

EXPLOITING THE SACRED:  
NATURAL RESOURCE EXTRACTION ON NATIVE AMERICAN TRIBAL LANDS

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## **ABSTRACT**

Native American cultures possess a strong, spiritual relationship to the natural world around them. They view Mother Earth as the giver of all life and strive to achieve harmony with the environment in which they live. The land itself holds spiritual significance for Native American tribes and is considered to be sacred. However, many Native American tribes have engaged in large scale natural resource extraction, with in and beyond the boundaries of their own tribal lands. While this source of economic gain has had a positive transformative impact on multiple impoverished Indian nations, there are many issues that make the process very difficult. Firstly, the process of large-scale resource extraction is often detrimental to the earth's ecological systems. This makes resource extraction inherently contradictory to traditional Native American religion, creating a divide between Native traditionalists and those who wish to promote economic growth. Secondly, federal trusteeship of Native American tribal lands has created a federal bureaucracy that makes tribal resource development a very complicated process. As a result, lands and leases are often mismanaged by the federal government to the great disadvantage of tribes. Lastly, a sudden oil boom can bring about dramatic demographic changes to an Indian reservation which is often times met with a lack of infrastructure and preparedness. The purpose of this paper is to investigate the social and legal implications of the barriers listed above, as well as explore Native conceptions of and attitudes towards energy resource extraction.

## **Ecology as Religion**

Native Americans possess a love for the land that goes much deeper than the love of self. With a keen sensibility of how to survive off the land in which they inhabit, the Native Americans strive to desecrate the land as little as possible because that land is their mother and the sky their father. They believe that they come from the land just as a child comes from a mother, and they are nourished by it; they depend on it for survival. The land is the source of all life and everything in the land possesses a soul. Every action carried out by humankind is felt by nature in the sense that it would feel the pain of a physical hurt if it were mistreated. Because they depended on the land for survival before European settlement, they did not want to hurt Mother Nature or else she would stop providing them with their basic needs (Vecsey 1978). The belief that the natural environment is the source of all life brings Native American ecology into the realm of not just conservation, but of religion, ideology, and ritualism.

The Europeans settlers' perspective on the environment was very different than that of the indigenous people whom they encountered when they arrived in the Americas. The Native Americans did not believe in personal ownership of the land because, as a sacred entity, did not belong to any individual; humankind is simply inhabiting it and using it, whereas the European perspective was based on private ownership. The "white perspective" saw the natural environment as a collection of resources and goods. Those resources could be extracted to any extent by the owner of the land with the goal of economic profit. This idea often gave little or no regard to the delicate balance of nature that is such an important concept to Native American religions.

When the first European explorers made landfall on the Americas they encountered a land that seemed untouched by the exploitation of society. The vast amount of flourishing woodlands, fertile soil, prairies, and clear rivers of good water left the explorers astonished and they thought that they had come upon complete wilderness, a land without human inhabitants. But this was not so, as Indians had been hunting, fishing and gathering making their subsistence off of the land for millennia. The land was not untouched as the explorers had thought, but it was unspoiled (Hughes 1983).

The European's perception of the new world as a "wilderness" is reflected both upon how they viewed the Indians that inhabited the land and how the Indians viewed the land that they inhabited. The Indians possess a deep respect and reverence for the very land that provides them with the means to live, and they express that respect by leaving it unspoiled by their dependence on the land itself. The Europeans regarded the Indians as wild inhabitants of this wilderness – complete savages; like a human species of predator in the forest (Hughes 1983). However, one of the most persistent and pervasive images of American Indians has been that of "natural" beings, persons who live in harmony with nature, whose identity is in congruence with the environment from whence they draw their sustenance. This commonly gave the Indians the image of the "noble savage," as whites who came into contact with the Indians under friendly circumstances often admired their seeming oneness with the world around them. Indians lived under the brutal and harsh conditions that are the very essence of nature. To some this way of life was something that must be overcome, repressed, and destroyed (Vecsey 1978).

Though there are endless ways which one can define "religion," for the purpose of this paper we will look at "religion" as the conception of, attitudes toward, and relations

with the ultimate source of life. In most religions, the term “the source of life” can be used as a synonym for “God.” The environment can be described as the non-human aspects of the world; the conglomeration of ecosystems that is commonly referred to as “nature.” Nature is the inhabitable biosphere of earth, air, and water upon which all humans depend for survival. Though creation stories vary from tribe to tribe it is a common Indian belief that humans come from the Earth just as a child comes from a mother. In the Indian sacred circle of creation all things on this planet including trees, stones, animals, mountains, and rivers, are alive and possess a soul. This concept is referred to as animism. Everything is equally integrated into the balance of life – a sacred circle. Any loss of life along the circle diminishes the whole (Vecsey 1978).

