

FALL
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Nevada

Historical Society Quarterly



SPECIAL ISSUE: *Native American Voices*

FALL/WINTER 2019



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Nevada Historical Society Quarterly

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Front Cover Illustration: *Lion Spirit*, by Jack Malotte, who recently completed an exhibition at the Nevada Museum of Art. He is Western Shoshone and Washoe and currently resides in Duckwater, Nevada.

Being the oldest cultural institution in the state, the Nevada Historical Society seeks to advance the study of the heritage of Nevada, the Great Basin, and the West since being formed May 31, 1904. The mission of the Society is to collect, preserve, and educate the public on the history of the state of Nevada through our changing and permanent galleries and extensive collections available for patrons in the Research Library.

The *Nevada Historical Society Quarterly* solicits contributions of scholarly or popular interest dealing with the general or natural history of Nevada, the Great Basin, and the West. For more information about potential subject materials and submission guidelines, please visit our website: <http://nvhistoricalsociety.org>.

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Editor's Note

This special issue of the *Quarterly* features Native American voices. Every piece in these pages was written or created by Native Americans from tribes in Nevada. I felt it was important to open our journal as a forum for Native people to express themselves openly. The bulk of what is known about Native tribes the world over often comes from a researcher's outside (etic) perspective. Mistakes have been made, and people's histories and beliefs have been misinterpreted, which is why it is crucial to generate a new understanding of cultures from Natives' own, insider (emic) perspectives. This issue is an attempt to educate readers on Native perspectives as viewed from the Natives themselves. I hope to see this shift in academia and education continue, wherein opportunities are available for individuals to educate others about their own cultures on their own terms.

This issue has also been graced with artwork of two Native American artists, in addition to personal essays and stories from authors who are part of the tribal bands living in our state. There is a research article discussing legal framework and its relation to Te-Moak Western Shoshone sacred sites, as well as two interviews, and another piece about the renaming of a mountain peak in central Nevada. We reprinted two short excerpts from the 1989 issue of *Nevada Magazine* written by Native authors about efforts to stand up for Native rights. As you will see, the tribulations and legal battles discussed 30 years ago remain much the same today. Tribal struggles with the U.S. government and the Bureau of Land Management (BLM) are long and arduous, as is exemplified in the personal essay written by Leanna Dann ("Living on Western Shoshone Land") and the federal government's nullification of the 1863 Treaty of Ruby Valley, which is also touched upon in Danielle J. Mayberry's "Protecting the Tosawihi Quarries and a Human-Rights Solution." The fact that tribes are still standing up for their rights signifies the cultural importance of the lands under question and demonstrates the perseverance, dedication, and gumption of those doing the fighting.

My hope is that our readers will gain new understandings and viewpoints of the challenges that Native groups in Nevada—and across the United States—still face today due to colonialism and the colonial model that our country was built upon. Moving forward as a society, we must dismantle past injustices and try to right as many wrongs as possible. There is currently a movement occurring in museums that supports this endeavor for change; known as IDEA, the acronym stands for inclusivity, diversity, equity, and accessibility. We are seeing more collaboration between tribal individuals and museum staffs regarding Native material objects. There are also federal mandates in place to repatriate certain items. Both are worthy efforts to move our nation in a more inclusive direction and start to heal intercultural relationships.

Michelle Roberts, PhD
Managing Editor

Protecting the Tosawihi Quarries and a Human-Rights Solution

DANIELLE J. MAYBERRY
Te-Moak Tribe of Western Shoshone

"When our feet touch the ground, we touch our ancestors."¹

For most of American history, the United States government has actively discouraged and outlawed the exercise of traditional beliefs and ceremonies of American Indians. Throughout the 19th and 20th centuries, the government provided support to Christian missionaries to "civilize and convert" American Indians. In 1934, with the passage of the Indian Reorganization Act, tribal governments were able to adopt constitutions, including a human-rights section, allowing for the free exercise of religion. However, obstacles still remain today for American Indians to practice their spiritual beliefs. American law provides little legal protection for American Indian holy places. With land lost during the allotment era and the failure of the U.S. government to honor treaties, many of the sacred sites stewarded by Indian nations for thousands of years became separated from tribal communities.² Currently, American Indians are regularly denied access to sacred sites located outside reservations, or sites are being destroyed. Frequently, conflicts arise between the use and needs of lands containing American Indian sacred sites among groups such as mining, logging, tourism companies, Indian nations, and tribal citizens.

¹Ken Workman (Duwamish).

²Angelique Townsend EagleWoman and Stacy L. Leeds, *Mastering American Indian Law* (Durham: Carolina Academic Press, 2013), 140.

Danielle J. Mayberry is a judicial law clerk at the Saint Regis Mohawk Tribal Court, located in Akwesasne, New York. She earned her Bachelor of Arts from Jamestown College and her Juris Doctor with an emphasis in Native American law from the University of Idaho College of Law. She grew up in Battle Mountain and is a tribal citizen of the Te-Moak Tribe of Western Shoshone. Her Western Shoshone families are from Austin, Nevada, the Reese River Valley, and the Ruby Valley. The author wishes to thank Te-Moak chairman and councilmember of the Battle Mountain Band, Joseph Holley, as well as Carlene Burton, Kathleen Holley, Jessica Mortensen, Fermina Stevens, and Johnnie Bobb for their support and guidance. The author also wishes to thank professors Angelique EagleWoman and Phillip Stevens for their comments and edits to earlier drafts of the article. The views and opinions in this piece are the author's and do not necessarily reflect the views of the Te-Moak Tribe of Western Shoshone or the Battle Mountain Band, Wells Band, Elko Band, or South Fork Band.

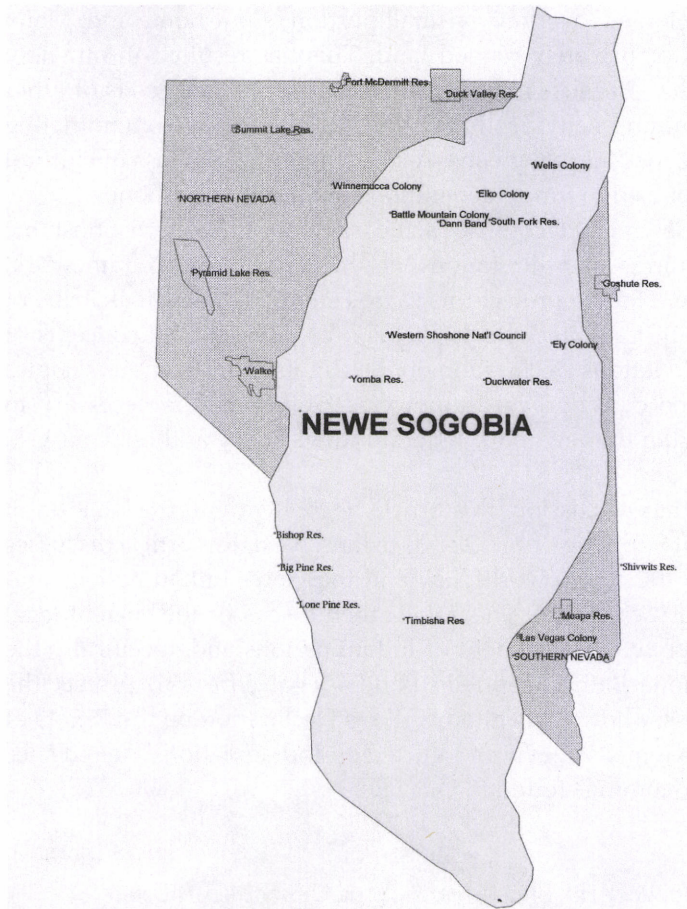


FIGURE 1. Neve Sogobia—the Western Shoshone homeland (University of Nevada, Reno, Western Shoshone digital collection)

Similar to other indigenous peoples, this particular topic resonates with me and my Indian nation. Since time immemorial, the Western Shoshone have occupied a large area in the Great Basin from southern Idaho to Death Valley, California, and from the Smith Creek Mountains in central Nevada to the area around present-day Ely, Nevada.³ According to our stories, “the Western Shoshone people were placed in our homeland by the Creator. Once placed on the land, two Native women instructed coyote to carry a large, pitched water-basket with him on his journey into the Great Basin area. Coyote was specifically told to not open the lid. Moved by curiosity, he periodically opened the basket during his trip. The beings concealed inside jumped out here and there. This is why we believe we live in a large area.”⁴ Historically, the Western Shoshone moved around in correspondence with the seasonal pattern of life, depending on the resources.⁵ The limited natural resources of the Great Basin meant that the Western Shoshone could not be concentrated in large numbers in one particular place over a long period of time.⁶ Instead, small groups generally inhabited a particular place or valley where their ancestors had lived since time immemorial.⁷

³Steven J. Crum, *The Road on Which We Came: Poi Pentum Tammen Kimmappéh: A History of the Western Shoshone* (Salt Lake City: University of Utah Press, 1994), 1.

⁴Crum, *Road on Which We Came*, 1.

⁵Crum, *Road on Which We Came*, 1–2.

⁶Crum, *Road on Which We Came*, 2.

⁷Crum, *Road on Which We Came*, 2.

Today our reservations and colonies cover only a small portion of our homeland. Many of our sacred sites are on federal or privately owned land. This has resulted in our holy sites being leased for mining projects, because many of them contain gold deposits or other precious metals. In most cases, mining activities harm the sacred sites by contaminating the water or destroying the site beyond usable means. A consequence is the loss of cultural knowledge that can no longer be passed to future generations of Western Shoshone.

This article discusses the Tosawihi Quarries, a sacred site to the Western Shoshone people. It analyzes the shortcomings and limitations of the current legal framework, concepts of tribal stewardship, the effort to protect this sacred site by the Te-Moak Tribe of Western Shoshone Battle Mountain Band, and the application of international concepts of human rights found in the United Nations Declaration on the Rights of Indigenous Peoples to remedy the shortcomings in the current legal framework. However, it is necessary to first situate these concepts within the framework of federal Indian policy and relevant U.S. Supreme Court cases.

To provide a framework for that discussion, this article begins with an explanation of federal Indian policies and relevant Supreme Court case decisions. Next, this article discusses the different perspectives held by the Anglo worldview and the views Indian nations and indigenous people have regarding sacred sites. This article then discusses the current legal framework and examples of its use to the detriment of Indian nations and specifically the Te-Moak Tribe of Western Shoshone Battle Mountain Band's legal efforts to protect the quarries. Finally, this article discusses how the United Nations Declaration on the Rights of Indigenous Peoples can be used to remedy the harm inflicted on Indian nations' sacred sites that is allowed by the current shortcomings found in U.S. law.

FEDERAL INDIAN POLICIES, THE WESTERN SHOSHONE, AND THE U.S. SUPREME COURT

U.S. laws and policies regarding Indian nations have fluctuated throughout history.⁸ The back-and-forth has been described as a "pendulum" swinging between two opposing policy stances.⁹ Either laws or policies supported Indian nations in governmental self-determination, or laws and policies aggressively promoted the termination of Indian nations.¹⁰ The approach by the federal government was driven by the question of how to deal with Indian people and their lands—the "Indian problem."

The Supreme Court also had a leading role in developing federal Indian law and shaping policies regarding the relationship between the federal government and Indian nations. The foundation of federal Indian policy is defined by three Supreme Court decisions written by Chief Justice John Marshall in the early 19th century, known as the Marshall Trilogy. In the first case, *Johnson v. M'Intosh*, decided in 1823, the Supreme Court deemed that the Indian nations held rights of occupancy to their land; however, the court also determined that the European nations making "discovery" claims held a superior claim to the same lands. Thus, the United States, as successor to Great Britain, obtained the superior title to all Indian land. Building on *Johnson*, in the case of *Cherokee Nation v. Georgia*, decided in 1831, the court held that the Cherokee Nation was a "domestic dependent Nation." In its decision, the court defined the

⁸EagleWoman and Leeds, *Mastering American Indian Law*, 8.

⁹EagleWoman and Leeds, *Mastering American Indian Law*, 8.

¹⁰EagleWoman and Leeds, *Mastering American Indian Law*, 8.

relationship between the United States and the Indian nations as “resembl[ing] that of a ward to his guardian.” In the final case of the trilogy, *Worcester v. Georgia*, decided in 1832, the court defined the theory of the origin of the federal-trust relationship, determining that the relation of an Indian tribe to the United States is based upon the “settled doctrine of the law of Nations.”¹¹ The Marshall Trilogy, then, played a pivotal role in shaping federal Indian law and policies by redefining the relationship between the Indian nations and the United States.

The United States’ first official policy can be traced to Great Britain and the international practice of treaty making between Europeans and Indian nations in North America.¹² The U.S. Constitution grants the president and Congress authority to declare war and enter into treaties. The Supremacy Clause contained in Article VI states that treaties are part of the supreme law of the land. During this era, the United States entered into over four hundred treaties with Indian nations.¹³ The primary motivation for the United States to enter into treaties was to secure land cessions. During this period, the federal government made its first attempts to regulate the Western Shoshone. Brigham Young, president of the Church of Jesus Christ of Latter-Day Saints, was appointed the first Utah Territory governor and superintendent of Indian affairs. Jacob Holeman was the Indian agent who worked under Young with tribes in the region, including the Western Shoshone.¹⁴ By 1853, emigration to California had reached its peak and had begun to decline.¹⁵ Latter-Day Saints settlers spread rapidly throughout the Great Basin. However, violence between the Western Shoshone and newcomers continued. Holeman was removed from office in October 1853, and his successors faced renewed hostilities.¹⁶

The following year, several government officials surveyed the area to find routes through present-day Nevada to California. By 1855, many non-Natives had begun to settle and farm on Western Shoshone land. The federal government saw the need for entering into treaties and establishing reservations for the Indians in the territory.¹⁷ In 1863, the Western Shoshone, led by Chief Temoke, signed a treaty with the United States.¹⁸ In 1863, the Treaty of Ruby Valley recognized and acknowledged the Western Shoshone ownership of the treaty area in exchange for rights of way to the goldfields of California. The Western Shoshone did not cede land to the United States. The treaties negotiated during this era form the foundation of the trust responsibility and obligations the United States has to the Indian nations.

Following the treaty-making era, political voices of the time called for the removal of Native Americans from the eastern seaboard to the West.¹⁹ Congress enacted the Removal Act, allowing for the relocation of Indian tribes to lands west of the Mississippi River.²⁰ During this time, more than four thousand Cherokee died when the forced march known as the Trail of Tears occurred.²¹ Wars of resistance to removal efforts were fought during the 19th century by many Indian nations.

¹¹EagleWoman and Leeds, *Mastering American Indian Law*, 21.

¹²EagleWoman and Leeds, *Mastering American Indian Law*, 9.

¹³EagleWoman and Leeds, *Mastering American Indian Law*, 9.

¹⁴Crum, *Road on Which We Came*, 19.

¹⁵Crum, *Road on Which We Came*, 20.

¹⁶Crum, *Road on Which We Came*, 20.

¹⁷Crum, *Road on Which We Came*, 21.

¹⁸Crum, *Road on Which We Came*, 26.

¹⁹EagleWoman and Leeds, *Mastering American Indian Law*, 11.

