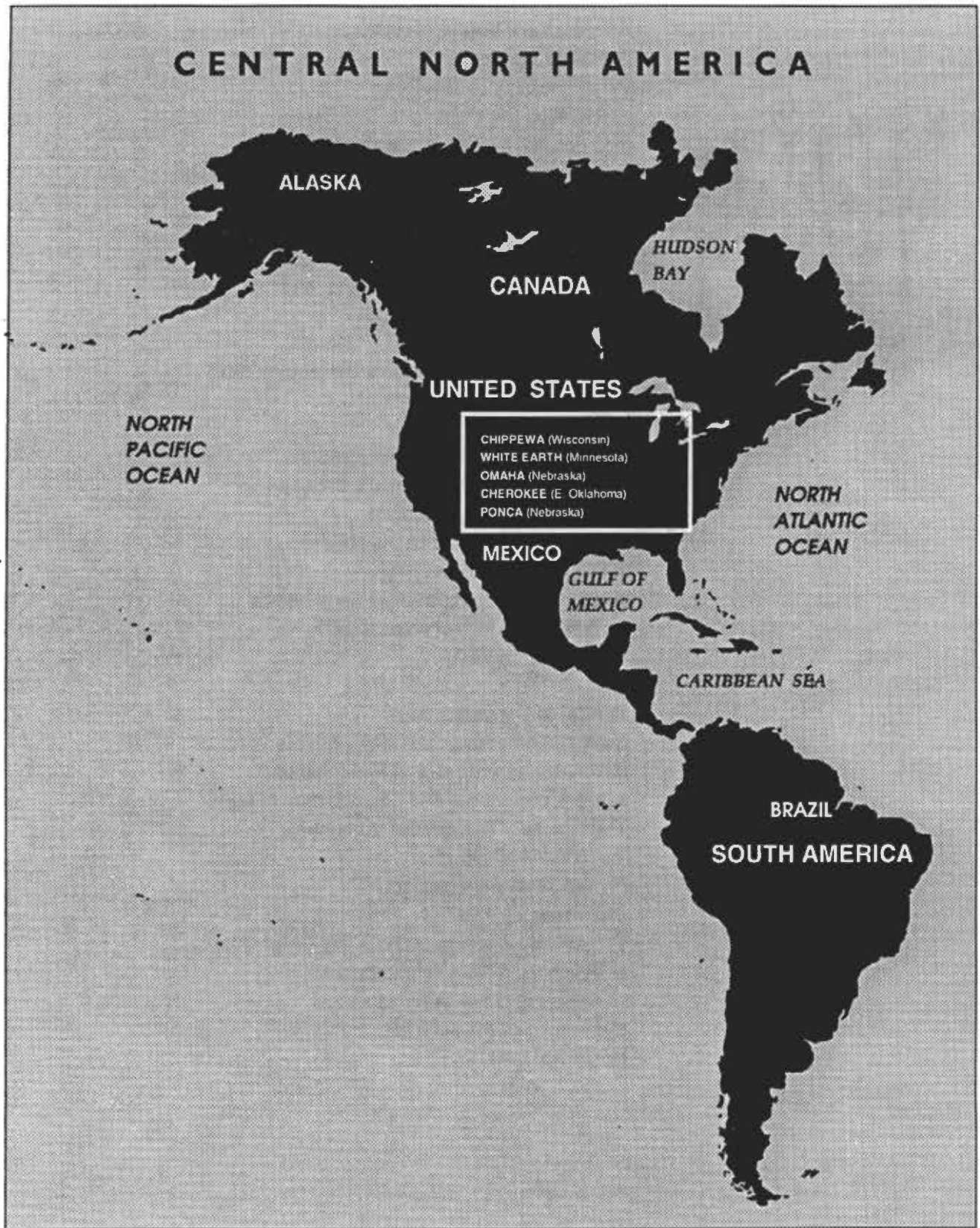


All things are bound together.  
All things connect.  
What happens to the Earth  
happens to the children of the Earth.  
Man has not woven the web of life.  
He is but one thread. Whatever he does to the  
web,  
he does to himself.

Soon your people will flood the land  
like a river after a downpour  
cascades down the cleft.  
But my people and I we are the ebbing tide.  
This destiny is a mystery  
to the red Man.  
We might be able to understand it  
if we knew that White Man's dreams —  
the hopes and expectations  
about which he talks to his children  
in the long winter evenings —  
what visions he engraves in their hearts  
so that they look forward eagerly  
to the coming day.

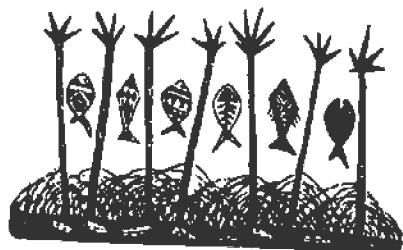
Yonder sky that has wept  
tears of compassion upon my people  
for centuries untold, and which to us  
appears changeless and eternal, may change.  
Today is fair. Tomorrow it may be  
'overcast with clouds.  
My words are like the stars  
that never change.  
Whatever Seattle says the great Chief  
at Washington can rely upon with  
as much certainty as he can upon  
the return of the sun  
or the seasons.

CENTRAL NORTH AMERICA



## Chippewa Treaty Rights in Wisconsin

By Winona LaDuke



In the spring of 1989 the national media took a look at Chippewa people who continue their centuries-old traditions of spearfishing on the lakes in their territory, and the local non-Indian residents who came out to oppose the Indians. The non-Indians' actions ranged from yelling out racist remarks from the boat landings and on a number of occasions the National Guard and state police had to restrain non-Indians who were attacking Indian fishermen.

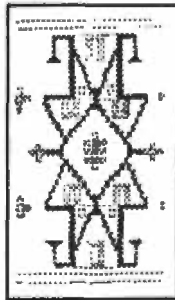
What is at issue here is not only a question of racism, at issue is whether the American people will stand by treaty agreements with Indian people. The Chippewa who are spearfishing and hunting, are doing so in accordance with their treaties, in which they ceded large areas of northern Michigan, Wisconsin and Minnesota, in return for smaller reserved or reservation areas. The treaties provided that the Chippewa would continue to use the larger areas of land in the ways which they always had to gather food and provide for their families. This is known in present-day terminology as an off-reservation treaty right. The Chippewa (or Anishinabeg as they call themselves) have always had this right; but it was just recently upheld by the Wisconsin Supreme Court in a landmark case known as the Voight decision (1983). Beginning in 1984, the Wisconsin Chippewa tribes began to undertake aggressive management of their resources and entered into a series of agreements with the state of Wisconsin to protect the resource.

It is interesting to note that the Chippewa tribes under self-regulation actually set quotas lower than those negotiated in the two prior years with the State of Wisconsin. The 1989 quota was set at 48,600 walleye (fish) compared to 71,000 walleye under the 1988 state/tribal interim agreement and 82,832 under the 1987 agreement. Overall, an estimated 7% of total walleye populations are allocated to the tribes under the agreement (1984-1988). However, Chippewa people continue to take only a small portion of total harvest of either fish or other animals (i.e.: deer) in either the states of Wisconsin, Minnesota, or Michigan.

That spring of 1989 the showdown between Indian people, and their supporters and the so-called anti-Indian groups was violent and ugly. Some of the biggest demonstrations were at a place called Butternut Lake in northern Wisconsin. For the most part the anti-Indian groups outnumbered the Indians who were fishing on the lakes. On several occasions, however, supporters of the Indians came to the boat landings, and 800 or more people stood as a buffer zone between the Indians and the racist signs, beer drinking, and sounds of racial smears which had proliferated through northern Wisconsin. The non-Indian support groups were active all spring, and came to a big showing at the Fourth of July parade in downtown Minoqua, a stronghold for the anti-Indian groups just south of Lac du Flambeau reservation.

The problems in northern

on the reservation (people or corporations who own land here, but don't live here); to see if we can make an agreement to have these lands returned. We are also looking at various sources of funding to purchase or re-acquire lands within the borders of the reservation. The long-term objective of the White Earth Land Recovery Program is to recover one-third of the reservation in the next ten to fifteen years. *One day, we would like to see the whole reservation back in Indian hands.*



**Why should we buy back land that is already ours?**

The White Earth Land Recovery Project believes that all lands within the borders of this reservation are legally ours. However, because of a series of laws, including the Nelson Act, the Steenerson, Clapp and WELSA Acts, there is a lot of confusion about land title, many non-Indian landholders, and a problem called "Checkerboarding". "Checkerboarding" is when there are many types of landholders on an Indian reservation. This makes it difficult to do protect the environment, make regulations, do business, hunt, and plan for the future.

It seems like it is easier to lose your land than it is to get it back. It is pretty unlikely that all the non-Indian interests on the reservation will just move off and return the land to us. It is more likely that they will be interested in selling. Because our main objective is to get the land back, and to be a positive force in the region,

we want to look at buying out non-Indian landholders as an option. There is no question that it will cost millions of dollars over the next fifty years; but the end result is what is most important. *We also intend to save every receipt for the federal government since it is our view that this should have been their responsibility in the first place to prevent the problem.* We also propose to use legal, legislative and negotiations methods to seek return of lands held by federal, state, and county governments. "Buying back" the land is only one of many ways to get back the land.

**What does the WELRP propose for the long term?**

Ideally, we'd like to see all the lands within the reservation back in Indian hands - whether it is the tribal government, or the individual tribal members. After all, this is our territory.

We believe that this reservation is full of clean lakes, air and rich lands. This could support community, and we could have a good standard of living and life from our land. In fact, if we regain control over our land base, we could support all tribal members from this land (about five times as many Indians as are now living on the reservation). Our community could harvest and produce from this land - whether maple sugar, wild rice, fish or gardens and farms, and do this in an ecologically sound manner. If we plan carefully, and do our economic development well, we can build an economy that supports our

community for many generations. That's how good this reservation is. We believe that rebuilding the land base is central to long term self reliance, dignity and the culture of the White Earth people.

*We also feel that this land is our life. We are families of survivors, we come from clans, we come from our history and our traditions as Anishinabeg people. We must look out for the next seven generations of our people. We've been here that long, and we'll be here that long again. We must protect our land.*

**How Will This Plan effect non-Indians?**

*What's good for the Indian is good for the non-Indian.* Rebuilding the White Earth landbase will help us rebuild the White Earth economy. When we increase the wealth of our people and our economy, this strengthens the economy of the region, improves employment and business opportunities locally, and in off - reservation border towns.

By developing a land-re-acquisition program, the White Earth people will offer perhaps, the only alternative to non-Indian landholders who wish to sell their lands. According to a study we did a couple of years ago over \$9million worth of property was advertised for sale on the reservation. There are a lot of non-Indian people who would like to sell. These people are in a two-way bind: 1) the real estate market in this region is depressed, making it harder to sell land, and 2) "title problems" will always be a problem for non-Indians on the reservation; after all this is Indian land. The

WELRP offers a viable alternative for the "willing sellers".

**Is the WELRP trying to get land for the band, or for individual tribal members?**

The WELRP believes that any way Indian people can regain land on this reservation is good. We support tribal members holding onto land, buying, or otherwise getting land; and we support the band getting land. However, we hope to take this reservation off

*the market.* We believe that our Burial Grounds, sacred sites, old villages, rice landings, maple sugar camps, hunting areas, and everything else, should be ours forever. We propose to return lands to "trust status", in some way, which will prevent them from being lost again.

**What is the WELRP doing now?**

This summer, we really need *your help.* We're going door to door, and asking people in the

community what they think about the land. We're interested in finding out what you think is important about getting back our land, what you think we could do with the land, what land you think we should try and get back, and why. Let us know what you think; and how we can work together.

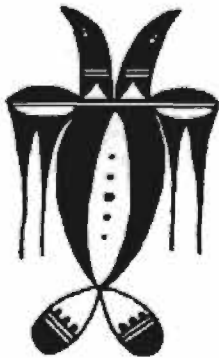
For more information:

WELRP  
Box 327  
White Earth, MN 56591  
218-573-3049



## Omaha Tribe of Nebraska- Blackbird Bend Case

By Mary Lee Johns



**B**lackbird Bend has been an ongoing court case for the Omaha Tribe of Nebraska for the past fourteen years. It has, just recently, escalated into a major issue for Indian Tribes, as a result of a decision by a federal judge to jail the entire Omaha Tribal Council for disobeying his court order; and fining the Tribe \$10,000 per day until the council officially agreed to allow a survey of the Blackbird Bend area.

### Background

In 1854, the Omaha Tribe of Nebraska signed a treaty with the United States establishing the Omaha Reservation in northeastern Nebraska. The eastern boundary adjoined the Missouri River, one of the longest, most powerful rivers in North America. The river's flood plain measured as much as ten miles from its high banks on either side. Before the 1960s all efforts of modern technology could not control it. The river was finally brought under control by five massive earth dams built on its upper stem.

Over the next 100 years following the signing of the 1854 treaty the Missouri River changed its course, gradually eroding the land on its eastern bank (Iowa side) and depositing the land on its western side (Nebraska side). This resulted in the addition of hundreds of acres to the Reservation in a large loop in the river called Blackbird Bend.

The River suddenly straightened out, as the Missouri had been known to do, cutting directly across the narrow part of

Blackbird Bend, leaving the accumulated land on the Iowa side.

After the dams were built, the lower portion of the Missouri was completely controlled, no longer subjected to devastating floods. The land near the river, because it is bottom land and very fertile became extremely valuable.

Iowa farmers began to farm the land and after a period of years began to claim it as theirs. They did not, however pay any taxes until after the Omaha Tribe had convinced the U.S. Department of Interior that the land belonged to the Tribe.

### Waterlaw

In western water law when land is gradually built up by a river it is called accretion; this land becomes a part of the adjoining property. In this case it became part of the Omaha Reservation.

Now when land is torn away suddenly, its called avulsion. When this happens the land remains the property of the previous owner, again the Omaha Tribe.

The controversy is not whether the Omaha Tribe owns the land, it's a question of how much it owns on the Iowa side. They have not been allowed to prove their ownership based upon these key points of water law.

### Non-Indian Claims

The non-Indians who claim the disputed acres are very wealthy and powerful landowners. The state of Iowa is also a party and claims title to 700 acres.

A key question: If the non-

Indians owned the land and the state had knowledge of their ownership, why were taxes never collected by the state?

**Court Case**

Knowing the land belonged to them the Omahas finally convinced the federal government that they had a case in 1974.

On May 19, 1975, the U.S. Department of Justice filed a lawsuit in federal court in Northern District of Iowa, on behalf of the Tribe. The lawsuit, however, only claimed 2200 acres of land, the area within an old survey line called the Barrett Survey, mapped in 1869, which showed the boundaries of the Omaha Reservation.

The lawsuit should have claimed more acres, because the river had moved by accretion east and north up to the Iowa High Bank encompassing 6990 acres. It is ironic that the U.S. Attorney who filed the suit had previously been the Attorney General for Iowa and had been involved in claiming the Blackbird Bend land for Iowa.

Because the lawsuit, filed by Justice, did not claim all the land, the Tribe was legally entitled to an attorney, in the Department of Interior, acting with the authorization of the Secretary of the Interior, filed a second lawsuit on behalf of the Tribe. This suit asked for an injunction to eject all trespassers on the Indian lands. It argued that the Department of Justice's Suit was filed prematurely because hydrological surveys which were still in progress would prove the Tribe's claim. It also stated that the Tribe should

not be bound by the Justice Department's actions.

The Justice Department's response was, they were acting for the United States as trustees to the Omaha Tribe, and the Tribe, as ward, was therefore bound by the Department's actions on their behalf.

The federal court ruled in the Tribe's favor with respect to the injunction against trespassers and held the matter in abeyance until the Tribe filed their own lawsuit.

The Tribe filed its lawsuit in October, 1975 claiming all 6690 acres.

In April, 1976, the judge *sua sponte*, meaning on his own initiative, without request by either party, announced that the trial would be concerned solely with the 2200 acres within the Barrett survey line.

There is a total of 2900 acres within the Barrett survey line; 2200 acres was awarded to the Tribe. The court changed its ruling and awarded 1900 acres to the Tribe, 700 acres to the state of Iowa and 300 acres to two non-Indian farmers.

The 1900 acres awarded to the Tribe is totally land-locked. In order to have access to the land the Tribe has to pay as much as \$15,000 per year to use an access road. They are no longer allowed to use this route and as a result of the court allowing surveys in the area the tribal land has been totally fenced off. The only way for

them to cultivate and harvest their crops is by helicopter.

**Present Situation**

The U.S. attorney, James Clear, has just recently asked the court for a final judgement in this case. He is requesting the court to authorize payment of \$1,450,000 for the non-Indian defendants and \$467,457 for their attorneys for al-

leged improvements to the land. He further asked the court to include \$700,000 of Tribal funds, which has been held in escrow, as part of the payment.