The Indians conceive of themselves as deriving from the earth and depending on it for survival, a relationship that is essential in the expression of Native American religion. All material things that are critical to human survival (food, shelter, clothing, tools, ect.) come from nature, as does the power to use all of these materials; therefore, the natural environment is the “source of life.” Indigenous people depended on nature for survival, and they recognized their dependence; this recognition is a conceptual aspect of their religion. American historian Wilcomb Washburn regards Indian intimacy with nature as the most salient characteristic that separates Indians from whites: “Virtually all Indians lived in close and intimate relationship with nature... The Indian relied directly upon nature for his life, and, perhaps more importantly, was fully conscious of that dependence.... The Indian’s mind was turned constantly toward the natural environment which was the source of life and death and reward and punishment.” (Vecsey 1978)

Just as the natural world is the ultimate source of life in the Indian worldview, their deities represent the multifaceted aspects of the environment. Their actions were guided by their view that nature is composed of a host of spirit persons who can talk to human beings and respond in a number of ways to the treatment they receive. For this reason, living in careful balance with the natural environment was necessary for survival. If they acted in ways that would destroy the balance of the natural communities where they found their food, shelter and clothing, then those communities would not provide for their needs any longer (Hughes 1983). American Indians held a two-sided relationship with nature in which they both loved nature and exploited it for survival. Their environmental religions prompted both sides of this human-nature relationship to the extent that it supported, apologized for, and justified subsistence activities. It recognized the lack of full human harmony with nature and sought to overcome it (Vecsey 1978).

Native American ethics regarding nature are protective and life preserving as a result of the sacred perspective of viewing the earth. Everything in nature possesses a soul and therefore every aspect of the natural environment must be cared for. Black Elk, a famous medicine and holy man of the Oglala Lakota (Sioux) explains this relationship: “The wingeds, the two-leggeds, and the four-leggeds, are really gifts of Wakan-Tanka. They are all wakan and should be treated as such.” In this saying Black Elk uses two Dakota words for concepts that are fundamental to understanding how Indians are related to the environment. The word “wakan,” meaning “power,” is the natural power that permeates all natural forms and movements. The Indian’s world was full of power, and of beings who had power, or were power. The word “Wakan-Tanka” is the Lakota’s name for the Great Spirit or “Great Mystery.” The names given by different Indian

languages show how those people understood the Great Spirit. For example, the Apache supreme being was called Life Giver. Among the Cherokee it is referred to as *Esaugetuh Emissee* meaning “Earthmaker,” and the Crow use the word *Ah-badt-dadt-deah* which means “The One Who Made All Things.” Not all tribes regarded the Great Spirit and the Creator as the same spirits, but this was the case for most tribes. A prayer from Black Elk expresses the feelings towards that spirit that is shared by most Indians:

O Father and Grandfather Wakan-Tanka, You are the source and end of everything. My Father Wakan-Tanka, You are the one who watches over and sustains all life. O my Grandmother, You are the Earthly source of all existence.

The world and all of the good things in it were seen as the gifts of the Makers, to be received and used with thankfulness and reverent care. The female counterpart to Wakan-Tanka is the generous being who supports humankind, Mother Earth, or Grandmother Earth. Mother Earth is a great power who provides mankind with fruits, roots, fish, and animals. She is respected as the continuing source of life for all living creatures, giving birth and sustenance, as more of Black Elk’s words explain:

We are of the earth, and belong to You. O Mother Earth from whom we receive our food, You care for our growth as do our own mothers. Every step that we take upon you should be done in a sacred manner; each step should be as a prayer.



The Native Americans gave life to the earth and treated it as they would their own mother. This perspective resulted in a loving care of the natural world with the intention of striving to refrain from harming it (Hughes 1983).

The land that was the mother of the people was not something to be owned privately. A characteristic saying of Indians regarding the land shows respect and humbleness: “We do not own land, we simply use it” (Hughes 1983). This stems from the belief that all living beings share the land, which includes plants, animals and humans. Indians were not individualists. The land was thought to belong to the group that inhabited it and blocks of land were assigned to families who were then entitled to use it, but it was not exclusively their property. The white perspective, on the other hand, saw the land as a piece of property, something to be surveyed, parceled, bought, sold, argued over, stolen, and abandoned for land elsewhere (Vecsey 1978). This concept does not make sense to the Indian.

## **The Land is Sacred**

Among the landscape there are specific places where the power for life is concentrated; places where the spirits of nature most often revealed themselves. These lands hold significant spiritual value to certain Indian tribes and are considered to be sacred (Yablon 2004). Indians desire to preserve these sacred spaces as this was where their myths took place, where their heroes walked and their ancestors were buried, where the nature deities were helpful, and conditions for subsistence were optimum. In many cases, these sacred locations are where rituals are held that are essential for Native American religion. Therefore, the relationship between the native people and their land is

central and indispensable to their religion, culture, and way of life. For most Indian peoples, the sacred place must remain in its natural state or else it would lose its sacred character. Altering the landscape or the use of the location could destroy the site by disrupting the sense of isolation necessary for ceremonies or by driving the spirits away (Ward 1992).

The term “sacred” can be defined as that which is dedicated to religious purposes, is entitled to veneration, and should be secure against violation or infringement. Under this definition, land is clearly sacred to indigenous Americans (Ward 1992). However, under this definition one would conclude that ethics of Native religions consider all land sacred. While this does hold true, it is not practical to assume that all land, or even all remaining relatively unspoiled land, could be set aside for Indian religious purposes. While the entire earth is sacred, some places are more sacred than others; those places must be identified as especially sacred places that warrant absolute protection against desecration.

Many of the lands that are considered sacred are no longer in the possession of Indian tribes and are instead owned by the federal government. What is now the United States used to be the domain of Indian peoples. Their land was taken from them by force, a history that should be (but seldom is) considered when resolving issues of land between Indian peoples and the federal government (Ward 1992). When Indians were relocated or confined on reservations in the nineteenth century, the ownership of their ancestral lands was claimed by the federal government to preserve future options for commercial development (Zarsky 2006). Federal ownership of sacred grounds presents a serious

threat to Native American peoples because Indian religions are rarely considered in federal land management decisions.

