Flooded Lifeways: A Study of the Garrison Dam and its Environmental Impact upon the Three Affiliated Tribes of the Fort Berthold Indian Reservation

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FLOODED LIFEWAYS:
A STUDY OF THE GARRISON DAM AND ITS ENVIRONMENTAL
IMPACT UPON THE THREE AFFILIATED TRIBES OF THE FORT
BERTHOLD INDIAN RESERVATION

by

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Bachelor of Arts, University of Alaska Anchorage, 1998

A Thesis
Submitted to the Graduate Faculty
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for the degree of
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This thesis, submitted by Brian K. Russell in partial fulfillment of the requirements for the Degree of Master of Arts from the University of North Dakota, has been read by the Faculty Advisory Committee under whom the work has been done and is hereby approved.

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This thesis meets the standards for appearance, conforms to the style and format requirements of the Graduate School of the University of North Dakota and is hereby approved.

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Date 17 July 2020
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Credit and thanks must go to my wife, Penny Russell, who patiently permitted me to complete this project while encouraging me when I seemed overwhelmed by it all.
For my father Charles M. Russell
and the Mandan, Hidatsa, and Arikara Nations
ABSTRACT

On December 22, Congress authorized the Flood Control Act of 1944, later named the Pick-Sloan Missouri Basin Program (PSMBP). The primary purpose of the PSMBP, which would require the construction of six main stem dams on the Missouri River, was to provide flood control, navigation, irrigation, and hydropower. The Mandan, Hidatsa, and Arikara nations, the Three Affiliated Tribes, maintained a reservation and way of life on Fort Berthold which lay in the direct path of the water that would form the reservoir behind one of the dams, the Garrison Dam.

It is important to acknowledge that the Garrison Dam also affected many non-Indian farmers and communities, like those of Sanish and Van Hook. Their story and desire for justice is worth inclusion and is an integral part of assessing the full impact of the Garrison Dam upon all North Dakotans. For the sake of time and space their story will be left for future scholarship.

This thesis explores the impact of the Garrison Dam on the Three Affiliated Tribes located on the Fort Berthold Indian Reservation in North Dakota. Congress ignored both the concerns raised by the Tribes and the alternatives they suggested, and the Tribes were forced to sacrifice their lands and way of life for what was termed “the common good.” This is yet another chapter in the long history of troubled Indian policy. A comparison of the experience of the Three Affiliated Tribes with that of other groups, the Cherokee relocation in the 1830s for example, will suggest that despite over one hundred years of experience, the American public and federal policy makers had learned little.
Legislative histories and transcriptions of congressional hearings provide policy-related material. United States Army Corps of Engineers archives and Fort Berthold tribal records reveal information related to the dam and reservoir. The intent of this study is to record a neglected aspect of the government’s efforts to control the Missouri River. I intend to show that the Garrison Dam was arguably one of the most destructive acts perpetrated against an Indian tribe during the twentieth century. A pristine environment was forever altered, and the damage caused by the Garrison Dam touched many aspects of Indian life: social, political, and economic. Their environment was forever altered and their story needs to be told.
CHAPTER ONE

INTRODUCTION: A PLACE FOR ENVIRONMENTAL HISTORY

Environmental history is not confined to the study of place or location, rather it encompasses all aspects of society and the "environment" in which it develops. It involves the study of the interconnectedness of the relationships between humans and the world around them. The American historian, Frederick Jackson Turner, defined western development as a "process." The history of the process of westward expansion must, according to Turner, include not only the domination of the land, but, as he said, "all the economic, social and political changes which resulted."\(^1\) It is the environment that required man to change and in the process of this change, he changed the environment around him.

Turner viewed American expansion as a series of conquests. He believed interpretation of these conquests could be understood by emphasizing the close connection between the pioneers and the environment in which they lived.\(^2\) Many history textbook authors have echoed this sentiment in the words they used to describe the movement west by a young American nation.

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The development of environmental history and the attempts of environmental historians serve to remind us that we are not the sole possessors of the earth. In examining the alterations to the environment of the Three Affiliated Tribes by the Garrison Dam, I will suggest the influence that environmental historians could have in guiding the social and political thought processes that can either increase or decrease the size of the human footprint on the earth. However, many historians and early history textbook writers continued in the Turnerian fashion of portraying the earth as a commodity while applauding our ingenuity to harness it.

Richard Hofstadter’s *The American Republic* echoed this “lordship” over the environment in chapters titled, “Triumph of the Railroad” and “Oregon Settlement.” In Hofstadter’s second volume of *The American Republic*, under the heading “Taming of the West,” the West was portrayed as the “Land of Opportunity” and he wrote of the conquest of the plains. Echoing Turner, Hofstadter reaffirmed the idea that European settlers eventually conquered the New World wilderness, and during this long struggle, the environment transformed the conqueror. What was absent in these discussions was the ramifications of this process. Environmental historians remind us that development may be necessary but there are always costs associated with it. The Mandan, Hidatsa, and Arikara know well these costs. Society must ask itself whether the benefits are worth the cost.

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5 Ibid., 301.
Historian Walter Prescott Webb continued the trend of viewing the environment as an object that required pioneers to hack their existence from out of the wilderness.

“For two centuries American Pioneers had been working out a technique for the utilization of the humid regions east of the Mississippi River,” he wrote, “they found solutions for their problems and were conquering the frontier at a steadily accelerating rate.” The Great Plains were an obstacle that served to tax and often defeat man’s ingenuity. Nature’s very stubbornness drove man to make the innovations he did. The new and old, innovations and survivals dwell side by side, the obverse and the converse of the struggle between man and nature.

Historians Charles and Mary Beard touted the “exploitation of the land and mineral resources” while conveying the harsh reality that land and resources had been lost. “Grasslands were plowed up and turned into dust storms or over-grazed into deserts. Forests were removed without regard to future growth, and magnificent trees by the millions were lost.” Of the 1,400,000,000 acres of land within the continental U.S., only 186,000,000 acres remained in public possession in 1924, consisting mainly of mountains, deserts, arid regions, and forest lands not suitable for cultivation. Much of the Fort Berthold Indian Reservation with the exception of the rich river bottoms could be described as such lands.

Samuel E. Morison and Henry Steele Commager wrote in *The Growth of the American Republic* that “the conquest of the Great Plains, land that had for so long posed

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a formidable barrier to settlement, had been America’s most notable achievement. The disappearance of the frontier was due to the irresistible pressure of farmers, swarming by the hundreds of thousands onto the High Plains and into the mountain valleys, subduing this wilderness of prairie and mountain for cultivation and civilization. It was this “frontier land,” declared Ray Allen Billington, where “pioneers and speculators vied for nature’s bounties to fulfill the nation’s manifest destiny.”

Historians of the American frontier have also often failed to acquaint their readers with the utterly destructive impact that the fur trade and westward expansion had upon the North American environment and on the American Indian. Even Turner in later years concluded that pioneers “were wasteful and seeking quick results rather than conservation and permanence.” Summing up the environmental impact of the American frontier on the land by 1901, John Muir concluded “none of nature’s landscapes are ugly so long as they are wild, but the continent’s beauty is fast passing away, especially the plants of it, the destructible and most charming of all.”

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12 Muir quoted in Ibid., 22-23.
It was fire, the axes, and "the destructive agency of browsing animals" that destroyed forests and then prevented them from renewing themselves, wrote the historian Francis Parkman. He likened a grazing sheep to a "hoofed locust." Parkman was protective of wilderness and among the first to teach that wilderness should be neither feared nor destroyed. This part of America's paradise was valuable in itself and for society as a whole.

Like Parkman, environmental historians are concerned with protecting the environment. Environmental history deals with more than physical location or place, it must assess the impact that the place or location has had upon society. The Garrison Dam's impact upon the Three Tribes provides another example of this concept as the Indians sought continuation of agrarian lifeways facing the seemingly insurmountable obstacle of Missouri River politics. The science of ecology deals with the interaction of organisms with one another and with their physical surroundings.

Biologist Rachel Carson stated that given time, time not in years but in millennia, life adjusts, and a balance is reached. For time is the essential ingredient, but in the modern world there is so little time. According to Aldo Leopold, founder of the Wilderness Society, the merger of history with ecology is based on science, more physical than spiritual. He espoused the idea of interdependency because the biotic

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13 Quoted in Ibid., 124-125.


15 Ibid., s.v. "ecology."

community is delicate, built upon intricate harmonies and balances. In 1789, Gilbert White declared that ‘nature was a great economist,’ for she ‘converts the recreation of one animal to the support of another!’ He saw the emergence of ecology as a science and ecology, almost inevitably, led to the idea of interdependence.

For Donald Worster, the principle goal of environmental history became one of deepening our understanding of how humans have been affected by their natural environment through time and, conversely, how they have affected that environment and with what results. Historian James Malin called for a reexamination of the history of the United States and by reading what ecologists wrote he knew how to ask the right questions. “The ecological point of view,” he believed, “is valuable to the study of history; not under any illusion that history may thus be converted into a science, but merely as a way of looking at the subject matter and processes of history.” A synthesis of history and ecology is essential because environmental history involves examining change, voluntary or imposed, in subsistence methods and the ramifications for people and the earth.

Aldo Leopold, “the Moses of the New Conservation impulse of the 1960s and 1970s,” according to intellectual historian Donald Fleming, “handed down the Tablets of the Law…” His *Sand County Almanac*, believed Wallace Stegner, was a prophetic book,


20 Malin quoted in Ibid., 295.
"the utterance of an American Isaiah."²¹ For good reasons, Leopold who recognized that humans were merely part of the whole is regarded as the most important proponent of modern biocentric or holistic ethics.

Leopold called for a new "land ethic," in which humans would be viewed as members and citizens of the biotic community rather than as its conquerors. People, he believed, should cease regarding responsible land use as only an economic issue. Rather they should regard it in terms of what was ethically and esthetically right. An action was right "when it tended to preserve the integrity, stability, and beauty of the biotic community." Otherwise it was wrong.²²

Land, according to this concept, is not merely soil; it is a source of energy flowing through a circuit of soils, plants, and animals. Food chains are the complex living channels that conduct energy upward; death and decay return it to the soil. Humans have repeatedly through time disrupted this cycle, without assessing the full impact of their actions.

Writing in the Atlantic Monthly in 1885, historian Francis Parkman criticized the ignorance and greed of those who exploited America's vast store of natural resources, which they had done nothing to create, destroying the natural environment in the process.²³ Roderick Frazier Nash, writing a century later, declared that an environmental ethic would require that society exercise self-restraint when dealing with the natural

²¹ Stegner quoted in Ibid., 63.
²³ Jacobs, Fatal Confrontation, 122.
Societies should not entertain the notion that nature and its resources existed solely for their possession, use, and enjoyment. Unfortunately for the Three Tribes, during the 1940s, the period of Garrison Dam, this will be a lesson yet to be learned by society.

In essence, environmental history is the study of how people have interacted with or perceived changes over time and valued the non-human world. It includes aspects of esthetics and ethics, myth and folklore, science and religion, literature and landscape, going wherever the human mind has grappled with the meaning of nature. Critical in finding a place for environmental history is the acceptance of the relevancy of its applications to the study of regions and the growth of societies. A brief assessment of the human footprint upon the earth should help illustrate this relevancy.

William Cronon’s *Changes in the Land* explored how different ways of living produced such different effects on the northern New England ecosystems. Europeans sought to give their landscape a new purposefulness, often by simplifying its seemingly chaotic tangle. Indian communities had learned to exploit the seasonal diversity of their environment by practicing mobility, relocating from place to place to find maximum abundance through minimal work, reducing their permanent impact on the land. The Europeans, however, believed in permanent settlement, therefore altering the landscape

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permanently. Europeans considered the land as a commodity, and the pursuit of capital and wealth is what set their societies apart from the pre-colonial Indians.\textsuperscript{26}

Henry David Thoreau argued in 1854 that American society had lost touch with its roots and was in danger of strangling the environment. In describing Walden Pond, he wrote:

A lake is the landscape’s most beautiful and expressive feature. It is the earth’s eye looking into which the beholder measures the depth of his own nature. The fluviatile trees next to the shore are the slender eyelashes, which fringe it, and the wooded hills and cliffs around are its overhanging brows.\textsuperscript{27}

Walden Pond was Thoreau’s oasis from Boston’s hustle and bustle and the rigors associated with a materialistic society. “Enjoy the land, but own it not,” he advised, “Through want of enterprise and faith men are where they are, buying and selling, and spending their lives like serfs.”\textsuperscript{28} Thoreau’s advice fell on deaf ears because the nation was caught up in the midst of its westward migration. Even he could not ignore the pull, however. “Eastward I go only by force;” he exclaimed, “but westward I go free. I should not lay so much stress on the fact if I did not believe that something like this is the prevailing tendency of my countrymen. I must walk toward Oregon and that way the nation is moving.”\textsuperscript{29} And move the nation did.

Richard White’s \textit{Land Use, Environment, and Social Change} noted that in the Pacific Northwest the old pattern was followed, a contrast between how Indians and non-

\textsuperscript{26} Ibid., 74-79.

\textsuperscript{27} Henry David Thoreau, \textit{Walden and Other Writings (1845)}. (New York: Barnes and Noble Books, 1993), 155.

\textsuperscript{28} Ibid., 173.

\textsuperscript{29} Ibid., 357.
Indians altered the landscape. A common attitude of settlers was “to get the land subdued and the whole wild nature out of it.” This mentality was typical and, unfortunately, the ecological changes were lasting. The Salish Indians, in the region, utilized the land but, like New England Indians, were careful to avoid abusing it. When the non-Indian settlers arrived they brought with them the trappings of an extractive culture. Introduction of foreign flora and fauna, such as thistles and sheep, permanently altered the landscape and environment of Island County, Washington.

During the 1850s and 1860s, logging in the Pacific Northwest began in earnest. By the early twentieth-century the virgin forests of Island County and the lands cherished by the Salish were nearly gone.

The Hardrock Mining Law of 1872, management of public rangeland and forests-lands, development of hydroelectric power and dams, and the doctrine of extracting water at no expense placed a heavy burden upon the environment. These “Lords of Yesterday,” as environmental lawyer and historian Charles Wilkinson described them, lorded over the environment and permitted the exploitation of a seemingly endless supply of natural resources with little concern for long-term costs. Development of the Missouri was one of the last significant projects to tame the wild rivers in the west.

Man’s arrogant belief that he can control nature was aptly demonstrated in 1975 when the Utah legislature passed a law declaring that the Great Salt Lake could not

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31 Ibid., 77-93.

exceed a level of 4020 feet. Almost ten years later, the lake put itself above the law by reaching a level of 4206.15 feet.33

In 1987 the lake began to recede as multi-million dollar pumping stations were placed into service to pump water into the desert to control the lake’s level. “We’ve harnessed the lake!” exclaimed Utah’s Governor Norm Bangerter, “We are finally in control.”34 But, at a cost. The Great Salt Lake was a refuge for millions of migrating birds. Without such places, according to author Terry Tempest Williams, successful migrations were endangered. In the case of the Great Salt Lake, conservation laws were compromised and the American public averted its eyes.35 Yet another example of control gone awry was the Mississippi Basin flood of 1927.