²⁰EagleWoman and Leeds, *Mastering American Indian Law*, 11.

²¹EagleWoman and Leeds, *Mastering American Indian Law*, 11.

TREATY OF RUBY VALLEY 1863

Treaty between the United States of America and the Western Bands of Shoshone Indians. Concluded October 1, 1863; Ratification advised, with amendment, June 26, 1866; Amendment assented to June 17, 1869; Proclaimed October 21, 1869.

ULYSSES S. GRANT, PRESIDENT OF THE UNITED STATES OF AMERICA, TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas a Treaty was made and concluded at Ruby Valley, in the Territory of Nevada, on the first day of October, in the year of our Lord one thousand eight hundred and sixty-three, by and between James W. Nye and James Duane Doty, Commissioners, on the part of the United States, and Te-moak, Mo-ho-a, Kirk-weedgwa, To-nag, and other Chiefs, Principal Men, and Warriors of the Western Bands of the Shoshone Nation of Indians, on the part of said bands of Indians, and duly authorized thereto by them, which Treaty is in the words and figures following to wit:

Treaty of Peace and Friendship made at Ruby Valley, in the Territory of Nevada, this first day of October, A.D. one thousand eight hundred and sixty-three, between the United States of America, represented by the undersigned Commissioners, and the Western Bands of the Shoshone Nation of Indians, represented by their Chiefs and Principal Men and Warriors, as follows:

ARTICLE I.

Peace and friendship shall be hereafter established and maintained between the Western Bands of the Shoshone nation and the people and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States within their country, shall cease.

ARTICLE II.

The several routes of travel through the Shoshone country, now or hereafter used by white men, shall be forever free, and unobstructed by the said bands, for the use of the government of the United States, and of all emigrants and travelers under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their nation, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceable over either said routes is hereby guaranteed by said bands.

Military posts may be established by the President of the United States along said routes or elsewhere in their country; and station houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for the mail or telegraph companies.

ARTICLE III.

The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through a part of the Shoshone country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said bands, and that their property and the lives and property of passengers in the stages and of the employees of the respective companies, shall be protected by them. And further, it being understood that provision has been made by the government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of country claimed or occupied by them.

ARTICLE IV.

It is further agreed by the parties hereto, that the Shoshone country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established whenever they may be required. Mills may be erected and timber taken for their use, as also for building or other purposes in any part of the country claimed by said bands.

ARTICLE V.

It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows:

On the north by Wong-goga-da Mountains and Shoshone River Valley; on the west by Su-non-to-yah Mountains or Smith Creek Mountains; on the south by Wi-co-hah and the Colorado Desert; on the east by Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley.

ARTICLE VI.

The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

ARTICLE VII.

The United States, being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same, therefore, and in consideration of the preceding stipulations, and of their faithful observance by the said bands, the United States promise and agree to pay to the said bands of the Shoshone nation parties hereto, annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. And the said bands hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.

ARTICLE VIII.

The said bands hereby acknowledge that they have received from said commissioners provisions and clothing amounting to thousand dollars as presents at the conclusion of this treaty. Done at Ruby Valley the day and year above written.

JAMES W. NYE
JAMES DUANE DOTY
TE-MOAK
MO-HO-A
KIRK-WEEDGWA
TO-NAG
TO-SO-WEE-SO-OF
SOW-ER-E-GAH
PO-ON-GO-SAH
PAR-A-WOAT-ZE
GA-HA-DIER
KO-RO-KOUT-ZE
PON-GE-MAH
BUCK

Witnesses:

J. B. MOORE, Lt. Col. 3rd Inf. Cal. Vol.
JACOB T. LOCKHART, Indian Agent Nev. Ter.
HENRY BUTTERFIELD, Interpreter

And whereas, the said Treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-sixth day of June, one thousand eight hundred and sixty-six, advise and consent to the ratification of the same, with an amendment, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,

June 26, 1866.

Resolved, (two-thirds of the Senate present concurring;) That the Senate advise and consent to the ratification of the Treaty of peace and friendship made at Ruby Valley, in the Territory of Nevada, the first day of October, A.D. one thousand eight hundred and sixty-three, between the United States of America, represented by their Commissioners, and the Western Bands of the Shoshone Nation of Indians, represented by their Chiefs and Principal Men and Warriors, with the following

AMENDMENT:

Fill the blank in the 8th article with the word five.

Attest:

J. W. FORNEY,
Secretary

And whereas, the foregoing amendment having been fully explained and interpreted to the undersigned Chiefs, Principal Men, and Warriors of the Western Bands of the Shoshone Nation of Indians, they did, on the seventeenth day of June, one thousand eight hundred and sixty-nine, give their free and voluntary assent to the said amendment, in the words and figures following, to wit:

Whereas the Senate of the United States, in executive session, did advise and consent to the ratification of the Treaty of peace and friendship, made at Ruby Valley, in the Territory of Nevada, on the first day of October, one thousand eight hundred and sixty-three, by the Commissioners on the part of the United States and the Western Bands of the Shoshone Nation of Indians, represented by their Chiefs and Principal Men and Warriors, with the following amendment:

"Fill the blank in the 8th article with the word five."

And whereas the foregoing amendment has been fully interpreted and explained to the undersigned Chiefs and Principal Men and Warriors of the aforesaid Western Bands of the Shoshone Nation of Indians, we do hereby agree and assent to the same.

Done at Ruby Valley, Nevada, on this 17th day of June, A.D. 1869.

Attest:

J. H. DAWLEY
R. B. SCOTT
W. R. REYNOLDS
LOUIS GRINNELL, Interpreter

TIM-OOK
BUCK
FRANK
CHARLEY TIMOOK
TO-NAG

Now, therefore, be it known that I, ULYSSES S. GRANT, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-sixth of June, one thousand eight hundred and sixty-six of June, one thousand eight hundred and sixty-six, accept, ratify, and confirm the said Treaty, with the amendment aforesaid.

In testimony whereof, I have hereto signed my name, and have caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

U. S. GRANT

By the President:
HAMILTON FISH
Secretary of State.

The end of the removal era ushered in the reservation era. Efforts were made by the federal government to assimilate Indians into mainstream American society. Moving American Indians to reservations was seen as the solution to the ultimate goal of obtaining landholdings from American Indians.²² In 1877, the federal government created the Western Shoshone Reservation along the Nevada-Idaho border by presidential executive order; this is presently called the Duck Valley Reservation.²³ The Bureau of Indian Affairs (BIA) wanted all Western Shoshone of the Great Basin to move to this reservation or to the Fort Hall Reservation, located near present-day Pocatello, Idaho. This government effort failed, because the Shoshones were deeply attached to particular places where their ancestors had lived.²⁴ As a result, only one-third moved to Duck Valley, while the other two-thirds remained in other areas, such as the Reese River, Smoky²⁵, and Ruby Valleys, places where their ancestors lived since time immemorial.²⁶

The end of the reservation era gave way to the allotment and assimilation era, which lasted from the late 19th century into the early 20th century. During this time, the United States implemented policies that violated provisions of the negotiated treaties. The BIA began to implement a policy of social experimentation, to convert Native people into the mold of white Christian farmers and to break up tribal-land bases.²⁷ Although the majority of Western Shoshones remained in their native areas, the BIA still wanted non-reservation Shoshones to move to Duck Valley. To rectify this situation, the BIA set aside allotments throughout Nevada and the Duck Valley Reservation for Great Basin Shoshones to farm.²⁸ The allotments stemmed from the General Allotment Act, also known as the Dawes Act.²⁹ The Dawes Act divided reservation land tracts into smaller pieces, subsequently deeded to Indians in trust for a period of 25 years.³⁰ As a result of the Dawes Act, 65 percent of tribal lands were transferred to non-Indians.³¹ The bureau also started creating communities referred to as "colonies" for those Shoshone people who lived within or near several towns and cities in Nevada. In 1917, the government hired Lorenzo Creel to act as a special supervisor to investigate Nevada's Indians and determine who should receive federal-trust land.³² In Creel's report, he recommended that land be set aside for the non-reservation Shoshones living in Battle Mountain, Elko, and the Duckwater Valley.^{33 34} During this time, many Western Shoshone children were forced to attend the Stewart Indian School near Carson City and the Carlisle Indian School in Pennsylvania. The purpose of these schools was to assimilate Native youth into white society.

In the mid-1920s, federal Indian policies shifted again. Changes began in 1928, with the findings of "The Problem of Indian Administration"—also known as the *Meriam Report*, named for Lewis Meriam, its principal researcher and author.³⁵ The report was commissioned

²²EagleWoman and Leeds, *Mastering American Indian Law*, 12.

²³Crum, *Road on Which We Came*, 43.

²⁴Crum, *Road on Which We Came*, 43.

²⁵Some refer to the valley as "Big Smoky Valley," but my family has always referred to it as "Smoky Valley."

²⁶Crum, *Road on Which We Came*, 43.

²⁷EagleWoman and Leeds, *Mastering American Indian Law*, 12–13.

²⁸Crum, *Road on Which We Came*, 44–45.

²⁹General Allotment (Dawes) Act of 1887, ch. 119, 24 Stat. 388 (1887) (codified in part at 25 U.S.C. §§ 331–81).

³⁰Dawes Act, ch. 119, 24 Stat. 388.

³¹Judith V. Royster, "The Legacy of Allotment," 27 *Ariz. St. L. J.* 1, 13 (1995).

³²Crum, *Road on Which We Came*, 73.

³³Duck Valley and Duckwater Valley are two separate reservations.

³⁴Crum, *Road on Which We Came*, 73.

³⁵EagleWoman and Leeds, *Mastering American Indian Law*, 15.



FIGURE 3. Eunice Silva, medicine woman for the Battle Mountain Indian Colony, in a scene from the film *Broken Treaty at Battle Mountain* (Northeastern Nevada Museum)

to assess the decades of Indian assimilation efforts and policies.³⁶ Complaints by the Western Shoshone concerning the failure of the government to honor the Treaty of Ruby Valley surfaced when Congress began to survey the conditions of American Indians in the 1920s.³⁷ The *Meriam Report* determined that the allotment and assimilation policies had failed.³⁸

These findings led the federal government to implement a policy of restoring the recognition of Indian self-rule. At this time, the Indian Reorganization Act (IRA) of 1934 was passed, enabling Indian nations to exercise powers of limited self-government, but it did not end federal involvement in tribal matters. The IRA provided a process for Indian nations to reorganize their governments by adopting written constitutions.³⁹ The first group of Western Shoshones to organize under the act were those on the Duck Valley Reservation.⁴⁰ The next to organize were the Shoshones living at the Battle Mountain, Elko, and Ely colonies. These

³⁶EagleWoman and Leeds, *Mastering American Indian Law*, 15.

³⁷Survey of Conditions of the Indians of the United States, 72nd Congress, First Session – Part 28.

³⁸EagleWoman and Leeds, *Mastering American Indian Law*, 15.

³⁹EagleWoman and Leeds, *Mastering American Indian Law*, 16.

⁴⁰Crum, *Road on Which We Came*, 99.



FIGURE 4. The Elko colony of Western Shoshone (Northeastern Nevada Museum)

Shoshones were referred to as the members of a tribe known as Old Temoke's People, after Chief Temoke, the principal signer of the 1863 Treaty of Ruby Valley.⁴¹

In June 1935, the Shoshones within the Battle Mountain, Elko, and Ely colonies held a vote on whether they wished to support the IRA and adopt a tribal constitution pursuant to the act.⁴² The Battle Mountain and Elko colony Shoshones voted in support of the IRA, while the Ely community rejected the IRA.⁴³ There was concern within the Shoshone communities that the law was an attempt to replace the Treaty of Ruby Valley. At this time, the BIA superintendent tried to convince Shoshone leaders to support the IRA. In mid-May of 1936, Shoshone leaders within the various communities worked with the superintendent to create a constitution.⁴⁴ The Shoshone participants agreed to establish the Te-Moak Tribe of Western Shoshone Indians under the IRA.⁴⁵ In 1937, after some setbacks with the BIA and Shoshone opposition from those living around Austin, Nevada, the BIA authorized the Te-Moak Bands to organize.⁴⁶ Today the Te-Moak Tribe of Western Shoshone consists of the Elko, Battle Mountain, South Fork, and Wells Band councils.

The BIA also wanted the non-reservation Shoshone in central Nevada to be part of the Te-Moak Bands.⁴⁷ However, not all Shoshones wanted to come under one large political

⁴¹Crum, *Road on Which We Came*, 103-4.

⁴²Crum, *Road on Which We Came*, 103-8.

⁴³Crum, *Road on Which We Came*, 104-5.

⁴⁴Crum, *Road on Which We Came*, 105.

⁴⁵Crum, *Road on Which We Came*, 105.

⁴⁶Crum, *Road on Which We Came*, 108.

⁴⁷Crum, *Road on Which We Came*, 108.

body. The first group of central Nevada Shoshones to organize were those who moved to the Yomba Reservation in the Reese River Valley.⁴⁸ The last group of Western Shoshones to organize under the IRA were those Shoshones settled on the Duckwater Reservation in 1940.⁴⁹ In the end, the IRA established new political subdivisions within the Western Shoshone population of the Great Basin: the Te-Moak Bands of Western Shoshone Indians, the Yomba Shoshone Tribe of the Yomba Reservation, and the Duckwater Shoshone Tribe of the Duckwater Reservation. These tribal governments remain intact today.

At the end of World War II, the United States hit its full economic stride.⁵⁰ However, during this time, American Indians experienced the highest rates of unemployment and suicide in the history of their existence.⁵¹ Past policies of promoting Indian self-rule were considered a failure. Once again the government began transitioning back to assimilation-type policies as a solution, ushering in the termination era.⁵² This era included the Indian Claims Commission Act of 1946, which allowed Indian nations to sue the government for past injustices.⁵³ Tribes could file claims arising from unkept treaty promises as well as claims arising from the illegal seizure of land without compensation.⁵⁴ The Indian Claims Commission became tied to the federal government's postwar termination program because Indian claims "coincided with the congressional drive to terminate federal responsibility for the Indians," and it became "a necessary preliminary step toward termination."⁵⁵ Despite the positive intentions of allowing Indian nations a day in court to sue for historic wrongs, the act's major goal was to settle tribes' grievances in order to prepare them for the termination of their status under U.S. law.⁵⁶

Another component of the termination era included transferring criminal jurisdiction to state governments and opening up state courts for civil actions involving reservation Indians. During this time, Congress passed Public Law 280. Although PL 280 did not include Nevada, one of its provisions specified that states not named in the law could use legislative power to assume jurisdiction.⁵⁷ As a result, in 1955, Nevada passed a law that gave the state the power to "assume jurisdiction over public offenses committed by or against Indians in the area of Indian country in Nevada, as well as jurisdiction over civil cases of actions between Indians."⁵⁸ The vast majority of Shoshones were unaware of PL 280 and the subsequent 1955 Nevada jurisdictional law.⁵⁹

To many, the federal policy of termination was viewed as an injustice to Native Americans. In the 1960s, Western Shoshone leaders began calling for Congress to investigate the handling of Indian affairs, for its policies of termination and for the implementation of legislation designed to stop all termination of Indian tribes and lands.⁶⁰ In response to national attention being garnered by American Indians in protest of the termination policy, President Richard

⁴⁸Crum, *Road on Which We Came*, 109.