The greatest threats that face sacred sites on federal lands are mining, reclamation, and intensive recreation (Ward 1992). Mining disrupts the landscape greatly by stripping the landscape to extract mineral resources. Mining can be very profitable, and the rights to exploit mineral wealth on federal land are relatively easy to acquire. Reclamation projects irreparably alter the sacred landscape by flooding valleys and changing the natural course of rivers, submerging significant medicine gathering sites, holy places, cemeteries, and possibly drowning out Native American Gods. While some recreational activities such as backpacking leave the landscape largely unchanged, other activities such as boating, skiing, and climbing will disturb a sacred site. Whether it is the noise or simply the crowded presence of outsiders, these activities disrupt the solitude of a place, rendering that place inadequate for religious practices.

An issue that frequently arises while discussing the protection of sacred sites is that of its boundaries. The term “sacred site” leads one to believe that there is a definitive boundary in which the spiritual value is heightened but many native activists challenge the term as inaccurate and inadequate because of that connotation. Each individual site is usually a part of a web of culturally significant locales spread across a larger ancestral landscape (Zarsky 2006). The most visible and well-known sites are on public lands, primarily in the west.

Sites on public land are under the control of federal land managers whose agencies encourage public recreational access to those lands along with logging and mining. However, sacred sites on public lands are subject to more stringent federal

oversight than land that is in private ownership which offers more protection leverage. The most commonly used tool for sacred site protection lies in the laws, policies and regulations that are imposed by the federal government. Though it is the most commonly used tool to protect sacred sites, federal law is far from adequate to protect sites from development because the United States, unlike several other countries such as Canada and Australia, has no substantive federal sacred site legislation, and what does exist lacks teeth (Zarsky 2006).

Congress has enacted a number of laws designed to protect Tribes' traditional, cultural, and religious uses and values. In 1978, Congress enacted the American Indian Religious Freedom Act (AIRFA), creating a Government wide policy to protect sacred sites and traditional forms of worship (USDA 2012). This law states that it is the “policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise... traditional religions... including but not limited to access to sites...” (Zarsky 2006). However, this act does not impose any penalties on violators nor does it mandate any procedures that federal agencies must use to protect Indian access and prevent damage to sacred sites. This renders that act as more of a statement than a practical tool for either Indians or federal agencies. In 1993 the Religious Freedom Restoration Act was passed, reiterating that governments should not substantially burden religious exercise without compelling justification and attempted to “provide a claim or defense to persons whose religious exercise is substantially burdened by government.”

The National Historic Preservation Act (NHPA) of 1966 requires federal agencies that issue licenses or have jurisdiction over a federal project to consider the affect of

their actions on any site in the National Register of Historic Places or that might be eligible for inclusion in it (Zarsky 2006). In passing the NHPA, Congress declared that the spirit and direction of the Nation are founded upon and reflected in its historic heritage and that heritage should be preserved to give a sense of orientation to the American people (USDA 2012). Federal agencies now must consult with the relevant State Historic Preservation Office and give the Advisory Council on Historic Preservation the opportunity to comment.

One controversial topic regarding sacred spaces and resource developments is that of Glamis Gold Inc. and Indian Pass, homeland of the Quechan Indian Nation in the southeastern California desert. Originally spanning some 880 square miles, Quechan homelands were seized by the United States and inundated by gold mining interests in the nineteenth and twentieth centuries (Zarsky 2006). The tribe was then confined to a 45,000-acre reservation that is home to approximately 3,000 Quechan today. To the north and west of the reservation is the spiritual heartland of the Quechan, an area that the Bureau of Land Management has designated the “Indian Pass-Running Man Area of Traditional Cultural Concern.” Within the Indian Pass area there are prayer circles, ceremonial places, shrines, ceramic scatters, petroglyphs, and spirit breaks linked by ancient trails. The trails connect geographical and cultural features around Indian Pass that are integral to contemporary Quechan religious ceremonies and pilgrimages, providing guidance through the spirit world as well as knowledge of Quechan origin, history and destiny. Willa Scott of the Quechan Tribe’s Culture Committee describes, “If these sites are destroyed we will lose our ability to pass down our beliefs.... Our cultural

gatherings, funeral rituals, singing, storytellings and teachings. Without these practices, our people will lose the most important part of who we are.”

Glamis Gold Ltd. is a Canadian gold mining corporation that is based in Vancouver, British Columbia. The company, which describes itself as a “premier intermediate gold producer with low-cost production, large reserves, and a consistent, strong growth profile,” has been acquiring gold mining claims in the southeastern California desert since 1987. In order to get around the requirement in the 1872 Mining Law that only U.S. citizens can mine on federal land, Glamis established a wholly owned subsidiary, Glamis Gold Inc., incorporated in Nevada.

The process of gold mining used by Glamis is open-pit, cyanide heap-leaching, a process that scars the landscape and can pollute the groundwater with cyanide. First the company digs up multiple tons of ore, grinds it into fine earth, and heaps it onto open-air leach pads on a lining of plastic or asphalt. The heap is then sprayed with a solution of dilute cyanide. The cyanide percolates down through the heap, for several weeks, leaching out particles of gold, which drain into a pond and are then pumped to a recovery plant (Zarsky 2006). This process yields a small amount of gold for a large amount of mined ore. A ton of ore can yield as little as 0.015 ounces of gold.