The Mississippi River swept across an area roughly the size of Massachusetts, Connecticut, New Hampshire, and Vermont combined, leaving water as deep as thirty feet on land stretching from Illinois to the Gulf of Mexico. John M. Barry’s book Rising Tide recounts this often overlooked catastrophe and reminds Americans of how their desire to control the Mississippi produced a disaster that changed the region’s environment and ushered in New Deal programs seeking even more control of the nation’s rivers.36

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34 Ibid., 247.

35 Ibid., 264-265.

An environmentally conscious society, like environmental history, finally blossomed during the 1960s and 1970s. It took the decline of the Peregrine Falcon and images of the Native American, Iron Eyes Cody, weeping at the despoliation of a once pristine landscape flashing across the nation’s television screens to influence Congress to enact protective legislation. The process, however, was slow.

Thoreau viewed nature as a system of necessary, complex relationships that cannot be disturbed in the slightest way without changing, perhaps destroying the equilibrium of the whole. It was conceivable, even essential, Thoreau suggested, that all men and women should “strive for a full measure of human dignity without severing their natural roots or forgetting their place on the earth.”

It took over 150 years, however, for Americans to heed his call for a new environmental consciousness.

In her book *Refuge*, Terry Tempest Williams, discussed the shift of natural to unnatural refuges in describing how urban wastelands were becoming wildlife’s last stand. “The great frontier,” she wrote, “shifted and we’ve moved wildlife out of town like all other low-income tenants.” Society has even sought to vilify portions of nature such as the starling that, if anything is opportunistic in its behavior. “Perhaps we project onto the starlings that which we deplore in ourselves: our numbers, our aggression, our greed, and our cruelty. Like starlings, we are taking over the world.”

Environmental historians, either as individuals or working within the framework of such organizations as the American Historical Association and the Western Historical

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38 Williams, *Refuge*, 54.

39 Ibid., 56.
Association, contribute to the movement by forging a balance between humans and nature by focusing on the origins of the destruction of our environment. By revisiting the past and retelling the story of westward expansion, for example, they can illuminate the path towards sustainable development and equilibrium within the biotic community.

In telling the story of the Three Affiliated Tribes I hope to remind readers of the costs paid by sovereign people when the environment is assaulted by attempts to control the natural world. Rachel Carson put it succinctly. The “control” of nature, she wrote

> is a phrase conceived in arrogance, born of the Neanderthal age of biology and philosophy, when it was supposed that nature exists for the convenience of man. The concepts and practices of applied entomology for the most part date from that Stone Age of science. It is our alarming misfortune that so primitive a science has armed itself with the most modern and terrible weapons, and that in turning against the insects it has also turned them against the earth.

Environmental history can be a means by which to acquire a clearer image of the past and a sobering reappraisal of the generally accepted concept that unlimited growth, frontier expansionism, and the wasteful use of non-renewable natural resources during the nineteenth and much of the twentieth century was acceptable. This new field of history is a chance to rediscover restraint and responsibility and the ancient awareness that we are interdependent and connected with all of nature and that our sense of community must take in the whole of it. It then becomes possible to see that we must care for the planet.

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In *People of the Valley*, western writer Frank Waters wrote that rivers can be
dammed, but that the human spirit never can be.  

The present generation must make
wise choices to insure that the next can be sustained. “Today belongs to us,” said Oren
Lyons, an Onandaga Iroquois. “Tomorrow we’ll give it to the children, but today is ours.
You have the mandate,” he continued, “you have the responsibility. Take care of your
people, not yourselves, your people.”

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CHAPTER TWO

FEDERAL POLICY AND INDIAN LAW: THE WINTERS DOCTRINE

Unlike land and forests, water resources were designated as common rather than private property. Richard N.L. Andrews, professor of environmental policy, University of North Carolina.

When I was a kid in geography class, I was taught that water flows downhill. What I’ve learned since is that water flows to money and power, wherever that may be. Navajo Tribal Chairman Zak Peterson.

The tragedy of the past is that it set precedents for land theft today when there is no longer any real need to steal such vast areas. But more damage is being done today by the United States Government than was done in the last century. Water rights are being trampled on. Land is being condemned for irrigation and reclamation projects. Indian rights are being ground into dirt. Vine Deloria Jr.

As the American people began to migrate towards the Pacific Ocean, during the mid-1800s, continuation of this movement would ultimately hinge upon control and availability of the most precious of western resources: water. Native American nations had flourished in the arid and semi-arid lands west of the hundredth meridian. The new invaders would require control of the water for their cities and farms. Conflict was most likely inevitable.

In the West, Major John Wesley Powell, noted explorer and geologist, consistently argued that land itself was almost worthless; it could only be made valuable

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by water. Water rights were, therefore, more valuable than land titles, and should be tied to each tract of land by law. 4 The American Colossus was fiercely intent on appropriating and exploiting the riches of arguably the richest of all continents, grasping with both hands, reaping where he had not sown, wasting what he thought would last forever. The man who could get his hands on the biggest slice of natural resources was the best citizen.

The riparian doctrine permitted the diversion of water as long it did not interfere with other users and the excess or unused portions were returned to the streams natural state. This was the law under the riparian doctrine accepted by eastern states during the colonial era. 5 In the West a new law emerged. Water went to the first user. The oldest water rights are absolutely superior to those of all junior users; senior users need not share the resource. Under the pure prior appropriations doctrine, western water users could, with impunity, flood deep canyons and literally dry up streams. 6

In 1908 Winters v. United States, the Supreme Court declared that Indians maintained riparian rights and that these rights were guaranteed through the many agreements and treaties, even if not explicitly detailed, between the federal government and the various Indian nations. This landmark decision has continued to influence the policy of the United States regarding Indian water rights for the past ninety-two years. This chapter will explore the history of Indian efforts in asserting these rights and demonstrate that the Winters Doctrine will continue to be valid well into the next century.

6 Wilkinson, Crossing the Next Meridian, 21.
However, every story must have a beginning and it is important to understand the early water policies of a developing and expanding United States.

Riparian law viewed the watershed as an integral natural unit. Water was valued as an amenity that added considerably to the worth and beauty of all parcels of land along the watercourse. Prior appropriation rejected the riparian doctrine. The first users got a guaranteed supply of water. There was no sharing of water. There was no need to preserve water in a watercourse. The doctrine of prior appropriations was the keystone of western water rights. It created the framework in which Indian-reserved rights operated. Eventually every western state adopted water laws based in principle on the doctrine of prior appropriations.

The West was semi-arid and the areas with the greatest need, cities, fertile farmlands, mines, were usually located in close proximity to water sources. Appropriation laws were well suited to meet the needs of farmers who depended on irrigation. The “First in time, First in right” doctrine was amenable as well to aggressive western cities which were spurred on by real estate interests wanting firm water rights for their desired developments.

However, the Indians residing in the West also had a claim to the water and its continued use was imperative for their continued existence as well. As the pressures of Euro-American encroachment upon their lands increased, the federal government adopted the policy of placing Indians in the West on reservations. By the 1890s all major Indian nations from the Mandan, Hidatsa, and Arikara to the Sioux and Navajo had been

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8 Ibid., 48.
relegated to life on government controlled reservations. Fifty percent of all the Indian lands and seventy-five percent of the Indian reservation populations lay within the zone of less than twenty inches of annual rainfall (the amount generally considered necessary for successful agriculture), and as Indians sought to improve their condition through economic development, the use of water for irrigation and for other uses became of supreme importance. During the 1930s and 1940s the demand for water, from both Indians and non-Indians, seemed bound to increase since the amount of water was strictly limited. The problem of Indian water rights and government protection of them would be a continuing one.9

Prior to 1904 all seventeen western states had developed comprehensive water right statutes reflecting the appropriation doctrine. According to Winters, the Bureau of Indian Affairs has a trustee’s responsibility to protect and conserve the Indian water resources until the tribes themselves decide on a future course of action. Indian water rights became a threat to state water rights. The uncertainty of the total scope of Indian rights created a great uncertainty for state water administrators.10

The actions of the United States with respect to Indian-reserved water rights are limited by its fiduciary duty as trustee to act for the benefit of the Indians. As a result, the federal government must affirmatively assert and defend Indian water rights. However, during the 1940s as the Pick-Sloan plan was being developed for the Missouri, the rights of the Three Tribes were never considered and largely ignored. In addition,

unlike Federal reserved water rights, which the United States must manage in the public interest, Indian rights may not be taken without the payment of just compensation.\textsuperscript{11}

Hints of federally recognized Indian-reserved water rights could be traced as early as the General Allotment Act (Dawes Act) passed on February 8, 1887. Section 7 stated:

That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is, hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.\textsuperscript{12}

Although the Dawes Act provided some credence to Indian-reserved water rights, the \textit{Winters} decision became the foundation for all future endeavors as Indians sought to secure access to water.

Indians of the Fort Belknap reservation in northern Montana regularly complained about off-reservation farmers and ranchers who diverted water from the Milk River before it could flow through their lands. Eventually their tribal government compelled their agent into action. Superintendent William R. Logan complained to the Commissioner of Indian affairs on June 3, 1905:

So far this spring, we have had no water in our ditch whatever. Our meadows are now rapidly parching up. The Indians have planted large crops and a great deal of grain. All will be lost unless some radical action is taken at once to make the


\textsuperscript{12} Francis Paul Prucha, ed., \textit{Documents of United States Indian Policy} (Lincoln: University of Nebraska Press, 1975), 174.
Logan's complaint eventually brought the matter to court, where he pled his case on the basis of prior appropriation. This doctrine, recognized by Montana, held that the first users of water had the senior rights to the resource. Judge William Hunt of the United States District Court decided that in agreeing to the terms of the 1888 treaty which confined them to the lands of Fort Belknap, the Indians were entitled to sufficient water to fulfill the purposes of that agreement. The treaty clearly indicated that the occupants of the reservation should "become self-supporting as pastoral and agricultural people." It did not matter whether non-Indian farmers and ranchers such as Henry Winter (whose name was erroneously entered as "Winters" in court documents) had a prior claim to the water. After the Ninth Circuit affirmed Judge Hunt's decision, the United States Supreme Court ruled on *Winters v. United States* on January 6, 1908.

Justice McKeena delivered the opinion of the Court:

The case, as we view it, turns on the agreement of May 1888, resulting in the creation of Fort Belknap Reservation. By rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians. The Indians had command of the lands and the waters, command of all their beneficial use, whether kept for hunting...or turned to agriculture and the arts of civilization. Did they give up all this? Did they reduce the area of their occupation and give up the waters that made it valuable or adequate? ... If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators. The power of the Government to reserve the waters and exempt them from appropriations under the state laws is not denied, and could not


14 Ibid., 41.
be. That the Government did reserve them we have decided, and for a use which would be necessarily continued thorough years. Decree affirmed.15

The declaration of water rights for Fort Belknap, which became known as the Winters Doctrine marked a fundamental turning point in the struggle of Indian people to remain on their lands. Not only did Winters buttress Indian claims to water rights; it offered additional testimony that Native people were not going to disappear. On Winters, the Supreme Court agreed that (1) in keeping with the policies of western states’ water rights, the date a reservation was established was to be considered the date water was reserved (2) unlike state prior-appropriations doctrine, reserved rights were not liable to extinction through non-use; and (3) right need not be quantified if the appropriated waters are used to fulfill the reservation’s purposes.16

<table>
<thead>
<tr>
<th></th>
<th>Winters Doctrine</th>
<th>Prior-Appropriations Doctrine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limit of right</td>
<td>Future need</td>
<td>Present use</td>
</tr>
<tr>
<td>Applicable uses</td>
<td>Meet purpose of reservation</td>
<td>Defined by state laws</td>
</tr>
<tr>
<td>Beneficial use required?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>State permit required?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Source of right</td>
<td>Reservation of land</td>
<td>Diversion and use of water</td>
</tr>
<tr>
<td>Origin</td>
<td>Federal courts</td>
<td>State courts, state laws</td>
</tr>
<tr>
<td>Officially sanctioned</td>
<td>Federal courts</td>
<td>State &amp; Federal courts/laws</td>
</tr>
<tr>
<td>Principal beneficiaries</td>
<td>Indians on reservation</td>
<td>Non-Indians</td>
</tr>
</tbody>
</table>

Dam and canal construction achieved its apex by the mid-1950s. Almost no major watershed in the West was left untouched. Indian tribes had prior rights under the reserved rights doctrine to significant quantities of the same water demanded by

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reclamation projects, but the delivery and storage systems built by both the United States Bureau of Reclamation (USBR) and US Army Corps of Engineers were for the benefit, almost exclusively, of non-Indians. In the case of the Pick-Sloan plan, the six main-stem dams conspicuously flooded more Indian than non-Indian lands and the affected reservations were unable to mount an effective defense against these plans. The BIA supported and the Department of Interior pushed for Missouri basin development. A classic case on conflict of interest ensued.

From the 1920s through the 1960s, reservoir capacity in the West mushroomed, expanding at the rate of nearly 80% per decade. The dams of the Colorado River watershed held back 72 million acre-feet of water in storage, nearly six times the annual flow of the river while Missouri River impoundment’s dammed up 85 million acre-feet. In the Pacific Northwest, reservoirs captured 55 million acre-feet; in California, the figure was 39 million acre-feet. Westwide, more than a million artificial reservoirs, lakes, and ponds stored more than 294 million acre-feet, enough to put Montana, Wyoming, Colorado, and New Mexico, under a foot of water.18 The most extensive impacts have involved Native Americans, whose established water rights have been expropriated in every corner of the American West. Along the upper Missouri tribes the loss of land was substantial. Fort Berthold lost 155,000 acres, the Sioux of Lower Brule, Cheyenne River, and Standing Rock an additional 260,000 acres. In the Pacific Northwest developments along the Columbia eradicated native fisheries and sacred locations such as Celilo Falls.

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18 Wilkinson, Crossing the Next Meridian, 259-267.
The *Winters* doctrine has provided few benefits to the tribes. *Winters* was common knowledge, but it was ignored, subverted, and circumvented. Taking the cue, state officials effectively read *Winters* out of existence through a business-as-usual approach of granting state water rights and allowing diversions that directly conflicted with Indian rights.¹⁹

Indian tribes did not and would not cease to assert their claims and several supporting court decisions would be delivered beginning in the 1920s. In 1921, the Ninth Circuit held in *Skeen v. United States* (273 F. 93, 9th Cir 1921), that the *Winters* rights were not limited to use on those lands under present cultivation on an Indian reservation but could be expanded to include the entire land holdings of a tribe. This decision also supported the ability of a tribe to lease its *Winters* rights in conjunction with the lease of tribal lands.²⁰

In *United States v. Powers* (305 U.S. 527, 1939), the Supreme Court reaffirmed the *Winters* doctrine and found an implied reservation for allotted lands without defining the extent or precise nature of the right to water. In the same year, the decision handed down in *United States v. Walker River Irrigation Project* (104 F.2d 334, 9th Cir. 1939), established that Indian-reserved water rights could be created, even if not expressly asserted, by Executive order as well as by treaty or agreement, putting most tribes on equal footing regarding the validity of water rights claims.²¹ Despite these declared victories, the tribes could do little to prevent the federal government’s and the American

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¹⁹ Ibid., 268.