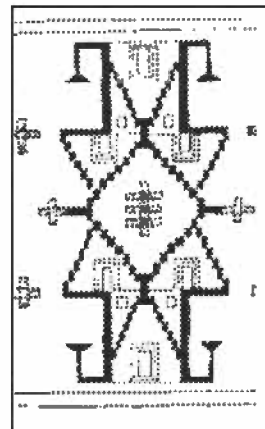
When the Omaha Tribe in good faith signed the 1854 Treaty it did so with the understanding that the U.S. would protect the rights and resources of

the tribe. In turn the Omaha's ceded their lands. The United States Justice Department who is intrusted with the protection of the Omaha Tribe is now requesting a U.S. Superior Court Judge to divest that same tribe of not only its rights but also very valuable resources and its money.

**The Omaha Tribe has asked for support in these areas:**

The Tribe has approached members of Congress asking that they intervene and hold "oversight hearings" into the conduct of the Department of Justice's handling of this entire matter.

- Increase public pressure advocating the need for further ongoing court action concerning the Blackbird Bend Case.
- Increase public pressure ad-



vocating a legislative and/or political settlement to the Blackbird Bend Case.

The Omaha Tribe is a small tribe and does not have great resources, it has further been impacted by the agricultural crisis in the midwest. They have recently been forced to cut back in all areas including staff and ser-

vices to their members. By having to cut back on their staff when they need staff support to carry on their fight could not have come at a worst time. These cut backs as well as the loss of their tribal funds will impact the outcome of their case, so any support we can lend them at this time will be greatly appreciated.

For more information contact:

Ed Nakawatase  
Community Relations  
Division  
American Friends  
Service Committee  
1501 Cherry Street,  
Philadelphia, PA 19102  
Tel: (215) 241-7131.

## Cherokee Nation: Native Americans for a Clean Environment



### Strategy

**N**ative Americans for a Clean Environment (NACE) was formed in 1985 by Indian and non-Indian people in eastern Oklahoma to counter nuclear waste disposal plans of Sequoyah Fuels, a uranium conversion and processing plant. NACE's goal is to promote a healthier and cleaner environment through locally based efforts. Through the years, NACE's goals have been adjusted according to need and realities. In the past few years, NACE has been in a position to assist other tribes and Indian citizens in their local efforts to bring about a cleaner environment; and lacking improvements at the Sequoyah Fuels plant, NACE now seeks the revocation of its operating license.

### The Problem

Sequoyah Fuels Corporation (SFC) is a wholly owned subsidiary of General Atomics Corporation out of San Diego, CA. SFC was formerly owned and operated by Kerr-McGee for 18 years. SFC is located at the confluence of the Illinois and Arkansas rivers in the Cherokee community of Carlile, between the towns of Vian and Gore, Oklahoma.

SFC is one of two uranium conversion facilities in the U.S. and one of eighteen in the world. The primary activities of SFC are processing uranium "yellowcake", or milled uranium, into uranium hexafluoride (UF<sub>6</sub>) and the processing of depleted UF<sub>6</sub> into depleted uranium (DUF<sub>4</sub>).

UF<sub>6</sub> is used primarily for the

feed material to make enriched uranium for fuel rods in commercial nuclear reactors; however, as a feed material for enriched uranium, its use is also for nuclear weapons. DUF<sub>4</sub> is used to make metals for armaments and military tank shields. DUF<sub>4</sub>, or depleted uranium, gained notoriety in the Persian Gulf War.

Much of the waste stream from the uranium conversion process at SFC is treated to be used as a "fertilizer" on 10,000 acres of farmland in eastern Oklahoma. This "fertilizer" is known as raffinate. NACE has produced video documentation that shows all plant life dies following application of raffinate. NACE has also produced video documentation of hundreds of dead cattle that are dragged from the raffinate fields and put into "dead pits".

Uranium emissions into the air amounted to .5 tons in 1991, according to company documents. Uranium effluent into the rivers amounted to 1.5 tons in 1991, according to company documents. The uranium in effluents is an improvement over the 2 to 5 tons of previous years. However, it should be noted that the Nuclear Regulatory Commission, which regulates the uranium at the plant, is now publicly questioning the company's emission data.

As of this writing, SFC is temporarily closed from an order issued by the Nuclear Regulatory Commission. This most recent order stems from company managers lying to the NRC, under oath, regarding the extent of the contamination at SFC. In addition, since General Atomics purchased

the plant in 1988, SFC has received over 42 NRC violations, mostly regarding health and safety safeguards.

**Description**

Following 22 years of operation by Sequoyah Fuels, our community has almost been contaminated and bought out of existence. Although NACE, as a formal organization, has been battling various aspects of the operations at SFC for only 7 years, various members, officers and staff at NACE have been trying to resolve this problem for 17 years.

The difficulties of resolution are due to several factors including the cultural and geographical isolation; the entrenched nuclear industry; political controls; SFC being only one of two such facilities in the U.S.; and regulatory ineptness.

It is important to note the new owners of Sequoyah Fuels being General Atomics (GA). GA has on its board of directors Alexander Haig, and John Vessey serves on the board of advisors. Through corporate research conducted by NACE, we have discovered several CIA connections, such as being signatories on a petition with PRODEMCA (Friends of the Democratic Center in Central America), who receive funds from the National Endowment for Democracy. Oceanic International, one

of GA's many subsidiaries, owns a house in Washington, D.C. which was occupied by Frank Terpil. Terpil was arrested for supplying arms to Libya, the PLO and Idi Amin. GA's Washington lobby, Norvall Carey, is well known for his bashing of environmental groups, accusing them of being "communists" and "flag burners".

Despite these and other obstacles, NACE continues its struggle for a safe and clean environment; it is, after all, our home.

In its 7 year history, NACE has won several victories. NACE successfully defeated plans by SFC for a permanent injection well for radioactive waste; has forced

many improvements, both in staffing and technology, on SFC; has required and participated in many public hearings regarding SFC plans; and has completed a health study of 350 residents surrounding the plant.

Additionally, NACE was successful in stopping a proposed food irradiation facility in southeastern Oklahoma; worked with Mississippi Choctaw citizens to defeat a proposed hazardous waste dump on their reservation; worked with Kiabab Paiute council members to reject a proposed hazardous waste incinerator (1 week before signing the contract); worked with Kaw citizens and

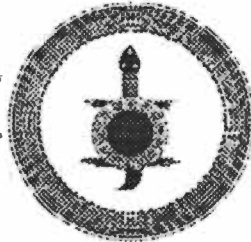
local residents to reject a proposed hazardous waste incinerator by the Kaw National Council; and assisted the Lakota people of Rosebud to stop a hazardous waste landfill.

Currently, NACE has legally intervened to prevent a new 10 year license being issued to Sequoyah Fuels. Our efforts have been joined, legally, by the Cherokee Nation. We are also working with various tribal citizens on the Monitored Retrievable Storage (MRS) of spent fuel rods on their reservations and providing assistance to various tribes and Indian citizens groups on local environmental issues.

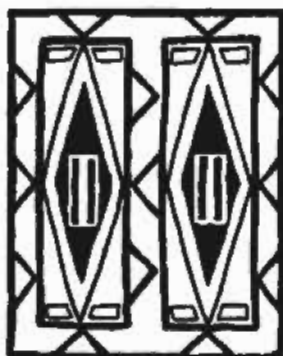
NACE is a co-sponsor of the 100th Monkey Project to stop nuclear testing and is a member of the Military Production Network, the National Toxics Campaign, the Southwest Network for Economic and Environmental Justice, and the National Nuclear Waste Transportation Task Force.

NACE has grown to include an inter-tribal board of directors representing citizens of Cherokee, Keetoowah Cherokee, Sac & Fox, Hopi/Zuni, Kickapoo and Cheyenne.

For more information contact:  
 Lance Hughes or Pam Kingfisher  
 NATIVE AMERICANS FOR  
 A CLEAN ENVIRONMENT  
 P.O. BOX 1671  
 TAHLEQUAH, OK 74465  
 918-458-4322



## Northern Ponca Restoration Committee, Inc.



### Program Description

**T**he Northern Ponca Restoration Committee was Incorporated to seek the return of federal recognition to the Ponca Tribe of Nebraska. The Ponca Tribe was one of 109 tribes that were terminated in the 1950s and 1960s. Termination was to bring prosperity and freedom to the Poncas, instead it has brought despair and poverty to the tribe. Poncas have been discriminated against by the federal government, State of Nebraska, Bureau of Indian Affairs and Indian Organization and Tribes. Since the tribe is not federally recognized they are not entitled to any of the federal services, Employment & Training, Education, Health Services, Housing and protection under the Indian Child Welfare Act. The most profound effect has been the loss of their identity as American Indians.

The Northern Ponca Restoration Committee is now seeking the return of federal recognition through a Ponca Restoration Bill. The Bill will return recognition (as American Indians), federal services, land, and insure economic development for the tribe. The Bill is scheduled to be introduced by the Nebraska Delegation in 1989; in 1990 the Bill will then be reviewed by the Senate Select Committee on Indian Affairs and the House Interior Committee. It is very crucial that the Northern Ponca Restoration Committee Board of Directors be able to provide testimony at the hearing.

### History of the Organization

During the 1950's, Indian policy within the U.S. government was aimed at the assimilation of American Indian peoples into mainstream society. The philosophy was that by releasing Indian peoples from the limitations of tribal membership, they would be freer to assimilate into the dominant society. House Concurrent Resolution No. 108 became the vehicle by which termination of tribes was accomplished. Adopted on August 1, 1953, it declared that

It is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States and to grant them all of the rights and prerogatives pertaining to American citizenship.

(67 United States Statutes B 132; House Report No. 841, 83-1, serial 11666).

The Termination Era (1945-1962) promoted an end to the special federal-tribal "trust" relationship enjoyed by the tribes, releasing Indians from the "disabilities and limitations" of being Indian. During the same year, Congress approved legislation which became known as Public Law 280 which facilitated termination by transferring responsibility for care of native peoples to individual states where the tribes resided. It

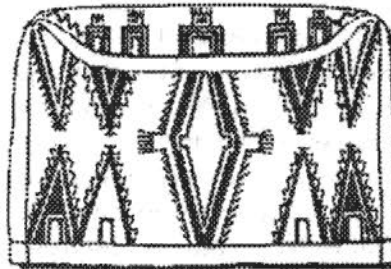
provided that for the states of California, Minnesota, Nebraska, Oregon and Wisconsin (with the exception of several tribes), criminal and civil jurisdiction over Indian affairs would now rest with the states in which Indians resided. In this matter, one hundred and nine tribes were terminated, affecting 1,362,155 acres of Indian land and 11,466 individuals. In April of 1962, Senator Church introduced a bill calling for the division of tribal assets between the Northern and Southern Ponca and the termination of the trust relationship to the Northern Ponca band. On September 5, 1962, Public Law 87-629 was passed by the 87th Congress, legislatively terminating the Ponca tribe of Nebraska. The effective date of termination was 1966, removing 442 Ponca from the tribal rolls, dispossessing them of 834 acres, and beginning the process of tribal decline:

What transpired as a result of termination has been a decline in the customs and traditions of the Ponca Tribe, the loss of federal services, employment-job training, health services for the young and elderly, Indian child welfare protection, higher education and youth programs. The loss of recognition as American Indians has had the most profound effect on tribal members and their descendants.

*Short History of the Ponca Tribe*,  
LeRoy and Tyndall 1987,  
pp.2,3.

Today the Ponca are sepa-

rated into the Northern and Southern Ponca tribes. The Southern Ponca reside in Oklahoma, primarily near the towns of Ponca City and White Eagle. Their population numbers now exceed 1,000. They retain strong cultural ties



with their language and tradition, and are considered conservative in their having retained and preserved their culture despite acculturation. Dancing societies such as the *Heduska* persist, along with ceremonies, costumes, ritual paraphernalia, and traditional singing and drumming. The Poncas hold an annual pow-wow where many of their traditions blend into a celebration of the vitality of the Ponca culture. The Northern Ponca have faced considerably more difficulty keeping their culture intact because of their history of removal, their intensive exposure to disease, and their ultimate termination. Despite these obstacles, however, the Ponca have retained strong ties to their indigenous tradition. Only nine years after the proposed termination of the Ponca was initiated, efforts were begun to restore the Ponca to full tribal membership. In 1971, several members began the initial effort to regain their rightful status as American Indians.

During the 1970s, members

of the Ponca Tribe, unwilling to accept their status as a terminated tribe, initiated the process of receiving federal recognition, enabling them, once again, to be eligible for federal services now unavailable to them. As a terminated tribe, the Ponca lost valuable federal support which enables other tribes to thrive. "The loss of recognition as American Indians has had the most profound effect on tribal members and their descendants" (LeRoy and Tyndall 1987). Loss of tribal identity resulted in a decline in the customs and traditions of the Ponca; the loss of employment-job training, free health care services through the Indian Health Services branch of the Public Health Service; eligibility for low-cost housing programs and education opportunities; protection from alienation of Indian youth from their families under the Indian Child Welfare Act; and loss of a collective land base to serve as a cultural center of tribal life.

Meetings held with tribal members in Omaha and Norfolk, Nebraska, during the 1970s enabled the Ponca to discuss their future and consider the possibility of restoration. The Nebraska Indian Commission conducted a survey of former tribal members to assess the problems encountered following the termination of federal services.

In 1986, representatives from the Native American Community Development Corporation of Omaha, Inc., the Lincoln Indian Center, Sequoyah, Inc., the National Indian Lutheran Board and the Ponca Tribe met to discuss

their status. The National Indian Lutheran Board agreed to fund a mail-out signature drive of all former tribal members to assess their views of prospective restoration. This was done the following year, resulting in the receipt of over 200 post cards and 150 petitions signed in support of the Ponca Restoration effort (LeRoy and Tyndall 1987). On August 19, 1987, the Northern Ponca Restoration Committee, Inc., was incorporated as a non-profit organization in Nebraska, whose specific charge was:

a. To perpetuate the identity of the tribe of Native Americans known as the Ponca Tribe of Nebraska;

b. To seek to establish said

tribe as a State-Recognized tribe of Native Americans;

c. To seek to reinstate said tribe as a federally-recognized tribe of Native Americans; and

d. To perpetuate the culture, traditions, and customs of the Ponca Tribe of Nebraska.

Today the Northern Ponca Restoration Committee, Inc., has a full seven (7) member Board of Directors, all of whom are Ponca tribal members. The Project Coordinator for the restoration effort is Mr. Fred LeRoy, himself a Ponca tribal member.

In 1987, the Committee applied for its first major grant from the federal government and was successful in acquiring \$25,000 from the Administration for Na-

tive Americans, an office of the U.S. Department of Health & Human Services. In 1988, the Administration refunded the Committee for an additional \$53,800 to continue its efforts.

Legal help has come from Attorney Mike Mason, of the Oregon Legal Services, Portland, Oregon. Attorney Mason has been instrumental in helping several tribes in the Northwest obtain federal restoration status.