⁴⁹Crum, *Road on Which We Came*, 111–12.

⁵⁰Charles F. Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Norton, 2006), 3.

⁵¹Wilkinson, *Blood Struggle*, 3.

⁵²EagleWoman and Leeds, *Mastering American Indian Law*, 17.

⁵³Crum, *Road on Which We Came*, 123.

⁵⁴Crum, *Road on Which We Came*, 123.

⁵⁵Crum, *Road on Which We Came*, 123.

⁵⁶Nell Jessup Newton, "Indian Claims in the Courts of the Conqueror," 41 *Am. U. L. Rev.* 753, 772 (1992).

⁵⁷Crum, *Road on Which We Came*, 145.

⁵⁸Crum, *Road on Which We Came*, 145.

⁵⁹Crum, *Road on Which We Came*, 145.

⁶⁰Crum, *Road on Which We Came*, 147.

Nixon delivered the "Special Message on Indian Affairs" to Congress on July 8, 1970.⁶¹ President Nixon called upon Congress to encourage Indian self-determination.⁶² One of the seminal pieces of legislation ushering in the new federal Indian policy was the Indian Self-Determination and Education Assistance Act of 1975.⁶³ This statute and others subsequently enacted have encouraged tribal government administration of services to tribal citizens.⁶⁴

Federal Indian law and policies have redefined tribal property rights, education, law enforcement, economics, civil and criminal jurisdiction, and many other major aspects of tribal society and governance. The Supreme Court has broadened and defined congressional plenary authority over Indian nations based on the Indian Commerce Clause.⁶⁵ Under U.S. executive power, federal administrative agencies possess the authority to implement federal legislation and policy.⁶⁶ In 1824, the Bureau of Indian Affairs was established within the Department of War.⁶⁷ In 1849, the BIA was transferred to the Department of the Interior.⁶⁸ The BIA is charged with the implementation of the daily trust-management functions of the federal government to Indian nations and tribal citizens. Other federal agencies are charged with interacting with tribal governments such as the Bureau of Land Management. The BLM is the agency within the Department of the Interior responsible for administering public lands. By presidential executive order, federal agencies are directed to provide meaningful consultation and collaboration with tribal governments prior to taking action that will impact tribal interests.⁶⁹

As a result of federal Indian policies and the failure of the United States to honor the terms of the 1863 Treaty of Ruby Valley, sacred sites stewarded by the Western Shoshone are now on federal and private land. For the Western Shoshone, the Tosawihi Quarries have no boundaries as a cultural site. Joseph Holley, chairman of the Te-Moak Tribes of Western Shoshone and councilman of the Battle Mountain Band, contends that "the quarries run everywhere the Tosawihi chert stone is found."⁷⁰ Tosawihi chert is a rock that is commonly white in color and found at the quarries, was used to make arrowheads and other tools. Today, most of the approximately 160 acres of the Tosawihi Quarries are on federal land administered by the BLM and, as a result, are subject to laws such as the Native American Graves Protection and Repatriation Act and the National Historic Preservation Act. Portions of it are also on privately owned land and subject to Nevada law and the authority of the State Historic Preservation Office. Oftentimes land-management policies, as well as state and federal laws, fail to take into perspective the importance of the Tosawihi Quarries to the Western Shoshone people. A gap currently exists between the worldviews held by indigenous people regarding sacred sites and the applicable state and federal laws. The current law and courts' interpretations reflect an understanding of Judeo-Christian concepts of religion and what a sacred site should look like.

⁶¹EagleWoman and Leeds, *Mastering American Indian Law*, 18.

⁶²EagleWoman and Leeds, *Mastering American Indian Law*, 18.

⁶³EagleWoman and Leeds, *Mastering American Indian Law*, 18.

⁶⁴EagleWoman and Leeds, *Mastering American Indian Law*, 18.

⁶⁵EagleWoman and Leeds, *Mastering American Indian Law*, 19.

⁶⁶EagleWoman and Leeds, *Mastering American Indian Law*, 19.

⁶⁷EagleWoman and Leeds, *Mastering American Indian Law*, 19.

⁶⁸EagleWoman and Leeds, *Mastering American Indian Law*, 19.

⁶⁹EagleWoman and Leeds, *Mastering American Indian Law*, 19.

⁷⁰Interview with Joseph Holley, October 30, 2019.



FIGURE 5. Tosawihi chert rock found at the Tosawihi Quarries by Joseph Holley, chairman of the Te-Moak Tribe of Western Shoshone and councilman of the Battle Mountain Band. Chert is commonly found at the Tosawihi Quarries. The rock was used to create arrowheads, scrapers, and other tools. It is mostly white; however, it ranges in colors. Tools made by Tosawihi chert have been found in Canada and New Mexico. (Photograph by Jessica Mortensen and used with her permission)



FIGURE 6. Scenery surrounding the Tosawihi Quarries (Photograph by Jessica Mortensen and used with her permission)

DIFFERING WORLDVIEWS OF WHAT IS SACRED

When thinking about sacred sites, most people think of well-known Christian, Jewish, and Islamic holy places. Few would doubt the significance of these areas or argue that these sites are not entitled to legal protections as provided by applicable laws. Given the widespread belief and practice of certain religious traditions, American Indian people, in contrast, are afforded little protection by the applicable law.

Under the European understanding of religion, organized churches represent religion, and religious activities may be conducted in different locations. But for Indian nations, location is fundamental to many aspects of Native religion and spirituality. "Sacred sites are integral aspects of tribal worldviews and identities; they figure in contemporary self-determination as well as political, cultural and economic survival. They are holy, irreplaceable places without which many tribal religions cannot exist."⁷¹ Since the beginning of time, the Shoshone have gone to the Tosawihī Quarries, now located in Elko County, to collect white flint used to create weapons and make tools or for ceremonies.⁷² When walking in the area, one may see tools, arrowheads, scrapers, pestles, and chips everywhere left by weapon makers.⁷³ Currently, the Shoshone people leave these artifacts at the site out of respect.⁷⁴ Johnnie Bobb, a traditional Western Shoshone elder, stated that the prayers of the older people who lived within the quarries are also always there.⁷⁵ The Shoshone have traditionally hunted in the area, gathered plants for medicinal purposes, and buried their dead there. Today the Shoshone still use this area for ceremonial purposes and claim the entire area and its water as sacred. Similar to other Indian nations, the Western Shoshone believe that water is sacred.⁷⁶ For Shoshone people, there is an obligation to protect this area and our traditional lands and to continue our traditional practices, which have occurred in this area since time immemorial.⁷⁷ Unfortunately, this understanding is not reflected in or protected by current law.

Courts also tend to interpret American Indian religion and beliefs as cultural practice rather than religion. As a result, it is not given the same consideration as Judeo-Christian religions. In 1988, in *Lyng v. Northwest Indian Cemetery Protective Association*, the Supreme Court stated "[t]he Constitution does not permit government to discriminate against religions that treat particular physical sites as sacred, and a law prohibiting the Indian respondents from visiting 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."⁷⁸ In the court's opinion, authored by Justice Sandra Day O'Connor, it was determined that tribal people were not being deprived of their right to religious freedom but instead were seeking to interfere with governmental action on governmental lands.⁷⁹ This holding can be construed as allowing U.S. property laws to be held above the spiritual rights of American Indians when sacred site locations are no longer on lands owned by indigenous people.⁸⁰

⁷¹Kristin A. Carpenter, "A Property Rights Approach to Sacred Sites Cases: Asserting a Place for Indians as Non-Owners," 52 *UCLA L. Rev.* 1061, 1068–69 (2005).

⁷²Stephanie Woodward, "Lost Bones, Damage and Harassment at Ancient Sacred Site." *IndianCountryToday.com*. Indian Country Today, January 13, 2016. <https://newsmaven.io/indiancountrytoday/archive/lost-bones-damage-and-harassment-at-ancient-sacred-site-5NYHak3uK0i3U4mfhz4nNQ/>.

⁷³Woodward, "Lost Bones."

⁷⁴Interview with Johnnie Bobb, August 24, 2019.

⁷⁵Interview with Johnnie Bobb.

⁷⁶Interview with Johnnie Bobb.

⁷⁷Interview with Johnnie Bobb.

⁷⁸*Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 453 (1988).

⁷⁹EagleWoman and Leeds, *Mastering American Indian Law*, 142.

⁸⁰EagleWoman and Leeds, *Mastering American Indian Law*, 142.

WESTERN SHOSHONE EFFORTS TO PROTECT THE TOSAWIHI QUARRIES

Since the 1970s, the Battle Mountain Band of the Te-Moak Tribe has been involved with efforts to protect the Tosawihī Quarries from mining activities.⁸¹ Gold lies beneath the quarries, and safeguarding it from mining-related damage and pollution has been a multigenerational struggle for the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone.⁸² Beginning in 2014, the Tosawihī Quarries have once again been under threat by those seeking to implement gold mining.⁸³ At the urging of an international consortium with offices in Toronto, Nevada, and the Cayman Islands, the BLM approved a permit to reopen a defunct mine there.⁸⁴ With the opening of the mine, drilling and other mining-related activities occurred, and as a result, sacred stone-gathering places, ancient hunting blinds, and other traditional cultural properties have been damaged.⁸⁵ Western Shoshone citizens have reported mine workers videotaping them when they visit the area.⁸⁶ In 2015, the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone filed an emergency appeal with the Interior Board of Land Appeals, asking the court to suspend mining until a plan could be devised to safeguard the site.⁸⁷ The Interior Department turned down the band's request to suspend mining.

In 1992, protection of Native American cultural resources was added to the National Historic Preservation Act. As a result, federal agencies, such as the BLM, are required to consult with tribes when mining and other projects on federal land could affect Indian nations' traditional cultural properties. Traditional cultural properties, as defined by the Indian nations, include structures and locations where culturally important practices occur or have occurred in the past. This process is part of the federal government's trust relationship with the Indian nations. The Tosawihī Quarries have been deemed eligible for the National Register of Historic Places, and part of the area was declared an archaeological district in 2010. Currently, sites within the quarry have been recognized as tribal cultural properties. However, to be afforded this protection, it is required that the tribe provide sacred cultural information to the BLM; otherwise, the site is not afforded protection. The position of the Western Shoshone has been that the entire area constitutes traditional cultural property. This argument was rejected by the BLM in the 1970s.

In 2016, the tribe pursued actions in the U.S. District Court of Nevada and the U.S. Ninth Circuit Court to protect areas of the quarries. These attempts were unsuccessful. The tribe sought a preliminary injunction to halt the building of a power line through the site. The BLM granted a right of way for the power line to be built for the mining company. The tribe contended that the power line disrupted the ability of the Western Shoshone to worship in the area, because of the noise it generated. The BLM argued that, in spite of the Western Shoshone's position that the entire area is a traditional cultural property, timelines within the applicable law had to be met, the tribe failed to satisfy the timeline, and the tribe

⁸¹Interview with Joseph Holley, April 7, 2019.

⁸²Interview with Joseph Holley.

⁸³Woodward, "Lost Bones."

⁸⁴Woodward, "Lost Bones."

⁸⁵Woodward, "Lost Bones."

⁸⁶Woodward, "Lost Bones."

⁸⁷Stephanie Woodward, "Eve of Destruction: Bureau of Land Management Sacrifices Native Site to Mining Group." *Inthesetimes.com*. Rural America, September 30, 2015. <https://inthesetimes.com/rural-america/entry/18461/eve-of-destruction-bureau-of-land-management-sacrifices-native-site-to-mini>.

failed to provide all of the relevant information under the law. The law requires that tribes provide certain information regarding sacred sites, but the tribe contended that revealing this information is against tribal religious beliefs. (The practice of Indian nations to guard information regarding sacred sites is not uncommon. Tension exists in most Indian nations between the confidentiality required to steward sacred sites and the disclosure requirement of these sites to assert cultural-property protection under the applicable law.⁸⁸)

In 2017, Klondex Mines⁸⁹ returned 3,200 acres of land located in Rock Creek and the Tosawihī Quarries to the Western Shoshone. However, there are still other portions of this area that the Western Shoshone believe are sacred, even though they remain on public and private land and are therefore subject to federal or state laws.

The Western Shoshone are not the only Natives to have discovered that applicable laws lack an understanding of their religious beliefs. Scholarship in this area demonstrates that laws protecting American Indian sacred sites have failed. There have been persistent efforts by Indian nations to protect sacred sites in the Chimney Rock area of Northern California, Bear's Lodge in Wyoming, the Black Hills of South Dakota (referred to as Devils Tower National Monument by the National Park Service), and the sacred mountain range north of Flagstaff, Arizona (referred to by the U.S. Forest Service as the San Francisco Peaks).⁹⁰ Problematically, in each of these cases, the courts tend to interpret Indian religion as cultural practice rather than religion and, as a result, indigenous religions are not given the same consideration as Judeo-Christian religions.⁹¹ It has been suggested that Indian nations should form partnerships with environmentalists, historic preservationists, and cultural-resource professionals to remedy the problem.⁹² However, many advocates within the field of Native American law are starting to advocate for human-rights law, specifically the protections under the United Nations Declaration on the Rights of Indigenous Peoples, to be used to remedy the injustices of domestic law and improve federal law, policies, and practices. The declaration is aimed at restoring the human rights of indigenous peoples, and its implementation in the United States would be a vital step toward protecting and preserving indigenous sacred sites and cultural survival.

THE DECLARATION: A HUMAN-RIGHTS APPROACH

Over the years, the federal Indian-law framework has been developed without human rights in mind. The Supreme Court and federal courts have immensely contributed to the inattention.⁹³ In the three Supreme Court decisions making up the Marshall Trilogy, Indians are routinely referred to as a racially inferior group of people who were living as savages at the time of white man's settlement in America. In *Cherokee Nation v. Georgia*, Chief Justice John

⁸⁸EagleWoman and Leeds, *Mastering American Indian Law*, 140.

⁸⁹"Klondex Donates Land to Western Shoshone," *Elko Daily Press*, August 24, 2017. https://elkodaily.com/mining/gallery-klondex-donates-land-to-western-shoshone/collection_d6f63ce7-e6a6-58db-97ed-120e233e6acd.html.

⁹⁰EagleWoman and Leeds, *Mastering American Indian Law*, 140–41.

⁹¹Elizabeth G. Pianca, comment, "Protecting American Indian Sacred Sites on Federal Lands," 45 *Santa Clara L. Rev.* 461, 492 (2005).

⁹²Dean B. Auagee, "American Indian Religious Freedom and Cultural Resource Management: Protecting Mother Earth's Caretakers," 10 *Am. Indian L. Rev.* 1, 55–56 (1982).

⁹³Walter R. Echo-Hawk, *In the Light of Justice: The Rise of Human Rights in Native America and the UN Declaration on the Rights of Indigenous Peoples* (Golden, CO: Fulcrum Publishing, 2016), 13.