²¹ Ibid., 25.
public’s desire to seize control of the waters in the West. During the 1930s era of large-scale water development, nearly every major western river and tributary was dammed.

Another federal nail in Indian water rights was the McCarran Amendment [43 U.S.C. 666 (1952)] which allowed state courts to adjudicate federal water rights acquired under state law. Although there is no mention of reserved rights or Indian water rights the implications of state adjudication would prove a setback for Indian sovereignty as well as their ability to assert their water rights. The 1952 McCarran amendment waived the government’s immunity from suit where “the United States is the owner of...water rights.” The waiver was later held by the Supreme Court to apply to Indian reserved rights as well as to all federal water rights.\(^{22}\) As will be seen in the *San Carlos* decision, the Supreme Court expanded the scope of the amendment holding that the Congress intended to include Indian water rights.\(^ {23}\) The impact of this outcome led many tribes to seek settlements outside the court rather than subject themselves to state court adjudication.

During the Eisenhower administration the only major Indian water-rights case decision was *United States v. Ahntanum Irrigation District* (236 F.2d 321, 9th Cir. 1956), in which the Ninth Circuit restated and enlarged upon its findings pointing out once more that the federally reserved water rights of tribes need not be fixed in quantity but may expand with the needs of the tribe. Subsequently the US Supreme Court denied an immediate appeal regarding the Ninth Circuit’s decision [cert. Denied 352 U.S. 988

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The court rejected any notion that the amount of water reserved to an Indian Reservation was to be measured by the Indian's needs at the time the reservation was created.

Water rights of Indians were a vital issue as Indians sought continued economic development of their reservations, and the basic document of Indian water rights remained the 1908 *Winters* decision. However, the specter of quantification, no matter how often rejected, would emerge to plague Indian efforts of prosperity and self-determination. The Three Affiliated Tribes would be no exception.

In regard to the critical issue of water rights, one example of how the federal government maintained the tradition of failing to abide by its own laws is the treatment of the Sioux and Three Affiliated Tribes on the Missouri. The federal agencies involved in the Pick-Sloan program have never acknowledged the legal provisions of the *Winters* Doctrine. Though their dams destroyed more Indian land than any previous public works, the Pick-Sloan administrators seemed not to have given more than an afterthought to the tribes of the Missouri Basin.

*Winters* was reaffirmed in 1963 in a most difficult context, the long-standing struggle among Arizona, California, and five other western states over the rights to the Colorado River in the parched Southwest. At the center of the struggle were the five Indian reservations of Chemehuevi, Cocopah, Yuma, Colorado River and Fort Mohave on whose behalf the federal government had asserted their rights to the water of the Colorado. Justice Black delivered the opinion:

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The Masters found as a matter of fact and law that when the United States created these reservations or added to them, it reserved not only land but also the use of enough water from the Colorado to irrigate the irrigable portions of the reserved lands. The Court in *Winters* concluded that the Government when it created that Indian Reservation, intended to deal fairly with the Indians by reserving for them the waters without which their lands would have been useless. We follow it now and agree that the United States did reserve the water right for the Indians effective as of the time the Indian Reservations were created. We also agree with the Master's conclusion as to the quantity of water intended to be reserved. He found that the water was intended to satisfy the future as well as the present needs of the Indian Reservations and ruled that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations. [Arizona v. California, 373 U.S. 546 (1963)]

Reserved rights attach to reservations, whether or not the instruments creating them mention water rights. In both cases, *Winters* and *Arizona*, the Supreme Court held that an implied reservation of water rights was made at the time the Indian reservations were created. In *Arizona*, the reserved water rights of Indians were expanded to include sufficient water for future needs and were not limited to those needs that prevailed at the time the reservation was established. The quantification issue was now addressed and the “practicably irrigable acreage” (PIA) standard would be an effective tool for tribes to assert their rights.

Since the *Winters* decision, Indian water rights had existed primarily on paper rather than in acre-feet, the amount of water needed to cover an acre of ground with an inch of water, or 326,000 gallons. The decision of the Supreme Court in 1963 in *Arizona*, indicated the future might hold more promise for the realization of those rights. In *Arizona* the Court concluded that Indian reservations on the lower Colorado River should receive almost one million acre-feet of water per year. The decision eventually expedited

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the delivery of water not only to these particular tribes but potentially to other groups in
the Southwest as well.26

The United States and Indian tribes vigorously resisted the inclusion of reserved
rights under the terms of the McCarran Amendment. First, the Amendment applied only
to water rights acquired under state law. Second, even if it did apply to reserved rights, it
did not apply to Indians. Indian rights were essentially privately owned property rights
the United States held in trust for the tribes, not water rights “owned” by the US
government. Finally, even if applicable in states with enabling acts that do not disclaim
jurisdiction (Colorado), it couldn’t apply in states with express disclaimers of jurisdiction
over Indian lands.27 Application of reserved water rights, by Indians, did not always
meet with success as both federal and state agencies continued to ignore Winters and
Arizona.

In 1967, the Bureau of Reclamation established the Yellowstone sub-basin
without regard to Indian water rights. At that time the Bureau sold the “surplus” water of
the Wind, Big Horn, and Yellowstone Rivers to twelve of the nation’s largest energy
corporations. The Wind River Indians in Wyoming and the Crow and Northern
Cheyenne tribes in Montana tribes were left with virtually no water for their own future
development, despite the supposed superiority of their legal claim.28 At took over thirty
years for the Interior Department to acknowledge the Winters Doctrine or Arizona to
quantify tribal needs and to compensate the Indians for the loss of their water rights.

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26 Iverson, “We Are Still Here”, 169.

27 Getches, Water Law, 15.
Another example of neglect occurred on November 29, 1967. The Crow nation requested 250,000 acre-feet per year from the Yellowtail Reservoir for use in coal development. The Bureau of Indian Affairs (BIA) supported the tribe's request. The US Bureau of Reclamation (USBR) determined, however, that only 110,000 acre-feet of the 640,000 acre-feet of water available for industrial purposes could be reserved for tribal development of coal land. The BIA, desiring to avoid lengthy adjudication, agreed to the amount and it was officially accepted. In October 1968, the Bureau of Reclamation reported the reservoir now produced 775,000 acre-feet of water per year for industrial use, however, it did not increase allocations to the Crow nation. The Indians came last in any determination of water allocations made by the USBR.

In 1973 the National Water Commission issued their findings on the government's efforts to protect and assert Indian water rights. The report stated:

Many large irrigation projects were constructed on streams that flowed through or bordered Indian Reservations. Sometimes above and more often below the Reservations. With few exceptions the projects were planned and built by the federal government without any attempt to define, let alone, protect prior rights that Indian tribes might have had in the waters used for the projects. In the history of the United States government's treatment of Indian tribes, its failure to protect Indian water rights for use on the Reservations it set aside for them is one of the sorrier chapters. For Indian-reserved rights, the Commission recommended that such rights be inventoried and quantified. The implications could mean that tribes with water rights quantified in acre-feet could own or control most of the waters impounded by western


reservoirs. The politics of such a decision could radically alter the distribution of water in the West to the economic benefit of the affected tribes. In the case of the Three Affiliated Tribes quantification could mean ownership of Lake Sakakawea.

A 1975 Department of Interior study identified a key issue as yet not clearly resolved by the courts; since the purpose of the Indian reservation was to provide an economic base for the Indian people residing therein, it must follow that Indian water rights were a right to use the available reservation water for any beneficial use including irrigation, livestock, domestic, power, recreation, industrial, and municipal purpose, and the maintenance of instream flows to protect biotic and aesthetic values inherent in reservation and related systems.31 The basic problem remains that the agency charged to protect the interest of the Indians continued to look to the courts to accomplish this purpose when the Congress should have intervened on the tribes behalf as required by the long standing trust relationship between the federal and tribal governments. Congress had been remiss to assert itself on this regard and was guilty of failing to fulfill its fiduciary responsibilities to the Indian people. The answer does not lie in the state or federal courts. It lies within the plenary power [Lonewolf v. Hitchcock, 187 U.S. 553, (1903)] possessed by a Congress that seems reluctant to exercise it. If Congress and the Executive Branch would clarify the tribal water rights, courts would not have to weigh each case after a problem occurs.

In 1976, the Supreme Court ruled that since the United States held title to Indian-reserved water rights in trust for the benefit of the Indians, the United States was the owner of the Indian-reserved rights within the meaning of the McCarran Amendment

Now both State and Federal courts had concurrent jurisdiction to adjudicate Indian and Federal reserved water rights. In the absence of congressional legislation, Native Americans have gone to court to assert their rights. This has led to 1) large-scale settlements and 2) a series of state-tribal-federal negotiated settlements.

Even though many Indian tribes did not know how much water they would need, tribes have not uniformly supported the concept of a final quantification of their reserved water rights, which the states have continued to favor. A typical declaration of this purpose by the states is evident in a letter, from then Attorney General for Washington State, Slade Gorton:

As to long dormant federal impliedly reserved rights held for Indians, the Indians should be provided a reasonable time period to exercise these dormant rights and, after the running of that period, all such rights still remaining dormant should be extinguished and the Indian beneficiaries compensated in the amount, if any, required by the US Constitution (Letter from Slade Gorton to Henry Eshwege, GAO, July 18, 1978).

Two prominent national Indian organizations the National Congress of American Indians (NCAI) and the National Tribal Chairmen’s Association (NTCA), expressed opposition to quantification in a their joint statements issued in 1976 to Assistant Secretary of the Interior for Indian Affairs. They stated:

Quantification of Indian Winters Rights is neither necessary nor desirable at this time. A final determination, made at any given date, is inconsistent with the

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32 Ibid., 68.

33 Ibid., 82-83.
open-endedness of the right itself (Letter to Henry Eshwege, GAO, July 10, 1978).\(^{34}\)

The NCAI also recommended in their letter that the States and non-Indians be challenged to place a ceiling on their own water use, rather than calling for Indians to place a ceiling upon their water rights. They also called for the termination of federal subsidies to all non-Indian water development in the West. Both the NCAI and NTCA asserted that Indians must be allowed to participate in the planning and decision-making process for their watershed.\(^{35}\)

Congress continued to ignore the rights of Indians and their rights were played out in the courts instead. In 1978, *United States v. New Mexico*, 438 U.S. 696 (1978) Justice Rehnquist writing for the majority declared that:

> While many of the contours of what has come to be called the 'implied-reservation-of-waters-doctrine' remains unspecified, the Court has repeatedly emphasized that Congress reserved "only that amount of water necessary to fulfill the purpose of the reservation," no more.\(^{36}\)

The implications of this decision were that Indian-reserved water rights continued to reside in the idea of the "specific purpose for which the land was reserved," determination of which has yet to be clearly defined and remains clouded to this day. In 1979, the state water engineers for New Mexico stated, "Historically, Congress forgot to address the issue [of Indian water rights]. Today the potato's gotten so hot Congress wouldn't touch it with a ten-foot pole."\(^{37}\) Since the Congress was reluctant to resolve the issue, the tribes would assume the initiative to avoid state court adjudication and obtain

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\(^{34}\) Letter from the NCAI to Henry Eshwege, July 10, 1978 quoted in Ibid., 104-105.

\(^{35}\) Ibid.

settlements themselves from the States. In effect, they were exercising their inherent sovereignty.

Congress has continued to play its more limited role of ratifying individual large-scale agreements involving the disposition of Indian water resources. Measures such as the Navajo Indian Irrigation Project Act, the Ak-Chin and Papago groundwater settlement agreements, and the Mission, Ute, and Pima settlement were bargains ratified or authorized by Congress and were all situations in which the tribes agreed to limit or defer Winters rights in return for guaranteed water delivery.38

Negotiation, rather than litigation, has emerged as the principal vehicle for assertion and substantiation of Indian water rights. Typical of many deals was the Southern Arizona Rights Settlement Act (SARSA) which settled the long-standing claims of the San Xavier Reservation and Schuk Toak District (Oct 1982; P.Law 97-293). The act provided a total of 76,000 acre-feet of water, including 27,000 acre-feet of Central Arizona Project water for San Xavier. The act also provided $15 million in trust funds; interest and dividends could be spent for subjugation of land, development of water resources, construction, operation, and maintenance of on-reservation facilities.39

Native Americans did not always gain something; perhaps the worst setback for Indian-reserved rights involved tribal attempts to reopen or expand upon court decisions quantifying their rights. In Nevada v. United States, 463 U.S. 110 (1983), the Court rejected an attempt by the Pyramid Lake Paiute Tribe to litigate its claim for water to

37 McCool, Command of the Water, 61.
38 Burton, American Indian Water Rights, 59.
satisfy the purpose of setting aside the reservation as a fishery.\textsuperscript{40} Similarly, reopening of \textit{Arizona v. California}, [460 U.S. 605 (1983)] the five Colorado river tribes were denied the opportunity to present evidence on various irrigable lands that had been omitted from the governments claim because of neglect, mistakes by federal attorneys, or because the reservation boundaries had not been finally determined at the time of the original 1963 decision. Although not a major setback, during this period of settlements it seemed unlikely that the tribes would be successful in recovering from old wounds and mitigated rights.

Since 1982, Congress has approved fourteen settlement agreements to resolve the reserved water rights claims of several Indian tribes. Each of the agreements contained four common elements:

1. Federal investment in water development facilities without impairing established non-Indian uses
2. Significant non-federal cost sharing
3. Creation of substantial Indian trust funds used by tribes to develop their water and for other purposes
4. Limited off-reservation water marketing to gain economic benefits.\textsuperscript{41}

The tribes have taken it upon themselves to overcome congressional hurdles and quite effectively asserted their rights and achieved guaranteed levels of support. The following table illustrates the extent and volume of the cost and acre-feet of water associated with these agreements.


\textsuperscript{40} Getches, \textit{Water Law}, 16.