For more information:

Northern Ponca Restoration  
Committee

2226 Leavenworth St.

Omaha, Nebraska 68102

402-341-847

Attn: Fred LeRoy and Clyde  
Tyndall





## CHAPTER 4: SOUTHWEST



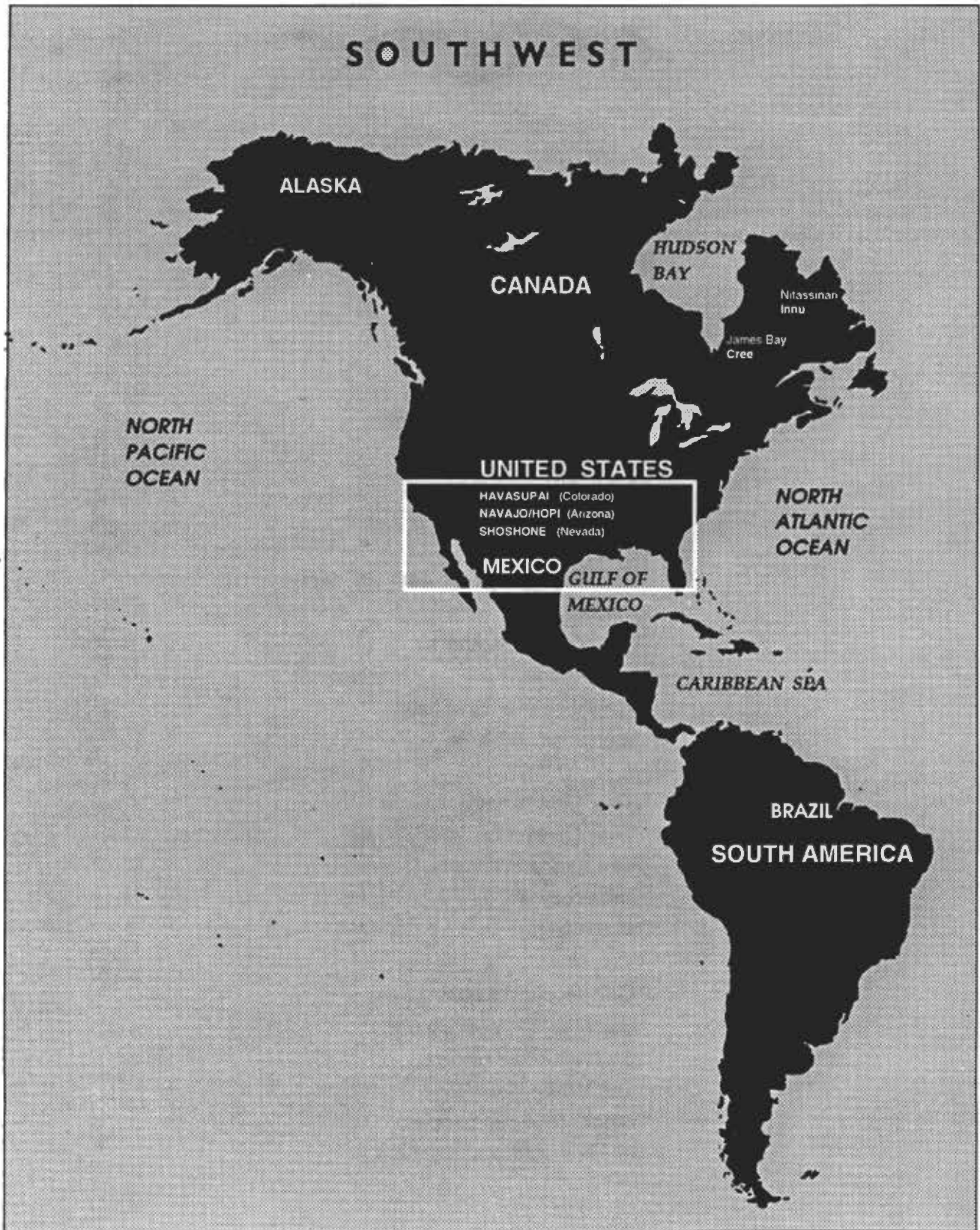
There was a time when our people  
covered the land  
as the waves  
of a wind-ruffled sea  
cover its shell-paved floor.  
But that time  
long since passed away  
with the greatness of tribes  
that are now  
but a mournful memory.

I will not dwell on  
nor mourn over our untimely decay  
not reproach  
my pale face brothers  
with hastening it  
as we too may have been  
somewhat to blame.

Your God is not our God!  
Your God makes your people  
wax strong every day.  
Soon they will fill  
all the land.

Our people are ebbing away  
like a rapidly receding tide  
that will never return.  
The White Man's God  
cannot love our people  
or He would protect them.

SOUTHWEST



## What Is a Land Grant?

By Roberto Mondragon



To understand the history of New Mexico Land Grants, it is necessary to know a little history of the origin of "Land Grants". As we already know, the history of the Southwest and the people of Northern New Mexico have roots that go beyond the region. The Mestizo roots and history extend as far back as the founding of Santa Fe in 1609 and beyond that to the founding of San Gabriel in 1598, 22 years before the Pilgrims landed at Plymouth Rock. The history of the people of Northern New Mexico extends to the expeditions of Cabeza de Vaca, and before him, Francisco Hernandez de Cordova and also to the ships of Hernando Cortez in 1514 and to the conquest of the Aztecs in 1521; to Christopher Columbus who landed on the American continent in 1492 under the Crown of Spain.

What of the time before 1492 and Columbus and Cortez? To go back to the ancient roots of the native tribes of the Americas who lived here and created advanced civilizations thousands of years before the Spanish Europeans accidentally landed on the shores of America would take volumes to write about. Therefore, the best place to begin the story of the "Land Grants" would be Spain beginning in the 8th century, 800 years before the Spaniards came to the Americas.

In the year 711 and until 1492, the Islamic Empire conquered and controlled most of the area which is now known as Spain. For nearly 800 years, the Moorish Muslims

enjoyed a prosperous political, economic and religious life in Spain. Even today, when you visit Spain, you can tour some of the ancient religious buildings which were built by the Muslims.

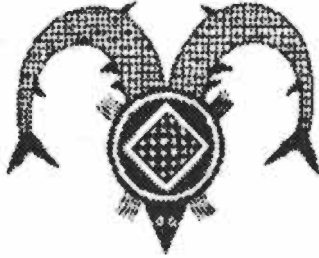
Beginning in the 11th century, about the year 1035, the Christian Spaniards (who were a mixture of many old cultures such as the Phoenicians, Carthaginians, Greeks, Romans and Visigoths) began to retake the lands being held by the Muslims. This period was known as the *Reconquista* or Reconquest and lasted about 500 years.

With the *Reconquista* came the problem of populating and distributing the land which was being retaken from the Muslims. This period in time is when the whole process of Land Grants began. There were various processes by which occupation took place during the reconquest and they are as follows:

1. In the northern areas of Spain during the reconquest (9th and 10th centuries), there was the military takeover of lands. The populating of these lands were known as *Presura* or *Aprisio*, which meant that the Christian Armies were simply colonizing the Provinces of Aragon and Catalonia which were once held by the Muslims.

2. With the military conquest of these lands, came the distribution for the exclusive benefit of the Catholic Church and the Nobles of the Christian Armies. These grants were known as *Senorial* and *Nobliaria*. These grants of land were often very large parcels in the Provinces of Galicia and Leon.

3. With the military conquest of land or the taking of land by treaty (between the 11th and 15th centuries), many new settlers of all social backgrounds began to arrive. Large amounts of lands were granted to Nobles. The Nobles, in turn, granted to the rest of the settlers various parcels of land depending upon their social status. These grants of land, made to the new settlers according to the social categories, were known as *Donativos* or *Mercedes* and there were three distinct social categories.



**Caballeros:** These were persons who had a fairly high degree of economic means and many horses. In those days, a person who had many horses was considered rich. *Caballeros* were granted large portions of land.

**Linajos:** These were persons who were considered the "middle class" or who were not exactly rich but they were somewhat prosperous in their middle economic position. They received grants of land in a lesser amount than the *Caballeros*.

**Vidalfos:** These were Christian soldiers who fought on foot because they did not own horses. They fought against the Muslims with bows and arrows, spears, swords and sometimes without weapons. These were poor men who were at the bottom of the social ladder. *Vidalfos* were granted the smallest grants of land.

4. The fourth type of grant was the *Realengo* or *Alfoz*. These large grants were given by authority of the King to newly settled towns or

*pueblos*. The word *Realengo* also meant that the Noble had authority over the towns as far as the laws, jurisdiction and the collection of taxes. The governing body of these towns was known as the *Concejal*, and its members were part

of the community. The people of these newly established towns were granted lands for the use of all the people in the community, for "communal" purposes or as a "commons" for the purpose of pasturing their livestock, gathering of wood for fuel or lumber for building. The common lands were also available for hunting and fishing. These "communal" rights to the lands were known as the *Alfoz*, but later the common lands given to the community became known as "Fuero." Having rights to a "Fuero" meant not only the use of the common lands but also the rights, privileges and liberties of the laws of the land.

Generally speaking, these methods were used to divide the lands during the 500 years the Spaniards took to reconquer Spain from the Moors.

In 1492, when Spain ventured to the Americas, the Spanish brought with them their religion, laws, customs and methods for land distribution.

Three years after Hernando Cortez conquered the most powerful tribe of the Americas, the Aztecs, in the year 1524 the Spanish Government set up the

Council of the Indies. This Council consisted of a group of people who would exercise control over the new American Colonies. These Colonies were divided into four different groups or what the Spanish called Viceroyalties: Peru, Buenos Aires, Nueva Granada and New Spain. New Spain was the area which is now Mexico and the Southwestern part of the United States including Colorado, New Mexico, Arizona, Texas, California, Nevada and Utah. The Council of the Indies had complete authority over the Viceroyalties and all the laws relating to these new Spanish Colonies were made by the Council in the name of the King of Spain and by his authority.

The laws which the Council of the Indies adopted of New Spain were known as *Cedulas*, laws or decrees which were issued by the King of Spain. Later, these *cedulas* were placed into one set of laws and were given the name of the "*Recopilacion de las leyes de las Indias*". The *Recopilacion* was finally published in 1681 and contained about 6,500 laws arranged in nine books and divided into titles or chapters. Parts of these laws attempted to do away with the so-called "*Ecomienda*" which was the practice of large land holders to maintain slave-like conditions of native people. The *Recopilacion* also attempted to incorporate some of the laws and customs of the native people. The *Recopilacion* was one of the most comprehensive and humane codes ever issued for a colonial empire. Copies of these laws were sent to all the Viceroyalties, gov-

ernors and mayors of the towns and cities of New Spain. The *Recopilacion de las leyes de las Indias* was the primary tool governing those land grants which Spain gave between 1693 and 1818.

The Spanish Crown exercised control over Mexico for exactly 300 years.

Mexico gained independence from Spain on August 24, 1821, with the signing of the Treaty of Cordova. It was signed by Agustin Iturbide on behalf of Mexico and by the Viceroy O'Donoju on behalf of Spain.

Up until the independence of Mexico from Spain, grants of land were not given to foreigners: Mexico, however, later began to give land grants to foreigners. This became a turning point in Mexico's history because thousands of Anglos from the United States began heading west into the territory of Mexico. Although these parcels of land were being given to foreigners by Mexico, a condition was made that the foreigners would eventually become Mexican citizens and they should abide by the laws of Mexico. The result was that so many Anglos began setting in the area of Texas that they finally took complete control of it.

The procedure of obtaining a grant of land from Mexico was as follows.

1. Submit a petition to the Governor with your name, age, country, vocation, and the reason for requesting the land. (Usually the main reason for issuing the grants was to establish settlements in areas that were otherwise unpopulated.)

2. State the quantity and, as near as possible, the description of the land not to exceed eleven square leagues or about 48,712 acres.

3. A local officer would examine and report whether the land was vacant and could be granted without injury to others.

4. The Governor would then formally issue the grant to the petitioner.

5. The original petition and a copy of the grant were then filed with the Secretary of the Archives.

6. The final step was the approval of the grant by territorial deputation or departmental assembly.

When Texas became an independent country in 1836, the Texas Anglos planned to eventually become part of the United States. Mexico never recognized the independence of Texas and attempted to take back the area which legally belonged to Mexico. In 1845, Texas officially became part of the United States.

In March 1846, President Polk sent General Zachary Taylor into Texas supposedly to protect its borders from

the Mexican people. When Mexican troops crossed the Rio Grande into Texas to protect their legal rights to their land, President Polk finally had the excuse he had been waiting for. On May 13, 1846, the United States Congress declared war on Mexico. The Congress then authorized 50,000 American troops to be armed and ready to attack Mexico. In justifying this

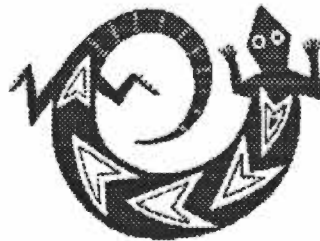
action, Polk said that Mexico had shed Anglo blood on American soil. That statement was false because that area of Texas legally belonged to Mexico. The people of Mexico were simply defending what was rightfully theirs.

The war between the United States of Mexico and the United States of America finally ended with the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848. Mexico and its people lost more than half of its nation to the Anglo invaders. The United States took all of Texas, California, New Mexico, Arizona, Nevada, Utah and Colorado.

The Treaty of Guadalupe Hidalgo guaranteed that those Mexican people, who remained on the lands taken by the United States of America, would be granted every right as U.S. citizens. The Treaty further guaranteed that the people would be given the right to remain on those lands that were granted to them by Mexico or Spain.

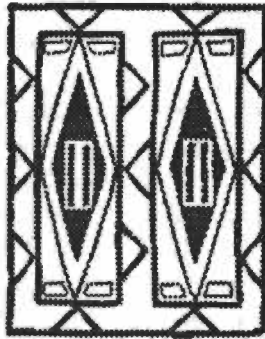
Most of the people who had their legal rights to land grants were subsequently denied those rights and when the Anglo Americans began migrating west in great numbers, they took most of the land grants from the original Mexican owners.

In New Mexico and Southern Colorado, these land grants were stolen mostly by the powerful groups known as the "Rings". The two main "Rings" were the Santa Fe Ring and the Taos Ring. These rings consisted of rich Anglo poli-



ticians, bankers, ranchers and lawyers.

Thomas Catron, leader of the Sante Fe Ring was the most infamous of the many swindlers and criminal Anglos who robbed many Mexicans of their legal rights to the Land Grants. Catron eventually became one of the largest landowners in the U.S. The New Mexico Land and Cattle Company was part of the New Mexico "Ring."



Catron, who knew the American legal system and also knew how to use corrupt judges, got the U.S. Congress to declare the Tierra Amarilla Land Grant a private land grant to one individual. He then bought the grant but did not

declare public ownership. For a few years, the heirs of the Tierra Amarilla Land Grant continued to use it as common land, and Catron allowed this to go on be-

cause he knew the danger of taking the lands from the people. A few years went by and when fences started to spring up within the boundaries of the Land Grant, it was then that people found out that their land had been stolen.

Catron was beginning to sell parcels of the land grant.

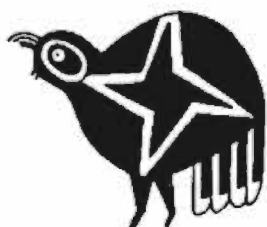
The Land Grant heirs of Tierra Amarilla Northern New Mexico and Southern Colorado have not given up hope that one day they will get their rights to their land back. If anything, that hope is

turning into action as the people learn the way the American system works. Where Thomas Catron could swindle non English speaking residents out of thousands of acres, the grandchildren and great-grandchildren of those whose were swindled are now taking up the banner. The issue of Land Grants is still as alive now as it was 150 years ago. The struggle for the land is passed on to each generation, just as land would have been inherited, had the Congress of the United States honored the Treaty of Guadalupe Hidalgo.

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## Tierra Amarilla Facing Three- Pronged Attack

By Carole Wright



The Anglo-American society has always found ways to justify the pure and simple act of theft. Witness the current investigation of the Defense Department. It is now being lightheartedly referred to as "honest graft", an oxymoron that ranks right up there with "a tree slave." This is the result of how Europeans took the Iroquois Confederacy's honest concept of government and turned it into what it is today a mishmash of laws that can turn the stark reality of black and white into gray where there are rights but there are none.

Right now, a legal, political and economic conspiracy is coming to the surface in Rio Arriba County-Tierra Amarilla and surrounding communities in particular. These small, predominantly Mexican communities in northern New Mexico are facing a three-pronged attack, led by greedy land developers, alleged conservationists, and self-serving politicians, that will surely destroy a traditional lifestyle if allowed to continue.

**They say, "Possession is nine-tenths of the law."**

Upon the acceptance of the 1848 Treaty of Guadalupe Hildago, the U.S. agreed to honor the Mexican settlers' property rights. Historically the Tierra Amarilla Land Grant encompassed 600,000 acres of community property, but, in 1860, Congress approved the grant as a private land grant as deliberately misinterpreted by David J. Miller of the New Mexico Surveyor

General's Office. Miller later became a land speculator in the Pecos Pueblo and Pablo Montoya land grants. Enter Thomas B. Catron, a name that leaves a bad taste in the mouths of many land grant people and rightfully so. By 1900, he had bought all but 50 acres of the Tierra Amarilla land grant, aware of but choosing to ignore, the 113 *hijuelas* (deeds) on file at the Rio Arriba County Courthouse for more than 10 years. One hundred years later, a federal court would rule the *hijuelas* invalid because (1) they conflicted with Catron's chain of title, and (2) they did not contain the proper Anglo-American legalese to describe the land holdings and specific uses by the holders. A disturbing turn of events to those who had lived and worked these lands for more than 200 years.

Twenty years ago, Amador Flores noticed that no one was using the land behind his home. He wrote a deed and recorded it at the courthouse in Tierra Amarilla, the county seat for Rio Arriba County. Flores defined his boundary as north by Nutrietas Creek, south by the Cuchilla, east to Highway 84 and west to Antonio Casados' property and that the 500 acres were "within the Tierra Amarilla Land Grant . . ." Since then, Flores fenced the land, graded access roads, built watering ponds for his livestock, planted a yearly garden, grew some hay, grazed his cattle, and paid taxes on the land.

A perfectly logical move by a man whose people, like the Indians, believe the earth is a living

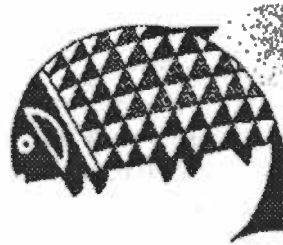


being that sustains life when properly used and cared for, a totally foreign concept to a real estate developer who views the land as a means to build his bank account.