Marshall described Indians as constituting a race of people who were “once numerous, powerful, and truly independent” but who had gradually sunk “beneath our superior policy, our arts and our arms.”⁹⁴ In *Johnson v. M’Intosh*, the Supreme Court transferred legal title of land to the United States under doctrines of discovery and conquest.⁹⁵ In its opinion, the court described Indians as “heathens” and a vile race of people with inferior character, habits, and religion.⁹⁶ Furthermore, in *Santa Clara Pueblo v. Martinez*, the Supreme Court declared that “Congress has plenary authority to limit, modify or eliminate the powers of self-government which the Tribes otherwise possess.”⁹⁷ As a result, federal Indian law does not view tribal self-government as an inherent right of Indian nations. The aforementioned cases are part of the foundation of federal Indian law and are used to evaluate cases before the Supreme Court today.

Professor Robert A. Williams at the University of Arizona, contends that “[i]f we continue to let the Court talk about Indians as if they are uncivilized and unsophisticated savages and use racist precedents that define their rights accordingly, we are not likely to make much headway in developing a winning courtroom strategy that convinces the justices that it is in the American public’s interests to recognize an admittedly highly problematic and exclusive set of Indian rights to a degree of measured separatism in this country. In other words, the Supreme Court will not take Indian rights seriously if the justices are not first confronted with the continuing force of negative racial stereotypes and hostile racist imagery that have been directed at Indians throughout the legal history of racism in America.”⁹⁸ Williams also argues that eliminating this long-established language of Indian racial inferiority is the first step on the “long, hard trail of decolonizing the Supreme Court’s Indian law.”⁹⁹ This change in judicial thought cannot be accomplished without judicial reevaluation. As a blueprint for going forward, the higher values expressed in the United Nations Declaration on the Rights of Indigenous Peoples are a solution to remedy the harm experienced by Indian nations and tribal citizens that are caused by the shortcomings found in current U.S. law.

Since their first contact with tribes, the people of the United States have struggled with the so-called Indian problem. The inadequacies of federal Indian law and the failure of federal courts to protect indigenous rights reflect this struggle. After over twenty years of negotiations between United Nations member states, indigenous peoples, and human-rights organizations, the United Nations General Assembly adopted the declaration on September 13, 2007.¹⁰⁰ On December 16, 2018, President Barack Obama announced the United States’ endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.¹⁰¹ The Declaration on the Rights of Indigenous Peoples has been described as the “minimum standards for the survival, dignity and well-being of the indigenous peoples of the world” and has been celebrated as a symbol of triumph and hope.¹⁰² The declaration emphasizes the rights of indigenous peoples to maintain and strengthen their own institutes, cultures, and traditions.

⁹⁴Robert A. Williams, *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America* (Minneapolis: University of Minnesota Press, 2006), xviii.

⁹⁵Echo-Hawk, *In the Light of Justice*, 177.

⁹⁶Echo-Hawk, *In the Light of Justice*, 177.

⁹⁷Echo-Hawk, *In the Light of Justice*, 176.

⁹⁸Williams, *Like a Loaded Weapon*, xxxvi.

⁹⁹Williams, *Like a Loaded Weapon*, xxxvi.

¹⁰⁰S. James Anaya, “The Human Rights of Indigenous Peoples: United Nations Developments,” 35 U. Haw. L. Rev. 983, 992 (2013).

¹⁰¹Echo-Hawk, *In the Light of Justice*, 34–35.

¹⁰²EagleWoman and Leeds, *Mastering American Indian Law*, 159.

The standards found in the declaration do not create new or special rights for indigenous peoples.¹⁰³ Rather, the rights expressed are applicable to the rest of the human race under principles of modern international human-rights law.¹⁰⁴

The declaration affirms the collective rights of indigenous peoples in relation to culture, development, and traditional territories, and it requires respect for indigenous state historical treaties and modern compacts.¹⁰⁵ In drafting the declaration, there was a concern over the patterns of human-rights abuses that are linked to histories of colonialism.¹⁰⁶ "There are ten core themes that are found in the Declaration. The themes are: (1) self-determination and indigenous institutions; (2) equality; (3) life integrity, and security; (4) cultural rights; (5) education and public media; (6) participation in decision-making and free, prior, and informed consent; (7) economic and social rights; (8) land, territories, and resources; (9) treaties and agreements; and (10) implementation and interpretation."¹⁰⁷ The declaration contains many protective rights for indigenous peoples, including the right to be free from discrimination, the right to self-determination, and the right to a nationality. The declaration states that indigenous peoples "shall not be forcibly removed from their lands or territories," and that they have the right to "practice and revitalize their cultural traditions and customs."¹⁰⁸

Across the United States, there are conflicts regarding American Indians' sacred sites. These holy places are often seen as obstacles inhibiting mining companies or other land developments. For most of American history, the United States has looked upon land as something to be conquered.¹⁰⁹ The United States fought the Indian nations and sought treaties or peace simultaneously, then colonized their land from 1776 into the 20th century.¹¹⁰ That legacy has been embedded into our legal institutions, economy, and law. This attitude also forms the way people look at the land.¹¹¹ Mining companies, gold companies, and investors see the gold and quantify the area for its resource value. In contrast, Western Shoshone culture teaches that the Tosawilhi Quarries are a holy ground and that cooperation with the natural world is necessary to survive.

Current U.S. law and policy fails to provide adequate legal protection for American Indian religious beliefs. Today the federal government is the largest landowner in the United States.¹¹² Essentially, land-managing agencies are "stewards" of public lands.¹¹³ There is a strong case for the agencies to embrace the declaration because it encourages agencies to rise to a greater vision of stewardship.¹¹⁴ No matter how far society advances, our future is tied to the land. The requirement for land-managing agencies is to understand that indigenous cultural resources on their lands is not contrary to current mandates found in the American Indian Religious Freedom Act of 1978, the National Environmental Policy Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and others. In addition, by Executive Order 13007 (1996), federal agencies are required to protect

¹⁰³Echo-Hawk, *In the Light of Justice*, 39.

¹⁰⁴Echo-Hawk, *In the Light of Justice*, 39.

¹⁰⁵Anaya, *supra* note 97, at 992.

¹⁰⁶Anaya, *supra* note 97, at 992.

¹⁰⁷Echo-Hawk, *In the Light of Justice*, 43.

¹⁰⁸Echo-Hawk, *In the Light of Justice*, 49.

¹⁰⁹Echo-Hawk, *In the Light of Justice*, 135.

¹¹⁰Echo-Hawk, *In the Light of Justice*, 135.

¹¹¹Echo-Hawk, *In the Light of Justice*, 134.

¹¹²Echo-Hawk, *In the Light of Justice*, 136.

¹¹³Echo-Hawk, *In the Light of Justice*, 136.

¹¹⁴Echo-Hawk, *In the Light of Justice*, 136.

Native American sacred sites. The executive order requires that each executive-branch agency, in managing federal lands, must accommodate access to and the ceremonial use of Indian sacred sites by Indian religious practitioners, and it must avoid adversely affecting the physical integrity of such sacred sites.¹¹⁵ The implementation of the declaration into U.S. law can direct an appropriate model for ensuring the rights of American Indians to transfer their ways of life to future generations and develop a land ethic for the 21st century.¹¹⁶

CONCLUSION

In reviewing the efforts of American Indians to protect sacred sites on lands they no longer have legal ownership over, it is clear that current U.S. law for religious freedom does not extend to the religious beliefs of indigenous peoples. This is a result of fundamental cultural differences in viewing the land and the U.S. property law based on a legacy of colonization and exploitation of land for commercial profit. There have been limited developments in the law that afford protection for sacred sites. Under current legal framework and institutions, judicial reevaluation and institution change are required to begin the process of affording proper legal protection to sacred sites. Imagine the outcry if the government destroyed or caused "serious and irreparable damage" to sacred sites that are integral to the belief system of Christian churches—it would be intolerable. Nonetheless, actions that result in the destruction of American Indian sacred sites continue to be acceptable. The higher values expressed in the United Nations Declaration on the Rights of Indigenous Peoples are the solution to protect the rights of American Indians. It is time to move forward and adapt U.S. laws to recognize the religious beliefs, and the spaces associated with these beliefs, of Indian nations and their citizens.

¹¹⁵Executive Order No. 13007, 61 CFR 26771 (1996).

¹¹⁶Echo-Hawk, *In the Light of Justice*, 155.

Notes & Documents

Fighting for Western Shoshone Rights: Brief Interviews with Two Key Defenders

DANIELLE J. MAYBERRY AND JESSICA MORTENSEN¹

Joseph Holley, Chairman and Councilmember of the Te-Moak Battle Mountain Band



FIGURE 1: Holley at the Tosawihi Quarries (Photograph by Jessica Mortensen and used with her permission)

The authors and Joseph Holley are cousins. The interview took place in August 2019 in Battle Mountain, Nevada.

Mayberry and Mortensen: Which tribal community did you grow up in? What areas are your family from?

Holley: I grew up in Battle Mountain. My dad, Glen V. Holley Sr., lived in Elko, and his dad had a ranch in Tonkin Springs. My mom, Kathleen William Holley, is from Battle Mountain. Her dad was from Silver Springs, and his dad was from there also.

How long have you been involved in tribal politics in a leadership role? What are your current responsibilities as the chairman and councilmember of the Battle Mountain Band?

I have been on the council for about 12 years. Being chairman is a balancing act, trying to keep a focus on the people and fighting the agencies.

¹Jessica Mortensen is a citizen of the Te-Moak Tribe of Western Shoshone and enrolled with the South Fork Band. Her Shoshone families are from Austin, Ruby Valley, and Reese River Valley (Nevada).

Danielle J. Mayberry grew up in Battle Mountain and is a tribal citizen of the Te-Moak Tribe of Western Shoshone. Her Western Shoshone families are from Austin, the Reese River Valley, and the Ruby Valley (Nevada).

Was your family also involved in tribal politics? Were they activists?

My dad was chairman of the Battle Mountain Band and also the Te-Moak chairman. He did a lot of work fighting the government over treaty rights. I grew up with it in my home, early fights with the BLM and the treaty.

What role did you have in the Tosawihi Quarry litigation? What do you suggest is the best solution to this situation?

I put forth a lot of testimony on the quarries. I feel the best solution is to work with the mine and work through the problems before you take it to the BLM.

Have you been involved with other litigation as a tribal leader?

Fighting with Barrick Gold Corporation on issues of concern.

Carlene Burton, Western Shoshone Mother Earth Protector



The authors are the niece and great niece, respectively, of Burton. The interview took place in August 2019 in Battle Mountain, Nevada.

Mayberry and Mortensen: Which tribe are you enrolled in? Which tribal community did you grow up in? Where is your family from?

Burton: I am enrolled at the Te-Moak Tribe of Western Shoshone. I am from Battle Mountain, and my family is from the Smoky Valley.

Are you currently on any boards or leadership positions with the Te-Moak Tribe of Western Shoshone?

The Battle Mountain Band Enrollment Committee.

Why is it important to protect Shoshone sacred sites?

They are sacred. The sacred sites are our culture. At the Tosawihi Quarries, you see flint chips and arrowheads. You can see how they used to camp. You still get that feeling, as if someone is with you out there. Rock Creek is that way, too. Currently, there are people drilling at the quarries, but the BLM—they don't care. All others see is gold at these sites.

FIGURE 2: Burton, right, at the Tosawihi Quarries with her friend Kathleen Holley (Photograph by Jessica Mortensen and used with her permission)

Notes & Documents

Doso Doyabi

WARREN GRAHAM

Duckwater Shoshone Tribal Historic Preservation Officer

Since the beginning of time, when the Creator placed people on earth, all people have given names to areas where they lived. In our teachings, the Western Shoshone people were the first to be given the area which we call Newe Sogobia (later known as the Great Basin). Even today, throughout Newe Sogobia, there are still Western Shoshone people who use the old names that our ancestors gave to places, even though they were renamed during the western expansion, when settlers modified or gave their own names to lands and landmarks throughout our homelands. During this time, Shoshone names were replaced on official maps. Many years have passed, and many names that my people gave to areas that we are tied to are disappearing with the passing on of our elders; we are losing that knowledge. But sometimes history reverses itself. I'm going to tell you a story about a recent project that sought not to replace a name of a mountain but rather restore the name that was already given to a mountain by the Western Shoshone people.

In 2017, the Duckwater Shoshone Tribe received a letter from the Nevada State Board on Geographic Names. It wanted to know if the tribe would like to offer input on a recent decision regarding the renaming of Jefferson Davis Peak, located in Great Basin National Park, in the easternmost part of Nevada. Even though the Duckwater Shoshone did not initiate the name change, after discussing the letter with our tribal council, we decided that we should get involved. I began to research the renaming and discovered that there was only one person who had submitted a name. That person was not a Nevadan, and the name he submitted was not from Nevada, nor did he have any ties to the state.

While I was researching this project, I also spoke with Ryan Morini, a friend of mine who was visiting during pine-nut-harvesting season. Morini is a professor at the University of Florida, and he conducts oral-history interviews with elders in Newe Sogobia for the school's Samuel Proctor Oral History Program. The subject of renaming the peak came up when we were picking pine nuts. Morini told me he knew of two sisters who are elders of the Ely Shoshone; their mother was a survivor of only a handful of Shoshones who escaped the Spring Valley Massacre.¹ After the tragedy, their mother grew up in Baker, Nevada, just a few miles east of Great Basin National Park. I was able to contact the two sisters,

¹The Spring Valley Massacre occurred in 1859. In 1863 and 1897, two more massacres occurred in the region. They are both called the Swamp Cedar massacres. Hundreds of Newe men, women, and children were killed.

who told me that their mother had always referred to the mountain as Doso Doyabi, which translates to “white mountain.” I then asked an elder here in Duckwater how she would say white mountain and if there were different ways to name the mountain. As the Shoshone language is very descriptive and complex, sometimes a name is not just a few words but a sentence-length depiction of a place. I then went to the University of Utah’s Shoshone Language Project website to look up the different ways to spell white mountain in Shoshone. Since Newe Sogobia is quite large, there are at least nine dialects of the Western Shoshone language. Further complicating things, within the different bands of Shoshone, there are slight differences in the pronunciation of our language, which gives each band a certain uniqueness and distinction. Moreover, the Shoshone language does not have strict rules for writing; many spellings are acceptable. So after considerable analysis on the different ways to say and spell “white,” I decided to submit *doso*, which is short for *dosobithi*, the form used in Duckwater. *Doyabi*, the word for “mountain,” is widely used throughout the Shoshone nation. I simplified the spelling variations so it would be easier for non-Shoshone speakers to pronounce it.

dosobithi	white	Duckwater	Harbin 1988
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It was a simple process to fill out the renaming form and send it in. I later received an e-mail from the state board asking if I could get the Duckwater elders to give their thoughts and support on the name change, to give it a little more strength moving forward. I reached out to our elder committee—Theresa Sam, Arvilla Mascarenas, Henry Black-eye, Ruby Sam, and Doris Allison—and all agreed to comment. After telling the elders that the name change had reached the state level of consideration, they became excited. Here were some of their thoughts on re-bestowing the mountain as Doso Doyabi:

“It honors our cultural heritage, for the places that had names before they were renamed.”