\textsuperscript{41} Ibid., 21.
Table 2. Summary of Enacted Western Indian Water Claims Settlements\textsuperscript{42}

<table>
<thead>
<tr>
<th>Settlement</th>
<th>Year of Settlement</th>
<th>Quantity of Water (Acre-feet)</th>
<th>Estimated Total Federal Cost (millions of $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Carlos</td>
<td>1992</td>
<td>150,000</td>
<td>38.4</td>
</tr>
<tr>
<td>Jicarilla Apache</td>
<td>1992</td>
<td>32,000</td>
<td>6.0</td>
</tr>
<tr>
<td>Northern Cheyenne</td>
<td>1992</td>
<td>91,300</td>
<td>56.5</td>
</tr>
<tr>
<td>Fort Hall</td>
<td>1990</td>
<td>130,000</td>
<td>22.0</td>
</tr>
<tr>
<td>Fort McDowell</td>
<td>1990</td>
<td>36,400</td>
<td>66.0</td>
</tr>
<tr>
<td>San Luis Rey</td>
<td>1988</td>
<td>16,000</td>
<td>32.0</td>
</tr>
<tr>
<td>Salt River Pima-Maricopa</td>
<td>1988</td>
<td>122,000</td>
<td>60.0</td>
</tr>
<tr>
<td>Colorado Ute</td>
<td>1988</td>
<td>119,300</td>
<td>184.0</td>
</tr>
<tr>
<td>Fort Peck</td>
<td>1985</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Tohono O’odham</td>
<td>1982</td>
<td>66,000</td>
<td>143.0</td>
</tr>
<tr>
<td>Ak-Chin</td>
<td>1978, 1984</td>
<td>85,000</td>
<td>93.0</td>
</tr>
<tr>
<td>Utah Ute</td>
<td>1965, 1992</td>
<td>--</td>
<td>198.5</td>
</tr>
<tr>
<td>Navajo</td>
<td>1962</td>
<td>508,000</td>
<td>602.0</td>
</tr>
</tbody>
</table>

Citing congressional intent in *Arizona v. San Carlos Apache Tribe*, [103 S.Ct 3201 (1983), revd. and remanded] the Court held that state courts were the preferred forum in which to adjudicate Indian water rights, and it indicated that the McCarran Amendment waived the sovereign immunity of the Indian tribes.\textsuperscript{43} The Court concluded that concurrent jurisdiction existed in regards to both Indian and non-Indian water claims but gave preference to state court proceedings. The basis for their decision was not founded upon constitutional grounds nor even the [McCarran] amendment itself, but as Justice Brennan wrote, on consideration of “wise judicial administration giving regard to conservation of judicial resources and comprehensive disposition of litigation.”\textsuperscript{44} In effect the Court reversed the previous policy of allowing Indian property rights to be adjudicated only in federal courts, and did it primarily on grounds of judicial efficiency. When viewed in the context of previous Court holdings in cases involving the

\textsuperscript{42} From McGuire, *Indian Water*, 29.


\textsuperscript{44} Supreme Court Justice Brennan quoted in Ibid., 203.
adjudication of Indian rights and Indian tribal sovereignty, it is clear that the *San Carlos* case broke a long tradition of leaving the tribes free from state jurisdiction.

The issue of quantification and use of water continued to be played out in the courts as states and Indian tribes reached impasses towards equitable settlements such as those in the table above. In *Wyoming v. United States* [492 U.S. 406 (1989), the state petitioned for *certiorari*, attempting to get the Court to find that the application of the PIA standard was unfair and improper under the circumstances of the case. The Tribes claimed denial of the right to water for energy development, and objected to being held to a standard of irrigation efficiency in future water development more rigorous than applied to non-Indians. The Supreme Court only heard the state's case regarding the "PIA" standard, ignoring the Indian claims altogether.45 The decision in *Wyoming* confirmed state court quantification of Indian reserved water rights and reaffirmed the general principle of reserved rights traceable to *Winters* and *Arizona I*. This judicial doctrine seems sealed by congressional acquiescence.

Most of the twentieth century passed without the tribes being able to enjoy the full benefits of the *Winters* Doctrine and thus without unduly upsetting the established uses of non-Indians or even preventing new uses. Water has become a symbol to Indians in their determination to remain Indian and preserve their traditional homelands and sovereignty. By helping Indians obtain water the government can assuage some of the bitterness caused by past injustices.46


In the absence of congressional action, the Justice Department was saddled with the nearly impossible and ethically questionable mission of representing both sides, the Indians and the Bureau of Reclamation. In sum, bureaucratic implementation of Indian water rights was a confused and contradictory process with unclear goals, unclear lines of authority, and inequality in relative bureaucratic resources.\footnote{Ibid., 62} Probably the most significant institutional barrier-blocking fulfillment of Indian water rights concerns the structure of the Department of the Interior. The Bureaus of Reclamation and Indian Affairs are both within the same department, so conflicts between the two were often resolved in behind-the-scenes political bargaining.\footnote{\textit{Berkman, Damming the West}, 193.}

Despite the apparent setbacks of \textit{San Carlos} and \textit{Arizona II}, there appears within the Supreme Court a return to recognition of Indian-reserved water rights. The McCarran Amendment waived the sovereign immunity of the United States to permit states to join the federal government in a suit to determine the water rights of users of a river system in stream adjudication. In 1976, the US Supreme Court held that federal water rights reserved for Indian tribes could be adjudicated in state courts.\footnote{See \textit{Colorado River Water Conservation District v. United States}, 424 U.S. 800 (1976).} The 1983 \textit{San Carlos} decision extended the waiver of sovereign immunity to states that had disclaimed jurisdiction over Indian lands as a condition of statehood.\footnote{This included the states of Alaska, Arizona, Idaho, Montana, New Mexico, North Dakota, South Dakota, Oklahoma, Utah, Wyoming, and Washington.} The Supreme Court, however, in the case of \textit{United States v. Nordic Village, Inc.}, 112 S. Ct 1011 (1992), significantly redirected a historical tendency towards liberal construction of waivers of
sovereign immunity, stating (1) that the McCarran Amendment should never have been interpreted to permit adjudication of Indian water rights in state courts, and (2) that opponents of state adjudication of Indian water rights have new, legal support from the Court, itself, in *Nordic Village*, for asserting that Indian water rights should be exempt from state court adjudication under the McCarran Amendment and (3) that Indian rights should be adjudicated and defended in the more hospitable environment of federal courts.\(^{51}\)

Since the 1700s the government made treaties that promised Indians that the remnants of their traditional lands and reservations could not be taken from them, including the water that gave them life.\(^{52}\) The government also encouraged millions of settlers to move west to take up residence, while the states clearly sanctioned their water rights. Herein lies the paradox of western water law since the solution that confiscates water from non-Indians in order to meet the government’s obligation to Indians would simply create a new set of victims.\(^{53}\)

The *Winters* Doctrine after over ninety years of application, hundreds of law-review articles, and thousands of court cases, still abounded with unanswered questions. The great value of the *Winters* Doctrine to Indians today remains its open-endedness. It is so vague that a nearly limitless variety of claims can be filed under it. That sense of uncertainty may well prove to be the tribe’s greatest weapon in the twenty-first century.


\(^{52}\) From the *Trade and Intercourse Laws* of the 1700s to the last treaties of the late 1800s, Indians were consistently promised fair treatment and a viable land base.

By the 1940s, the Missouri River Basin was the last bastion of a major free-flowing western river. Following the disastrous floods of 1943 the public cried out for control of the river known as the “big muddy.” The Flood Control Act of 1944 called for 319 projects, including 112 dams throughout the basin, yet the eleven Indian tribes of the upper Missouri, all poor, all suffering from massive unemployment, would receive almost nothing from the plans’ implementation. The Three Affiliated tribes of the Fort Berthold reservation, promised occupation of their lands in perpetuity by the federal government in Fort Laramie Treaty of 1851, would see their land and water rights denied and subjugated by developers and downstream concerns.
CHAPTER THREE

FLOODED DREAMS: PICK-SLOAN AND THE COMING OF GARRISON DAM

The Missouri River was an enigma. Despite over a century of human attempts to understand and control it, America’s longest waterway remained a perplexing and mysterious entity until the mid-twentieth century. As the principal tributary of the Mississippi, the Missouri at 2,464 miles is the longest river in North America (the Mississippi by comparison is 2,350 miles long). Flowing out of the Rocky Mountains and across the Great Plains, the Missouri joins the Mississippi just north of St. Louis draining a basin of more than 528,000 square miles. The Central Plains section through which the Missouri flows is one of great climatic instability. Although amounts much higher and much lower occur, the average annual precipitation is about 15 inches.¹

Before the coming of the white settlers, short grasses covered the upland surfaces, while the green foliage of deciduous trees marked the courses of the streams hidden below the level of the plains.²

The Missouri River valleys were elongated oases with environmental conditions conducive to agriculture. Before the dams, the river meandered back and forth across the flood plains from 200 to more than 400 feet below the adjacent upland plains. The


Indians farmed the rich alluvial soil and cleared the densely wooded areas of cottonwoods and willows for timber and shelter.\(^3\)

The Missouri River bottom was a garden spot in a forbidding country and it was here in 1862, near the modern day city of Bismarck, North Dakota, that the Arikara joined the Mandan and Hidatsa who had been living along the Missouri since the mid-1700s.\(^4\) Here in these valleys they flourished as bankers and traders with their villages serving as the principal way stations along the river. Their valley homes abounded with game and provided shelter in the substantial forests that grew along the river margin. Along the lower slopes of these deep valleys were perennial springs. The valley had fertile land for farming, wild fruits, and river access for fishing. (Figure 1) The hillsides provided lignite for fuel. There was grass, water, and shelter all that the Three Tribes required.\(^5\)

The Three Tribes\(^6\) were not completely sedentary and ventured up onto the plains to hunt buffalo and other game. It was the valleys, however, that provided the bulk of their sustenance. There they grew varieties of beans, numerous types of squash, flint corn, dent corn, sweet corn and many other garden crops. They bred these vegetable species to survive the cold springs and short summers of northern latitudes.\(^7\) Despite

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\(^4\) Ibid., 42.


\(^6\) The Three Affiliated Tribes, the Mandan, Hidatsa and Arikara will henceforth be referred to as the Three Tribes.

\(^7\) Ibid., 42.
pandemics and predation by their aggressive neighbors, principally the Lakota Sioux, the Three Tribes would maintain their valley homes for hundreds of years.\(^8\)

Figure 1. A View of Missouri Bottomlands Below Fort Berthold ca. 1868\(^9\)

This chapter is the story of the Missouri and the nations desire to control and harness its power at the expense of the environment and Three Affiliated Tribes on the Fort Berthold Indian Reservation in North Dakota. It is a story of a people whose dream was to remain upon their lands to continue their journey towards prosperity and self-


sufficiency. The dreams of the Three Tribes to exist within the larger culture while maintaining their rich heritage were subjugated for the dreams of developers, lower-Missouri basin states and the US Army Corps’ desire to control a river.

In the September 1851 Treaty of Fort Laramie, the US government in exchange for vast areas of traditional domain, made solemn promises that the Three Tribe’s choice homeland the river valley, as well as additional uplands in all some 12.5 million acres, should be theirs in perpetuity along with goods, services, and money.\textsuperscript{10} It was during this time that the government began to recognize the three separate tribes as a single political entity. This treaty was not a generous gift from the government, but the purchase price for an ancestral domain.\textsuperscript{11}

Although the Three Tribes never occupied much of the original 12.5 million acres allotted them by the original treaty, in accordance with federal Indian policies current at various times since 1851, reservation acreage was substantially reduced.\textsuperscript{12} Often these reductions occurred without the knowledge and consent of the Indians. The first reduction occurred on April 12, 1870, when the Fort Berthold Indian Reservation was formally created by an executive order. In 1880 the reservation was reduced again to around 3 million acres by another executive order to provide land for railroad
construction and continuation of westward settlement and regional development. By 1944, the time of the Garrison Dam, gross acreage remaining on the reservation was around 643,368 acres: 579,838 trust lands and only 63,150 in the private hands of both Indian and non-Indians.¹³ Trust lands are defined as acreage with the title being held by the United States government "in trust" while guaranteeing full-utilization by a sovereign, Indian peoples such as the Three Tribes.¹⁴ (Figure 2)

Figure 2. Map of North Dakota and Other States Showing the Reduction of the Fort Berthold Indian Reservation, 1851-1948¹⁵

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¹³ Schneider, *North Dakota Indians*, 142.

¹⁴ Prucha, *The Great Father*, 1202-1206.
Indian land use was changing as well. Prior to 1870 the traditional system of small patches of land separated by strips of weeds left growing remained predominant. By the 1880s agricultural practices on the reservation approximated those of non-Indian settlers on the plains. Potatoes, turnips, and other vegetables introduced by Europeans gained acceptance and did very well in the Missouri basin environment. The Three Tribes were very successful in embracing agricultural practices promoted by the Bureau of Indian Affairs (BIA) to facilitate their “civilizing” and assimilation. Jacob Kauffman, the BIA agent in 1881, viewed the progress of the Three Tribes as a successful experiment. In the 1890s the federal government undertook concentrated efforts to make the Fort Berthold people self-supporting through farming and cattle production. Despite occasional droughts, increased acreage devoted to wheat production created a surplus, a testimony to the successes of the Three Tribes and potential realization of their dream of self-sufficiency. The lands on the reservation proved fertile and productive as the Three Tribes continued to prosper into the 1920s. By 1926, more than 63,411 acres of rich, river bottom was in production for the Three Tribes, either for agriculture, or more prominently, leased to non-Indian ranchers for cattle grazing.


17 Kauffman quoted in Meyer, Village Indians, 132.

18 Ibid., 152.
Looking back on the American West and in particular the use of water in the development of western water resources, one of the early and immensely influential characters is found in the persona of Major John Wesley Powell, geologist, explorer and bureaucrat. He became a self-appointed champion of state water rights as opposed to federal or private control. Speaking to the North Dakota State Constitutional Convention in 1889 he said, “Civilization was born in arid lands, the largest populations have depended on irrigation, so it is an old problem. All you have to do is to learn the lessons already taught by history … lands you depend on depend on placing the water on the soil, when you have learned to do that you are in no unfavorable conditions.” The dreams, however, of farmers to produce and boosters to develop urban centers in North Dakota clashed with the desire of the Three Tribes to exist in harmony with the land and the dominant culture.

Powell warned that the quest to control water in the west would always be a battle waiting to happen; North Dakota would be no different. Powell was a staunch advocate for states’ rights and local popular control of water for irrigation, “Don’t let these streams get out of the possession of the people. Fix it in your constitution that no corporation, no body of men, no capital can get possession of your waters.”

Powell went on to describe the North Dakota environment as follows: “The state of North Dakota,” he said, “has a curious position geographically in relation to agriculture. The eastern portion of the State has sufficient rainfall for agricultural


20 Powell quoted in Ibid., 201.
purposes; the western part has insufficient rainfall and the western portion is wholly
dependent on irrigation."\textsuperscript{21} Hence the reclamation dream of irrigation to make the
"prairie bloom" would be applied to justify development and the harnessing of the
Missouri River.

The Missouri basin either furnishes too much water as in the floods of 1884,
1881, 1943, and 1951, or too little, as during the severe droughts of the 1860s, 1890s,
1920s and the dust bowl years of the 1930s.\textsuperscript{22} The United States Army Corps of
Engineers\textsuperscript{23} sought to discipline the mighty Missouri during the 1940s. Just as John
Wesley Powell advocated, control of the river with its raw and unbridled power was a
ripe prize for the Corps. But why was Missouri River development necessary when
North Dakota’s population was relatively sparse and other regions in the country were
producing sufficient amount of grain and cattle? Was additional irrigation and damming
necessary for the prosperity of the country? The river provided the answer to these
questions in 1943.

Missouri flooding claimed six lives, 70,000 acres of fertile bottomland and $8
million in damages in Omaha on April 12, 1943. In May another 540,000 acres were
inundated by its waters, causing an additional $7 million in damages. In June, after
960,000 acres and $32.5 million in damages in Kansas and Missouri, the call went forth
for control of the mighty Missouri.\textsuperscript{24} Between 1936 and 1950, some 200 people were

\textsuperscript{21} Powell quoted in Ibid., 202.

\textsuperscript{22} Lawson, \textit{Dammed Indians}, 3-4.