However, a Richard Donaldson had purchased 1900 acres as an "investment gamble" that included Flores' 500 acres and also recorded the deed in 1975. He also paid taxes on the property which led him to comment that the (courthouse) people were not honorable, racially biased against Anglos and that their record-keeping procedures showed that "all those people are living in the dark ages." Donaldson sold the land in 1981 to Vista Del Brazos, an Arizona-based land development company, headed by realtor Jack Halland.

They then filed a quiet title suit in 1985 to establish ownership to the land. Judge Kaufman ruled in their favor and scheduled an April 4, 1988 hearing for Flores to show why he shouldn't leave the land. Flores did not receive notice of the hearing, did not appear, and consequently Kaufman ordered him off the land. Flores burned the order. Kaufman set a May 17 hearing to hear arguments on whether Flores should be held in contempt of court for refusing to obey the court's order to vacate the land. At that hearing Flores' attorney Richard Rosenstock filed a motion asking the court to consider New Mexico's prescriptive use law a law that would allow Flores continued use of the land because he had used the land for over ten years without anyone objecting.

He also argued that an injunction was not the proper legal method of removing someone from the land and that Flores was entitled



to "ejectment proceedings", even a jury trial. The American Civil Liberties Union also entered the case because they pointed out that Flores' constitutional rights were violated when he didn't receive notice of the April 4 show cause hearing.

Peter Holzem, attorney for the developers, said that the issues of the prescriptive use law and the violations of Flores' civil rights were beside the point since the court had already ruled against Flores on the question of ownership of the land. Again Kaufman ruled in favor of the developers and on June 17 he found Flores in contempt of court and ordered him to jail and for him to remain in jail until his family and supporters leave the land. Kaufman also noted that even though Flores recorded his deed and paid taxes on the land for more than 20 years it did not constitute a valid claim.

Currently in an Española jail Flores had rejected a June 27 offer from the developers to sell him 50 of the 500 acres. Tonantzin Land Institute has since been asked to assist in future negotiations when the developers by the Tierra

Amarilla Community Council that is working with Flores on this issue.

Land developers are closely watching the Flores case and are also hoping the state Supreme Court will rule in their favor in the Ensenada water case. According to one of the developers their future depends on both cases.

#### **Water is the lifeblood of the land.**

In April, 1988, the state Supreme Court had agreed it will consider a petition for a hearing on a lawsuit known as the Ensenada case. The petition was filed following a Court of Appeals ruling that favored land developers over the farmers and ranchers at Ensenada, a small farming community northeast of Tierra Amarilla. The lawsuit was filed by the Ensenada Land and Water Association after State Engineer Steve Reynolds approved a water rights transfer request by Howard M. Sleeper and Hayden and Elaine Gaylor. The group, known as Tierra Grande Corporation want to transfer the purpose and point of diversion of their water rights from Ensenada Ditch to Nutrias Creek so they can turn an old gravel pit into a lake for their development scheme.

District Judge Art Encinas ruled in favor of the Association comprised of 200 acequia users of Ensenada and Parkview ditches, and said that the transfer request would be detrimental to the traditional users. Encinas pointed out that northern New Mexico's "significant cultural value (is) not measurable in dollars and cents"

and that "the families' ties to the land and water are central to the maintenance of that culture."

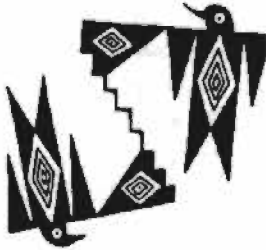
He also noted that the transfer of a few acre feet of water shows "a distinct pattern of destruction which begins with small seemingly insignificant steps." He denied the transfer request citing that it is "clearly contrary to the public interest." However Judge Encinas' 1985 decision was reversed on March 1 of this year (1988) by the state Court of Appeals.

The Court of Appeals decision written by Rebecca Sitterly of Albuquerque and signed by Judges A. Joseph Alrid and Pamela B. Minzer said Encinas erred when citing "public interest" as grounds for denying the transfer request. They said the state law on "public interest" was not in force at the time the application was filed in April 1983. The Legislature added the "public interest" standard to apply to water transfer cases filed after April 1985 which was in response to El Paso's

claim to New Mexico groundwater. Attorney Richard Rosenstock said that the Appeals Court "has done a great disservice" and that in effect their decision demonstrates that "the small farmer is not important to New Mexico and can be considered only marginal to other money interests coming to the state" and that "all traditional water users should not expect any help or favorable treatment by the courts in New Mexico."



## Atrisco Land Grant Testimony



In 1905 the Atrisco Land Grant received patent to its land holdings in the amount of 82,728.72 acres. Atrisco became recognized by the U.S. Government as a community land grant in fee simple for the use and benefit of the owners and proprietors of the community or Town of Atrisco (Pueblo de Atrisco) a body politic as it has been known. The Atrisco Land Grant (La Merced de Atrisco) has continuously been occupied since 1692 and has been subject to the laws and ordinances of Spain Mexico and the U.S. Government. The 1905 patent clearly states the Grant's intention:

TO HAVE AND TO HOLD the same together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belong unto the said Town of Atrisco in trust for the use and benefit of the inhabitants of said original and additional grants as their respective interests may appear and to their successors in interest and assigns forever.

*Patent Recorded In Book 35, pg. 91  
The United States of America.*

Atrisco since its founding and settlement historically has been described as close-knit agricultural community comprised of small farms (ranchos y estancias) traditional water systems (acequias) and communal grazing lands (tierras comunales). Atrisco has never been considered a private land grant and in a court decision dated September 4, 1894, it was held

that under Spanish and Mexican customs a grant covering a large tract of land to large number of heads of families was understood to be a community land grant.

In 1967 the heirs to the Atrisco Land Grant chose to convert from a community land grant to a for-profit corporation today known as Westland Development Co., Inc. Westland has stated that its "basic business philosophy is to enhance the value of the land through careful planning and development to insure perpetual benefit to the heirs of the incorporators of the Town of Atrisco", a municipal corporation.

It is the opinion of the Atrisco Land Rights Council that there exists a definite need to preserve the historical "Rock Art" of the West Mesa Escarpment, by our indigenous ancestors both, Indian and Spanish. The Council has constantly advocated since its founding in 1982 the protection and preservation of Atrisco's land-based heritage for its community members.

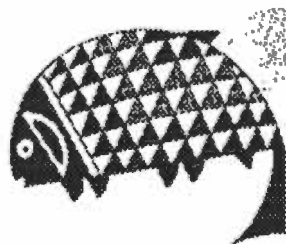
We are formed as a land trust that recognizes the unique value of conservation as a means to protect that which we view as an integral part of our people and community fabric. We are in total support of a national petroglyph monument and archaeological district to better preserve this rich cultural heritage.

We view our participation in this process as key to formulating protection and management strategies that will help us maintain the integrity of our lands. We see our role as generating the potential for a unique partnership that

respects the indigenous land rights of people who today find their historic communities facing growth and development pressures eroding the base of our traditional and local economies. This land to us is sacred. In our mind, divergent interests seeking to preserve the escarpment, can best be served by forging constructive relationships that are sensitive to the historical land tenure patterns. These patterns established in pre-history and colonial times by those communities already formed as historical land trusts are based on the notion of common land usage. We have an opportunity to establish a cohesive ecological vision on how best to preserve and maintain our historical continuity.

We feel the roots of our conservation heritage are based on nearly three hundred years of responsible stewardship over the common lands of the grant. It is in our interest to harmonize those efforts aimed at protecting for the public good the religious signatures of our people. It is also our intent to preserve and protect the interest of succeeding Atrisco heirs. This can be achieved by a very sensible approach that is not uncommon to sound conservation and land protection approaches used in other

parts of this country, i.e., the Armour-Stiner Carmer Octagon House in New York that is protected by a historical easement held by the National Trust for Historical Preservation and the 3,200 acres of easements held by the Jackson Hole Land Trust to protect the scenic and wildlife qualities adjacent to the Grand Teton National Park. A conservation easement could potentially satisfy the preservation needs of the escarpment and of the Atrisco people. It is a mechanism that can convey the bundle of rights necessary to run an efficient park system in perpetuity. It could also



help preserve the continuity of the land with regard to further erosion and alienation of our land base.

The particular of such an easement will naturally have to conform to the stipulated agreements of Atrisco heirs and conservation proponents alike. We feel this is the only obstacle that needs to be fully explored, discussed and agreed upon. Sale, as indicated to us by numerous Atrisco heirs whom we represent is out of the question. In our opinion any sale could form a source of conflict

inconsistent with the grant's overall intent. A well negotiated easement would keep the chain of title consistent while providing land for the park purpose.

Finally, we feel the Federal Government is obligated to help us maintain the integrity of Atrisco's land base as indicated by certain provisions of the Treaty of Guadalupe Hidalgo signed between the U.S. and Mexican governments in 1848. Article VIII of the treaty states that:

In the said territories property of every kind now belonging to Mexicans not established there shall be inviolably respected. The present owners, the heirs of these and all Mexicans who may hereafter acquire said property by contract shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

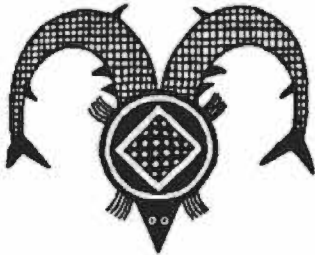
We feel the spirit of this treaty remains constant as a treaty between nations and that it is a right of the people to protect that which we view as sacred.

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## Havasupai Tribe Battles Destructive Outside Forces

By Marta Valverde



**T**he Grand Canyon is under attack, according to leaders of the Havasupai Indian Tribe.

The Havasupais, who live at the bottom of the Canyon, have vowed an all-out battle with forces they say are trying to destroy them, their land and, above all, their water.

The Tribe recently hosted a conference to honor Grandmother Canyon, as they call the Grand Canyon, and to inform the public about a pending lawsuit naming the U.S. Forest Service and Energy Fuels Nuclear, Inc. (EFN) for violations of First Amendment religious freedom rights and trust responsibility.

In 1984, EFN filed a proposed plan of operation and Kaibab National Forest gave approval to proceed with a plan to mine land that was once aboriginal to the Havasupai, from Red Butte, four miles to the south of the proposed mine, to the North Rim of the Grand Canyon. Joe Sparks, lawyer for the Havasuapi, said the Forest Service did not make a good faith environmental analysis of the impact and never considered the alternative no mine at all.

"They were always going to approve the mining," said Sparks. "They made a decision that mining was going to take place on the site before the Environmental Impact Statement (EIS) was completed."

In fact, the draft of the EIS was not completed until February, 1986 for the Canyon Mine and according to the draft EIS,

"no Indian sacred or religious sites have been identified near the mine site."

Red Butte, Wii'igdwisa as it is known to the Havasupai, is called the abdomen of the Grandmother Canyon and it is the traditional place for emergence for them. Tribal Chairman Delmer Uqualla said it is a traditional power spot.

"That place where they want to mine is a very sacred spot," said Uqualla. "It is the spot where the abdomen of the Grandmother Canyon is and where many of our elders have gone for ritual power." A representative of EFN said that the EIS team used independent experts and an archaeologist's study showed no significant occupation of the area nor any evidence of ceremonial use.

"Shortly before the draft was completed was the first time we heard concerns from Havasupai about our mine," said Pam Hill, spokesperson for EFN. "The archaeologist found several objects, but nothing that would indicate a ceremonial site," she said.

In September, 1986, the final EIS was produced and the Forest Supervisor issued a record of decision giving approval to a modified plan of operation for the Canyon Mine. It was then that the Tonantzin Land Institute of Albuquerque got involved and together with the Havasupai and Hopi Tribes filed an appeal challenging the merits of the approval and Southwestern Regional Forest, post held by David Jolly, reverse the Supervisor's decision. Two days later, EFN's plan of operation became effective and they

began surface development.

After a series of motions and appeals, Jolly denied a request for a full stay and issued a partial stay which allowed EFN to continue with mine preparations short of sinking the shaft.

"We've gone through all the procedural routes on Canyon Mine," said Hill. "Our feeling is we should be allowed to go ahead as quickly as possible. Our mines on the north side have not been subject to roadblocks as have been on the south side and we question the Havasupai right to prohibit us from mining in that area."

EFN has eight uranium mines on the North Rim of the Grand Canyon, three which have been mined out and reclaimed, three in operation, and the other two under development, just like the Canyon Mine. All uranium ore is taken to their uranium processing mill in Blanding, Utah. In addition, the company once operated the largest coal mine at Steamboat Springs, Colorado and also operates a gold mine in that state. All the uranium mines owned by EFN are in northern Arizona, and the company has about 45,000 claims on federal and private land on the South Rim to mine uranium, Hill said.

Headquartered in Denver, Colorado, Energy Fuels Nuclear, Inc. is privately held primarily by the Adams family of Denver. In the past four years, EFN has become one of the main lobbyists for a bill pending in Congress which would allow the U.S. government to buy \$750 million of yellowcake (processed uranium) in order to bolster a sagging do-

mestic market which went from \$45 per pound of yellowcake in 1980 to \$15 per pound. As one of the largest producers of uranium, EFN would benefit greatly from a buy-out that eventually will cost taxpayers billions of dollars. In addition to the \$750 million, uranium producers would be allowed to write-off \$9 billion in debts to the U.S. for enrichment programs.

With the uranium market now glutted (11 years of supply for nuclear power plants and 60 years for the military, according to U.S. figures), consumers of nuclear electricity would also subsidize the buy-out with higher rates since the uranium was purchased at a higher rate. No new nuclear power plants are being proposed. The average age is 20 years for each plant.

"If there wasn't a controversy, there wouldn't be a lawsuit," said attorney Sparks. "The best remedy to protect the Havasupai public interest and the scenic value of the Grand Canyon is a congressional buy-out."

He added that at current market value, Canyon Mine could produce three million pounds of uranium ore that would yield \$45 million. But if subsidized by the taxpayers, it would bring twice as much. The proposed rate, under congressional consideration, ranges from \$25 to \$35 per pound twice the market value.

Representing the 500-member tribe, Uqualla said they have very few options but to fight the mine. The conference at Fred Butte was held to educate the general public

to what is happening on their land, as well as to educate their own people about the effects uranium would have on their lives. They are especially concerned about the water contamination.

EFN's Hill said the EIS showed no danger of water contamination from runoff surface water because the village of Supai is 60 miles away, the reservation border is 30 miles away, and the possibility of contamination at that distance is nearly impossible. Sub-surface waters could not be contaminated because the ore is mined 1000 feet above the level of the aquifers, she said.

Representatives of Tonantzin Land Institute, which co-sponsored the conference, said that Big Boquillas Ranch, being purchased by the McDonald administration of the Navajo Tribe, has shown large amounts of natural radiation of water in the area. It is located on the south side between the Havasupai reservation and the proposed Canyon Mine. The 729,000 acres, being purchased for \$36 million, is known to have \$100 million in uranium reserves, said John Redhouse of Tonantzin.

"There is no benefit to the Havasupai people from that mine," he said. "It is the destruction of their place of origin and also means genocide in terms of contamination. The active radiation that will come from this mine will get into food, air, water and the earth."

Redhouse added that EFN has plans to construct three mines east of Havasu Creek on the South Rim



of the Canyon and other companies are also interested in uranium mining. A uranium mill may be constructed in the area as well in order to facilitate easier transportation and processing of the raw mineral. In 1986, an EFN truck, transporting uranium to the Blanding mill, was involved in an accident which spilled 10 tons of the mineral onto the Navajo reservation, he said.

Havasupai Council Member Rex Tilousi said that the tribal members would not be the only ones to experience ill effects from the tailings that are left from uranium mining.

"Over three million visitors come to the Canyon each year.

The dust from the drilling will go toward the Grand Canyon," said Tilousi. "Havasupai (also called Havasu) Creek flows into the Colorado River which flows into Parker Dam and into Parker."

Tilousi said that Havasupai, which means People of the Blue Water, once inhabited the plateaus surrounding the Grandmother Canyon, but in the 1930s, the Forest Service asked them to move and tore down their houses. An Indian Village once stood where the current Grand Canyon Village is and seen by millions of visitors. The Tribe is in the process of reclaiming a quarter-acre from the Forest Service to reconstruct their site.

"We were forced down into the canyon but we have never forgotten where our forefathers lived," Tilousi said, adding that their bones were dug up and taken to universities for studying. It seems they are still trying to move us out of our canyon home."

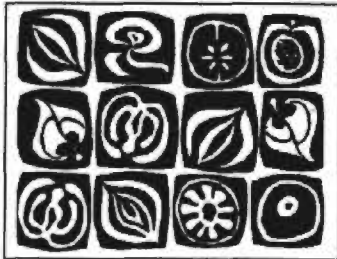
"I would like to see our children, their children and grandchildren enjoy the canyon lands and swim in the turquoise waters," he added.

For more information:  
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 Supai AZ 86435  
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 Attn: Rex Tilousi

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 (Arizona) Times.