“It would be good to get back the names for places where Shoshones have cultural ties.”

“It’s good that they’re thinking of renaming places back to the original names of our people. You know, all these places were called something else before they were renamed.”

“That is great that they are considering changing the mountain name back to a Native name. It’s good because some of these names are disappearing along with our elders, and it is good that these names are not forgotten.”

“This is a good thing. It retains our cultural ties to the land and honors the old ones from the past.”

In January 2019, the name Doso Doyabi went to the state level for consideration, and with a unanimous vote, it continued to the federal level. In June 2019, I received the news that it had passed unanimously at the federal level—the name would officially be restored back to Doso Doyabi.

I think it’s important that the names of the places my ancestors gave to our land do not get lost through time; such names are one of the vital keys to keeping Shoshone culture alive and our ties to Newe Sogobia strong.



View of Doso Doyabi from Wheeler Peak (Qfl247 at English Wikipedia)

Nevada Artists

JACK MALOTTE

Western Shoshone and Washoe

Jack Malotte is Western Shoshone and Washoe. He currently resides in Duckwater, Nevada, and is an enrolled member of the South Fork Band of the Te-Moak Tribe of Western Shoshone. Although born in Schurz, Nevada, Malotte spent much of his younger years in Lee, Nevada, and eventually moved to Reno, where he attended local schools, including Wooster High School. He was influenced by the work of Arthur Okamura, Jack Mendenhall, and Chuck Close while attending the California College of Arts and Crafts, in Oakland from 1971 to 1974. Malotte also worked as a U.S. Forest Service firefighter.

The artwork that Malotte has created celebrates the landscapes of the Great Basin, with a unique focus on contemporary political issues faced by Native people seeking to protect and preserve access to their lands. His most recent pieces reconsider historical narratives and myths of the American West, refer to Western Shoshone and Washoe traditions and legends, and highlight longtime political, environmental, and legal struggles of Native communities.

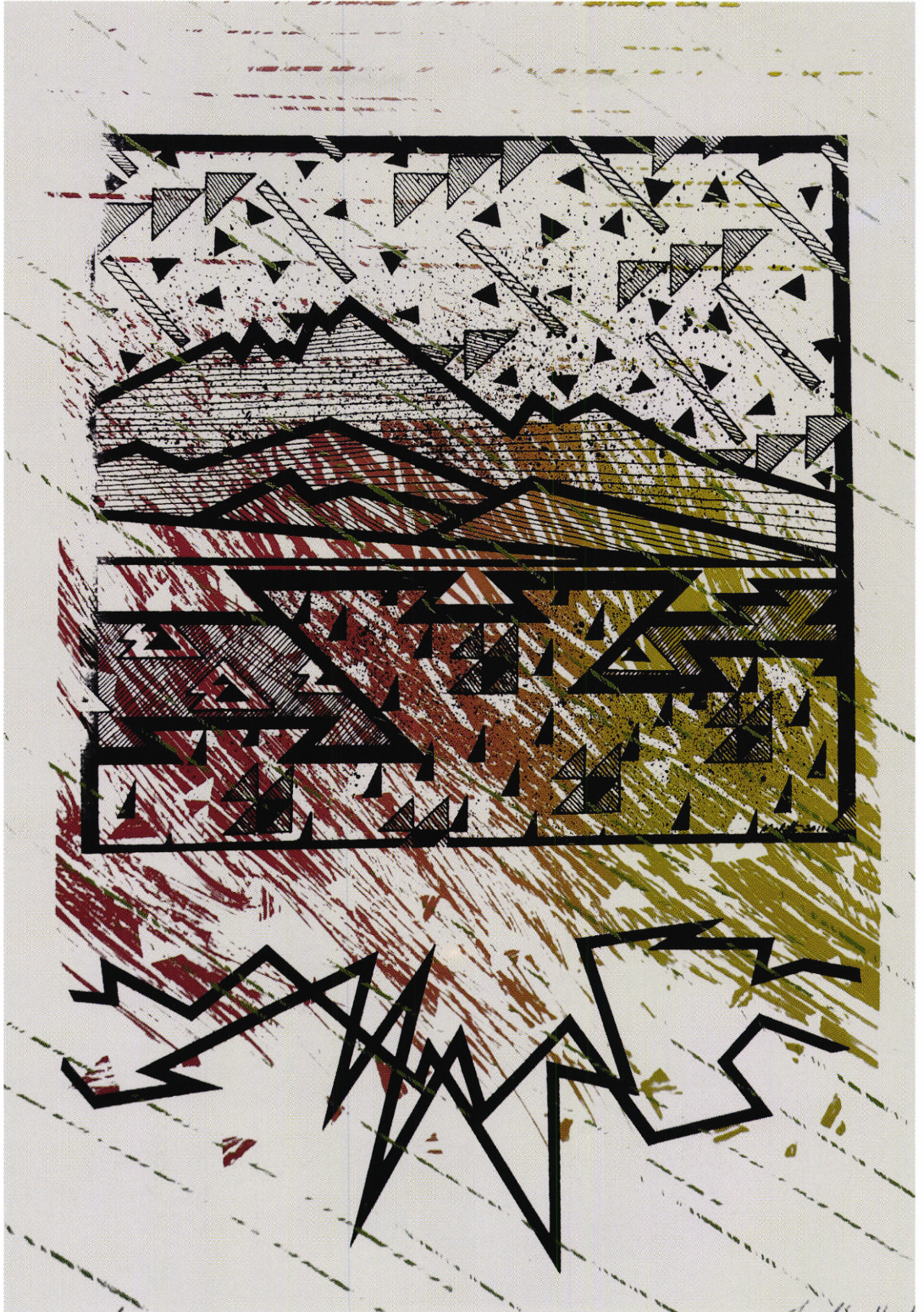
Malotte recently completed an exhibition at the Nevada Museum of Art, which ran from June 6 through October 20, 2019. In conjunction with the exhibition, the museum published a 240-page, hardcover book titled *Jack Malotte*.