\textsuperscript{23} The United States Army Corps of Engineers will henceforth be referred to as simply “the Corps.”

\textsuperscript{24} Marian E. Ridgeway, \textit{The Missouri Basins’ Pick-Sloan Plan: A Case Study in Congressional Policy
killed and another 250,000 displaced by the river’s rampaging waters. This was the environment that would see the Pick-Sloan Plan developed in order to tame the river known as the “big muddy” and continue western water development which began in earnest some twenty-years earlier.

Severe flooding in California’s Imperial Valley in the mid-1920s inspired the first truly large-scale multiple-purpose water project. Hoover Dam on the Colorado provided flood control and irrigation with the added bonus of hydroelectric power to finance its construction and maintenance. The Hoover Dam set the precedent for the large federal water projects typical of the New Deal and post-WWII periods: Grand Coulee Dam on the Columbia and the upper Colorado, and Missouri River basin projects. During the 1930s Congress directed the Corps to study systematically the potential of some 200 rivers for navigation, hydropower, flood control and irrigation. The resulting “308 reports” laid the foundation for nationwide water resource development implemented during the Depression and post-war years.

Western water development programs represented the triumph of the New Deal and the Progressive era ideal by demonstrating that government would not merely preserve but effectively control, manage, and improve the workings of natural processes for human benefit. The progressive dream plus the promise of lucrative or pork-barrel federal dollars created a powerful synergy that left Indian tribes without a voice or platform to assert their rights to waters under proposed development despite the


affirmation of these rights by the *Winters* decision. The advent of federally financed flood control, however, created a powerful new opportunity for congressmen to seek pork-barrel projects to benefit their own districts. During the period from 1936-1976 the Corps built over 400 multi-purpose dams in 42 states. When combined with the U.S. Bureau of Reclamation (USBR), Tennessee Valley Authority (TVA), and Soil Conservation Service projects, nearly all major rivers and tributaries within the United States was dammed.\(^{27}\)

During the drought years of the 1930s lower Missouri valley residents and states opposed Dakota dams, fearing reduced river levels and reduced navigation channels to support barge traffic. After the devastating floods of 1943, however, views changed as downstream states realized that the only way to protect their cities, farms and $185 million navigation channel was through upstream dams on the Missouri in North and South Dakota and Montana.\(^{28}\) This new demand for dams meant that dams on or near Indian lands were eminent.

The prevailing attitude of many Americans in 1943 towards the environment was reflected in the statement of Col. Miles Reber, Division Engineer of the Missouri District at the 1943 Irrigation War Food Conference held in Bismarck, "America was carved from wilderness, plains and mountains. Man proved himself fit to survive.\(^{29}\) The Missouri River was the last great river yet to succumb to man's quest for control. The Corps set

\(^{27}\) Ibid., 165.


out systematically to convince the states of the Missouri Basin that plans for harnessing the river needed their support and would benefit the entire region.

The timing of the '43 floods now focused congressional, presidential, and national attention on the Missouri. Speaking at the Missouri River States Commission (MRSC) on May 21, 1943, Colonel Lewis A. Pick of the Corps asserted:

>The Missouri River Valley is the last great valley in the U.S. whose water potentialities have not been developed. If the river is not properly under control the results will be disastrous.\textsuperscript{30}

Two separate elements of the Euro-American dream about the river now converged: the dreams of the downstream states of the Missouri Basin to eliminate the annual flooding, and the dreams of the upper basin states for irrigation. The MRSC's public-relations strategy, highlighting the dangers of an uncontrolled Missouri River, proved successful in gaining widespread public acceptance of building dams and reservoirs along the upper river. Harry Trustin, the editor of the Bismarck Tribune, who was also the vice-chairman of North Dakota State Water Conservation Commission wrote:

>Colonel Pick is the first responsible official of the Federal Government to put into words the dream that forward-looking North Dakotans long have entertained. That is, to make the fullest use of the Missouri River, this State's greatest resource. If he fails to make his dream come true, it will not be because North Dakota failed to back him up.\textsuperscript{31}

Speaking before the MRSC, Senator Guy M. Gillette of Iowa stated:

>I have never before been an enthusiast about Missouri River improvements. Today I heard for the first time a comprehensive, definite plan for the development of the whole Missouri River watershed. It isn't to help Council

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\textsuperscript{30} Colonel Pick quoted in Ibid., 169.

\textsuperscript{31} Trustin quoted in Bismarck Tribune, 16 June 1943.
Bluffs. It isn’t to Help Fort Peck. It isn’t to help Bismarck. It isn’t to help Sioux City. It is to help the entire area -- because that proposal has been made, because it is comprehensive, because it is national in its scope and in its purpose, I am a convert.32

Governor John Moses of North Dakota spoke at the MRSC’s Bismarck meeting, and pointed out that North Dakotans realized their state’s future was completely tied up with the river. He urged the eight-state region to work in cooperation for the mutual benefit of all. “We will have to be valley-conscious,” he said, “instead of state-conscious.”33

Speaking at the same meeting, North Dakota Senator Gerald P. Nye declared his support for Missouri development. “As a Member of Congress there is not a thing that I can do that I won’t do to obtain the authorization and appropriations that we need for this magnificent project.”34 Missouri project rhetoric, based on reclamation ethics of a bygone era, succeeded because pro-developers in North Dakota, the Corps and downstream states feared the repeat of 1943 and an uncontrollable river.

Talk of diverting the Missouri River was not new in the 1940s. As early as 1889 proposals circulated through Washington, D.C. on proposed diversions of water for irrigation, not flood control, in North Dakota.35 In 1931, Corps engineers investigated the site later used for the Garrison Dam but found it “entirely impracticable,” both because the foundation materials lacked “sufficient crushing strength” to support a high dam and

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33 Quoted in Ibid., 13.

34 Quoted in Ibid., 14.

because, like all sites below the Yellowstone River, it would be subject to rapid silting. Major General Lyttle Brown, then Chief of Army Engineers in 1932, concluded that further consideration of flood control dam at the Garrison site would be unjustified. Ironically, what one generation of engineers felt was unfeasible another considered practical. However, site selection included many other factors, which were not in the interest of Indians.

Site selection was always a tricky business and required both geological and logistical considerations. Engineers had to consider sites near major transportation centers and in close proximity of towns, hospitals and recreation facilities to house and support the workers. Typical of most western water projects, and the reason the site was rejected in 1931, none of the desired infrastructure was present at the Garrison site, leading to the construction of the government town of Riverdale in 1947.

Geological factors also weighed heavily in the selection process. A narrow valley is more conducive to dam construction for two simple reasons: cost and safety. Dams in lower reaches of the river would cost exorbitant amounts of money because of earth fill required to stem the river’s flow through wide valleys. Also, they were more likely to experience failure because subsurface mineral deposits are less stable over long periods of time. Dams in narrow valleys required less fill and when placed between cliffs


37 Ibid.


39 Ibid., 17.
permitted the use of concrete like the dams along the Columbia and Colorado. The Missouri had few places of this sort suitable for dam construction.\textsuperscript{40}

Despite these physical limitations there loomed a more insidious reason for the selection of the Garrison site. The Corps’ 1944 Comprehensive Report on Plan Improvement stated:

In determining the location of multi-purpose reservoirs, consideration must be given to the existence of cities that might be wholly or partially inundated by these reservoirs, such as Bismarck and Williston in North Dakota. Accordingly, the sites described in this report have been selected at such distances downstream from these cities that sufficient storage [in reservoirs] will be provided without undue flooding of expensive real estate.\textsuperscript{41}

The lands to be flooded by the Garrison dam, mostly Indian, were not considered as valuable as land and development near the non-Indian communities of Williston and Bismarck. The dam was to be sufficiently above Bismarck to protect it and far enough below Williston to avoid flooding it. Felix S. Cohen, the Department of Interior Solicitor, stated in a memo to Commissioner Brophy that “the Garrison site was selected by reason of the fact that a large proportion of the inundated area would be composed of Indian lands.”\textsuperscript{42} Another reason for selecting the Garrison site was its location above Bismarck. The storage limit for Garrison reservoir was dictated by the need to avoid damages imposed upon and in the vicinity of Williston, near the Montana border. By late 1944 the Corps, USBR and MRSC had agreed to the site centered just below the Fort

\textsuperscript{40} Additional insight on Missouri basin dam selection is provided by Robert Kelley Schneiders, “Flooding the Missouri Valley: The Politics of Dam Site Selection and Design,” \textit{Great Plains Quarterly}, 17 (Winter 1997): 237-249.

\textsuperscript{41} US Army Corps of Engineers, “Plan of Improvements,” 18.

\textsuperscript{42} Cohen to Brophy memo quoted in \textit{Sanish Sentinel, (N.Dak.)}, July 1, 1943.
Berthold Indian Reservation.\textsuperscript{43} There was no Indian representation in this process within the MRSC, and neither the Corps nor the USBR ever solicited tribal input regarding the Garrison site selection prior to 1944.\textsuperscript{44} Indian desires of preserving their lands and communities were ignored in order to make the Pick-Sloan plan a reality.

The Pick-Sloan Plan has been called a compromise brought about by a shotgun wedding and it certainly was a curious alliance between the Corps and the USBR, New Deal rivals. Colonel Lewis A. Pick, of the Corps, threw together his plan in just under ninety-days. Only ten pages long, it emphasized flood control through the construction of five main-stem dams, to include the Garrison site originally rejected by the Corps in 1931. W. Glenn Sloan, assistant director of USBR at Billings, Montana, completed a more detailed analysis of Missouri development over a five-year period. His plan placed greater emphasis on irrigation and did not include a dam at the Garrison site stating that sufficient flood control was achievable by the proposed Fort Peck, Oahe, Big Bend, Fort Randall, and Gavins Point dams. The Sloan plan opposed the Garrison site because it would only increase upstream navigation in Sioux City by 800 feet and the other proposed main-stem dams would be sufficient for flood protection.\textsuperscript{45} These two federal juggernauts went head-to-head, each seeking to gain the upper hand and lucrative dollars associated with Missouri Basin development. The battle lines were drawn along state lines.

\textsuperscript{43} US Army Corps of Engineers, "Plan of Improvements," 18.

\textsuperscript{44} Ridgeway, The Missouri Basin's, 56.

\textsuperscript{45} Meyer, Village Indians, 211-12.
The Pick Plan was submitted to Congress on March 2, 1944, and instantly contested by the US Bureau of Reclamation (USBR) and the National Reclamation Association (NRA) because of a fear that excessive concern for lower basin navigation and flood control would override potential water uses in the upper basin.\textsuperscript{46}

The Sloan Plan was submitted to Congress a week later and supported by the NRA, the railroads, Department of the Interior, and most western governors. North Dakota, Wyoming and Montana presented united testimony favoring upstream irrigation as preferred use against downstream navigation and flood protection.\textsuperscript{47} However, the flood protection aspects loomed largest in the minds of a sympathetic public and the powerful, down river congressional delegations. With the recent memories of the 1943 disaster prevalent in lower-basin communities, the public sought final liberation from the rampages of a wayward Missouri River. Upper-basin dams would go a long way toward preventing increased Mississippi water levels like those seen during the great floods of 1927 and 1943. Both agencies felt the pressure to merge the two plans into a single comprehensive plan or face the establishment of a Missouri River Authority (MVA), which neither supported, and the loss of control which they both desired to maintain.

Another factor leading to the merger of the Plans was the introduction and support for establishing a Missouri River Authority (MVA) patterned after the TVA. President Franklin Roosevelt was a staunch supporter of this initiative although the MRSC, the


\textsuperscript{47} Ibid., 64.
Corps and the USBR vehemently opposed the idea of an MVA. The Corps especially desired to maintain control of construction and maintenance of the five main-stem dams proposed by the plan. Then on October 16 and 17, 1944, Pick and Sloan met in Omaha and created a compromise. They produced a short six-page paper, which was incorporated into the Flood Control Act and passed into law by Congress on December 22, 1944. This compromise permitted the Corps to construct and maintain the main-stems dams, including the Garrison site originally opposed by Sloan, while the USBR would build smaller dams along the tributaries and canals for irrigation. Although the Three Tribes had no way of knowing it, their fate was sealed by this piece of legislation, which they had no part in planning and on which they had never been consulted. The Tribes, however, did not readily accept this fate.

Table 3. Comparison of Proposed Reservoirs created by the US Bureau of Reclamation and US Army Corps of Engineers Plans

<table>
<thead>
<tr>
<th>Name of Dam &amp; Reservoir</th>
<th>Name of Stream</th>
<th>USBR Plan (acre-feet)</th>
<th>Corps Plan (acre-feet)</th>
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<tr>
<td>Livingston</td>
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<td>Mission</td>
<td></td>
<td>892,000</td>
<td>Omitted</td>
</tr>
<tr>
<td>Boysen (low)</td>
<td>Big Horn</td>
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</tr>
<tr>
<td>Boysen (high)</td>
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<td>Omitted</td>
<td>3,500,000</td>
</tr>
<tr>
<td>Kane</td>
<td></td>
<td>750,000</td>
<td>Omitted</td>
</tr>
<tr>
<td>Yellowtail</td>
<td></td>
<td>470,000</td>
<td>Omitted</td>
</tr>
<tr>
<td>Ft. Peck</td>
<td>Missouri</td>
<td>19,500,000</td>
<td>19,500,000</td>
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<tr>
<td>Medicine Lake</td>
<td>Off stream</td>
<td>5,200,000</td>
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<tr>
<td>Crosby</td>
<td></td>
<td>230,900</td>
<td>&quot;</td>
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<tr>
<td>Des Lacs</td>
<td>Des Lacs</td>
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49 Thorson, River of Promise, River of Peril, 67.

50 Meyer, Village Indians, 212.

51 John T. Tucker, “Comparison of Reports by USBR and Corps of Engineers as based on the ND water plan of 1942 for the Comprehensive Development of the Water Resources in the Missouri Basin,” (Washington: The Author, 1944), .34. NDSWCTRL.
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<th>Sheyenne</th>
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<td>Jamestown</td>
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<td><strong>Garrison</strong></td>
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<td>Oahe</td>
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<td>Big Bend</td>
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<td>Ft. Randall</td>
<td>&quot;</td>
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<tr>
<td>Gavins Point</td>
<td>&quot;</td>
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</tr>
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<td><strong>Total:</strong></td>
<td><strong>(13) 55,322,900</strong></td>
<td><strong>(8) 62,950,000</strong></td>
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</table>

Since the passage of the Indian Reorganization Act in 1934, the Tribes of Fort Berthold had exercised their sovereignty by adopting a constitution and electing a tribal council. As early as March 1943, when a group of engineers began surveying the area around Garrison and further upstream, local newspapers had taken it for granted that a dam was in prospect. The *Sanish Sentinel* headlined its report on their activities, “A Dam Question” and commented, “There is big news in the air. But we cannot get to it.”\(^{52}\) Hopefully the newspaper remarked, the “dam will be located where it will do the most good to the most people.” Later that summer the *Sentinel* reported that the plan outlined by Pick and Sloan would take care of the needs of the area for the next century and support millions of people.\(^{53}\) The Tribes understood the implications clearly, possibly because their experience with federal agencies in the past gave them insight others in the region lacked. However, the Three Tribes would not wait for the federal agencies to inform them of the Pick-Sloan plan, which was being developed despite their opposition to it.