## Big Mountain Legal Office

June 1992



**T**he Big Mountain Legal Office (BMLO) is a private non-profit legal organization dedicated to providing free legal representation to Native Americans involved in the struggle to preserve and protect traditional Native American religion and culture. Currently BMLO represents approximately two thousand five hundred (2500) Navajo Indians who are refusing to relocate from their ancestral land and who are challenging the relocation provisions of the Navajo-Hopi Indian Land Settlement Act of 1974 in the case of *Jenny Manybeads v. United States of America*.

Due to the lack of funds and staff, BMLO has been unable to respond to the many letters we receive requesting information about the Big Mountain/Navajo Hopi relocation issue. We hope to again provide regular updates to those of you who support our clients as long as funding is available.

### I. SUMMARY OF MEDIATION EFFORTS IN THE *MANY-BEADS vs. UNITED STATES* CASE

In 1974, pursuant to the Navajo-Hopi Indian Land Settlement Act, Congress divided the two million acre Joint Use Area between the Navajo Nation and the Hopi Tribe. At that time nearly all of the area was occupied by Navajo families who had lived there for several generations. As a result, Congress ordered approximately 15,000 Navajos to relocate from their ancestral land. This land is now known as Hopi Parti-

tioned Lands (H.P.L.). To date many of these Navajo families have refused to relocate from the H.P.L.

The *Jenny Manybeads v. United States* case was filed in federal district court in January, 1988 on behalf of those individual Navajo families who refuse to relocate from their ancestral homelands. These Navajos object to relocation from their ancestral lands because of their strong religious connection to the area. In the *Manybeads* case, the traditional Navajo families claim that forced relocation from their ancestral homelands pursuant to the Navajo-Hopi Indian Land Settlement Act of 1974 would violate their constitutional right to the free exercise of religion. In addition, in the *Manybeads* case the families argue that forced relocation violates the American Indian Religious Freedom Act, the federal government's trust duty owed to native people and several international human rights laws.

The *Manybeads* case was originally filed in federal district court in Washington, D.C., but was transferred back to the federal district court in Arizona at the request of the United States government. In the *Manybeads* case the plaintiffs are approximately two thousand five hundred (2500) individual Navajo people who still live on the land which Congress took from the Navajo Tribe in 1974 and the defendants are the United States government and the various federal agencies involved in the federal relocation program. Neither the Navajo or Hopi Tribe are parties in the



*Manybeads* case. Instead, the two Tribes were granted permission to appear in the *Manybeads* case as amicus curie (friend of the court). The Hopi Tribe supports the United States government and the Navajo Nation supports the Navajo individuals.

Following a week long hearing on the individuals' request for an injunction to halt the federal relocation program, Judge Earl Carroll denied the request of the individual Navajos and granted the United States government's motion to dismiss the lawsuits. The court ruled, based on the United States Supreme Court's decision in *Lyng v. Northwest Indian Cemetery Protective Association*, that the federal government can forcibly relocate Native Americans from federal reservation land because the land belongs to the federal government and not to the Indians. Judge Carroll ruled specifically that individual Navajos do not have a right under the First Amendment to remain on federal reservation land which is no longer held in trust for the Navajo Tribe even if it will destroy their religion.

The individual Navajos appealed the decision to the Ninth Circuit Court of Appeals. On April 10, 1991, three judges of the Ninth Circuit Court of Appeals heard oral argument on the *Manybeads* case. In addition to the *Manybeads* case, the Ninth Circuit also heard that day in the case of *Masayesva v. Zah*. In *Masayesva v. Zah*, Judge Carroll had ruled that certain homes and religious structures belonging to individual Navajos were illegal because they had been

constructed in violation of his order against new construction in the disputed area. As a result, Judge Carroll ruled that the structures must be dismantled. Although several of the individuals involved in the suit agreed to dismantle a religious hogan. The federal district court imposed a fine of \$1,000 on the Navajo Nation until such time as the religious hogan was removed. The religious structure has not been dismantled and instead the Navajo Nation appealed the court's order.

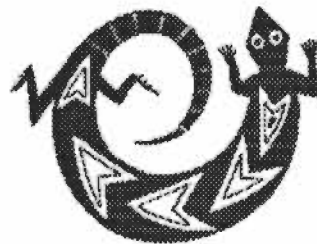
After listening to the arguments in the *Manybeads* and *Masayesva* cases, the Ninth Circuit on May 10, 1991 ordered that both cases be referred to a federal mediator. In its Order, the Ninth Circuit stated their belief that the complex issues involved in these cases would be best resolved through mediation rather than through a decision of the court. The Ninth Circuit in its Order appointed Judge Harry R. McCue, Chief U.S. Magistrate from San Diego, California, to act as mediator in the cases.

From June 1991 through the present, the mediation has been ongoing. The four parties participating in the mediation are the individual Navajos from the *Manybeads* case who still remain on the land, the Navajo Nation, the Hopi Tribe and the United States government. The individual Navajos are represented in the mediation by the Big Mountain Legal Office, the Navajo Nation is represented by the

Navajo Nation's Department of Justice, the Hopi Tribe is represented by the law firm of Arnold & Porter, and the United States is represented by the United States Department of Justice. In addition to the lawyers representing the various parties, several of the individual Navajo plaintiffs have participated in the mediation as have President Peterson Zah of the Navajo Nation, Chairman Vernon Masayesva of the Hopi Tribe and individual members of the Hopi Tribal Council.

Throughout the mediation process, the individual Navajo families have taken the position that they are entitled to a religious based exemption from the relocation law. It is our position that the relocation law and program is unconstitutional because it seeks to force traditional Navajo people to relocate from their sacred ancestral lands and move to areas far from their sacred places where they would be unable to practice their traditional religion. The Hopi Tribe seeks to use the land for economic development and makes no religious based claim to the land.

The *Manybeads* families also take the position that in addition to remaining on the land, they must be allowed to repair or replace their homes and religious structures and to maintain livestock herds sufficient to provide for their subsistence needs. Currently the federal relocation law prohibits the repair or replace-

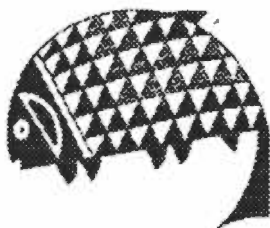


ment of Navajo structures on the H.P.L. and severely limits the number of livestock that Navajo families can maintain.

These severe restrictions make survival for the families extremely difficult and have forced many of the families to give up and to relocate in violation of their religious beliefs.

Finally, it is our position that the federal government must provide reasonable notice and an opportunity for consultation with Navajo residents prior to beginning any federal construction or fencing projects which may impact or destroy Navajo religious sites in the disputed area. In the past, federal projects were done without notice to area residents and several sacred sites were destroyed or desecrated. This practice was finally stopped when the Big Mountain Legal Office won a restraining order and injunction in the case *Roger Attakai v. U.S.A.*

Throughout the mediation process the federal government has taken the position that the relocation law is constitutional and that they will continue to enforce the law until either a settlement is reached through the mediation or the law is changed. The Navajo Nation takes the position that the individual Navajos should be allowed to remain on their sacred land and that the Navajo Nation will provide the Hopi Tribe with whatever reasonable compensation the Hopi Tribe requires to allow the Navajo families to remain on the land. The Hopi Tribe



has taken the position that it will not consider settlement proposal from the Navajo Nation until the Navajo Nation and the individual Navajos have complied with ten pre-conditions which the Hopi Tribe announced at the outset of the mediation process.

The Hopi Tribe has demanded that the substance of the mediation be kept confidential. The mediator has therefore instructed the parties that the substance of the mediation process is to remain confidential and cannot be discussed publicly. Without discussing the details of the Hopi Tribe pre-conditions or the substance of the mediation, it can be said that the Hopi Tribe's pre-conditions appear to be designed more to prevent than to reach a settlement and have created tremendous obstacles to reaching a fair and reasonable resolution. Nevertheless, the individual Navajos and the Navajo Nation have done everything in their power to comply with the Hopi Tribes's pre-conditions and take the position at this time that there has in fact been substantial compliance with all pre-conditions. The mediator has also agreed that we have substantially complied with the pre-conditions and has pushed forward with settlement discussions.

The Navajo individuals and the Navajo Nation have worked together over the last year to develop a comprehensive settlement proposal which would provide for the settlement of the *Manybeads* case and the *Masayeva v. Zah*

cases. In addition to the land issue, the Navajo's comprehensive settlement proposal also provides for settlement of five separate lawsuits filed by the Hopi Tribe against the Navajo Nation which seek money damages as a result of the 1882 land dispute. The final details of the Navajo proposal have recently been worked out and the proposal has just been presented to the federal government and Hopi Tribe. Once the Hopi Tribe and the federal government have had an opportunity to consider the proposal we anticipate they will provide us with a response. At that time further mediation will probably be required.

In the event that a settlement is not reached through the mediation process, the *Manybeads* and *Masayeva* cases will be referred back to the Ninth Circuit for a decision. The decision of the Ninth Circuit can then be appealed by either the Navajo families or the federal government. Another possibility is that Congress may be asked to impose a settlement on the parties if an agreement cannot be reached.

During the time that the mediation has been in progress, both the Congress and the United Nations have taken a position that they will withhold action on the relocation issue pending the outcome of mediation. If and when the mediation process concludes without reaching a settlement, it is anticipated that both Congress and the United Nations will revisit the issue and will probably wish to review the recommendations of the mediator prior to for-

mulating any proposal for settlement.

## II. 1934 Bennett Freeze Area Case Update

In addition to the Hopi Tribe's claim in the 1882 Joint Use Area, it also made a claim to approximately seven (7) million acres of Navajo land known as the 1934 area. If successful, the claim could result in a second and larger relocation program.

The 1934 area is an area of the Navajo Reservation west of the 1882 Joint Use Area. The 1934 area includes the Tuba City area and the two Hopi villages of Upper and Lower Moencopi. In 1974 the Hopi Tribe filed a lawsuit against the Navajo Tribe seeking to have the seven million acre 1934 area taken from the Navajo Tribe and turned over to the Hopi Tribe. Since 1974 the Navajo Nation and Hopi Tribe have been involved in this lawsuit and have spent millions of dollars in damages from the Navajo Tribe. A small band of Paiute Indians has also joined the lawsuit and are also making a claim for the Navajo land.

The 1934 case has been divided into two phases. Phase One required that the federal court determine what areas of the 1934 area were occupied or used by the Navajo Tribe, the Hopi Tribe and the Paiutes as of 1934. Once the court has decided which Tribe occupied which land in 1934, Phase Two will decide how the land will be divided or partitioned now in 1992.

Trial in Phase One of the 1934

case began in 1989. On April 27, 1992, Judge Earl Carroll of the federal district court of Arizona issued the Phase One decision. The April 27, 1992 decision dealt only with the Navajo and Hopi claims with the Paiute claim being dealt with at a later date. In his decision, Judge Carroll ruled that contrary to the Hopi claim they did not occupy the vast majority of the 1934 area as of 1934. Instead, the court ruled that the Hopi Tribe only had proven a claim to exclusive use of approximately 30,000 acres. This exclusive Hopi use area is located to the south and east of the villages of Moencopi.

The court also ruled that the Hopi Tribe had established that it jointly used an area of approximately 65,000 to 100,000 acres of land with the Navajo Tribe. This new Joint Use Area surrounds the smaller area which the Court ruled was the exclusive Hopi use area. In rejecting the Hopi claim, the federal court rejected their claim that they should be entitled to millions of acres of land which they claimed had been used by Hopi people for religious purposes. According to the Hopi Tribe's evidence, most of the

1934 area was visited at least occasionally by Hopis who were making religious pilgrimages or who were gathering eagles or ceremonial herbs. The court limited the Hopi's claim to land which they could demonstrate had been either occupied or intensively used as of 1934. As a result, the Hopi Tribe was awarded only a

small percentage of the land which they had claimed.

Now that Phase One has been decided, the Phase Two trial is scheduled to begin on July 7, 1992. In the Phase Two trial, Judge Carroll will have to decide how much of the 65,000 to 100,000 of Joint Use Area should be partitioned and awarded to the Hopi Tribe. The Hopi Tribe takes the position that the Phase One decision created a larger joint use area of approximately 400,000 acres. The actual size of the Joint Use Area has not yet been addressed by the Court. If the Judge decides to partition any of the Joint Use Area, it is anticipated that he will order the relocation of the Navajo families living in those areas. As a result, the Phase Two trial will focus in part on the hardship which Navajo people would be subjected to if the Joint Use Area is partitioned and if Navajo families are ordered to relocate. It is also possible that the individual Navajo people who reside in the Joint Use Area may seek to intervene to oppose relocation and to raise their individual First Amendment rights.

It is also possible that the Hopi Tribe may choose to appeal Judge Carroll's decision in the Phase One Trial. If this occurs, the Court could either go forward with the Phase Two trial while Phase One is on appeal or could postpone the Phase Two trial pending the outcome of the Phase One appeal. Whether the Phase One decision is appealed or not, the Phase Two decision which the Court is yet to make can also be appealed by either party which could delay a

final resolution of the 1934 case for several more months or even years. In the meantime, the "Bennett Freeze" which prohibits construction or development of the 1934 area while the land is in litigation, will continue. As a result, the Navajo families who live in the 1934 area will continue to live in inhumane housing conditions until the 1934 case is finally resolved. Once the 1934 litigation is resolved, it is anticipated that there will need to be a substantial development program to provide relief for these families who have lived under the "Freeze" for nearly 20 years.



### III. The Mediation is Working

While the mediation continues, protecting the Navajo families and improving their living conditions continues to be our priority. Through the mediation process we have continued to address several important issues including livestock impoundment, repair and construction of homes and religious structures, lack of safe drinking water and harassment by B.I.A. or relocation officials. As a result impoundment of H.P.L. livestock has all but stopped, the Hopi

Tribe's effort to force more than fifty (50) Navajo families to dismantle their homes and structures has been successfully blocked, the Mediator has directed the federal government to develop plans to provide safe drinking water to the Navajo families of the H.P.L., several key members of Congress have written to the B.I.A. directing that they not engage in conduct which might disrupt the mediation and the U.S. Justice Department has recently directed the federal relocation agency to stop its intensive outreach program designed to pressure the families into relocating.

We are confident that a settlement can be reached through mediation which will provide a fair and just resolution for the people of both Tribes. We hope in the meantime you will continue to support the people and our efforts to assist them.

### IV. What you can do to help:

1. Write to key members of Congress and ask them to (1) support the mediation process and to educate themselves about recent developments in the mediation; (2) urge them to contact the

Office of Navajo and Hopi Indian Relocation and the B.I.A. and to ask that these agencies halt their recent efforts to increase pressure on the Navajo families who are involved in the mediation; and (3) ask that Congress lift the construction freeze in the 1882 and 1934 areas so that the families can repair or replace dilapidated homes and religious structures.

2. Make a contribution to support the Navajo people and the mediation effort. Funding is currently needed to provide transportation for people who wish to attend the mediation meetings, to cover travel costs for Navajo staff who are working as liaisons between the people and our office and to cover the cost of the printing and mailing updated information to our clients and their supporters. Checks should be made payable to the Big Mountain Legal Office.

For additional information contact:

Lee Brooke Phillips  
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124 North San Francisco  
P.O. Box 1509  
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Attorney for *Manyheads* Plaintiffs.

## The Western Shoshone Indian Land Rights Issue

October 31, 1991



### I. The 1863 Treaty of Ruby Valley

In 1863, the Western Bands of the Shoshone Nation entered into a Treaty of Peace with the United States. Among its provisions, the treaty described the boundaries of Western Shoshone Country, comprising some 30 million acres extending from the Snake River in Idaho through Nevada into southern California. The Treaty did not cede title to any Shoshone lands, although it granted the United States certain privileges, including the right to build a railroad to California; and the right to engage in mining activity and to establish towns and ranches in support thereof. Additionally, the treaty granted to the President the authority to establish permanent reservations for the Western Shoshones within their territory. Although the Treaty of Ruby Valley was ratified by Congress and remains in full force and effect, no such reservations were ever created. Western Shoshone title to their territory has never been legally extinguished. Nonetheless, and solely as a result of proceedings before the United States Indian Claims Commission, the Western Shoshone Nation has been deprived of virtually all of its lands.

### II. Proceedings in the Indian Claims Commission

Western Shoshones retained counsel as early as 1932 to enforce the Treaty and their land rights. Nothing was done. Instead, in 1951, the Bureau of In-

dian Affairs persuaded some Western Shoshones to file a claim before the Indian Claims Commission (ICC) seeking compensation for a "taking" of all Shoshone lands. This case became *Western Shoshone Identifiable Group v. United States*. Throughout these proceedings (1951-1979), a large number of Western Shoshones protested that the Treaty is still in effect, that they still own and occupy the land, and that taking compensation would amount to selling it. Contrary to legal precedent, the claims attorneys insisted the Indians were wrong. Today, the Duckwater Shoshone Tribe, the Timbisha Shoshone Tribe, the Yomba Shoshone Tribe, and the Dann Band correctly assert that they were never represented in these proceedings.