The land that is mined, unless the company is required to take measures in restoring the land through processes such as back-filling, is left a deeply and permanently scarred and devastated landscape. Even when the land is back-filled, original land features, cultural sites and ecosystems may be lost forever. Another extremely hazardous after effect of this process is that of the left over cyanide, a chemical that is highly toxic when dissolved in water which produces cyanide gas. Mining companies will generally

work hard to prevent the leaking of cyanide heaps because leakage would mean a loss of gold. However, leaks and spill do occur, and when it can be very damaging to water sources and surrounding ecosystems. The combination of a large open pit, related mine roads, power lines, waste rock piles, and water wells draining the desert aquifer, as well as potential cyanide pollution of groundwater would mean an end to the existence of Indian Pass as a place of spiritual practice and significance for the Quechan people (Zarsky 2006).

### **Tribal Resource Extraction**

American Indian lands contain vast amounts of natural resources and are among the least explored and least developed lands in the United States. Nearly 30 percent of the nation's coal reserves west of the Mississippi exist on Indian lands, as well as 50 percent of the potential uranium reserves, up to 20 percent of known natural gas and oil reserves, and a combination of other rare earth minerals that are increasingly sought after for use in manufacturing. Approximately 2.1 million acres of Native American lands have already been subjected to resource development and the US Department of the Interior estimates that there are an additional 15 million acres of potential and mineral resources. For the Indian nations with these substantial energy resource endowments, development can have a transformative economic potential; good news for many tribes as Native Americans living on Indian reservations are the most economically disadvantaged people in the country (Grogan 2011). However, the process that native tribes must go through to develop these resources is much more complicated than that of off-reservation energy projects.

Federal control of the resource extraction makes it difficult for tribes to capitalize on their energy wealth. From leasing, to extraction, to royalties, nearly every aspect of resource development on native lands is in some way controlled by the federal government. For example, all leases and agreements must be reviewed and authorized by the Secretary of the Interior. Federal agencies also collect royalty payments on behalf of tribes and individual Indians and then redistribute them as royalty disbursements to Indian mineral owners. This authority over Native lands and its resources is a result of the federal trusteeship established in the early nineteenth century. In 1831, Chief Justice John Marshall described tribes as "nations within a nation" unable to negotiate treaties with foreign nations but implying that they retained the power to govern themselves. Marshall went on to describe the relationship between tribes and the United States as "that of a ward to his guardian." This relationship led to the situation that still persists today - the federal government as the trustee of Indian lands (Regan 2014).

Because of the precedents established by the Marshall court, the federal government has certain duties with respect to minerals development on tribal land, and can invoke its trust obligations "at the point of leasing or contracting, in the administration by the Bureau of Indian Affairs (BIA) of activities under approved agreements, and in courts' resolutions of disputes regarding the lands of tribes or individual Indians (Grogan 2011)." The federal trust responsibility gives way to the idea that tribes are incapable of managing their own lands. As a result, the federal government maintained almost complete control of native resources for most of the twentieth century. On Indian lands, companies must go through at least four federal agencies and 49 steps to acquire a permit for energy development, compared to as few as four steps off



reservations. This complicated bureaucracy raises the cost of entering into resource development agreements with tribes or individual Indians (Regan 2014).

After the Marshall decisions there were some changes to land tenure under the General Allotment Act of 1887, also known as the Dawes Act. The intention of this act was to fully assimilate Native Americans by parceling certain tribal lands into individual allotments rather than collective land ownership. Over time, federally devised inheritance laws resulted in some allotment parcels being fractioned into lots owned by hundreds of owners. This made decision-making about land use on allotted land extremely difficult. As a result, comprehensive land-use plans for mineral extraction became extremely difficult to agree upon, as 51 percent of the allotted land owners would have to approve a lease sale before it is offered (Grogan 2011). The allotment era ended with the passage of the Indian Reorganization Act (IRA) in 1934. The IRA stopped the allotment process and returned some land and mineral rights to select tribes. The primary intent of the IRA was to improve tribal economic self-sufficiency and increase tribal control over tribal affairs. Despite its goals, the federal government still failed to provide the resources or the necessary independence from federal interference and oversight to promote real self-sufficiency. Some tribes, such as the Navajo, rejected the IRA and were left without approval authority on the leasing of their resources. The Indian Mineral Leasing Act (IMLA) of 1938 supported the intent of the IRA by prohibiting state taxation of tribal mineral income, establishing and standardizing a system of rents, royalties and bonuses, and provided at least some transparency and accountability on the part of the federal government to tribes and individual allottees through standardized processes

(Grogan 2011). While this act was a step in the right direction, it did not give the tribes an influential role in these operations beyond the initial leasing process.

Because of the large number of federal government agencies that are involved, the development of tribal energy resources often results in confusion, overlap, and a lack of coordination between the involved agencies. The Bureau of Indian Affairs (BIA) is the primary agency with authority in managing Indian trust assets and is the first agency that gets involved with any activity that happens on Native lands. There are 55 million surface acres and 57 million acres of subsurface mineral estates that are held in trust by the US government for American Indian Tribes; all of which are under the authority of the BIA. Its responsibilities include: facilitating or negotiating lease sales; approving and issuing leases; maintaining lease and ownership records; determining minimum royalty rates, rental rates and lease terms; approving easements for extractive activity on trust lands; recommending approval of the Application for Permit to Drill to the Bureau of Land Management; providing assistance and technical guidance to tribes and individual Indians; and determining that the approval of all activities are in the best interests of the tribe or individual Indian (Grogan 2011 pg. #).