Moonrise, Jack Malotte



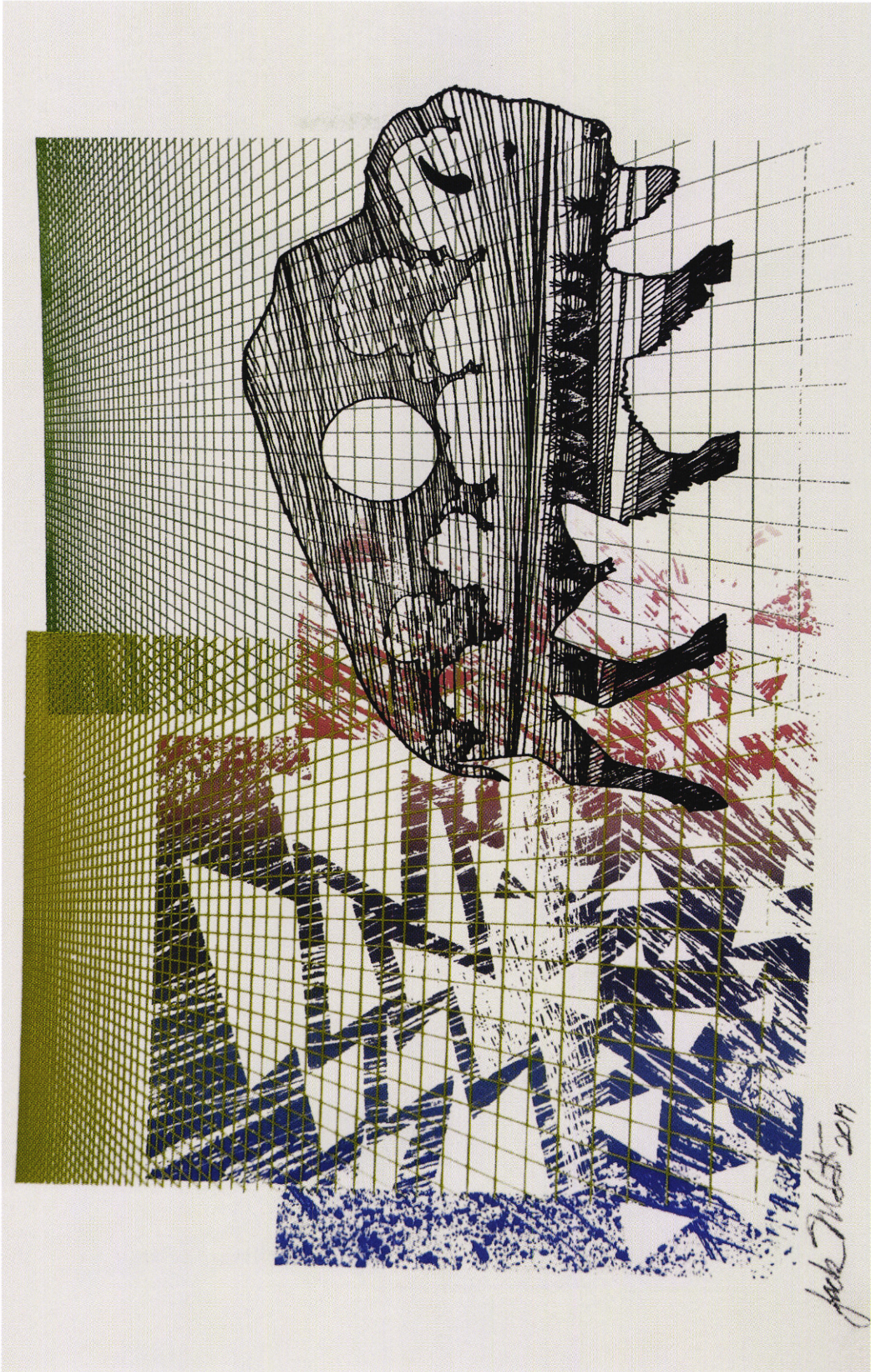
Floating Buffalo, Jack Malotte



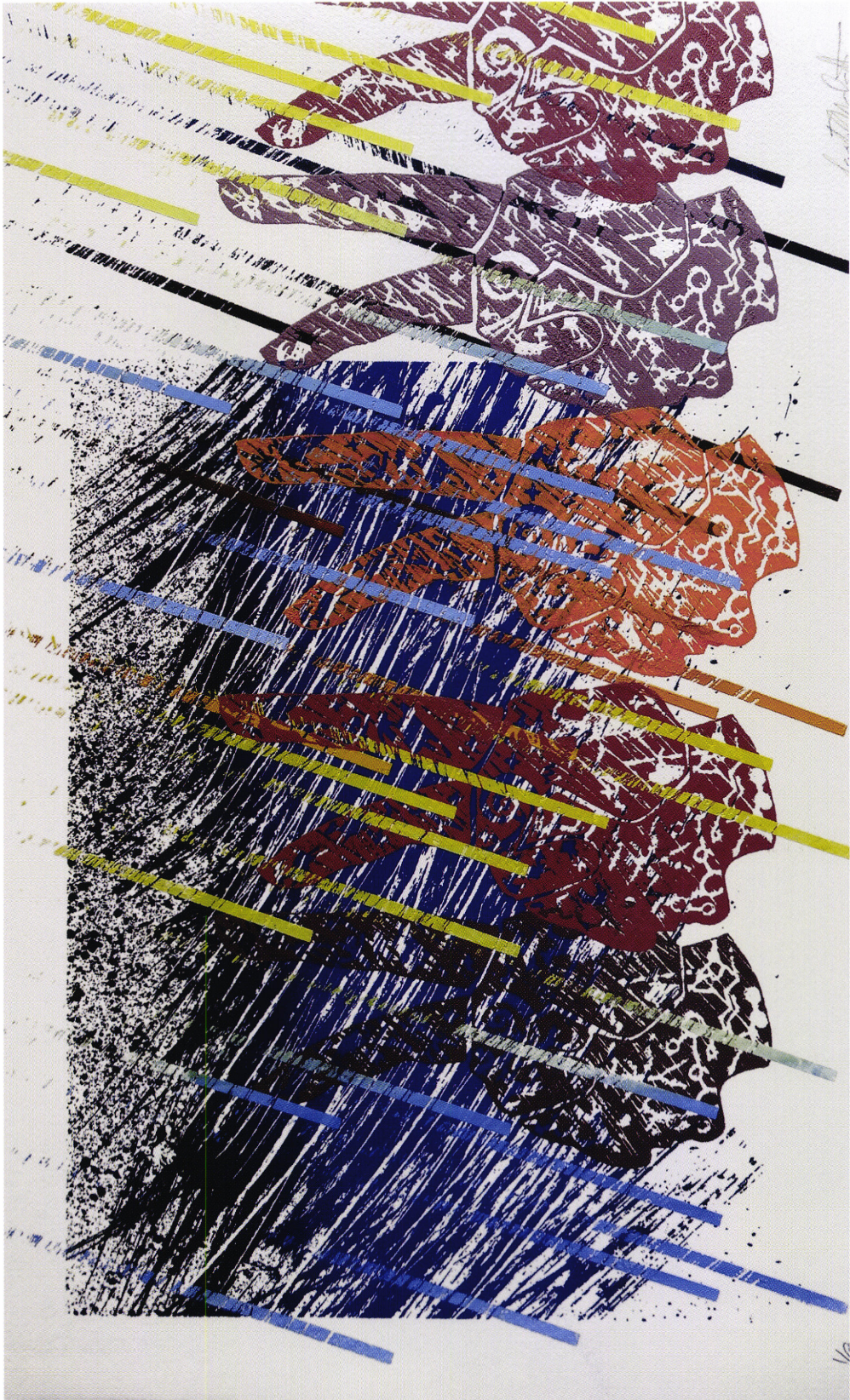
Fracking in the Rubies, Jack Malotte



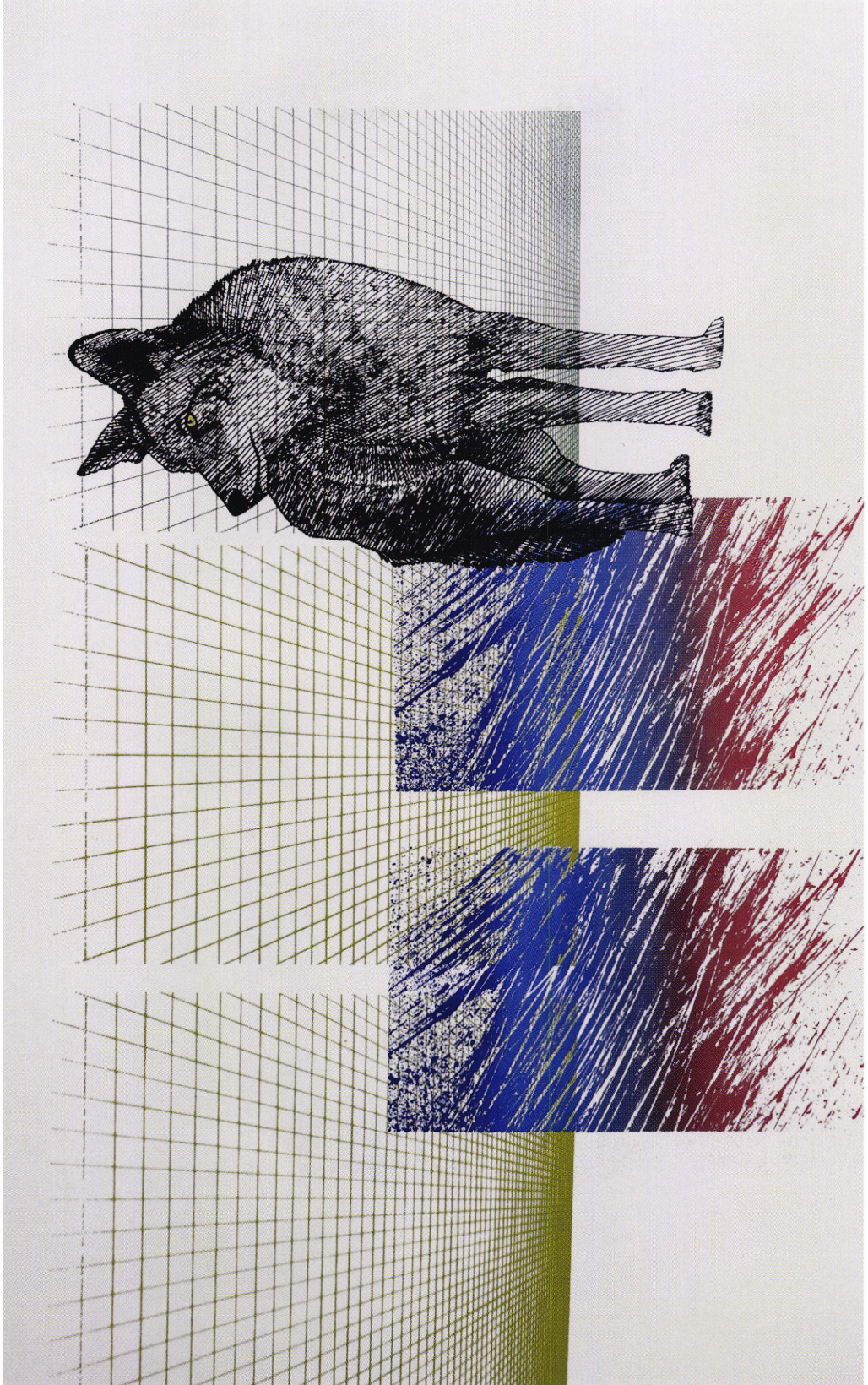
Artist at the Gallery, Jack Malotte



A Buffalo's Perspective, Jack Malotte



American Indian Movement, Jack Malotte



Run Coyote Run, Jack Malotte



Wild Horses, Jack Malotte

Nevada Artists

JAMES SHOSHONE
Washoe and Timbisha Shoshone

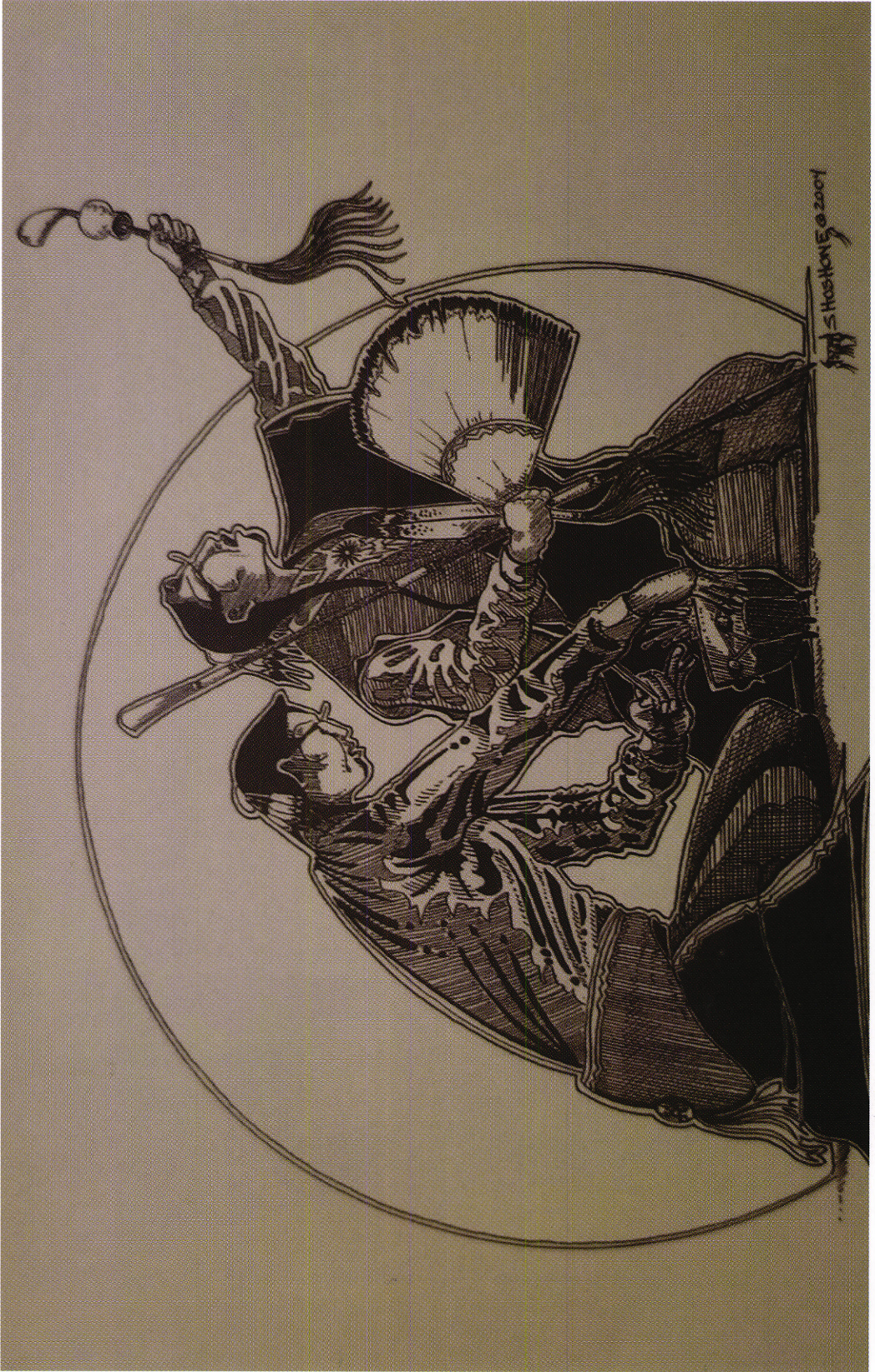
James Shoshone is Washoe and Timbisha Shoshone. His buckaroo artwork is inspired by his life's experiences riding horseback and working on ranches in rural Northern Nevada, including the IL and YP Ranches in Elko County. In addition to putting pen to paper to create lively sketches of this lifestyle, Shoshone also collects and trades vintage silver bits and rawhide gear. He follows vaquero traditions and lives like the cowboys he portrays in his pieces, and his evident connection to the land has been inherited from generations of Native peoples.



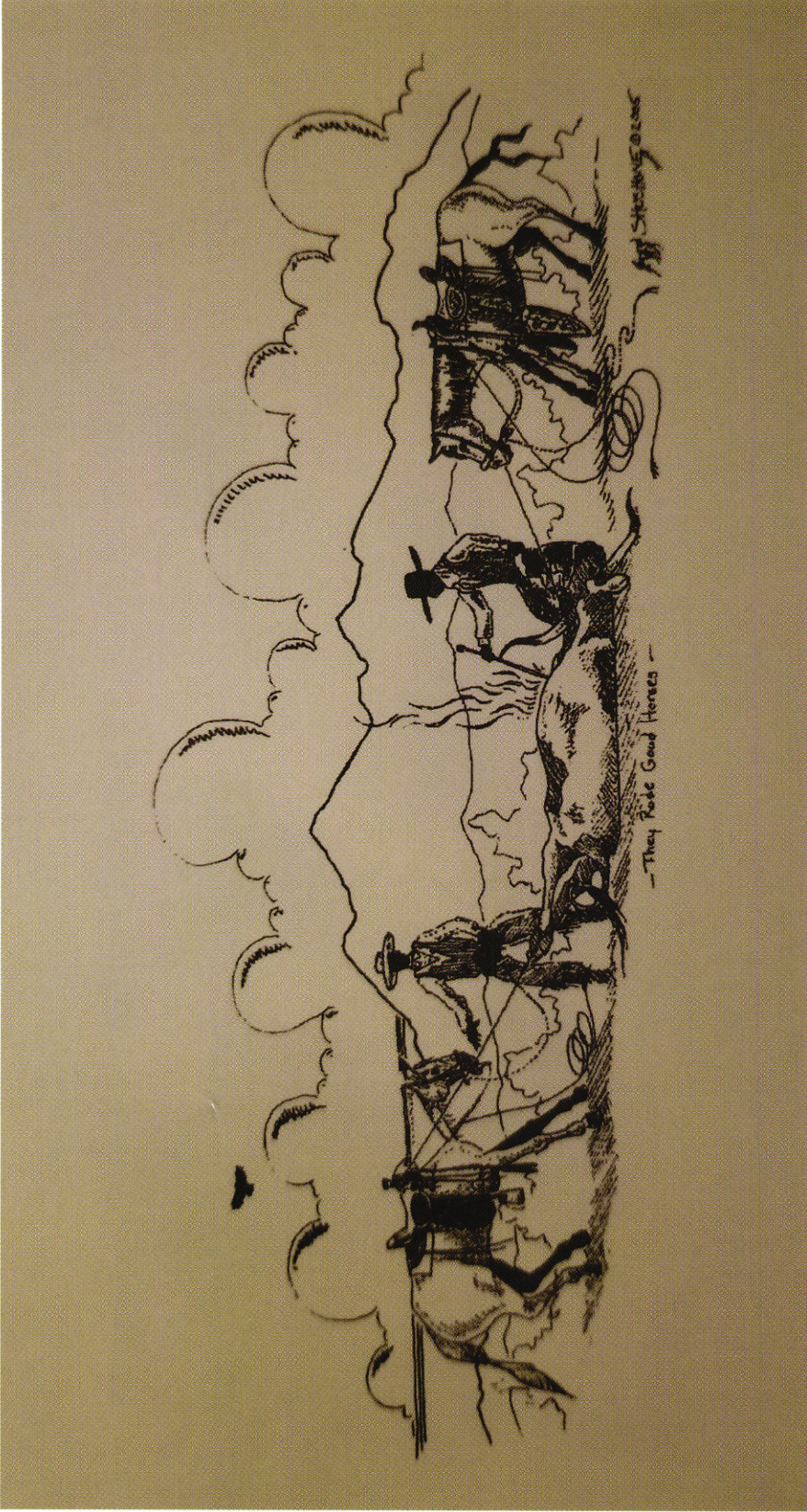
FIGURE 1: James Shoshone (Photograph by Mary Williams Hyde and used with her permission)



Did Someone Say Rope, James Shoshone



Untitled, James Shoshone



They Rode Good Horses, James Shoshone

Essays

The Visitor

FERMINA STEVENS
Western Shoshone

The history and continued struggle of the Western Shoshone people (or Newe, in our language) are significant and must be told. Many have a story to tell. I have mine as well. I would like to take this opportunity to acknowledge the plight of indigenous people around the world who are fighting for Mother Earth and for the right to clean land and water. We see your strength and courage. Continue to hold on to your faith—Creator is here. The Western Shoshone's struggle with the United States government has been and is ugly, and as the U.S. continues its destructive ways in Newe territory, I can say without doubt that our story is not over.

The U.S. government and Western Shoshone have a long shared history. Our treaty of peace and friendship was forcibly signed in blood in 1863 in Ruby Valley, Nevada. The U.S. has never come to Newe territory in peace and friendship; rather, it comes with lies and an intent to destroy. Since then, our fight has been over the title to our land, in a court system designed to stamp out our very existence. The Western Shoshone people, in various capacities, have been in and out of court since the 1970s, with results that have usually ended unfavorably for us, so we've sought justice elsewhere. In 2002, the Inter-American Commission on Human Rights made recommendations to the U.S. regarding how best to address the land disputes and human-rights violations of the Western Shoshone, but to this day, the U.S. has not responded.

In contrast to those recommendations, and in the name of energy dominance, the U.S. pushes oil, gas, and fracking leases on public land. On top of that, gold mines are expanding, new mines are opening, and the Southern Nevada Water Authority wants to transport billions of gallons of water from aquifers in northeastern Nevada to the southern Nevada desert.

This makes me nervous, as I know the pain of thirst. I also know that water is something most people take for granted. Now is the time to start talking about protecting the water, otherwise it will be our grandchildren who suffer the consequences.

The Newe hail from a primitive people who survived from the land; they hunted animals and gathered seasonally available foods such as berries, roots, and nuts. We have long known the native plants, understood their medicinal value, and respected the ways of Creator. The Newe have always had a connection to the land—and still do. We are here living, hunting, fishing, gathering our medicines, and holding ceremonies. Newe territory is the home of my ancestors, Ruby Valley is the home of my family. One of my fond childhood memories is being at my great-grandmother's house at the base of the Ruby Mountains in Ruby Valley; I would often lie under a great big tree there, looking up and watching the clouds fly by.

Closing my eyes, I could feel the breeze against my cheeks, hear the water flowing by in a nearby stream. It was so peaceful as I slept and dreamed of things I no longer remember, surely of things yet to come. Little did I know that one day an unexpected visitor would stop my world for a moment and touch my spirit like no other.

For a couple years, I had repetitive dreams, the same dreams hundreds of times. It became annoying, but I'd had repetitive dreams before, so I figured something life changing was headed my way. All I could do was pray for my family and my people and all things that are good: health, safety, and love. He came to my backyard on a beautiful Saturday afternoon, in November 2016. It was a big and loud visit, as he wanted witnesses—he made me acknowledge those who were listening and those who could see. What was happening was unreal. There was so much energy, and it was so intense at times that I thought I would burst into a thousand pieces. He visited for a couple of hours, said many things, and showed me things, yet today I know so little, as understanding is a continuous process.

"Creator is here!" he said. "You must believe! You must trust! You must have patience!"

Then he exited quietly, as the sun set and the fire died down. And yet he returned during prayer the next morning at the rising of the sun. The sun danced.

"I am here!" said Creator. "You must rejoice! You must dance and thirst."¹

At that point in my life, I hadn't participated in the Sun Dance circle for nine years. But Creator instructed me to return.²

I returned to the Sun Dance circle the next summer and now look forward to each thirst, because I know that one day, through suffering, he will show the way. I believe there is something grand and beautiful ahead of us. He is here for a reason. For now, I patiently wait for whatever is beyond the next fall, the next spring, the next Sun Dance (FIGURE 1).

In less than two hundred years, the Shoshone people have gone from living in a pristine land of plenty to fighting for the health of the land and the water for future generations. As we

watch the continued destruction of our homeland, I do believe that it is only a matter of time before it all comes back around. We are taught at a young age, and we all know, that you cannot take from this land without giving something in return. This is Newe territory. Creator is here.



FIGURE 1. *Sun painting*, Fermina Stevens

¹The Sun Dance is a spiritual prayer ceremony. Dancers fast for three days with no food or water.