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\(^{52}\) *Sanish Sentinel, (N.Dak.), May 20, 1943*

\(^{53}\) *Sanish Sentinel, (N.Dak.), July 1, 1943.*
On November 15, 1943, the tribal council passed a resolution opposing the construction of any dam adversely affecting the reservation. The resolution stated:

A dam below the Fort Berthold reservation is being contemplated for future actions by Congress of the United States in cooperation with the state of North Dakota, which action, if realized, will destroy by permanent flood all the bottom land of the said reservation, causing untold material and economic damage to the Three Affiliated Tribes.54

The Tribes were not interested in selling their lands so they took the initiative to offer alternative dam sites that the Corps would not even consider. The Tribes commissioned civilian engineer Daniel C. Walser to locate a viable alternative to the Garrison site. (Figure 3) He concluded, like Sloan of the USBR had, that the other proposed dams; Oahe, Big Bend, Fort Randall, and Gavins Point, together with the Fort Peck storage, would provide the desired flood control, increased navigation, and hydroelectric power for the region.55 In addition, a dam built across the main stem on the upper portions of the reservation would generate power more cheaply over at the Garrison site. The alternate site would save about $1 million in construction costs alone. In response to this alternate site Colonel Pick of the Corps asserted that “it would not be a project that we could justify or that I would recommend.”56

The Corps’ reputation for arrogance towards civilian engineers and the general public was legendary. The fierce confrontation between General Humphreys, Chief


56 Quoted in Sanish Sentinel, (N. Dak), July 24, 1947.
Engineer of the Corps, and James Eads a civilian engineer, in 1874 illustrates the nature of this conflict.

The debate over civil works on the Mississippi grabbed the attention of the nation throughout the spring and summer of 1874 as newspapers spread hydraulic theories across front pages, not only in river cities such as St. Louis, New Orleans, and Cincinnati but in Chicago, Boston, and New York. Increasingly, the debate became one of civilian versus military engineers. Meanwhile, one senator declared: “Every attempt that has ever

Figure 3. Map of the Lieu Lands and Alternate Dam Site

been made to induce the Corps of Engineers to listen to the recommendations made by
the ablest civil engineers in the country has been resisted with an obduracy that is beyond
belief.\textsuperscript{59}

During the 1927 Mississippi Flood the Corps’ plan to save New Orleans was to
dynamite an upriver levy protecting a community of ten thousand. The community’s
residents were predominantly black and their homes would be sacrificed in order to save
the city of New Orleans. The people were compelled to sacrifice their homes for those
living in larger communities up and down river. The Corps would consider no
alternatives; in this instance, as on Fort Berthold, the needs of many outweighed the
needs of the few. As a fundamental principle of democracy, this attitude has remained
consistent and at times is justifiable; however, future scholarship of this concept is
needed.

Although the Garrison Dam was authorized by the 1944 Flood Control Act the
Act did not appropriate the necessary funding for the project. The Tribes were successful
in taking advantage of Congressional dawdling over funding to ensure that their voices
were heard. Colonel Pick and his staff attended a meeting on Fort Berthold on December
6, 1946, at the BIA agency building located in the doomed community of Elbowoods.
The purpose of this meeting was to get the Indians on board and gain their support for the
project with assurance that their interests were taken care of. The Corps, however,
displayed its unwillingness to alter its preconceived plans and its lack of cultural
sensitivity in the remarks by Colonel Pick at the meeting in Elbowoods. “Several

\textsuperscript{58} Barry, \textit{Rising Tide}, 73.

\textsuperscript{59} Ibid., 74.
conferences have been held with you people,” Pick said, “during which the plan for the construction of this dam has been discussed. During these conferences it was recognized that you were particularly desirous of preventing the construction of the dam at the Garrison site rather than obtaining compensation for the lands to be inundated.” Pick seemed unable to understand that land was more than a commodity to the Three Tribes, it was life and the river was its life-blood.

Those tribal members attending the meeting addressed quite eloquently their views of the land and the methods used to inform the public of the Corps plans. Robert Lincoln of the Charging Eagle District stated:

We have known that plans were under way for the government to construct Garrison Dam but never did they come to consult us until its own plans were completed informing us as to what they proposed to do. We are much like the hen and her young fighting off the hawk that is swooping down to attack.61

Opinion was sharply divided, Snowbird, an interpreter explained, had told his people that life meant change; that it was a process of continually adjusting to new and unexpected situations.62 The tribe’s legal counsel, Ralph H. Case, urged cooperation by the tribes and consideration of the alternative site by the Corps. “If the Upper Dam is built, it will save all the heartaches,” he said, “but in addition, it will save $1 million of destruction and probably $20 million in relocation costs. It will save 340 families.”63

(See Figure 3 on page 59)

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60 Statements from a General Meeting between the Corps, BIA officials, and tribal members (Elbowoods, ND: Fort Berthold, May 27, 1946.) n.p. Four Bears Museum.

61 Ibid.

62 Ibid.

63 Ibid.
However, suspicions over past dealings with federal government persisted amongst the tribal elders. James Driver, Sr. from Shell Creek said:

The most thing that is dearest to me is the land within the limits of the Fort Berthold Reservation. I don’t want to be sitting here, without my knowledge, to be flooded over. Your promises are never true. You always fool the Indian people. Change your plans time and again and still you are not satisfied at this time. Now you want to take our land and tribe out somewhere else.64

The irony is that the Three Tribes of Fort Berthold had never abrogated nor broken any treaty or agreement made with the United States. Chester Smith also from Shell Creek said, “We have observed every treaty that the United States commanded. Therefore, I love my land and I don’t want to be flooded over.”65 Echoing this sentiment and the final speaker of the meeting, Daniel Wolfe from Elbowoods declared:

We are told that they would give us land in exchange for the land that are to be inundated. That the land they give us would be comparable in size and little bit better then what we have, but there is no land that would compare with the land that we have at the present time. Now I heard the remarks of General Pick here saying that he would do his best to give us the best land in exchange for our lands, but I doubt his word because they have fooled us. They have never live[d] up to their promises. There will be no land in comparison in what we got here.66

Their words fell upon the deaf ears of the Corps as the appropriations bill finally passed through Congress in 1946 with a proviso that the War Department would have to procure, “Lands comparable in quality and sufficient in area to compensate said Tribes for the land inundated by the Dam.”67

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64 Ibid.
65 Ibid.
66 Ibid.
67 War Department Civil Appropriation Act, Statute at Large, 63:1026-28, 1049 (1947). NDSWCTRL.
Lieu lands, a term used to define lands offered “in lieu” of those lands currently possessed, would be located and rejected by the Three Tribes and the BIA. Allen G. Harper, area BIA director, would send a letter to the District Engineer Colonel W.W. Wanamaker dated September 11, 1946, responding to the proposed lieu lands. In it Harper reaffirmed the Indians’ position that “reservation conditions simply could not be duplicated by any tract or combination of tracts.”

At the 1946 meeting with the Corps, one Indian speaker displayed a sympathy for non-Indian settlers that would be displaced had they accepted the lieu lands. “The residents of the lieu area are pioneers of that country, and I do not think it right to compel them to leave their home.” Although facing certain injustice, tribal members were able to convey what the government could not, compassion for those facing displacement. The Corps’ relationship with the Three Tribes is best seen through the eyes of non-Indians familiar with their plight.

Rev. H.W. Case, a Congregationalist who worked with Indians for 40 years stated, “The engineers, as I recall, made no personal approach to the people and their problems. On our reservation [Fort Berthold], if a man owned a strip of land, they cut it in half so he couldn’t make a living on the rest.” Present at the 1946 and subsequent

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70 An aspect of the story of Garrison dam worthy of future scholarship, although not explored here, is the dislocation and treatment of the many the non-Indian residents, their story is worth telling.

71 Letter from H.W. Case to Arthur Morgan, August 12, 1968, quoted in Morgan, Dams and Other Disasters, 53.
meetings with the Corps, Rev. Case noted, "My own observation was that the
government had sent a man out [Col. Pick] who knew so little of Indian history and
people. One could see this when he said in his approach, ‘I want to show you where we
will place you people’ "72

Rev. Case summarized the treatment of the Three Tribes by the Corps and
Congress, and the American people’s failure to uphold the Three Tribes basic human
rights as follows:

It is sufficient to help folks to realize what havoc the US Army Engineers have
brought about through their inability to deal in human relations. The chief of the
USA Engineers down through the personnel, on the Fort Berthold situation,
showed their inability to accept American Indians as people too. I was in the
middle of the fight for justice among these people on Fort Berthold where the
largest displacement of people took place in the Missouri Basin development, and
saw and heard so much discrimination. What occurred as to the Tribes in the
upper Missouri was not the accident of circumstances. It was the working out of
philosophy of life. An organization, such as the Corps of Engineers, should be
especially concerned that not only in its chief functions, but also in all functions
that concern the life of the people, it should conduct itself in such a manner that it
is an asset and not a blight. Great power should carry great responsibility.73

So what were the causes of the Corps’ callousness? In essence, the Corps’
leadership was ignorant of Indian rights. They also have consistently displayed an
unwillingness to respond to technical or political pressure preventing them from
considering alternatives to eroding the Three Tribes land-base.

However, despite numerous resolutions passed by the tribal council, rejection of
the lieu lands, and testimony before the Congressional community as well as the
newspapers of the region and the nation, the pleas of the Tribes would go on unheeded.

72 Quoted in Ibid., 47.

73 Letter from Case to Morgan, September 2, 1968, quoted in Morgan, Dams and Other Disasters, 57-58.
Having already spent $6 million on infrastructure in preparation for Dam construction at the Garrison site, the Corps and its lobbyist would be successful in wielding the doctrine of eminent domain and forcing capitulation by the Indians.

The 1947 Congressional session approved an appropriation of $20,105,625 for the Garrison Dam and Reservoir Project. Of this sum, $5,105,625 was earmarked to make the cash settlement with Indians of the Fort Berthold Reservation whose lands would be inundated by the reservoir. (Figure 4)

Figure 4. Segments of the Reservation Above the Garrison Reservoir Site

74 MRBI Staff, “Land Consolidation Problem,” n.p. NDSWCTRL.
Table 4. Area of segments illustrated by Figure 4.

<table>
<thead>
<tr>
<th>Indian-owned (Acres)</th>
<th>Alienated (Acres)</th>
<th>Total (Acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Segment</td>
<td>19,860</td>
<td>5,622</td>
</tr>
<tr>
<td>N.Eastern Segment</td>
<td>21,432</td>
<td>6,159</td>
</tr>
<tr>
<td>Eastern Segment</td>
<td>67,378</td>
<td>17,673</td>
</tr>
<tr>
<td>Southern Segment</td>
<td>74,498</td>
<td>5,160</td>
</tr>
<tr>
<td>Western Segment</td>
<td>243,245</td>
<td>9,516</td>
</tr>
<tr>
<td>TOTAL</td>
<td>426,413</td>
<td>44,130</td>
</tr>
</tbody>
</table>

The Act also promised irrigation of tribal lands and free electrical power for the remaining portions of the reservation. These terms were forced upon the Indians, not obtained by their free consent. As Council Chairman Carl Whitman, Jr. asserted, “agreement to the bill was the only recourse left to them.” The battle had been lost.

Although non-Indian settlers were forced to leave their homes, their situation was slightly different having obtained or purchased the land from the government, whereas the Indians, as original occupants of the soil, had treaty and water rights maintained by the government. The Lonewolf decision now lorded over the Tribes as settlement legislation progressed through Congress that would take away their lands for the public good.

The Corps produced and distributed propaganda to communities throughout the state in 1947, and continued to tout the possibilities of the Dam. “The Project will bring

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75 Alienated acres are defined as non-Indian acreage within the reservation boundaries after the inundation.

76 Garfield B. Nordum, “Garrison Dam and Reservoir Project North Dakota” (Bismarck: ND State Dept. of Public Instruction, Sept 1947), 4.

77 Meyer, Village Indians, 217.

78 Further analysis of the 1904 Lonewolf decision and its implications towards Indian policy can be found in Blue Clark’s, Lonewolf v. Hitchcock: Treaty Rights and Indian Law at the End of the Nineteenth Century, (Lincoln: University of Nebraska Press, 1999).
immeasurable wealth to North Dakota. Multi-purpose storage for irrigation and power, 
...the recreational value of such a body of water [Lake Sakakawea] can hardly be visualized in advance of its creation.”79 Yet, as with all projects that yield great wealth there was a heavy burden or cost to be exacted not only from the environment, but in this case, at the expense of the Mandan, Hidatsa and Arikara of Fort Berthold.

The Tribal leadership was summoned to Washington to sign the agreement that extinguished their rights to the land and acceptance of the authorized payment having refused the lieu lands offered by the War Department. On May 21, 1948, a distraught Council Chairman George Gillette signed the agreement as other members looked on (Figures 5).

Figure 5. Signing of the 1948 agreement80

79 Nordum, Garrison Dam, 6.
80 Morgan, Dams, n.p.
In tears, Gillette said in one final effort at justice, “The truth is, as everyone knows our Treaty of Fort Laramie, made in 1851 and our tribal constitutions are being torn into shreds by this contract.”\(^{81}\) He later justified his actions by explaining that the building of Garrison Dam was inevitable and that the only thing to do was get as liberal settlement out of Congress as possible.\(^{82}\)

The Congress and the Corps forced this legislation upon the Indians and the Three Tribes certainly did not at any time favor it. So, having made concessions, the Three Tribes had to leave their precious river bottom land and homes for the treeless, waterless, relatively barren prairies, where temperatures could range from minus forty to more than one hundred degrees above zero.

Some criticism of the Indians’ position is justified. Perhaps they held an unrealistic dream believing they would be able to halt construction of the dam. Their position was compounded by not accepting the lieu lands in Mercer and Oliver counties that would have at least offered a similar environment to that lost in the taking area. However, it is important to understand and appreciate the dilemma of the Three Tribes and ask the question: when would the government and the American public stop forcing Indians to sacrifice and change?

Damming a river radically alters the surrounding ecosystems. Dams also collect silt. Nutrient-rich sediment, which normally provides nutrients for downstream organisms or settles on agricultural flood plains, instead accumulates behind the turbines.

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\(^{81}\) Quoted in *Sanish Sentinel*, (N. Dak), May 27, 1948.

\(^{82}\) *Sanish Sentinel*, (N. Dak), June 16, 1948.
and dams.\textsuperscript{83} The natural habitat lost by the construction of the Missouri River main stem
dams was significant: Grassland and timber 127,379 acres; bluffland 205,565 acres;
tributary mouths 10; main channel miles 207; and an erosion zone of 46,221 acres was
created.\textsuperscript{84} Although waterpower was basically a nonpolluting, renewable energy source,
harnessing it by means of hydroelectric dams involved tremendous ecological, social, and
cultural costs.