After everything is approved by the BIA, the Bureau of Land Management (BLM) takes over with the primary responsibility of the preparation and review of production and mining plans. The BLM also oversees many other pre-lease functions such as mineral appraisals and evaluations of tracts. As the Primary agency for oil, gas, and other non-coal mineral operations, the BLM is responsible for the Application for Permit to Drill, inspection, and enforcement (Grogan 2011). Many other agencies can become key players that are involved in the approval and oversight process of mineral

extraction on Native American lands. Among these agencies are the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and The U.S. Forest Service when mining might affect Indian sacred sites on the lands it manages.

The extent of which the federal government is involved in the process of tribal energy resource extraction has a great impact on how beneficial to the tribe such an endeavor could be. In the next section we will examine the cases of two different tribes that have significant resources on their land, and how the federal government's involvement in the management of those resources effects the outcome of their energy programs.

## **The Navajo**

The Navajo Nation encompasses 15.4 million acres over a 27,000 square mile portion of Arizona, New Mexico and Utah. With a growing population of more than 250,000 members and the greatest land base, the Navajo Nation is the largest Native American tribe in the United States. It also is among the most sophisticated of the tribes in terms of managing its own affairs and is one of the largest oil-producing Indian tribe in the United States (Grogan 2011).

Today the Navajo Nation struggles with many issues including extreme poverty, unemployment, and alcoholism. According to the 2000 census, 42.9 percent of residents of the Navajo Nation lived below the poverty level, meaning they had an income of less than \$8,350 per year (Tarasi 2011). The proportion of impoverished people was more than four times the average poverty level in the United States. As a result, 21.4 percent of Navajo families lack plumbing, and around 18,000 out of the 48,000 Navajo households

lack electricity. The lack of access to electricity on the Navajo Nation is not only a result of high poverty levels, but also geographic isolation, as well as legal and political pressures. Despite the large reserves of natural resources for energy production that are abundant on the reservation, the Navajo Tribal Utility Authority (NTUA) does not operate any of its own power plants, so it is required to purchase electricity from other utility providers.

The natural resources present on Navajo land are very abundant. The Nation possesses major coal reserves, which are mined under two separate contracts with Peabody Energy dating from the mid-1960s, one of which covers coal properties jointly owned with the Hopi Tribe. The other contract from 1963 is with BHP Billiton, which allows the company to extract coal from Navajo land elsewhere on the nation. The nation also has significant oil and gas deposits, and has been producing oil since shortly after signing its first lease in the early 1920s. In 1933 congress enlarged the Navajo reservation to include the Aneth extension in southeast Utah. This area has proven to have rich oil deposits, turning its name into the Greater Aneth oil field area. The first well in this area was pumped in 1956, and today many of the tribe's producing wells are in this area. The Navajo have been acquiring wells when lease contracts expire, purchasing working interests in leases, thus slowly taking control over all aspects of the business, from exploration and drilling to pipeline shipment to selling product wholesale (Grogan 2011). Today, oil and gas production are overseen by the Navajo Nation Oil and Gas Co. (NNOGC), whose mission "includes the goal of re-establishing Navajo ownership of the Nation's resources."

To understand the current state of the complex relationship between the Navajo Nation and the US Federal government one must first explore the history of that relationship. The Navajo first came into contact with Spanish colonists in the 18<sup>th</sup> and early 19<sup>th</sup> centuries. The Spanish introduced horses, sheep, and goats to the Navajo. These animals became a vital part of the Navajo economy. The first treaty between the Navajo and the US government was made in 1846. Disagreements with American troops despite this treaty led to hostilities by 1849. Until 1863, this hostility turned to chronic warfare. In 1868 another treaty was signed allowing the Navajo to return to land that was set aside for them in their former territory (Funk 2014). The treaty created a reservation of about three and a half million acres on which the Navajo became the defined unit that they are today. They were provided with sheep and cattle under the condition that they agreed to live in peace with the American settlers. At the time, the land that was given to them was highly undesirable for economic gain. It was poor farming land isolated from the main non-Navajo population; the economic wealth that laid in the land's natural resources was yet to be known (Iverson 1981).

During the late 19<sup>th</sup> century the tribe prospered. The amount of land on the reservation was extended to accommodate their increasing herds and booming population. Had the government officials foreseen the great mineral wealth of the land for twentieth-century America, the Navajo reservation would not have emerged in its present size (Iverson 1981). However, the greatly increased livestock holdings presented serious problems of soil erosion and over grazing. This led to a livestock-reduction plan that was forced on the tribe by the U.S. Government. It wasn't until the early 20<sup>th</sup> century that the Navajo tribe was allowed to develop an official government of its own,

which was created mostly because the U.S. Government needed a formal entity to approve mineral leases on Navajo lands.

While the Navajo have had great success in managing its extractive resources with skill and to the great benefit of the tribe, they have experienced many disappointments and setbacks in their quest for autonomy. The Navajo nation has presented themselves before the Supreme Court twice (in 2003 and 2009) seeking \$600 million in compensation relating to its coal leases with Peabody Energy, alleging that the federal government negotiated lease terms with the company that shortchanged the tribe for decades (Grogan 2011). The tribe was able to confirm that DOI Assistant Secretary Donald Hodel attended secret meetings with Peabody Energy and shared confidential information about the tribe's coal reserves as deals were struck. However, the Supreme Court ruled that the government had not breached its fiduciary trust duties and dismissed both suits.