²I danced for six years in the ceremony, however, due to health concerns I chose to stop dancing. After a nine-year hiatus Creator was telling me it was time to return.

Essays

Living on Western Shoshone Land: A Childhood Memoir

LEANNA DANN

Te-Moak Tribe of Western Shoshone



FIGURE 1. Our lands—Dann Ranch with my tribesmen (DeeDee Dann)

As children, we did not question who owned the land we ran on, the sagebrush we played house in, or the creek where we washed our dishes. The land, the sagebrush, and the water all belonged to our Mother Earth, and it was without question that we were to respect and take care of her, and in turn, she would take care of us. Little did I know that not all people saw the earth as sacred and as ours to take care of and respect. Little did I know that the land, the sagebrush, and the creek we knew to be ours were part of a battle much bigger than I could fathom.

The Western Shoshone people's homeland, Newe Sogobia, spanned Nevada's Great Basin, spilled over into Southern California, and dipped into southern Idaho and northern Utah. In 1863, the Western Shoshone signed the Treaty of Ruby Valley with the United States of America; this act between sovereign nations formalized an agreement of peace and friendship between the Western Bands of the Shoshone Nation and the U.S. government. Not surprisingly, this treaty was broken time and time again over the next hundred years, and our family was one of many whose very livelihood this broken agreement would affect.

My great-grandfather, Dewey Dann, purchased land in 1928 through the Homestead Act, granting him 800 acres, which he used to build up his ranch, simply named the Dann Ranch (FIGURE 1). This became the land my family and I called home. It was in north Newe Sogobia,

about 12 miles southeast of Crescent Valley, Nevada, at the foot of the Cortez Mountains. In the winter, a blanket of snow covered the land as far as we could see. In the spring, we hoped for rain and watched the wildflowers grow. Summers and autumns were dry, bringing our creeks down to a trickle. The goat-head weeds alongside the creek banks dried to thorny burrs, a nuisance that our bare feet constantly tried to avoid.

It was in this environment that I was the youngest of three girls to be born to Tim Dann and DeeDee Dann. My paternal grandparents are Elizabeth Dann and the late Richard Dann, and my maternal grandparents are the late Wilhelm Beneder and Babette Beneder. I was born on the Dann Ranch, in a house that was a refurbished boxcar, with old yellow and black paint peeling off its sides. The night of my birth, my mother woke up at 1:30 a.m. and could not go back to sleep. She started our old Ford truck, roused her friend and neighbor Carmen, and told her that she would drive up to the hot spring to take a bath. Carmen, knowing that labor was imminent, followed my mother up the rocky dirt road that led to our only source of hot water: a hot spring on the side of the mountain range, overlooking a vast valley with sagebrush and, at night, a star-studded sky. My mother started going into labor, and Carmen stayed with her, first at the hot spring and then back at the house. Meanwhile, Carmen's husband, Jesus, saddled a horse and went to fetch my dad, who was out in the mountains on an overnight hunting trip. Three and a half hours later, at five in the morning on August 22, with my father by my mother's side and my sisters sleeping in the other room, my family had their newest member. I have been told the story of my birth repeatedly. It reminds me of the strength of my mother, the bonds between family and friends, and the deep connection we have with our land and our home.

We were raised to live on the land. As children, we ran wild among the sagebrush and made forts out of the willows growing along the creeks. We swam in a pond of irrigation water, and we bathed in plastic tubs filled with creek water. We looked for chicken eggs and



FIGURE 2. Pine-nut picking with Timothy Dann, Niabi Dann and Leanna Dann (DeeDee Dann)



FIGURE 3. Horseback riding with Niabi Dann, Rubina Dann, and Leanna Dann (DeeDee Dann)

milked our goats in the morning. Throughout the summer, we pulled carrots and beets from the garden ground, and we dug potatoes in the fall. When grasshoppers invaded our land and crops, our neighbor's boys ran down the rows with five-gallon buckets, capturing as many of the insects as they could, some of them to be used as fishing bait later on. My dad and his brothers hunted for deer and butchered our chickens, goats, and pigs when needed. In the fall, we gathered pine nuts at Mount Tenabo (FIGURE 2). In the winter, our wood stove heated the water for hot-water bottles that we placed in our beds to warm our feet before we fell asleep. Candles and kerosene lamps were kept ready for power outages, which happened frequently when our generator ran out of diesel. When we got up early, we helped my dad and uncles feed the cattle (FIGURE 3). To us this was home, and home was safe.

As a six-year-old, I paid little attention to the conversations my parents or my "grandmothers" Mary and Carrie Dann¹ were having at the time. We were not told of the battles my grandmothers were facing, nor the millions of dollars our family would be getting fined, nor why others lacked respect for living creatures, something that we would witness in the near future. Our young eyes saw only what was in front of us, and we heard only what our elders told us. At Indian gatherings, children played unconcerned about the conversations of the adults. At the same time, we observed and took in the values of our people. During gatherings, we got up when the sun rose and the ground was fresh with dew. We circled around the fire for the sunrise ceremony and prayed for the healing of our Mother Earth. We took part in sweats and helped prepare meals for the people.

¹Mary and Carrie are my great-aunts from my paternal side, but we refer to them as our grandmothers.

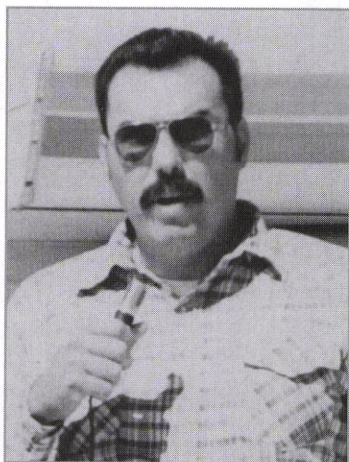
At dusk on the evening of September 21, 2002, the other children and I were taken to the outskirts of the ranch, where someone had set up a tepee. Elders sat outside around a drum. Soon after we arrived there, we saw a trail of dust in the distance. We were told to go inside the tepee and wait until the vehicles had passed. It was the beginning of our livestock being rounded up and sold by government officials. It was the first time I learned that something that belongs to someone can be taken away with no remorse by those who have power.

As I grew older, I learned more about our history and our family's struggle. The trail of dust that day was created by the Bureau of Land Management trucks, filled with quasi-militarized enforcement officers who rounded up our horses and cattle to be sold at auctions. Based on Western Shoshone treaty rights to the land, my grandmothers had not paid grazing fees for their cattle to the BLM. But my grandmothers were indignant and took their case through the judicial system, all the way up to the Supreme Court. The United Nations and the Inter-American Commission on Human Rights became involved. The land I knew to be my home as a child became the source of a court battle, one that ended in the confiscation of our family's livelihood. Although my grandmothers fought for their land and treaty rights, they were charged with allowing the land to be overgrazed by their cattle. In the end, a nearby gold mine obtained a permit by the BLM to vastly expand its mining operation across the acres on which my grandmothers had grazed their livestock. The mine turned the land upside down. Mountains and canyons with piñon pine and juniper ecosystems turned into heaps of mining refuse or bottomless mining pits. Mount Tenabo, where we used to pick pine nuts as children and look for arrowheads, no longer exists.

The last of our ranch memories are coming to an end. After the cattle and horses were rounded up and auctioned off, most of our family moved, too. No longer are there children running in the sagebrush or herds of cows and horses grazing the land. What is left of our ranch will soon be sold. My family will return to pack up what is left in our houses. What will remain are the values our family instilled in us: the connections to our ancestral land, our traditions, and the strength and resilience of our people. It saddens me to know that the lands we once roamed as children will merely persist in memories and stories. Once my generation is gone, only photos of places once known, before the mining activities, will remain of our ranch on Newe Sogobia.

Indian Country: New Visions, Old Traditions

Excerpt reprinted with permission from Janet Geary, Publisher, *Nevada Magazine*, August 1989



"It's not me," Joe Ely says. "It's the strength of the people I represent."

JOE ELY

The chairman of the lake

The Pyramid Lake Paiutes' tribal chairman, Joe Ely, emerged as a leader during the negotiations last year to divvy up water from the Truckee and Carson rivers and, for his tribe, to save Pyramid itself. Elected last December to a third term as chairman, Ely is a tough, rational negotiator who says he doesn't like the limelight. Still, he has been in the public eye. In May he signed a historic agreement with Westpac Utilities, the water purveyor for Reno and Sparks, that could end eight decades of water disputes if federal, state, and local officials take further steps.

Ely, 31, grew up at Pyramid and is a graduate of Pyramid Lake High School. Today he lives in Nixon at the south end of the lake with his wife, Guadalupe, and two sons, Harley and Jesse. His life centers around God, family, and a '78 Shovelhead Harley-Davidson motorcycle. "It's transportation,

wonderful transportation," Ely says of the bike. "It's silver-blue metallic and greasy."

Along with Carrie Dann, Ely was selected Native Nevadan of the Year by a panel of Indian people, as announced in the monthly *Native Nevadan* magazine. Part of the reason others look to him as a leader is his willingness to fight for his tribe, his people, and his beliefs.

"First you've got to know what you're fighting for," Ely says, "and define what you want to attain."

As for achievements, he says, "We started a lot of things three years ago. They aren't yet complete. Ask me that question in two years. At that time it won't just be the achievements of me, but of my tribe." —*Becky Lemon*



Carrie Dann says Indian rights aren't served by 15 cents an acre.

CARRIE DANN

A fighter for the Western Shoshone

Carrie Dann would like nothing better than to spend time on the range or fixing up her home in

Beowawe. But fate chose another role for this traditional Western Shoshone woman. Since 1974 she and her sister Mary have been waging a legal battle to force the federal government to honor the Ruby Valley Treaty of 1863.

"It began with Grandma," Dann recalls. "She said, 'This is your land. Unless Indian people do away with it themselves, no one can take it away from you.'"

Dann's fight with the government is also a fight to preserve Shoshone traditions. "They are what keeps you tied to the land," she says. "A lot of our people have lost their identities and are only Western Shoshone in color."

In January the U.S. circuit court in San Francisco ruled against the sisters, saying that the Western Shoshones' title to the land had been lost a century ago. "I couldn't believe what the court did," she says. "They said we'd been paid. What really angered me was our 'trustee,' the Department of the Interior. I have a retarded boy. I want to make sure he is provided for through my labors. It's the same way with underaged people. Whoever is the trustee must protect their rights."

A fighter to the end, Dann's optimism radiates through the defeats. "I think young people are looking at themselves," she says. "I'm one of the original people, and I'm proud. I think the younger generation is more into being original people than the people ahead of them. Maybe they'll come back to their own ways. What I'd like to see is for younger people to fight for their own history to be taught in the public schools." —*Becky Lemon*

Excerpt reprinted with permission from Janet Geary, Publisher, *Nevada Magazine*, August 1989

Note: Although some information in this 1989 article is out of date, the editor thought it was important to reprint for two main reasons: 1) it demonstrates the arduous legal battle the Dann family fought to try to keep their lands. 2) It demonstrates one of the core values of indigenous people in Nevada—maintaining the natural environment in conjunction with development.

Indian Country: New Visions, Old Traditions

*Nevada Indians are looking to a better future,
but not at the expense of Mother Nature*

BECKY LEMON AND LINDA JOHNSON

Walking through a pristine canyon at the north end of Pyramid Lake, you see a tiny waterfall singing its way from an unpolluted spring behind rows of icicles into bathtub-like pools. Rainbows dance on the crystalline wall under a bright early sun. The land is sweet with the scent of sagebrush, and it's easy to experience a joining with Mother Earth. Other than the sounds that have always been in the canyon, nothing else is heard.

On the other side of this vast Paiute reservation a different kind of sound is heard. In the small town of Wadsworth, workers on great yellow machines hurry to put the finishing touches on a campground and RV park to be opened that afternoon. Balloons dance in the morning breeze, and the people who have gathered are already in the mood to celebrate. The park represents the latest development by the Pyramid Paiute tribe, whose members little more than 150 years ago depended on hunting, fishing, and gathering for their survival.

Threading his way through the crowd, unobtrusive and relaxed as he greets the people, tribal Chairman Joe Ely talks about the goals underlying the event. Before cutting the ribbon, he explains how the new park will serve both the tourists, who fish for trophy cutthroat trout at Pyramid Lake, and the Paiute tribe, who will use the income to improve health, education,

Becky Lemon is the editor of *The Native Nevadan*, a state-wide monthly Indian news magazine published by the Reno-Sparks Indian Colony. Linda Johnson is a Paiute and a community member of the Reno-Sparks Indian Colony.



In Schurz, Walker River tribal elder, Walther Voorhees, who remembers Wovoka, stands by the Paiute prophet's grave. Wovoka, who lived near Yerington and Schurz, was famous as the Ghost Dance prophet of the late 1800s. (Jay Aldrich)



Pitcher Travis Summerfield delivers in a Schurz Little League game (Jay Aldrich)

and other social services. "Economic development will eventually get us out from under the federal government's thumb, and we can live our lives the way we want," Ely says.

The same is true for other Nevada Indians. Since 1978, when the Indian Self Determination Act set the stage for economic development, many of Nevada's 24 tribes, be they Washoe, Paiute, or Shoshone, have initiated modern business practices while still abiding by the spiritual values of balance, harmony, and a oneness with nature.

Traditionally, most ventures have revolved around tourism and smoke shops, where Indians sell arts and crafts along with tobacco. Paiute Ed Johnson, director of the Stewart Indian Museum, explains that Indians have a different attitude than white society about tobacco use, since it was part of their culture long before the white man arrived. The Indian tobacco plant called *poebahmoo*, Johnson says, "was used by the Northern Paiutes for enjoyment, spiritual blessing, and for healing prior to the white man, and is still used today by the Indian people."

The smoke shop idea was said to originate in the early '60s when a nonIndian entrepreneur sold tobacco on the Walker River reservation. The shop prospered by selling cigarettes at low prices, and soon other tribes followed suit. The reason for the discounted smoke shop prices is that the tribes, as government entities, charge a tribal tax rather than a state tax. Like other retailers, the tribe buys cigarettes at regular wholesale prices, which include federal taxes, too. But the tribal tax goes right back to the tribe for municipal, social, and educational programs, which helps to keep the tobacco prices down. Today smoke shops are among the prime sources of tribal income.

But Clarence Andreozzi, a councilman from the Battle Mountain Colony, talks of the need to find other sources of income besides smoke shop dollars. "It's tough for a council to function without them," says Andreozzi. "We couldn't function on Bureau of Indian Affairs dollars. We're desperately trying to get a truck stop open, so we don't have to depend on smoke shop revenues alone."

All over Nevada you see the change. New buildings, new enterprises, new ideas coming together with old ways. But there is always a concern with keeping spiritual values intact. Revenues are used to improve people services and to further economic development. Since the tribal government is the developer, it is responsible to the entire community and its resources. The whole—rather than an individual entrepreneur—must benefit from the profits.

One tribe that has succeeded in diversifying is the Reno-Sparks Colony. Located in the shadow of Bally's Hotel Casino, the tribe operates a mini-mall that includes its original smoke shop. It leases several shops to non-Indian businesses and runs Sierra Press, a full-service printing company.