In 1962, the ICC held that Western Shoshone lands were "taken" in the nineteenth century by "gradual encroachment of whites, settlers and others...." In the absence of any taking date, the attorneys stipulated July 1, 1872 as the "date of valuation" for purposes of determining compensation. In 1979, despite several Shoshone attempts to stop the proceedings, the Court of Claims awarded \$26 million—the 1872 value without interest—for the putative "taking." With interest since 1979, the fund has grown to almost \$70 million. This money is still being held by the Secretary of the Interior.

Although the ICC had no jurisdiction to adjudicate title to Indian land (its jurisdiction was limited to awarding money damages for "ancient wrongs"), its deci-

sion ratified the presumption that a "taking" had occurred. Those who are now seeking a land settlement insist that the Shoshone Nation as a whole never understood or intended that the claim was for the loss or taking of their lands, but only for damages for unlawful use and other infringements by non-Indians.

In 1974, the Western Shoshone Sacred Lands Association sought to broaden Shoshone representation in the ICC proceedings. Specifically, it wished to exclude from the "taking" claim those lands not actually occupied by towns or white ranchers—some 16 million acres currently under the Bureau of Land Management (BLM) and Forest Service control. Their request was summarily denied. The court noted in a footnote that the Shoshones could "postpone payment, in order to try out the issue of current title, ... [by] ask[ing] Congress to delay making the appropriation ... to pay the award."

In 1976, the nominal plaintiff in the case, the Temoak Bands Council, concluded that Western Shoshone title remained unextinguished and that action should be taken to stop the case before it was too late. The Temoak Council sought a stay of the case pending a determination by the Interior Department Solicitor as to the status of the Shoshone title, or an adjudication by a court with actual jurisdiction to determine the title. The stay was denied, and, after appeals were exhausted, the ICC case went to final judgment on December 12, 1979. On appeal of the denial of the stay, the Court of Claims again directed the Shos-

hones to Congress: "If the Indians desire to avert the extinguishment of their lands claims by final payment, they should go to Congress as recommended [in the earlier decision] .... The essential point of the matter is that the Temoak's true appeal is to legislative grace, not as of right to this court."

### III. The Case of U.S. v. Dann

Mary and Carrie Dann are Western Shoshone Indians raising livestock on ancestral Shoshone lands in Crescent Valley, Nevada as contemplated by the Treaty of Ruby Valley. They are the leaders of a traditional Western Shoshone extended-family band. In 1974, five years before the final judgment in the ICC case, the Bureau of Land Management (BLM) sued the Danns for an injunction and trespass damages for grazing livestock on "public domain" lands without a permit. In their defense, the Danns asserted unextinguished Shoshone title and the Treaty of Ruby Valley. The case has been before the U.S. District Court in Reno four times, the Ninth Court of Appeals three times, and the U.S. Supreme Court once.

In 1974, the District Court held that the 1962 ICC finding of a taking by "gradual encroachment" was conclusive. In 1976, the Ninth Circuit reversed and remanded for a trial on the grounds that the ICC case had not yet gone to final judgment and was not conclusive. The District Court waited five years, apparently for the ICC proceedings to become final, without

granting a trial. In April 1980, the court held that Shoshone aboriginal title was good until December 12, 1979, when it was extinguished by the entry of final judgment in the ICC proceedings. Both sides appealed.

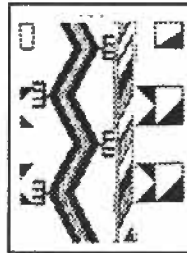
Immediately following the ICC monetary award, the Bureau of Indian Affairs began to develop a "judgment fund distribution plan" as required by the Indian Tribal Judgment Funds Use or Distribution Act of 1973. When it became clear the Bureau of Indian Affairs (BIA) could not complete

the plan within the six months required by the Act, largely because of massive Western Shoshone opposition to accepting the judgment, the BIA asked the Senate Select Committee on Indi-

an Affairs for an extension. In view of the *Dann* appeal and the uncertainty about the status of the Shoshone title, the Committee Chairman rejected the BIA request. This put the judgment outside the purview of the 1973 Act. The judgment now cannot be distributed without further Congressional action.

In its 1983 decision, the Ninth Circuit reversed again, holding that Western Shoshone title was not extinguished by any governmental action in the past, nor was it extinguished by the ICC judgment because the money was never actually paid to the Shoshones. The Government sought Supreme Court review.

The Government did not ask the Supreme Court to determine who owned the land. Instead, the



Court was only asked to determine whether the Shoshones were "paid" within the meaning of the Indian Claims Commission Act. The Court held that the transfer of funds from the Treasury to the Interior Secretary on December 19, 1979 constituted "payment," whether or not the funds were ever accepted by or distributed to the Shoshones. The Court remanded for further proceedings without discussing whether the "payment" had any effect on Shoshone title or justified the Government's effort to eject the Danns.

In September 1986, the District Court held that the Danns were "precluded from asserting Western Shoshone Indian title" as a result of the 1979 "[constructive] payment." Again, title was not actually tried, it was simply "recluded." On cross-appeals, the Ninth Circuit affirmed and additionally held that the necessary implication of the Supreme Court decision was that Western Shoshone tribal title was extinguished in the nineteenth century, despite the Ninth Circuit's own earlier finding, based on the evidence, that the title was not extinguished prior to 1979. The court then adopted the stipulated "valuation date," July 1, 1872, as the "most appropriate" date for extinguishment. The court remanded, however, for a determination of whether the Danns held "individual aboriginal rights" established by actual use and occupancy prior to November 1934, when Nevada was closed to homesteading.

### The Present Situation

Since 1980, several Shoshone Tribes, including the Duckwater Tribe, have refused, along with the Dann Band, to pay federal grazing fees. Despite the Government's victory in the Supreme Court, Shoshones are grazing nearly 3,000 head of livestock on approximately 1,000,000 acres of "public domain" lands without permits, and are continuing their traditional hunting and gathering activities throughout their ancestral homeland in defiance of state law.

At trial in June 1991, the Danns withdrew all defenses based on "individual aboriginal rights" on the grounds that *tribal* right to the land was the essential issue. They also restated their lack of faith in the fairness of the U.S. courts and their intention to continue to occupy their ancestral lands. The court found them in trespass, but refused to issue the equitable (injunctive) relief sought by the Government. The BLM recently reached agreement with the Danns to suspend its planned roundup of their livestock pending further negotiations to take place during the winter.

Notwithstanding the Government's court victory, legislation is required to resolve the conflict and distribute the judgment. The Western Shoshone tribal governments have all refused to accept the money in the absence of a legislative solution that provides them with an adequate land base.

A significant number of Western Shoshones support an immediate distribution of the judgment

award, irrespective of its potential impact on those who are attempting to get a land settlement. Many of these people reside in urban areas and have little or no connection with the land; some are not enrolled in any of the Western Shoshone Bands; and others are simply no longer willing to wait for the end of litigation or for Congress to act. Those Shoshones who want a permanent land base oppose such legislation unless it provides for establishment of significant reservations. They fear that when the judgment funds are distributed, Congress will ignore all moral claims and wash its hands of any further responsibility on the grounds the Shoshones have been adequately "compensated" for their lands.

The Western Shoshone tribal governments believe the 1863 Treaty of Ruby Valley guaranteed them a significant Reservation land base and that they have essentially been defrauded by the Government and the courts. When they tried to stop the ICC case and prevent it from destroying their otherwise good title (which was worth far more than the claim itself), they were told it was too late to stop the claim, and to go to Congress for relief. It would appear that Western Shoshones have a very strong moral claim, if not a legal claim, to the creation of a significant reservation land base within the area of their ancestral lands.

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## The Most Bomed Nation on Earth: The Western Shoshone People



Since World War Two, the U.S. military has joined the mining industry in degrading the landscape. The Western Shoshone Nation/ Nevada is one of the most heavily bombed places on earth, with more than 900 nuclear devices exploded above and underground, and conventional weapons heavily tested at bombing ranges that stretch from Nellis Air Force Base to the Bravo bombing sites around Fallon (many bombs fall on public land far from their targets). The Stealth Bomber was tested around Tonopah; Hawthorne is the biggest explosives depository in the nation; the seismically unstable Yucca Mountain, a sacred site for a high-level national nuclear waste depository; and bombing practice and low-level flights of military aircraft further impact the human and animal populations around the state. During the early years of nuclear testing, clouds of radiation severely damaged the health of animals, plants and rural populations immediately downwind and had incalculable effects on those further away (maps of testing fallout show arrows extending from the Test Site to the eastern shores of Canada, but southeastern Nevada and Western Utah bore the brunt of this radioactive assault). Since 1963 all testing has been underground (though underground tests still vent radioactive gases), and most of it has been at the Nevada Test Site sixty miles north of Las Vegas. Nevada was selected for these military assaults because of its small population - around a million, with most

people concentrated in the two main cities - and because desert land is widely misperceived as worthless and virtually lifeless, rather than fragile and delicately balanced.

The Test Site is located on Shoshone land, and in recent years the Western Shoshone National Council and American Peace Test have formed a fruitful partnership to oppose testing. Some of the largest civil disobedience actions in U.S. history have taken place at this remote site in the Great Basin, and many arrested activists have given their name as "Shoshone Guest," claimed a right to be on Test Site land based on WSNC (Western Shoshone National Council) permits, followed Shoshone activists such as Bill Rosse and Western Shoshone spiritual leader Corbin Harney onto the land, and otherwise made the land rights struggle an integral part of their actions. (Efforts to use Shoshone ownership of the land as a defense against trespass charges have not yet been accepted in court.) Pauline Esteves, Rosse, and Harney have traveled around the world to meet with antinuclear activists, many of them engaged in similar land rights struggles - since all nuclear weapons are tested on indigenous peoples' land, from that of the Uighur people of China to the Maohi people of French Polynesia to the Kazakhs of the U.S.S.R. Much of the military land in Nevada was transferred from BLM (Bureau of Land Management) jurisdiction quietly. Some sites like the Bravo 20 bombing range never went through such formalities, and



## INDIGENOUS LAND RIGHTS READER

bombs are dropped on this and other public land.

This is an excerpt from "A Struggle for Native Land Rights: The Western Shoshone and the Dann Case", by Rebecca Solnit. A publication of the Southwest Research and Information Center titled "The Workbook", P.O. Box 4524, Albuquerque, NM 87106.

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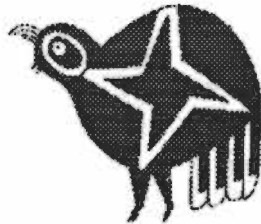
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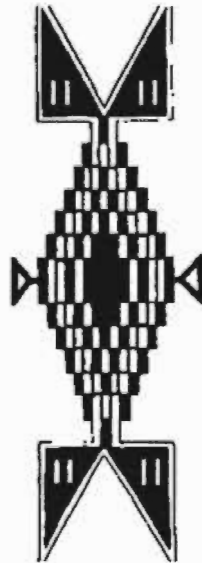
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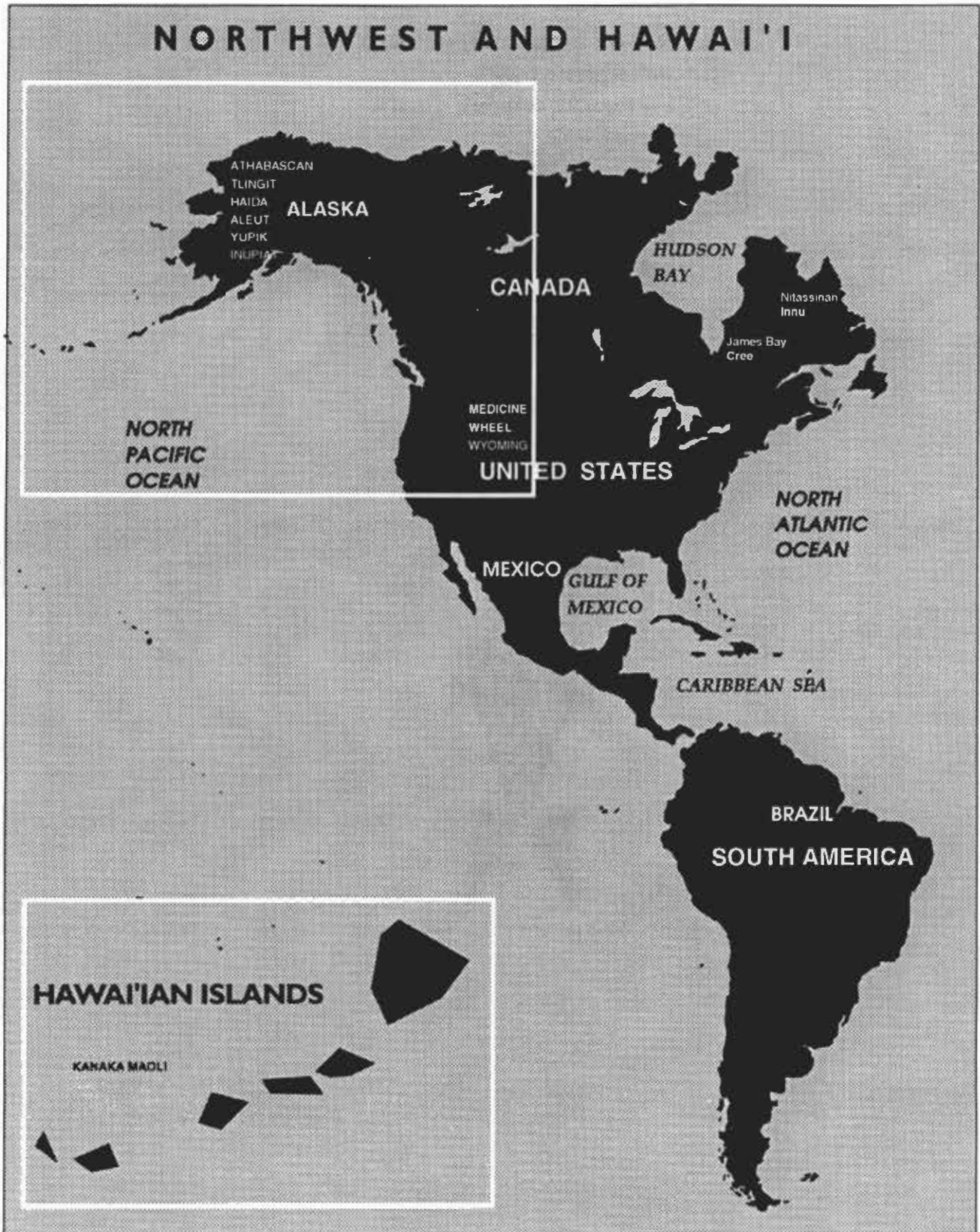
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702-295-1000  
702-295-1130



No, We are two distinct races  
with separate origins  
and separate destinies.  
There is little  
in common between us.  
To us the ashes  
of our ancestors are sacred  
and their resting place is hallowed ground.  
You wander far  
from the graves of your ancestors  
and seemingly without regret.

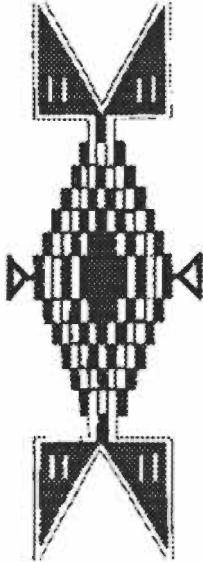


NORTHWEST AND HAWAI'I



## Medicine Wheel Alliance

An American Stonehenge



**T**he Medicine Wheel is a National Historic Landmark, located in an open plateau atop the 10,000 foot Medicine Mountain in the western part of Wyoming's Big Horn Mountains. The mysterious Medicine Wheel derives its name from a circular pattern of boulders forming the structure of the site. The circle is about 80 feet across and contains 28 stone spokes radiating out from a central rock cairn. Although it is the subject of various tribal legends, no one knows exactly when or by whom it was built. Estimates of its age range from 10,000 B.C. to A.D. 1450.

It is generally believed that the purpose of the Medicine Wheel was, like Stonehenge, originally related to measuring the movements of the sun and stars within the context of the religion practiced by its builders. Today, the Medicine Wheel is an important religious center for Indian peoples including the Crow, Cheyenne, Arapaho, Shoshone, Salish-Kootenai, and Blackfeet, as well as the Sioux tribes to the east. The Medicine Wheel is presently used for ceremonies and worship, and is regarded as a church by many Indian people.