### **The Southern Ute Tribe**

The Southern Ute Tribe, situated on a small reservation of 1,125 square miles in the southwest corner of Colorado, holds a unique position in the world of tribal energy resource development. By forming their own gas production company, the tribe is able to make their own decisions regarding any deals that are made in leasing their land to developers. That company now has operations across the country on other tribal reservations in addition to their own, and even on private land.

The Ute Indian territory used to be much larger than it is today. Seven bands of Utes once inhabited hunting grounds which originally included parts of Wyoming, Utah,

Arizona, New Mexico, Oklahoma, and Texas. In 1868 the federal government established a rather large reservation for the tribe of 56 million acres that covered the better part of western Colorado. However, gold and silver were eventually discovered in the San Juan Mountains, leading to an agreement that would diminish the original plot of land to the small reservation that is known today as “The Ute Strip,” which is home to roughly 1,400 tribal members. Much of this land was also opened up to white homesteaders, creating a sort of checkerboard across the reservation of private, white ownership and Ute-owned territory (History of the Southern Ute 2016).

The Southern Ute has a tribal government that was established by the Indian Reorganization Act. The Constitution of the Southern Ute Indian Tribe defines the Tribal Council as its governing body. The council is composed of a chairman and six council members. The Chairman appoints an executive officer who oversees the many tribal departments. Among these departments is the Natural Resources Department, whose mission statement on their website reads:

The Department of Natural Resources is empowered by the Southern Ute Indian Tribal Council with the mission to develop, administer and manage the natural resources of the Southern Ute Indian Reservation for the benefit of the Tribe and Tribal Members. The Department is entrusted with promoting the beneficial use, protection, conservation, preservation, and developmental enhancement of the Tribe’s natural resource by using sound administrative, ecological, cultural, socioeconomic and educational methods for the benefit of present and future generations.

Until the 1960’s energy development leases were negotiated through the Department of the Interior. Tribes held the authority to approve those leases, but often times the tribe lacked the expertise and data required to make good energy decisions. After the approval of a lease by the tribe the rest of the development process, such as

management, audits, and royalties, was controlled by the federal government with no input from the tribe. This situation changed for the Ute in 1966 when Leonard Burch was elected as tribal chairman. Burch, who had spent some time working in the Bureau of Indian Affairs, then appointed Sam Maynes as the tribe's general council.

Burch and Maynes sought to change the energy resource playing field for the Southern Utes, a tribe that has had historical success in forming useful alliances with non-Indians. They decided to bring in experts to map and analyze the tribes existing and potential energy resources. They found that the tribe's resources had been extremely undervalued by the Department of the Interior and brought to light the fact that this issue was a nationwide occurrence - most tribes with natural resources were being mismanaged by the federal government. This ultimately led to a shift in federal energy policy and the passing of the Indian Mineral Development Act of 1982. This act gave tribes the power to negotiate lease terms. The Southern Utes took full advantage new expertise and ability to negotiate lease terms to make much more favorable leases. The tribe put into place a severance tax on gas production and took over the responsibility of auditing leases, a task that was originally in the hands of the federal government.

The tribe's real success with energy development began with the Colorado Ute Water Rights Settlement Agreement, in which the tribe received \$8 million from the federal government. They then used those funds to create Red Willow Production Co, their own gas production company. The creation of such an entity allowed the tribe itself to reap the wealth from energy production on their own land, something outsiders had been doing for years. This idea would solve many of the complications that extensive federal oversight had created. Decision making was now in the hands of the tribe itself,



therefore decisions could be made in the tribe's best interest. After taking over 54 wells in 1995, Red Willow was able to quadruple production in just nine months. Tribal control over wells also proved to have great economic benefits as it exempts tribes from property and severance taxes that are imposed by the state or county.

Red Willow Production co. established much of its success by building a team of high quality, honest employees that could help Burch achieve his goal of creating an economically self-reliant society. One of the key players in Red Willow is John Jurrius, who has a substantial background in the financial aspect of the oil industry. In order to mitigate the issues brought about by frequent elections and turnover rate common in the tribal government, Jurrius was tasked with creating a plan that would "build a financial structure that provided corporate style continuity, even as tribal councils came and went."

The plan that Jurrius came up with divides the tribe's finances into two separate branches. The first branch, the Permanent Fund, invests energy royalties into securities that can generate steady revenue for the tribe. This fund pays for a collection of government and social services. The second branch of this plan is called the Growth Fund. This fund invests funds that do not go to the Permanent Fund into energy companies, real estate, and private equity. This fund is also directly beneficial to the tribal members, as it distributes dividends to adult members (ages 26 and up) and supplies retirement funds for members over the age of 60. (Thompson 2010)

The extent of Red Willows production has continued to grow since its conception in 1992. What started as a plan to buy existing conventional wells within the reservation boundaries turned into an international, multifaceted company with thousands of operations on-reservation and off, on-shore and off. Red Willow began acquiring and

operating coalbed methane wells in 1995 and has continued to do so ever since. In order to diversify their portfolio of producing assets, the company began exploring new sources in off-reservation operations, the first of which was drilling for oil in the Montana portion of the Williston Basin. Red Willow's first international endeavor began in 2002 with a large coalbed methane project in Alberta, Canada. Oil became the primary focus for Red Willow in 2011 leading to operations in West Texas as well as the Gulf of Mexico. (Red Willow Website)

### **The Three Affiliated Tribes**

The ability to take hold of the natural resources found on tribal lands can give Native tribes a way to realize their goal of becoming economically independent from the federal government. The growth of the tribal energy industry can have immense transformative impacts on the economic well-being of tribal governments as well as individual tribal members. However, as the rapid growth of an industry, such as oil, takes over an Indian reservation there are many unforeseen effects that bring about abrupt change in social, cultural, economic, political, and environmental landscapes. As an oil and gas boom takes over a once desolate, rural reservation it brings with it a flood of a completely new population that is there for the industry and the industry alone. To examine the effects of such a phenomenon we will explore the case of the Bakken Oil Boom on the Fort Berthold Reservation that has been drastically altering the reservation's cultural and physical landscape since 2007.