The colony is also developing new lands north of Reno that were obtained through a Congressional withdrawal in 1986. In keeping with traditional values, this carefully planned community in Hungry Valley will reintroduce natural food and medicinal plants in place of cheat grass, use the latest solar and wind technologies, and install state-of-the-art sewer and water systems. The tribe feels it has the luxury of developing a community from the ground up.

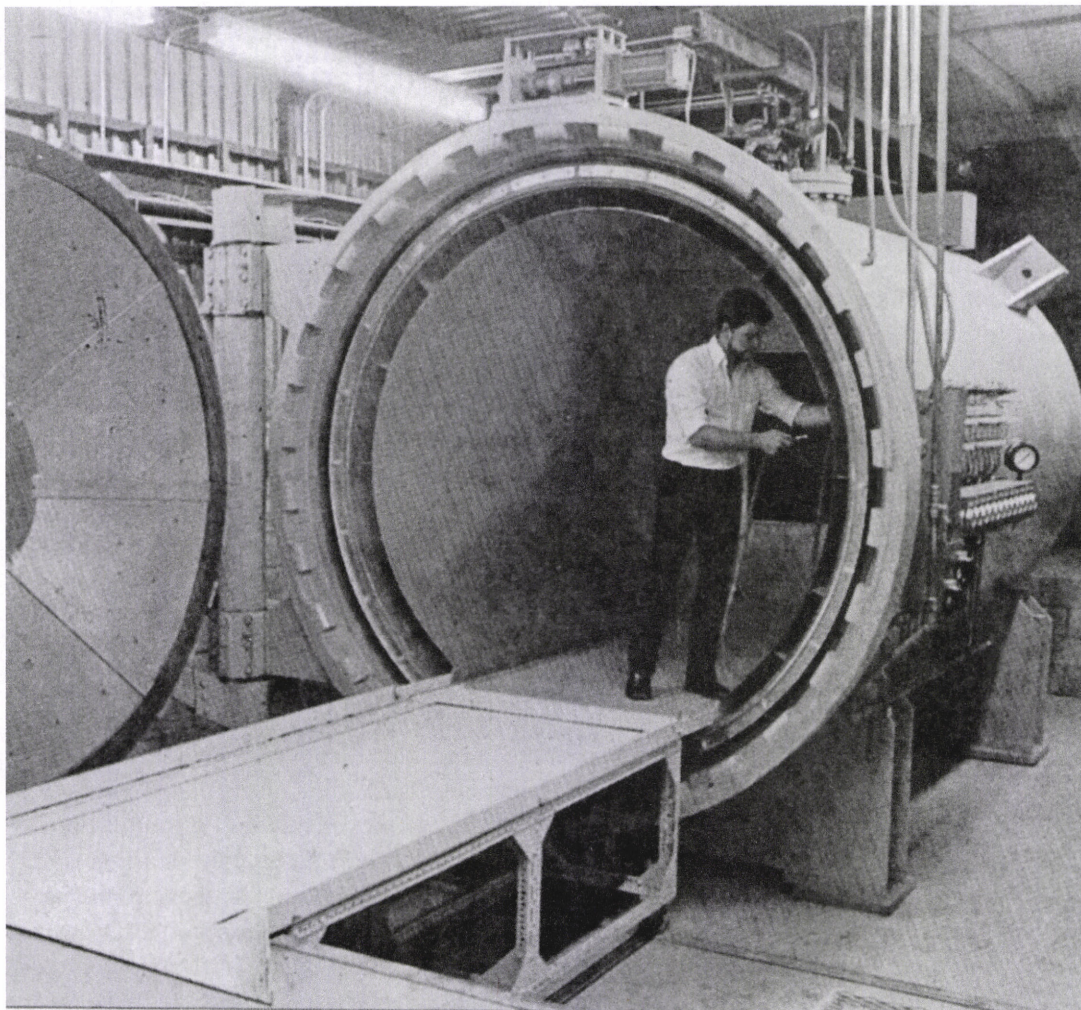
Longtime tribal Chairman Lawrence Astor, a stubborn fighter for his people, is clear about the reasons for choosing the isolated valley as the colony's new site. "We want to get back to Mother Nature," Astor says. "We also want to keep our kids away from drugs and alcohol. We want to show them how other things grow, too, and teach some of the old ways."

At Schurz, the Walker River Paiute Reservation is also finding new hope from economic diversification. "We're changing the concept of the smoke shop," says former tribal Chairman Jonathan Hicks. The tribe didn't make any money last year from the tobacco enterprise. Instead, they plowed everything back into an all-purpose truck and tourist center at Schurz. Called the Four Seasons, the unobtrusive business sells gas and diesel, and will eventually include an RV park, cafe with a patio, a laundry room, and showers for truckers.

On the more traditional side, the Walker River tribe raises cattle, its herd ranging between 500 and 1,000 head depending on the season. Hicks' raucous sense of humor surfaces when he talks about the beef. "We don't raise them for pets," he laughs, dimples showing. He says the tribe recently marketed cattle via satellite auction to reach other larger areas. "Livestock buyers can view the product on video and bid accordingly," he says. "It resulted in a better price for us, too."

In the picturesque Carson Valley, the Washoe tribe also looks to ranching to strengthen its economy. Chairman Vernon Wyatt explains the strategy. "We need to raise enough hay to feed our herds instead of buying outside our area. When we buy, we buy from Indian ranchers and growers. Economically, we needed to diversify. We have a feed lot, and we've created jobs for tribal members. We also hire high school students and encourage them in agricultural training and educational interest in going on to degrees in agriculture."

Beyond ranching, the Yerington Paiute tribe has yet another answer to economic freedom. Besides running a Dairy Queen franchise, the tribe does agricultural land preparation, including disking, clearing, and something a bit more modern. "We're probably the only ones in the valley that do laser land leveling," says tribal Chairman Linda Howard of the operation that uses light beams to determine the field's cut. "The surrounding ranchers depend on the tribe to do it."



The giant autoclave helps to shape aerospace components and the Las Vegas tribe's future
(*The Native Nevadan*)

Technology is also helping the Las Vegas Paiute tribe. Using advanced composite materials, Nuwuvi Composites Technologies (NCT) manufactures aerospace components in a gigantic piece of equipment called an autoclave. The machine is 11 feet long, seven feet in diameter, and is similar in concept to a household pressure cooker. By applying heat and pressure to a special graphite and epoxy cloth that has been draped over various molds, the autoclave turns the loose fabric into a solid material.

"It's an expanding field that is growing rapidly," says Doug Finch, the venture's enthusiastic manager who has been with the tribe two years. According to Finch, the business is expanding so rapidly that it has tripled in size since the beginning of the year, when it landed a big contract to manufacture graphite-composite golf club shafts. Now employing 35 people, NCT hopes to employ 50 in two years and gross around \$3 million.

The company is also an integral part of the tribe's planned community 17 miles northwest of downtown Las Vegas on U.S. 95. As the first major industry on the tribe's 3,700 acres, NCT will help provide seed money for other industries, such as a related cut-and-saw enterprise

that will work with the same graphite-epoxy material. The tribe's goal within the next two years is to move its downtown administrative offices to the new land, develop a policy for security and fire protection, and build more residential housing. Leo Katz, one of the people working on the project, says, "When you're talking about a planned community, this is what you have in mind—all the services provided."

For many Indians, however, the best way to develop economically, and still retain traditional values, continues to be through tourism. The Duck Valley Shoshone-Paiute tribe on the Idaho border promotes fishing in Sheep Creek and Mountain View reservoirs. The Fallon Paiute-Shoshone tribe's Stillwater Pheasant Hunting Club raises small game birds for hunting.

The tribe has a master plan that protects both the environment and important archaeological sites.

That Indians are sensitive about protecting the environment is clear when you compare how Lake Tahoe and Pyramid Lake have been developed. Called "Da ow a ga," meaning "edge of the lake," by the Washoe people who once called it home, the exquisite mountain lake became "Tahoe" when Euro-Americans mispronounced "Da ow." Until a recent building moratorium, construction threatened the lake's pristine beauty with algae and silt.

The Pyramid Lake reservation, on the other hand, is almost 477,000 acres of unbeaten paths. Although there have been suggestions to build a casino at the desert lake, tribal members have resisted the temptation and have instead developed Pyramid into one of the top cutthroat-trout fishing lakes in the U.S. The difficulties that the tribe faces in maintaining the sportsman's fishery inevitably come from upstream water use and pollution. In fact, the Cuiui, an endangered fish found only in Pyramid Lake, faces an upstream battle in its struggle to survive. Referring to the reservoir in the Sierra west of Reno, Joe Ely says, "There's not enough water right now in the river for the fish to spawn without the backup of Stampede Reservoir. Without Stampede's life support system, the fish can't spawn and would probably be extinct."

As upstream water is important to the life of the Cuiui, so are age-old traditions important to the life of the new enterprises. When the RV park opened at Pyramid Lake, participants were involved in more than just speeches and handshakes. A young girl, two cultures evident in her high cheekbones and light brown hair, prepared herself for a traditional foot race. In a gentle conversation, she and her mother decided that the moccasins and red dress she wore would not slow her down. After handing her mother the feathers she carried, the girl hitched up her dress and ran like a willowy young deer, easily passing the pounding feet of other youths clad in athletic shoes. Later, she danced with the same grace and enthusiasm to the age-old sounds of drums echoing from sagebrush-brocaded hills.

Whenever an event touches an Indian's life, you can be sure there will be some celebration involving powwows, foot races, and especially drums. Shaped in a circle to illustrate a continuation of life, the drum is an extension of the earth's heartbeat. Paiutes have always known that Mother Earth was round, and the sun shaped in a circle. The moon and other planets that revolve around the sun, too, are a continuation of the never-ending circle. Thus, the drum is sacred to gatherings and other events in Indian country.

During the Pine Nut Festival at the Walker River Indian Reservation, all activities stop when the drums start beating. To bless the pine nut crop, hundreds of people come together in a huge circle to dance around a ceremonial pinion pine that has been transplanted from the hills.

It used to be that this annual dance started at dusk and lasted until dawn, but today's celebration is considerably shorter. The dance is accompanied by some of the best hand drummers in the Great Basin, who in recent times number fewer and fewer. Today, only about eight of these Paiute or Shoshone traditionalists are still sharing their rich heritage through song and drum.



A young dancer is absorbed in fancy footwork at the Stewart Indian Museum Powwow (Jay Aldrich)

A more frequent celebration open to the public is the powwow. Derived from the Algonquin word "*pauau*," meaning "curing ceremony," the powwow was originally a contest of skills, pitting drummers against dancers, to see who would come out victor at the end of the song. In a mocked, staged confrontation, the warrior challenged the elements of life—represented by the drum—by keeping his body and instincts alert while he danced. If the warrior lost a beat or step, his own integrity would prompt him to stop dancing out of respect for life. Until the next song or go round, he had lost his battle in the circle of life.

Each outfit worn during the powwow also has a story. For example, Washoe dancer Sam Johnson of the Reno-Sparks colony has incorporated elements from Plains tribes into his intricately beaded outfit. With an easy grin, Johnson explains that the only Washoe part of his outfit is the deer-hoof rattles he wears just below his knees. "My outfit is not the tribe I'm from," Johnson says. "I've adapted my dance and outfit from the north because the Washoe tribe doesn't do this kind of dance."

According to Johnson, his bone breast plate represents the ribs of the soul and offers protection. The roach, with its blood-colored base, depicts a scalp. Both are Sioux style. He also wears an eagle feather bustle and carries eagle feathers, including a traditional eagle feather flag he uses in powwow grand entries or other special gatherings. Since killing eagles is anathema to Washoe people, Johnson gets all his eagle feathers through the U.S. government.

While old traditions are a link to the past, and new enterprises are a bridge to the future, there is yet another way that Nevada Indians are fighting for self-determination—in the courts.

The Western Shoshone Nation is waging a battle to protect the rights spelled out in the Ruby Valley Treaty. In 1863, the U.S. entered into a Treaty of Peace and Friendship that delineated the boundary of Western Shoshone lands—roughly one-third of Nevada stretching diagonally from northeastern to southwestern borders—and granted rights-of-way across Shoshone territory.

The treaty was ratified by Congress and has never been abrogated. Nor have the Western Shoshone ever broken it. To this day, they claim, the U.S. has never legally acquired title to the lands, although the Interior Department claims that the Shoshones' title was extinguished through various court decisions and that they lost title to the land in the 1870s through "gradual encroachment." The government also points out that \$26 million was paid in 1978 to the Secretary of the Interior as Western Shoshone trustee. No Shoshone has touched a penny. With interest the total has grown to almost \$60 million.

"Now the U.S. is trying to force their laws on us and break us down," says rancher Carrie Dann, emotion breaking her voice, after a circuit court decision in January that was considered a setback to the Shoshone cause. "They tried to force the Indian Claims Commission on us. The Western Shoshone resisted them. We still resist today."

Carrie Dann and her sister Mary are the leaders of a traditional Western Shoshone band who have a ranch in Crescent Valley near Beowawe. The hard-working sisters have been in various courts, including twice to the Supreme Court, since 1974, when they reasserted their aboriginal and treaty rights to graze cattle on so-called public land after the federal government filed trespass charges against them. Since litigation has been only partly successful, the Western Shoshone Nation will now pursue its claims in Congress.

The Western Shoshone Nation also plays an active part in the ongoing protests at the Nevada Test Site and is vocal in its opposition to a proposed high-level nuclear dump at Yucca Mountain. Both sites are on treaty land. The Shoshone protesters feel the two nuclear operations go against the concepts of harmony, balance, a oneness with the earth, replacing what is removed and the circle of life.

In a simple statement, Carrie Dann graphically illustrates the values so ingrained in Nevada's Indian people that they cannot be removed from self or everyday life. "From time to time we learn that this earth is alive," she says, her face hard with determination.

"Like a female body, she gives birth. We respect her like we respect our own bodies. She gives us all we need—clothing, food, shelter." From economic development to celebration, these values endure.

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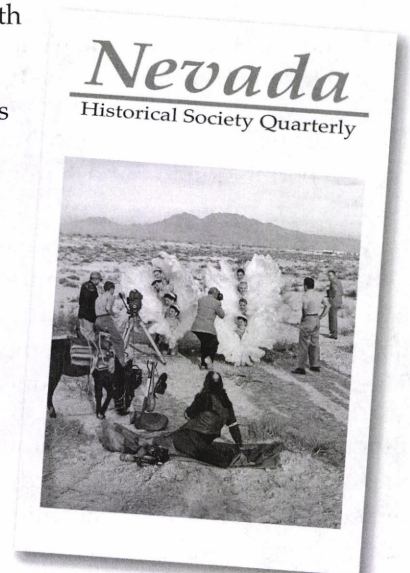
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²Elliot Lord, *Comstock Mining and Miners* (Berkeley: Howell-North, 1959), 172.

³*Independent News*, January 13, 1965, 4.

⁴James G. Scrugham, ed., *Nevada: A Narrative of the Conquest of a Frontier Land* (Chicago: American Historical Society, 1935), 3:398-99.

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