### The Forest Service and The Medicine Wheel

The Medicine Wheel site has been endangered over the last few years by timber sales and plans for tourism development by the United States Forest Service. Since the Medicine Wheel, apart from being one of the last truly unspoiled archaeological monuments in the country, is currently

used by a significant number of Indian people for religious purposes, these development plans would seriously and irreparably damage the cultural value of the site. Those who practice religious ceremonies at the Medicine Wheel believe that extensive development would jeopardize the spiritual nature of the Medicine Wheel, and that the spirits they worship would leave.

The Forest Service had planned to construct a 2,000 square foot Information Center at the Medicine Wheel, as well as a 90 foot viewing platform along the fence, new toilet facilities, a 30 car parking lot, asphalt trails and interpretive signs. Native Americans have reacted to these plans with extreme disappointment. They are strongly committed to the idea that, aside from the fact that this kind of development would, in their view, interfere with the spiritual environment of the Medicine Wheel, they deserve the opportunity to worship freely without being subject to tourists' cameras. The site is their church, and they regard the development plans as a threat to their freedom of worship. No one denies that the Medicine Wheel area should be open for visitors, but to develop the area specifically for tourism is clearly not appropriate.

### The Medicine Wheel Alliance

The Medicine Wheel alliance was originally formed to generate interest in the preservation and protection of sites, including the environment, culturally significant to Native Americans and the general public. The Medicine



Wheel Alliance has worked during the past year on efforts to protect the Medicine Wheel and Medicine Mountain in the Big Horn Mountains of Wyoming from timber sales and development.

Presently, nine tribes have provided support for the Alliance's efforts: Blackfeet, Crow, Northern Arapaho, Northern Cheyenne, Shoshone, and four Sioux tribes from three states. All are working in a cooperative spirit for the good of the Medicine Wheel and Medicine Mountain. Tribal elders and representatives from the tribal medicine communities have held a series of meetings with each other and the Forest Service to identify the issue and find satisfactory resolutions to these issues.

The Medicine Wheel Alliance has also provided information to the general public through a publicity campaign, including articles in the *Billings Gazette*, *Casper Star*, *So-Ban Times*, and the *Denver Post*. The Medicine Wheel Alliance has been on National Public Radio, KOUS-TV Billings, and a thirty-minute television documentary entitled "Indian Country". Representatives of the Alliance have spoken at the Montana Wilderness Association's annual meeting in November 1988, Badger Two Medicine's annual meeting in the fall of 1988, and in January 1988 at Montana State University in Bozeman.

### Medicine Wheel Alliance Update

The Medicine Wheel Alliance (MWA) has spent the last 4-1/2 years trying to get protection for the Medicine Wheel and Medicine Mountain. In this time frame MWA has seen these federal documents come out of the Big Horn Forest Service in Wyoming. A scoping document in August of 1988, a draft environmental impact statement (EIS) in June of 1991. In all of these documents the traditional uses and users of the Medicine Wheel and Mountain are pretty much left out in the cold. The exclusive use time for the Medicine Wheel are solstices and equinox, 3 days allowed. All of these time frames could be closed by snow, especially, Fall, Winter and Spring.

In the draft EIS the Information Center was not part of this document. It has been taken out to be a separate procedure and this was done because what the Information Center is turning into is a snowmobile warming hut for snowmobilers out of Lovell, Wyoming, to help them promote tourism.

In October of 1991 the Medicine Wheel Alliance along with the Sierra Club, at Sheridan, Wyoming, presented to the Big Horn Forest Service (BHFS) a general management plan for this site and area. Some general things that were in this document were:

1. No mining, timbering, oil and gas development, tourism development within the 2-1/2 mile radius of the Medicine Wheel.
2. Exclusive use days of (4) days period throughout the sum-

mer months plus the solstices and equinoxes.

3. Road closure past the Medicine Wheel and guides/guards be stationed at radar dome turnoff 1-1/2 miles from the wheel.

4. That the area be treated as a special management area with traditional use being its highest priority.

5. No hunting be allowed within the 2-1/2 miles of the wheel. To date the BHFS has not addressed this document nor responded to it.

After all of this, the comments that came in on the draft EIS were overwhelming in their support for traditional use by Native Americans being the highest priority. The forest service has totally backed off from the issue and will give no future date for their final EIS and decision notice. The Advisory Council on Historic Preservation has tried to get them to at least do a programmatic agreement to no avail.

So at this point in time we are in limbo land on this project with the area still being promoted as a tourist attraction, the destruction of the site still taking place and the desecrations of the spirit life that is present here still being treated without respect.

So the battle goes on for a sacred space that is treated with multiple use principles.

The Medicine Wheel is a National Historic Landmark, a sacred place of worship, and a natural wonder. You can help preserve this cultural resource not only for Native Americans but for all of us.

For more information about

**NORTHWEST AND HAWAI'I**

the Medicine Wheel and the Medicine Wheel Alliance, please call or write to one of the Medicine Wheel Alliance coordinating committee members:

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Instead, in 1958 the U.S. authorized the creation of the State of Alaska, through which these settlers instituted a governmental apparatus run by themselves for their own advantage. Great numbers of Alaska Natives, particularly the traditional elders, were denied the right to vote in the Statehood referendum because of a state law mandating English speaking as a prerequisite and criteria for voters. This law remained on the books until 1970.

A strong turnout of settler voters was insured by allowing military personnel to vote as residents, unlike anywhere else in the U.S., a practice which continues to this day.

With the discovery of major oil deposits in Alaska in 1968, the multi-national energy corporations, along with the State and federal governments, pushed for a means to gain clear "legal" title to Alaska's lands once and for all by terminating the claims of the Indigenous Peoples and their traditional tribal governments. The result was the Alaska Native Claims Settlement Act (ANCSA), passed by the U.S. Congress on December 18, 1971.

ANCSA was an act of Genocide (as defined by the United Nations) perpetrated against the Indigenous Peoples of the North American Continent and institutionalized as federal law, once again without the consent of the vast majority of the Alaska Native Peoples. The State of Alaska, the Federal government and the multi-national energy corporations were the major beneficiaries of ANCSA,

while Indigenous Peoples lost more than 330,000,000 acres of their traditional land base. Profit-making state chartered "Native" corporations were created for the purpose of exploiting natural resources, and the remaining 44 million acres of land in Alaska were transferred from the tribes to these "Native Corporations". Shares of stock in these corporations were issued to "eligible" Natives in place of their land rights. In one of its most brutal provisions, ANCSA denied land rights to all Native children born after 1971, thereby effectively terminating them as Indigenous Peoples.

Although the text of ANCSA states that it was not "a jurisdictional act", it nevertheless also claimed to terminate traditional Native hunting and fishing rights, placing it in direct conflict with the inherent rights of Alaska Natives to exert jurisdiction over their own subsistence activities.

Many Traditional People have refused to except the validity of ANCSA because the vast majority of Alaska Natives never had the opportunity to vote or otherwise approve the Act. The individuals who voted in favor of ANCSA at the Alaska Federation of Natives Convention in 1971 (used as the "proof" of Native acceptance of ANCSA by the U.S. government) did not legally represent the vast majority of Native Alaskans under the Department of Interior's own guidelines for terminating Indigenous People's claims to their traditional lands.

When the provisions of

ANCSA go into full effect, (the date has recently been extended to 1993) many villages may lose what is left of their land base through taxation, sale of "Native corporation" stock to non-Natives, confiscation of lands for corporate debts, and other forms of so-called legal land theft provided for by ANCSA and its amendments. Transfer of "corporation" lands to tribal governments is the only protection for Alaska Natives, but this option is not being presented to the villages by governmental or corporate officials.

Similarly, many of these same government officials and corporate representatives are currently presenting "options" to Native communities regarding the management of their subsistence rights. The "options" being offered are limited to a choice between federal and state management of these basic human rights (guaranteed as the "right to subsistence" under international law), which provide the basis for Indigenous People's health, culture and self-sufficiency.

Continuing government and corporate plans to exploit natural resources in Alaska (such as coal mining in Chickaloon, oil development in the Arctic National Wildlife Refuge, oil drilling on the Continental shelf, clear cutting of timber in southeast) threaten to further destroy the habitat of the fish and animals upon which the Native communities depend.

A fact continually ignored by the State of Alaska is that its government disclaimed from its inception any jurisdiction over Indigenous lands and fishing rights.

This "disclaimer clause" is written into the State of Alaska Enabling Act and Constitution as follows: "The State of Alaska and its people shall disclaim any and all Lands owned, occupied, and/or claimed by Natives of Alaska, including fishing rights FOREVER". Nevertheless, harassment, intimidation, confiscation of gear and subsistence foods, destruction of habitats, as well as arrests and imprisonment of Native hunters and fishers by State fish and Wildlife continues, in violation of the State's own constitution.

The most viable option for indigenous communities, which is not being presented by the State, federal and corporate representatives currently debating the issue of Subsistence rights in Alaska, is the re-assertion of the Indigenous Peoples' fundamental right to exert their sovereignty and self-determination in the area of subsistence as well as in all areas of their lives. This is a right which has never been given up or relinquished through treaty or any other legal and binding agreement.

Despite the so-called disclaimer clause in its Constitution, the State of Alaska continues to contest every assertion of sovereignty by the Traditional Tribal Governments through its courts and the actions of its law enforcement officials. Although the State of Alaska is Public Law 280 State, and uses this law to justify its jurisdiction over Natives (in direct contradiction to its own Constitution), it continues to fail to comply with the terms of the Indian Civil rights Act of 1968, which

mandates that PL 280 states obtain the consent of the enrolled adult members of each tribe, band, group, villages, etc, before any decision can be made affecting Indian lands, jurisdictional rights, etc.

At the heart of the problems of Indigenous Peoples in Alaska is this crucial historical reality: the United States Government has not fulfilled sacred obligations it made regarding the inhabitants of Alaska, nor has it or the State of Alaska ever obtained the consent of Alaska Natives to appropriate their lands, assume jurisdiction over them, or to otherwise intrude into their way of life.

Responding to the blatant policies of termination applied by the U.S. and the State of Alaska, and a growing awareness of their rights under both federal and international law, many Traditional village governments and Elders Councils throughout Alaska have begun to organize, inform their communities, and re-assert their Sovereignty in areas such as hunting, fishing and tribal jurisdiction over their traditional land base. They have begun to make efforts to reach out to each other in order to develop unified strategies to combat the termination of Alaska's Indigenous Nations and Cultures, prevent the environmental destruction of their lands by corporations, and insure the survival of their future generations.

*"The State of Alaska denied my mom, Katie John, the right to fish traditionally. They've made it al-*

*most impossible for my mom to fish, put so many restrictions on her. Mom's 75, and all the stress and harassment from the State has affected her health. She's had two heart attacks since all this started. They let no non-Natives sport-fish and hunt in our area, but natives go to jail for that. My cousin went to jail for getting one duck.*

*My mom said to the State she's going to fish anyway, even if it means going to jail."*

Eva John

Mentasta Lake Traditional  
Athabaskan Village

This brief overview is not intended as a detailed analysis but rather as an introduction to historical issues which continue to effect the lives of the Indigenous Peoples and Nations in Alaska.

The following is a chronology of some of the laws, acts and other significant events that have had a profound effect on the lives of Alaska's Indigenous Peoples since the beginning of United States occupation. Reference materials and historical documents are available to those wishing to learn more about this chain of events and its effects upon our Peoples.

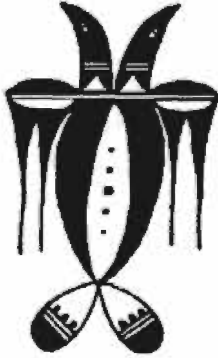
For more information or to find out how you can help, please contact:

The Sovereignty Network  
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## WHAT IS SOVEREIGNTY?

By Steve Boggs  
and Peter Akwai



**S**overeignty is the right possessed by a culturally distinct people, inhabiting and controlling a definable territory, to make all decisions regarding itself and its territory free from outside interference.

It is what we kanaka maoli (indigenous Hawaiian) enjoyed under our own culture and constitution before the U.S. armed invasion and robbery of our Hawaiian nation in 1893.

Today, sovereignty means the separate management of our own lives by us through our own independent institutions.

Sovereignty is not something that can be given to us. We cannot receive sovereignty; we can only assert it, or give it up.

If we agree to be "beneficiaries [wards] under a fiduciary trust" it means that we accept the continued authority of state and federal governments over us. It also undermines our assertion of sovereignty under international law.

### **Have we kanaka maoli lost our sovereignty?**

No! Beginning in 1893, we have merely been deprived of a mechanism for exercising our inherent sovereignty. We kanaka maoli have never voluntarily sur-

rendered our sovereignty. We were never allowed to vote on the illegal 1894 Dole Republic of Hawaii or the illegal 1898 U.S. Annexation, and we had no chance to vote separately on statehood or other options in 1959.

### **How can we achieve the recognition of our sovereignty?**

Sovereignty is recognized when nations of the world accept the fact that a people make their own decisions and refuse to allow others to decide their fate for them.

Politically, we can achieve re-recognition of our sovereignty by: (1) occupying lands that rightfully and historically belong to us: (2) opposing bills in the legislature and congress which are not initiated or approved by us: (3) resisting the destruction of our forests, fishing grounds, farmlands, the desecration of Pele, Kaho'olawe, and the bones of our ancestors.

Legally, we can achieve re-acknowledgement of our sovereignty by regaining international recognition of our right to de-colonization under the U.N. and our right as an Indigenous people to have a land base and other resources to maintain our culture, language and religion. This will pressure the U.S. government to re-recognize our inherent sovereignty.

## Timetable of U.S. Crimes Against Us Kanaka Maoli

By Ulla Hasager and Kawaipuna Prejean

**1893** The illegal U.S. armed invasion of Hawai'i—our kanaka maoli (indigenous Hawaiian) homeland and the armed robbery of our government, lands and treasury, violated five bilateral treaties as well as international law. U.S. connivance with the insurgent "Provisional Government" was denounced by U.S. president Grover Cleveland as an "act of war" and "lawless occupation."

**1898** The illegal U.S. forced annexation of independent Hawai'i, without the consent of, nor compensation to us kanaka maoli, not by treaty or statute but by a mere joint resolution of Congress, violated the U.S. Constitution and international law. The imposed "ceded land trust" of over 2.4 million acres made us kanaka maoli wards of the U.S. and, later, territorial and state governments.

In the following years, the self-appointed government "trustees" cut the acreage to 1.4 million and ran the "trust" for their profit, ignoring us, the true kanaka maoli owners and supposed "beneficiaries."

**1921** The illegal U.S. imposed Hawaiian Homes Commission Act created a "second land trust" of around 200,000 acres. By targeting only those of half or more kanaka maoli ancestry,

the U.S. Congress, in typical colonial fashion, divided us against ourselves. In the next 70 years, this program placed fewer than 4,000 eligible families on their lands mostly lacking water and other infrastructure, leaving 12,000 still waiting at the end of 1991.

**1941** Japan's attack on Pearl Harbor furnished the U.S. militarily with an excuse to proclaim an illegal, unconstitutional state of martial law. Military rule lasted 34 months, deprived us kanaka maoli of civil rights, and transferred 500,000 acres of land, including all of the island of Kaho'olawe to military control, without restitution to us kanaka maoli.

**1946** The U.S. breached Article 73 of the United Nations Charter, which required self-determination for Hawai'i as a non-self-governing territory. The U.S. kept Hawai'i captive as a non-declared, non-self-governing colony instead.

**1959** The U.S. legalized its non-compliance with the U.N. Charter by making Hawai'i a state. At the request of the U.S., the U.N. removed Hawai'i from the U.N. list of non-self-governing territories.

We kanaka maoli were not asked if we wanted independence or another form of self-governance. Rather, a limited choice between "immediate" statehood and the territorial status quo was presented

to "qualified" voters. U.S. rule had already reduced us kanaka maoli to a minority in our own country. In other words, the U.S. stuffed the ballot box, having already stuffed the population.