The Fort Berthold Reservation, located in western North Dakota, is home to the Mandan, Hidatsa, and Arikara Indian Tribes, collectively known as the Three Affiliated

Tribes. The original tribal land for the Three Affiliated Tribes consisting of over 12.5 million acres was established by the Fort Laramie Treaty of 1851. This massive land base was gradually reduced to fewer than one million acres through a series of federal treaties and land takings creating the present-day Fort Berthold Reservation. Some of the tribe's most valued and revered sacred sites are present on this land, causing a culturally significant spiritual tie to the land in which the tribes inhabit. (Cross 2011)

Oil and gas exploration in this portion of North Dakota yielded little to no success until around 2007 with the introduction of new technologies such as horizontal drilling and hydraulic fracturing. Hydraulic fracturing, also known as fracking, is an unconventional method of extraction in which fossil fuels are recovered by injecting a chemical solution into a well at very high pressure to fracture rock formations deep underground, releasing large amounts of natural gas to be captured. Though very effective, this method of extraction is very controversial due to its associated environmental issues such as groundwater contamination, earthquakes, and the disposal of the subsequent wastewater.

The Fort Berthold Indian Reservation sits directly above the Bakken Oil Formation, a shale formation that holds an estimated 300 billion barrels of oil, twenty-four billion of which are economically recoverable with today's extraction technologies such as fracking (Cross 2011). The potential to recover this oil has brought about a massive boom in industry to the reservation. This boom has had a profound impact on the reservation, both positive and negative. The tribal members encounter those impacts in their daily lives.

The economic impact that the oil boom has had on both the tribal government and individual tribal members has been substantial. For every barrel of oil that is recovered from the reservation the state collects extraction and production taxes of 11.5 percent. The tribal government has entered into a tax agreement with the state in which half of the tax revenue goes straight to the tribal government. This agreement has given the tribal government as much as \$249 million in tax revenue from just one year of production. Oil companies also pay the tribes per-barrel royalties to pump oil from their land. This brought in an additional \$99 million in the 2013 fiscal year. Royalties paid to individual tribal members who have entered into their own leases on private land or individual trust lands have been even greater, totaling \$350 million in 2013.

In addition to the direct payments that are made to the tribes and its members, oil and gas development has completely altered the reservation's economic landscape. Oil companies have put billions of dollars into the local economy by creating jobs, increasing business income and supporting new enterprises. With the fresh opportunity of well-paying jobs, the unemployment rate on the reservation dropped significantly along with the poverty rate. There has also been a great surge in Indian-owned businesses on the reservation, primarily in companies offering oilfield services. The rapid increase in population has also been very beneficial to non-oil related businesses owners on the reservation as they have seen their sales skyrocket since the boom began in 2007.

However, economic prosperity did not come without subsequent negative side effects and challenges. Suddenly, a quiet farming community was taken over by a booming industry and the demand for proper infrastructure to support such growth became a daunting challenge for the tribes. The narrow state highways and tribal roads

that crisscross the reservation are now being ravaged by giant oil trucks, schools are filling up, and housing is becoming scarce. The social changes that are being brought to the reservation are also of major concern to its residents. As a result of the rapid increase of income and introduction of a new demographic of outsiders, substance abuse has increased substantially. This has opened up a market that has brought organized crime to the reservation peddling heroin and methamphetamine to its residents. Tribal law enforcement and court systems have been overwhelmed by this dramatic change in demographics (Davies 2014). In fact, due to a 1978 Supreme Court decision, tribal police have no criminal jurisdiction over non-Indians. Those crimes must be handled by state or county law enforcement officers, who seldom respond to correspondence from the reservation. As a result, tribal police officers are often forced to let criminals go regardless of the crime they committed (Crane-Murdoch 2012).

The big question that is on the minds of many of those effected by the boom still remains: what happens when the oil runs dry? Many of the economic gains that the reservation has experienced as a result of the sudden oil boom seem to lack the long term pay-off that will persist after the industry has left the reservation. Additionally, how is the tax revenue generated by oil going to directly benefit the tribe? In an effort to provide an answer for these pressing questions, former Tribal Business Council Chairman Tex “Red Tipped Arrow” Hall’s administration created “The People’s Fund,” a \$200-million-dollar fund that distributes dividends to adult tribal members each year. The program is thought of as a way to prolong the benefits of the tribe’s wealth while maintaining their important cultural values (Goodluck 2016). On the People’s Fund page of the MHA Nation website one can find this sentiment explained, directly followed by

instructions on how members can go about receiving their disbursements: “The People’s Fund has been created for the membership as a source of revenue long after the last barrel of oil is taken from our lands. As we have been fortunate to be blessed with this natural resource that has taken millions of years for Mother Nature to prepare. We shall extend the benefits of this resource perpetually into the future. The People’s Fund will continue to benefit the members of the Three Affiliated Tribes for many generations to come.” While the People’s Fund is directly beneficial to tribal members in the long run, it is apparent that it is not enough to address the infrastructure, social, and environmental costs that have come with the oil boom.