The flooding of their valley broke the existing balance between range, shelter,
water and shade and disrupted the agricultural and livestock enterprises of the Indians,
which had provided seventy percent of their earned net income. Roughly 156,000 acres
of the reservation was flooded and the remaining reservation was carved into five isolated
and geographically separated segments (Figure 4 on page 63). According to the census
of tribal membership in 1946, there was a total reservation population of 2,034 in which
1,700 were forced to relocate.\textsuperscript{85}

The Three Tribes were denied their \textit{Winters} rights, since Indians were not allowed
to fish or to graze their cattle along the reservoir, nor could they water their cattle at the
reservoir’s edge. Their mineral rights were forfeited, hunting and trapping, royalties
from oil or gas if discovered, prohibited. The 20,000 kilowatts of electricity from the
dam, promised at no cost, was not provided by the Corps.\textsuperscript{86} Irrigation facilities of the

\textsuperscript{83} Andrews, \textit{Managing the Environment}, 244.

\textsuperscript{84} Thorson, \textit{River of Promise}, 83.

Fort Berthold” (Billings: BIA, 1948), 2. Record Holdings, Lake Sakakawea Project.

\textsuperscript{86} Ibid., 3.
dam and reservoir were not made available to the Indians and non-Indians and remains unrealized dream, although much of acreage remaining is not suitable for irrigation.

By October 1947 construction along the embankment was well under way at Garrison Dam site. The project employed over 2,300 men, constructing what was then the largest rolled-earth dam in the world while creating the third largest man-made reservoir in the country, Lake Sakakawea. Costing $294 million, Garrison dam lay 12,000 feet long, 210 feet high, 2,600 feet wide at the base and 60 feet at the top, in all, roughly 70,000,000 yards of earth and 1,500,000 yards of concrete. Construction was completed in fall of 1953. (Figure 6)

Figure 6. Garrison Dam, 1954

87 Photo Archives, US Army Corps of Engineers, Real Estate Division, Riverdale, ND.
Once filled, the new reservoir named Lake Sakakawea extended 178 miles from the dam northwest to Williston, ND. The lake averages between two and three miles in width, and is six miles wide at its widest point. The maximum depth of the lake is 180 feet at the face of the dam. The lake covers 368,000 acres, has 1,300 miles of shoreline, and can store nearly 23 million acre-feet of water. That amount of water would cover the entire state of North Dakota with about six inches of water. The drainage area of the lake is about 181,400 square miles.88

The Corps estimates that from 1954, when integrated operations of the main-stem dams and reservoirs began to 1992, approximately $2.7 billion in flood damages have been prevented.89 In addition, an estimated $7.7 billion in flooding damages were avoided during the severe 1993 Mississippi/Missouri floods. However, the benefits of irrigation promised by the original Pick-Sloan plan have never fully materialized.

One cannot help but see the struggle of the Three Tribes reflected in this statement conveyed at the 1961 American Indian Conference held in Chicago:

When our lands are taken for a declared public purpose, scattering our people and threatening our continual existence, it grieves us to be told that a money payment is the equivalent of all the things we surrender. Our forefathers could be generous when all the continent was theirs, they could cast away whole empires for a handful of trinkets for their children. But in our day, each remaining acre is a promise that we will still be here tomorrow. Were we paid a thousand times the market value of our lost holdings, still these payments would not suffice. Money never mothered the Indian people, as the land has mothered them, nor have any people become more closely attached to the land, religiously and traditionally.90


90 American Indian Conference proceedings, Declaration of Indian Purpose, (Chicago: n.p., 1961), 16.
The river itself was changed from a cold, free-flowing mighty river to a series of warm-water reservoirs with genteel stretches of river between. Few benefits other than recreation have come to the state of North Dakota from the Garrison Dam. Cheap electricity has not brought new industries and prosperity to the state or the Three Tribes.\(^91\)

The dreams of the Mandan, Hidatsa, and Arikara, the Three Affiliated Tribes, remained flooded and the Missouri was no longer free.

Figure 7. Fours Bears Monument After Relocation.\(^92\) Continued to serve as a symbol for the perseverance of the Three Tribes.

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\(^91\) Robinson, *North Dakota*, 465.

CHAPTER FOUR
REMOVAL AND RELOCATION: A HISTORICAL COMPARISON

Having been forced by the Congress to cede their lands for construction of the Garrison Dam the Three Tribes faced many challenges as the ensuing reservoir required their complete removal from their river valley homes. This legislation and the impending construction of Garrison Dam was a continuation of federal Indian policy in which the needs of Indian people were subordinated to the needs of the larger, dominant Euro-American society. But this is an old story that can be re-told in the languages of other American nations.

The Cherokee nation was one of the Five Civilized Tribes as labeled by early American historians. They were considered "civilized" since they had adopted agrarian ways and their prospect of assimilation by the emerging American nation seemed assured. In the 1820s they were amongst the first native peoples to adopt a constitution patterned after the United States'. In the 1830s, facing relocation, they sought relief in the young nation's courts rather than through armed conflict. The reward for their seeking peaceful and equitable treatment by the United States government was their eventual removal and the tragic "Trail of Tears."¹

¹ There are many publications relative to Cherokee history, for additional information I would suggest the following: John Finger's, *The Eastern Band of Cherokees 1819-1900* (Knoxville: University of Tennessee Press, 1994); John Ehle's, *The Trail of Tears: The Rise and Falls of the Cherokee Nation* (New York: Anchor Books, 1988), and Stanley W. Hoig's, *The Cherokees and their Chiefs: In the Wake of Empire* (Fayetteville: University of Arkansas Press, 1998).
Nearly a hundred years later the Three Tribes were considered model “Indian citizens” and candidates for assimilation. They had maintained peaceful relations with the federal government despite the pressures to join other Indian nations that had taken up arms against the government in the 1860s. Having adopted their own constitution pursuant to the Indian Reorganization Act of 1934, the Tribes seemed to be following in the steps of the Cherokee a hundred years earlier. By 1948, the Tribes had relented to government pressures and entered into a forced agreement resulting in the inundation of 155,000 acres of their reservation and eventual forced relocation.

After the taking, the residual reservation was divided into five segments. (Figure 3) The Agency, which had been at Elbowoods, was moved to New Town, a point located off the western edge of the reservation. The southern segment was the farthest away from the Agency, approximately 120 miles by the nearest road, which was a poorly graveled highway, impassable in wet weather like most North Dakota roads in the 1940s. The other segments were closer, yet all were so far away that two-way radio stations were employed to transact business with the Agency at New Town.²

Through careful comparison it becomes evident that although the characters have changed the circumstances of these two episodes remain strikingly similar. The story of the relocation of the Three Tribes to facilitate the construction of the Garrison Dam and ensuing reservoir paralleled the policies of removal of the Cherokees.

Once the Three Tribes had reached their agreement with the federal government in 1948 the plans for relocation began in earnest. By October 1947 construction along

² Meyer, Village Indians, 220.
the embankment was well under way at Garrison Dam site, (Figure 8 and 9) with construction completed in the fall of 1953.

In a survey conducted by Gordon MacGregor in 1946, "The 'reservation' was to the Fort Berthold Indian considered his homeland. They were never assigned this land," he continued, "or forced to reside on it as prisoners of war as were many tribes of the nomadic plains culture." The Missouri River bottoms had been their homeland prior to the coming of the Euro-Americans. The Three Tribes were occupying ancestral lands, so too had the Cherokee occupied lands within the boundaries of the state of Georgia.

Figure 8. Phases of embankment construction 1947-1954

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3 Gordon MacGregor, "Attitude of the Fort Berthold Indian regarding Removal from the Garrison Reservoir Site and Future Administration of Their Reservation," *North Dakota History* 16, no. 1 (1949): 56.

4 Photo Archives, Real Estate Division.
In his final message to Congress on December 2, 1828, John Quincy Adams foreshadowed the coming federal policy.

And when we have had the rare good fortune of teaching them [Indians] the arts of civilization and the doctrine of Christianity we have unexpectedly found them forming in the midst of ourselves communities claiming to be independent of ours and rivals of sovereignty within the territories of the members of our Union. This state of things requires that a remedy should be provided, a remedy which while it shall do justice to those unfortunate children of nature [Indians], may secure to the members of our confederation their rights of sovereignty and soil.\(^5\)

The remedy Adams recommended was the removal of the tribes to points west of current settlements in the eastern portions of the United States. President Andrew Jackson pursued removal regarding the Five Civilized Tribes. In his fifth State of the Union address to Congress on December 3, 1833, Jackson conveyed his true feelings toward the Cherokees, “They [Indians] have neither the intelligence, the industry, the moral habits, nor the desire of improvement which are essential to any favorable change in their condition."\(^6\) The Cherokee, were in the way of progress and the federal government’s effort to develop and exploit natural resources. As the population of Georgia grew, non-Indian farmers required more land and it was upon Cherokee land that they cast their eyes.

The discovery of gold within the Cherokee Nation lands in 1829 fired Georgians with new vigor for Cherokee lands, and many rushed into the region in violation of the Indians territorial rights. Neither the government of the United States nor Georgia took action to impede this encroachment upon Cherokee lands. As historian Francis Paul

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\(^5\) President Adams quoted in Prucha, *The Great Father*, 190.

Prucha has stated, “The Jacksonian and Georgian contention was that the Indians had only a possessory right to the soil, a mere right of occupancy.”

The irony is that prior to the enactment of the removal policy, assimilation was the course Indians were urged to follow and the Cherokee certainly had taken steps to adopt many non-Indian ways. The federal government had urged Indians to cultivate the land and develop other domestic arts such as spinning and weaving as well as learning the English language. Many Cherokee received formal education in English schools; they developed a written language of their own and published a newspaper, the *Cherokee Phoenix*. They had followed southern economy and many owned black slaves upon extensive plantations. On July 26, 1827, the Cherokee nation adopted a written constitution patterned after that of the US. It was evident that the Cherokee did not correspond to the common perception of Indian tribes as nomads and wanderers requiring transformation into agriculturists that was a part of the rhetoric justifying removal.

The policy of removal, however, was implemented and the Cherokee as well the other “civilized” tribes, the Choctaw, Chickasaw, Seminole and Creek were removed. The Senate passed the removal bill 28 to 19 on April 24 and the House by the narrower margin of 102 to 97 on May 26. President Andrew Jackson sealed the Cherokees fate by signing it on May 24, 1830.

The desire for Indian lands was not the only motivation for removal. Having adopted their own constitution in 1827 and having declared themselves a sovereign

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7 Prucha, *Great Father*, 196.

8 Ibid., 185.

9 Ibid., 206.
nation the Cherokee asserted a challenge to both Georgia and the United States regarding sovereignty. Were the Cherokee an independent nation? The question was settled in 1831 by the landmark case of *Cherokee v. Georgia* in which the Supreme Court delivered the opinion that Indians tribes were “domestic dependent nation[s].”\(^\text{10}\) Although Chief Justice John Marshal offered moral support to the Cherokees the decision ultimately sided with Georgia and the injunction to forestall enforcement of Georgia law over the tribe was denied.

In yet another Supreme Court case, *Worcester v. Georgia* in 1832, the Cherokee pressed for recognition of the supremacy of federal treaties with the Indians, and that Georgia’s attempts to assert control over the native population would be undermined. This hope soon turned to despair, however, when Jackson refused to enforce the court’s opinion which had sided with the Indians.

“The clouds may gather,” the principle chief of the Cherokee, John Ross, wrote to a friend in 1830, “thunders roar and lightning flash from acts of Georgia under the approbation of General Jackson’s neutrality, but the Cherokees with an honest patriotism and love of country will still remain peaceably on their own soil.”\(^\text{11}\) The only recourse left to the Cherokee was to seek a wide audience and hope for public support at the injustices being exacted upon them. Unfortunately, their voice failed to be heard above the sounds of developers, expansionists, and states rights advocates.

No practical alternative to Indian removal ever came before the government and the alternative of leaving a portion of the United States in Indian hands was unacceptable.

\(^{10}\) Chief Justice John Marshal quoted in Prucha, *Great Father*, 197.

\(^{11}\) John Ross quoted in Hoig, *The Cherokees and their Chiefs*, 146.
“Years since I stated to them my belief that if the States chose to extend their laws over them it would not be in the power of the Federal Government to prevent it,” declared Jackson in 1831. “My opinion remains the same,” he continued, “and I can see no alternative for them but their removal to the West or a quiet submission to state laws.”\textsuperscript{12}

The Cherokee could not fully understand removal because they had been successful in their transition to an agrarian-based economy and had loyally defended the frontier against the Creeks and the British in the War of 1812. To them, as to all Indian peoples, their homeland was a sacred place and so closely related to their cultural identity that to uproot them would be as destructive as trying to transplant an ancient oak tree.\textsuperscript{13}

The Three Tribes echoed this sentiment having also adopted a constitution, displayed years of loyalty to the federal government and developed a growing agrarian economy.

The Cherokee ruling elite, John Ross, Charles Hicks, Elijah Hicks, Major Ridge, William Hicks, John Ridge, Elias Boudinot and others believed that their constitution was evidence of Cherokee maturity. The leaders wished to assert their right as an independent nation or state within the union. They also hoped to forestall the Jacksonian efforts for compulsory removal west. Utaletah, a mixed blood, conveyed optimism for the future, “Our nation as a political body has reached an important crisis and bids fair for rapid progress in the path of civilization. While at the same time,” he continued, “we

\textsuperscript{12} Andrew Jackson Senate address of Feb 22, 1831, quoted in James D. Richardson, \textit{A Compilation of the Messages and Papers of the Presidents 1789-1897, Vol II, 1817-1833} (Washington: GPO, 1896), 541.

can say with no ordinary degree of exultation, that agriculture is gradually gaining an ascendancy amongst us equaled by no other Indian tribe."\(^{14}\)

Under pressure from both federal and state governments the Cherokee people became divisive and factionalized. The Treaty Party headed by John Ridge and Elias Boudinot recognized early in 1832 the inevitability of removal. Subsequently, they went before the Tribal Council to urge seeking an acceptable agreement with the federal government during the summer of 1832 and were overwhelmingly turned down and branded as traitors to the nation. The Removal Party persisted, although they never represented more than 10% of the population. Seeing an opportunity the federal government was quick to capitalize in this division and the Treaty of New Echota was conceived in December 1835. Although Ridge’s group was a minority, in the eyes of the government they spoke on behalf of the nation, the agreement was for $5 million and the exchange of all current lands for those in the northeastern corner of Oklahoma.\(^{15}\)

In his annual message to Congress, President Jackson was quick to declare victory:

> The national policy, founded alike in interest and in humanity, so long and so steadily pursued by the Government for the removal of the Indian tribes originally settled on this side of the Mississippi to the West of that river, may be said to have been consummated by the conclusion of the late treaty with the Cherokees.\(^{16}\)

In May of 1836 the Senate narrowly ratified the Treaty of New Echota by one vote, establishing the deadline for complete removal by May 23, 1838.

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\(^{14}\) Quoting from the *Cherokee Phoenix*, May 6, 1828, in Ibid., 233.