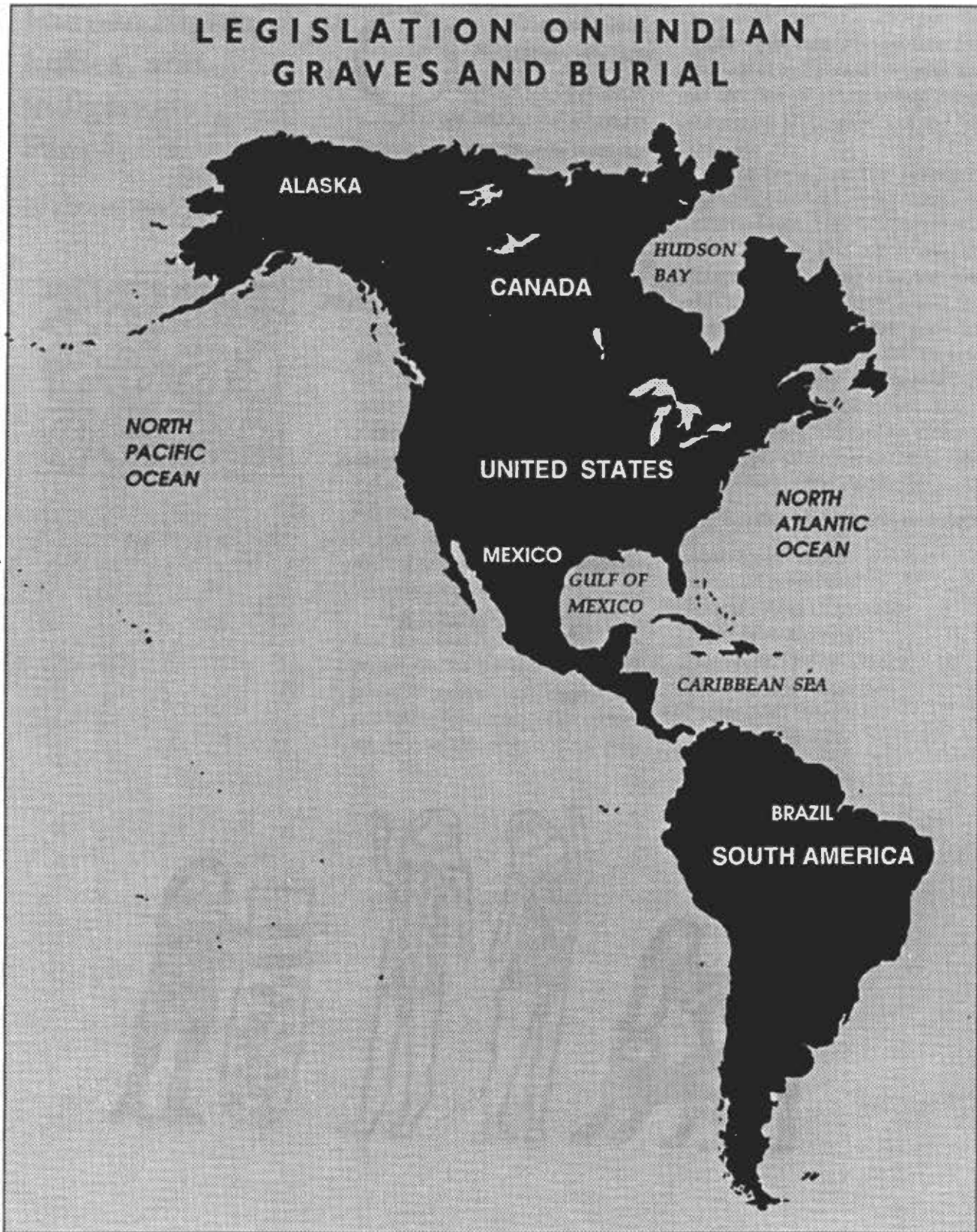
At the same time, we kanaka maoli were excluded from policies, laws, and programs which recognized Native Americans' right to self-government and control of aboriginal land.

The illegal U.S. imposed Statehood Admission Act further diluted our original exclusive right to lands stolen in 1893 and 1898. Instead of just one purpose for the "ceded public" lands for "the benefit of the inhabitants of the Hawaiian Islands," the Act defined five purposes, only one of which was for "the betterment of native Hawaiians, as defined in the Hawaiian Home Commission Act."

As with annexation, statehood occurred without the consent of, nor compensation to, our kanaka maoli.

**1991** On December 12, the U.S. Commission on Civil Rights released a follow-up to its 1980 report "Breach of Trust? Native Hawaiian Homeland." The report was now titled "A BROKEN TRUST: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians."

# LEGISLATION ON INDIAN GRAVES AND BURIAL



## The Sanctity of the Grave

By Sarah Penman



*"My son never forget my dying words. This country holds your father's body. Never sell the bones of your father and your mother." I pressed my father's hand and told him I would protect his grave with my life. My father smiled and passed away to the spirit-land.*

*I buried him in that beautiful valley of winding waters. I love that land more than all the rest of the world. A man who would not love his father's grave is worse than a wild animal.*

Chief Joseph of the Nez Perces

**F**or most American Indians the sanctity of the grave is absolute. However, thousands of American Indian skeletal remains are currently stored or are on display in museums, universities, private collections and federal institutions throughout the country. The debate surrounding the disposition of these remains has intensified over the last few years. Citing moral, ethical and legal arguments, national Indian organizations and Indian tribes are seeking the repatriation of these remains for proper disposition. Archaeologists and anthropologists have traditionally resisted repatriation efforts. They claim that the bones are of great historical, cultural and scientific value and they have a right and obligation to retain them.

However, there have been several major breakthroughs in efforts by Indian activists and tribes to secure Indian skeletal

remains and funerary objects for reburial.

The Smithsonian Institution has tentatively agreed to return any remains and funerary objects in its possession to Indian tribes that request them. The Smithsonian has one of the largest single collections of Indian skeletal remains in the country, consisting of some 18,000 remains and 17,000 funerary objects. These represent a small percentage of the estimated 600,000 remains that are held in institutions throughout the country.

Walter Echo-Hawk of the Native American Rights Fund (NARF) has been closely associated with negotiating the return of remains to the tribes, "the government took the red man's land, culture, religion, material possessions and even the dead." Calling the Smithsonian agreement "clearly historic", he said that this is the first time that the US government has returned to the American Indian something it has taken from them.

Many Indians believe that the excavation, study and display of the bones of their ancestors is racist and a violation of the Indian Religious Freedom Act of 1978. Though the Act does not specifically mention skeletal remains, it does require the Government to respect traditional Indian beliefs. Many tribes believe that to disturb a grave interferes with that spirit's journey. To walk in balance and fulfill the commitment to mother earth a person's body must be returned to the earth mother so that the spirit is free to travel. In short, disturbing graves

country," has been used for thousands of years by three California tribes for religious rituals and ceremonies. As Justice Brennan noted in his dissenting opinion (see below), "Where dogma lies at the heart of western religions, Native American faith is inextricably bound to the use of land." Spiritual leaders have historically travelled to certain sacred sites in the high country to avail themselves of the spiritual power needed for these ceremonies. Such spiritual discipline requires privacy, solitude and an undisturbed environment. Indian practitioners believe that ceremonies must be practiced at a particular site, in a prescribed manner, or harm will come to the people themselves and the rest of the world. Furthermore, Indian communities have increasingly looked to and drawn upon traditional ceremonies and practices as a means of revitalizing their societies. They are using the power of these lifeways to combat alcoholism, high incidence of suicide and social problems.

In 1979, the Forest Service issued an environmental impact statement on the Chimney Rock portion of the road, noting that the area has traditionally been used for religious purposes by the Yurok, Karuk and Tolowa Tribes. The study found the area to be "significant as an integral and indispensable part of Indian religious conceptualization and practice," and recommended that the road not be completed because it "would cause serious and irreparable damage to the sacred areas which are an integral and necessary part of the belief systems and

lifeways of Northwest California Indian peoples." While construction of the road and the logging activity would not prohibit religious ceremonies, it would make such practices impractical.

However, the Forest Service decided not to adopt this recommendation, choosing a route that avoided archaeological sites and was as far removed as possible from specific sacred sites. The Service also

adopted a management plan for timber harvesting in this area of the National Forest which provided for one-half mile "protective zones" around all identified religious sites.

In 1982, Indian individuals, an Indian organization, nature organizations and the State of California filed suit to stop both the road-building and timber-harvesting. The Federal District Court issued a permanent injunction against both activities on the grounds that such actions would violate the Indians' First Amendment rights. The Ninth Circuit Court of Appeals upheld the constitutional ruling of the District Court, ruling that the federal government had failed to demonstrate a compelling interest in the completion of the road. In 1984, Congress passed the "California Wilderness Act," which designated much of the area as wilderness, thus precluding logging activity.

#### Majority Opinion

Justice O'Connor delivered the opinion of the Court. Portions of the decision are quoted below.

"The Free Exercise Clause [of the Constitution] is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government. Even assuming that the Government's actions here will virtually destroy the Indians' ability to practice their religion, the Constitution simply does not provide a principle that could justify upholding respondents' legal claims".

"The Government does not dispute, and we have no reason to doubt, that the logging and road-building projects at issue in this case could have devastating effects on traditional Indian religious practices...[However,] government simply could not operate if it were required to satisfy every citizen's religious needs and desires."

"The Constitution does not permit government to discriminate against religions that treat particular physical sites as sacred, and a law *forbidding* [emphasis added] the Indian respondents from visiting the Chimney Rock area would raise a different set of constitutional questions. Whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, its land."

The court believed that such "solicitous" government steps as choosing an alternate road route in order to minimize the impact the construction would have on Indian religious activities were in keeping with the "American In-

## LEGISLATION ON INDIAN GRAVES AND BURIAL

dian Religious Freedom Act." To suggest that the "American Indian Religious Freedom Act" "goes further" to authorize an injunction against completion of the road, is "without merit," because the Act offers no "judicially enforceable individual rights."

### Dissenting Views

In a strongly worded dissent, Justice Brennan cited the lower courts' conclusion that burdens from the construction of the road were sufficient to invoke First Amendment protection and that interests served by the road and logging projects were "insufficient" to justify those burdens.

"The [Supreme] Court does

not for a moment suggest that the interests served by the G-O road are in any way compelling, or that they outweigh the destructive effect construction of the road will have on the respondents' religious practices. Instead, the Court embraces the Government's contention that its prerogative as landowner should always take precedence over a claim that a particular use of federal property infringes religious practices. Attempting to justify this rule, the Court argues that the First Amendment bars only outright prohibitions, indirect coercion, and penalties on the free exercise of religion...[W]e have never suggested that the protections of the guarantee are lim-

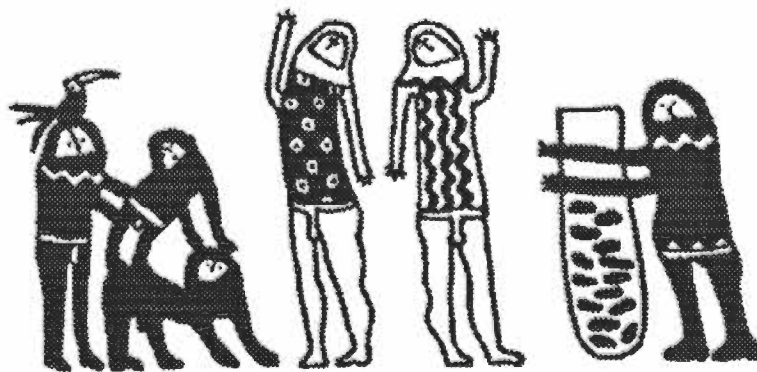
ited to so narrow a range of governmental burdens."

"...today's ruling sacrifices a religion at least as old as the Nation itself, along with the spiritual well-being of its approximately 5,000 adherents, so that the Forest Service can build a six-mile segment of road that two lower courts found had only the most marginal and speculative utility..."

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Reprinted from FCLN Indian Report,  
Summer 1988.



Rights secured to tribal governments under federal Indian law also supply injured tribes with potentially strong legal grounds to rebury deceased tribal ancestors who have been wrongfully exhumed and withheld from reburial against the wishes of the tribe. One theory is that where remains have been removed from graves located in areas ceded to the United States by treaty, the signatory tribe implicitly reserved the right to rebury the desecrated tribal remains. This result will likely arise when the long-standing canons of Indian treaty construction are applied in many instances. Interpreting the treaties as understood by the Indians, given the practices and customs of the tribes at the time, it generally cannot be said that the signatory tribes intended to cede away all or any legal rights to protect their dead. Similarly, it cannot be said that the United States intended to obtain Indian land for the purpose of snatching Indian bodies from the grave or to rob the dead. At treaty times, the "science" of archaeology was not even born and grave robbing was a common-law felony.

Another legal theory arises under federal Indian law. Regardless of whether dead bodies were removed from ceded treaty areas, tribes also possess the inherent sovereign right to repatriate desecrated remains of deceased members or ancestors—a right that has never been divested by treaty or statute, or by necessary implication. One of the most fundamental attributes of tribal sovereignty is the right to govern the internal

affairs and the personal, social and domestic relations of tribal members. Proper disposition of tribal dead and protection of the sensibilities of living members clearly falls within this inherent aspect of tribal sovereignty. Such an exercise of tribal control over deceased tribal members desecrated from graves located outside reservation boundaries may properly be argued to exist in certain narrowly-defined circumstances. Such power would be particularly appropriate, for example, where desecration is allowed to exist either because state law has chosen not to regulate or protect tribal remains or fails to accord equal protection. In such instances, the paramount interest at stake is the tribal interest—the state's failure to act to protect basic human dignity does social, cultural, spiritual, emotional, and individual violence to the tribes and their internal and social relations between living and dead members. The exercise of such power by tribes in such narrow circumstances is also implicitly consistent with the federal trust or protectorate relationship: In rare instances where federal or state governments fail to protect basic human decency, or permit a loophole in legal protections to exist, tribes must be deemed to retain the inherent powers to protect their membership.

In *Mexican v. Circle Bear*, 370 N.W.2d 737 (S.D. 1985), the Supreme Court of South Dakota granted comity to a tribal court order determining the disposition of a dead body pursuant to tribal custom, even though that tribal

custom was at variance with applicable state statutes and the decedent died within state jurisdiction. Even though the South Dakota Supreme Court was aware that tribal law conflicted with state law, it *nonetheless granted comity to the tribal court order*:

"We conclude that the fact that tribal custom is different from state law... is not reason enough to deny effect to an order based upon that custom.... Given the diversity of decisions regarding the right to custody of a dead body or burial purposes, *see generally* Annot. 54 A.L.R.3d 1027 (1973), we would be guilty of parochialism if we were to hold that tribal custom regarding that right is so abhorrent to the policy expressed in state law that it may not be given effect. Accordingly, we hold that recognition and enforcement of the tribal court order of March 20, 1985, would not contravene the public policy of this state."

*Id.* at 742. *The Mexican* decision, which applied international law comity principles to a domestic dependent Sioux Nation, illustrates that the inherent sovereign right over tribal dead is not inconsistent with nor inherently limited by the domestic dependent nation status of Indian tribes.

### Conclusion

Popular ideas that Indian graves are fair game for trophy hunters, that dead Indian bodies are valuable only as "specimens," and that Indian burial objects belong to "finders as keepers" are all vestiges of racism that must be rejected by today's society as repugnant. The legal fiction that has

## LEGISLATION ON INDIAN GRAVES AND BURIAL

arisen in the minds of many that dead Indian bodies are "property" that can be bought or sold in the marketplace as "chattels" must be dispelled as alien to long-standing principles of American common law. Hopefully, these needed social changes can be brought about by non-Indian society based upon the simple notion that Native American communities are living communities entitled to the same basic decencies that we accord to our own dead.

Reprinted from Native American Rights Fund Legal Review, No.1, Winter 1988.

### **Legal Rights to Repatriate the Dead Update**

Five states have passed repatriation since 1989. Three statues were passed in response to specific repatriation and reburial matters, and three are general repatriation laws. The five states are California, Hawaii, Kansas, Nebraska, and Arizona.

In 1989, Hawaii appropriated \$5 million from its Land Banking Law to purchase a Native Hawaiian burial ground owned by a private developer who had dug up over 900 remains in order to build a hotel - \$500,000 of those funds were used to rebury the dead.

Similarly, in 1989, Kansas

passed implementing legislation concerning a reburial agreement between state officials; the owner of a tourist attraction, which displayed 165 Indians from an Indian burial ground; and three Indian tribes that provided that the dead would be reburied by the descendent tribes. In addition, in 1991, the Kansas State Historical Society obtained legislation to allow it to deaccession and repatriate Pawnee Indian remains in its collection. The remains had been obtained from vandalized graves.

In 1989, Nebraska enacted a general repatriation statue entitled the "Unmarked Human Burial Sites and Skeletal Remains Protection Act." This landmark legislation requires all state-recognized museums to repatriate "reasonably identifiable" remains and grave goods to tribes of origin on request. Under Nebraska's law, the Pawnee Tribe repatriated over 400 Pawnee dead from the Nebraska State Historical Society. The Pawnee Tribe reburied the dead in 1990 despite continued resistance by the Nebraska State Historical Society.

In 1990, Arizona passed a sweeping repatriation statue to repatriate human remains, funerary objects, sacred objects, and objects of tribal patrimony.

Under this law, culturally or religiously affiliated remains held by state agencies are repatriated to tribes of origin. Moreover, remains that are not culturally affiliated with a tribe still must be reburied within one year nearest to the place where the remains were discovered.

Finally, in 1991, California passed a law that makes it the policy of the State that Native American remains and associated grave artifacts shall be repatriated.

During the same period that individual states started to enact legislation designed to ensure appropriate treatment of Indian human remains and funerary objects, the Federal Government, at the urging of Indian tribes and national organizations, also began to seriously consider the need for uniform, national legislation addressing this issue. That process culminated in the enactment of the Native American Graves Protection Repatriation Act in 1990.

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