The oil boom has since left the Fort Berthold reservation as a result of a major price drop for oil in the global market. The price of oil went from over \$100 a barrel to \$45 a barrel in 2014, making it nearly impossible to profit off of oil drilling in the United States (Goodluck 2016). The reservation is now much quieter than it was during the peak of the boom, but it is left with destroyed roads and environmental impacts that will be seen by future generations to come. The Bakken Shale Formation still hold billions of barrels of oil and, when it is economically feasible, the boom could very well return to the reservation. If and when it does return, major strides will be necessary in order to keep up with the demand for infrastructure, as well as the immense environmental and social impacts.

## **The Dakota Access Pipeline**

Despite the traditional notion that Native American cultures are at the forefront of protecting the earth as a sacred deity, tribal land is often subjected to environmentally degrading resource extraction projects. Whether it is carried out by the tribe itself or leased out to another entity, the development of the vast wealth of energy resources beneath tribal land can be extremely lucrative for those involved. However, oil and gas development inherently raises the risk of environmental destruction. This contradiction of values between traditional Native beliefs and economic sustainability leaves one to wonder where the line is drawn between protectors of the earth and its exploiters.

On the Standing Rock Sioux Indian Reservation in North Dakota that line appears to be very clear. In April 2016 protestors set up camp on public lands in opposition of the construction of the Dakota Access Pipeline. The \$3.78 billion project, headed by the Dallas company Energy Transfer Partners, is set to build a 1,172-mile-long oil pipeline through both private and public lands, connecting the Bakken oil formation of North Dakota with South Dakota, Iowa, and Illinois. The goal of the pipeline is to extend the reach of Bakken oil to markets in Illinois, and ultimately the gulf coast and east coast. When completed, the pipeline would be responsible for transporting roughly half of the crude product coming from the Bakken formation (Nemec 2016).

For members of the Standing Rock Sioux Tribe the pipeline poses a major threat to their everyday lives. Though it is not set to be built through the reservation itself, the pipeline will be constructed in a path that will destroy important sacred religious sites and potentially poison their main source of drinking water, the Missouri River, in the case of a spill or leak. This has raised great concern within the tribe, and their concerns have

been shared throughout the entire country. As of November 2016, over 4,000 people, both native and non-native, have joined the Standing Rock Sioux at their protest camp. Over 200 sovereign Indian nations are represented at the protest in support of the cause. This magnitude of solidarity among Native tribes has never been witnessed in modern history.

Among the tribes in support of the Standing Rock Sioux are the oil-rich Three Affiliated Tribes of the Fort Berthold Reservation. While the pipeline would appear to be beneficial to the tribe's declining oil industry, Tribal Chairman Mark Fox makes his opposition very clear. In a formal letter declaring the tribe's opposition to the pipeline Fox states, "We...share the firm belief that Dakota Access should find an alternative means and method of transporting oil to market that has less potential for negative impact to Standing Rock and the lands we have historically shared with a fellow nation, friends and relatives." (Donovan 2016)

## **Conclusion**

With all of the controversy surrounding the environmental degradation that is associated with the fossil fuel industry, the line between the roles of Native tribes as protectors of the earth and giants in the industry of resource extraction is becoming increasingly vague. It seems like an easy decision for Native tribes, who may be sitting atop great mineral wealth, to engage in the extractive industry. Taking advantage of the earth's resources could present a way to overcome generations of poverty and move away from dependence from the federal government, a long-time goal for many tribes. However, the federal government makes it very difficult for resource extraction to take



place and be lucrative on federal land. The sheer number of agencies and lack of oversight that a tribe must go through before a lease can be approved makes the process very unfavorable. It is for this reason that some tribes, like the Southern Ute, have created their own oil production company, simplifying the process and putting more decision making in the hands of the Natives.

While the idea of a booming industry may sound appealing to a struggling community, within this report we have seen how such a boom can have many unforeseen consequences. An oil boom, such as the one that was brought to the Fort Berthold Reservation, can completely change the landscape of a community, both physically and socially. It may be seen as a last resort to keep tribes financially afloat, and many tribes have found themselves in the position of exploring that last resort despite how contradictory it is to their traditional culture and beliefs.

Perhaps, the shift towards tribal resource extraction is reflective of the gradual disappearance of traditional Native American culture, a trend that is increasingly apparent in the modern era. It could be possible, however, that tribal resource extraction is not seen by Natives as a contradiction to their traditional beliefs. It is their traditional belief that the earth's natural resources are a gift from Mother Earth, given to the people for survival. Historically (and traditionally) this was applied to water, farming, and hunting. It was believed that reaping the benefits of these natural resources was acceptable as long as it was done appropriately and with absolute stewardship for Mother Earth. This meant refraining from harming the natural environment whenever possible. This was reflected in important religious ceremonies that defined the cultures' relationship with Mother Earth.

In the modern world, Native American cultures are struggling to survive. Tribal involvement in large scale extraction industries can be seen as a means for the survival of an entire culture. Therefore, one may conclude that tribal resource extraction is not contradictory of traditional Native culture as long as it is carried out in the most environmentally conscious way possible. That is a tough condition to meet in inherently environmentally destructive industries such as coal, oil, and natural gas, and is seldom the case in any of those extraction operations. As a result, we often see the trading of traditional values for an attempt at gaining financial stability.

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