\(^{16}\) Andrew Jackson’s State of the Union address, December 5, 1836, quoted in Richardson, *Vol III*, 256.
The other faction representing some 15,668 Cherokees out of 18,000 headed by the principal chief John Ross, cried foul and rejected the treaty. In a letter to President Martin Van Buren, Ralph Waldo Emerson declared, "The American President and Congress, neither saw nor heard them and have contracted to drag them over mountain and rivers to the west. Sir, does the government think the people of the United States are become so savage and mad? You sir, will bring down that chair on which you sit and the name of this nation will stink to the world."17 There was great public outcry; however, troops would soon be dispatched to begin the process of rounding up the Cherokee people for expulsion to foreign lands in the West.

The Cherokee people did not take up arms to resist removal. Leaders such as John Ross ensured to the best of their abilities that the people would migrate peacefully. "We are now about to take our final leave and kind farewell to our native lands, the country that the great spirit gave our Fathers. It is with sorrow that we are forced by the white man to quit the scenes of our childhood...we bid farewell to all we hold dear," said George Hicks as one of the last groups assembled for movement westward in November of 1838.18 Although the Cherokee sought a delay for a spring migration the government was adamant that they be completely removed by the close of 1838. This late fall departure meant that winter would be upon the Cherokee before they could travel to the new territory. In the Cherokee language, the forced migration was called the 'trail where we cried.' We know it today as the 'Trail of Tears.'

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18 Quoted in Gilbert, Tears across Missouri, 37.
John Conrad has noted that the nation’s press treated Indian removal as a simple transportation story, emphasizing details such as the name of the steamboat and its arrival at a particular place. Examined in full context, coverage of removal was minor news, dominated by official views, and rarely detailed of the pain of this policy.\(^{19}\) Indicating that the general apathetic view of the American public persisted during the time of removal while the government pursued its policy. Therefore the public outcry at this tragic event never blossomed. And continued in isolated pockets and similar pattern would occur during the 1950s as the Three Tribes were relocated by the Garrison Dam.

It has been estimated that of nearly 18,000 Cherokees rounded up by federal troops, 1,500 died en route to the West, while an additional 2,500 died in camps for a total of nearly 4,000. One Cherokee scholar, however, calculated that the figure was probably closer to 8,000 or 10,000 for the five-year period of removal 1835-1840.\(^{20}\)

The Cherokee removal and the relocation of the Three Tribes have several parallels. Both sought support in the court of public opinion, both were rejected. Each tribe had maintained peaceable relations and took strides in adopting non-Indian ways such as language, farming, and forms of government, yet were relocated to land the federal government did not need in order to facilitate development. In Georgia it was the expansion of the states non-Indian landowners and gold. On Fort Berthold it was land to be flooded to facilitate the construction of dam and reservoir to develop non-Indian


\(^{20}\) Hoig, *Cherokee Chiefs*, 175.
agriculture and to protect downstream cities from a rampaging river. Despite these similarities it is important to mention some of the differences.

The removal of the Cherokee was to land completely foreign to them. At least the Three Tribes had hunted and camped on the open prairie above their river valleys. Although the Three Tribes lost a way of life there was no loss of life as the tales of the horrific “trail of tears” convey by surviving Cherokee migrants. Although there were differences in the episodes, it is interesting that the pattern of forced removal initiated in the 1830s persisted and was reapplied to the Three Tribes more than a hundred years later.

Having sought the best deal they felt they could from the government at the time, the Three Affiliated Tribes now faced being forced from their ancestral homes. Although they would not suffer the loss of life as the Cherokee had, the loss of lifeways was just as devastating for the Three Tribes. The designated ‘taking area’ of the reservoir included 175,716 acres comprising 26% of the reservation area; 154,911 acres under Indian ownership and 20,805 acres owned by non-Indians.\(^{21}\)

Department of the Interior surveys conducted in 1946 indicated that a majority of the Indians intended to reside on the remnants of the reservation after the reservoir filled up. These Indians maintained the desire to continue living off the land practicing agriculture as they had. Seventy-five percent planned to use their new land for agriculture or would like to if their holdings could be consolidated.\(^{22}\) The conclusions of


MacGregor's 1946 survey indicated that the dreams, although flooded, of the Tribes persisted in that their culture and identity would continue.

1. The first finding of the survey is that the great majority of the Indian households wish to live on the reservation.
2. The second finding is that the Indian households prefer the administration and services of the Indian agency to others. They prefer a known to an unknown quantity.
3. The third finding is that a large majority of Indian households want to make their living by raising beef cattle.

An important, yet unrealized dream of the agency and tribal members, was the desire to continue living off the land. Land consolidation was a critical component of this dream. Individual allotments established by the Dawes Act of 1887 between 1895 and 1929 had devolved into a multiplicity of scattered holdings, most of which proved too small to permit agrarian enterprises required for economic stability. Take the example of Comes Along Pink who was allotted 80 acres in 1900. (Figure 9)

By March, 1947, there were forty-seven heirs to his estate with undivided interest in portions ranging from 11.01 acres to .06 acres. The difficulty of getting everyone to agree on land usage prevented these lands from becoming economically solvent. (Figure 10) Continuation of agrarian enterprises would prove rather difficult and hastened the shift to a cash-based economy.

Unfortunately the residual acreage of broken parcels would prove unable to support wide scale endeavors and the economic depression of the Three Tribes would persist for years to come.

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23 Ibid., 53-54.

24 Meyer, Village Indians, 222.
FRACTIONATION OF LAND THROUGH INHERITANCE
FORT BERTHOLD RESERVATION

80 Acre Allotment of Comes Along Pink, Allottee No. 100

Description of Allotment - W½ SW½ of Sec. 33,
Twp. 150 N., R. 91 W., 5th P.M., North Dakota.

Date of Trust Patent - December 31, 1900

Originally

<table>
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Note: Comes Along Pink, Allottee No. 100, died on December 10, 1902. This estate was probated in 1915 and there were eighteen original heirs, but since that time fifteen of the heirs have died and their heirs determined, increasing the number of heirs to forty-seven as of March 1947. The above graph shows the undivided inherited interest of each heir by acre in the allotment.

Figure 9. Fractionation of Land through Inheritance, Comes Along Pink, Allottee no. 100

After the water claimed the 155,000 acres of the best land on the reservation there remained approximately 445,000 acres. Of these 445,000 acres there would be less than 66,000 acres arable. This area was not conducive to large scale crop agriculture since the area contained high levels of sand and was highly susceptible to erosion preventing sustainable levels of agriculture from being developed by the Three Tribes.  

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The winter of 1950-51 was a busy one on the Fort Berthold reservation, for during those months more than fifty community meetings were held to discuss the general and specific problems involved in relocation. Superintendent Quinn complained that one of the most serious problems faced by the agency staff was the "negative attitude" of the people toward moving out of the valley.²⁹

By May 20, 1953, 102 families had been completely relocated, and 70 more were in progress.

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From this time on the process moved rapidly, but it was not until the end of 1954 that the superintendent was able to say that relocation was complete.  

(Figure 12)

![Map No. 3: Indian Family Settlement Patterns, 1950-1970](image)

Figure 12. Indian Family Settlement Patterns, 1950-1970

In 1954, a new and insidious policy now loomed over the Three Tribes, one that the Cherokee did not have to face – termination. Congress saw an opportunity to rid itself of its responsibilities to the Indians of Fort Berthold. On May 3, 1954, a draft termination bill was conceived regarding Fort Berthold. The bill stated:

"Purpose of this act is to provide for the termination of Federal supervision over the trust and restricted property of the Three Affiliated Tribes of the Fort Berthold"

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30 Ibid., 235.

Reservation and of certain individual members thereof, and for a termination of Federal services furnished such members because of their status as Indians.\textsuperscript{32}

The Tribes, response to the draft was both unanimous and immediate in a tribal resolution dated July 17, 1954.

Now therefore be it hereby resolved by the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation in the state of North Dakota that the said Comprehensive Plan, or Bill is hereby rejected. It is premature, detrimental to the Three Affiliated Tribes well being and is both unfair and ungracious as to the needs and requests of the Three Affiliated Tribes.\textsuperscript{33}

Fortunately for the Three Tribes the pressure to terminate the relationship with the federal government was not pursued with the same zeal that Jackson displayed desiring removal of the Cherokees. Nonetheless, it cast a shadow upon the people as their trust in federal agencies was strained.

The Fort Berthold agent did not fully support the Tribal Business Council's response to Congress. "The relocation of the people of the Fort Berthold Reservation is not simply the physical movements of a community from one location to another," stated agency Superintendent Rex W. Quinn. "It is an opportunity to rehabilitate Indian people with the assistance and guidance of the Indian Service," he continued, "The basic principles as I interpret them is to assist and activate a cultural change of a whole group of people from an old, well established system to a broader American way of living and conduct."\textsuperscript{34} The 1820s idea of assimilation into the greater society continued to persist in


\textsuperscript{34} Agency Staff, Report on Relocation, 1.
the middle of the twentieth century. Those who were charged to protect and uphold Indian rights fell in line with the policy makers of the day.

The Mandan, Hidatsa, and Arikara people climbed from out of the valley towards underdeveloped uplands. They left behind their trees, their wild fruits, their coal deposits, and their ceremonial houses, their churches and sacred place. Unsuccessful at persuading the Three Tribes to accept termination formally, the BIA implemented it administratively. Viewing relocation as a “splendid opportunity” to eliminate “wardship,” the Bureau declined to replace much of the reservation infrastructure and withdrew some agency programs and services.

Quinn derided the impoverished state of the reservation and generally disapproved of many cultural practices, for instance, the practice of the ‘give away’ declaring it detrimental to the well being of tribal members. He at least recognized the gravity of the situation as relocation ensued during 1951.

The emotional strain that has engulfed the reservation during the period of relocation has brought on a confusing array of problems. The disappearance of wild game and fruit, sources of timber supply, and the many natural bounties of the valley will change the economy from one historically dependent on natural resources to one of largely cash.

There were about three hundred households on the reservation that had to be moved including houses, fences, and all other types of improvements. These families had lived in close knit communities with a familiar set of social and economic situations. They were called upon to move into undeveloped areas of the reservation not normally

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36 Ibid.
homesite to them. Unlike the Cherokee who were moved to a completely alien landscape, the Tribes at least were not totally unfamiliar with the rangelands having at hunted game upon them.

The effects of the relocation created many obstacles for the Tribes and the agencies charged with their care. “Inundation of the Fort Berthold Indian Reservation by the Garrison Reservoir presents several problems governing the providing of medical care to the Indian population,” stated Edwin A. Shelby, MD, the senior Assistant Surgeon on the reservation. “With the reservation isolated into five separate segments it is no longer possible to operate a central medical center which could adequately serve the medical needs of the people.” Unlike the Cherokee who at least were able to move into a single area, the Three Tribes were required to reorganize their communities in the newly created five geographically, non-contiguous and separated segments (Figure 4). “It was like trying to continue a chess game after a child nonchalantly decided to scramble the chess pieces on the board,” declared Ralph M. Shane, director of road reconstruction.

Just as hostility between the Ross and Ridge-Boudinot factions divided the Cherokee nation, so too did division occur between members of the Three Tribes. Fortunately, the gory violence and lawlessness among the Cherokee that went unabated during the 1840s failed to materialize during the 1950s. Although there were no violent

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37 Ibid., 2.
38 Ibid., 2.
39 Ibid., 2.
40 Ralph M. Shane, “A Short History of Fort Berthold Indian Reservation” North Dakota History 26 (Fall 1959) 126.
episodes or assassinations on the Fort Berthold Reservation like those of Ridge and Boudinot, the war of words resonated amongst Council proceedings regarding everything from use of money, per capita payments, and elections.

The massive changeover in the lives of tribal members was not accomplished without generating antagonisms or arousing hostility within the populations. Factionalism among the people of Fort Berthold, evident before the Garrison project was ever broached, became pronounced during the period of transition. A clash over the distribution of the additional funds to aid in the relocation and rebuilding voted by Congress in 1949 threatened to shatter tribal organization and social unity that had developed during their long period of tribal association on the upper Missouri.

An example of the internal strife wrought by the relocation upon the Three Tribes regarded elections. "The Indians of the Fort Berthold Reservation in North Dakota, were deprived of their Democratic right to vote on September 7th, 1954," wrote Carl Whitman to President Eisenhower, the Attorney General and others. In essence, he accused Martin Cross, the newly elected Chairman, of voting fraud and refused to recognize his election and that of other council members.

If Martin Cross or any of his Comrades, who are trying to identify themselves as Tribal Business Council members, are allowed to act in our names, we, members of the Three Affiliated Tribes have a right to sue the Government of the United States, if the Government involves any of our resources in agreement with such "Council," since the Government of the United States cannot claim to have acted in ignorance either.

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42 Ibid.
Martin Cross declared that the sole purpose of Whitman’s letter was to create disunity and confusion among the people and further asserted that the charges were unwarranted.

I deny the accusation. The Council, as a constituted authority, delayed the dates of the Tribal Council elections because of very good and valid. Upon advice from both the Tribal Attorney and the Area Office Counsel they urged legalization of voting distract first so that true representation on the Council could be effected. 43

This war of words permeated the Agency Bulletin, fortunately, it was regarded as politics as usual and the Three Tribes were able to get on about the business of rebuilding their communities.

As a result of the Garrison Dam project, the Three Tribes were forced to leave their reservation homes along the Missouri River and relocate to higher ground. Relocation of the people was difficult. They were moved in an unorganized, jumbled fashion and many of the families were moved to locations that they called “coyote country,” meaning that the land was unfit for farming and growing vegetables or berries. 44

The words of the people themselves can best exemplify the effects of their forced relocation.

He [the US government] has taken away our lands and our houses. He has relocated our churches, schools and the agency. He has flooded our lands and our homes. We have not benefited from the Garrison Dam. There was an abundance of fruit, cherries, and plums, now there are none. We no longer can visit with our relatives. There are many miles to travel to reach their homes. It takes a whole day. Lucy Rogers, Hidatsa 45

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43 Ibid.


It took the heart out of the Fort Berthold Reservation. The Garrison Dam called for relocation of our Indian people onto higher ground. They were moved lock, stock and barrel by white contractors. The contractors took advantage of the people. For instance, the well drillers dug wells for the Indian families that were deeper than necessary, because they were being paid by the foot. Housemovers did not care how they moved a house and were careless about putting basements in. It is a sad affair. Money cannot repay what we have lost.

*Flora (Whitman) Demoray, Mandan*⁴⁶

Our shelter is gone, the trees and fruits are gone. In the bottomland we had soft water, up here we have hard water; it will eat a tin can in weeks time. It is a lot more difficult to live these days. The way of life is upset. There are no jobs. We have no cattle or horses. Our homes are not good. *Ben Heart, Arikara*⁴⁷

Robert Bennett of the Aberdeen BIA office and placement officer said, “the lands taken on the Fort Berthold Reservation for Garrison Dam involve directly a comparatively small number of people but their taking affects the lives of all people on the reservation.”⁴⁸ It was clear to him that the remaining land would be insufficient to support the people with a decent standard of living.

Financial problems plagued the Tribes as credit for cash and cattle ceased in the midst of relocation. A 1953 report completed by A.M. Cooper, BIA area director, indicated that delinquent loans for cash had risen from $41,279.41 as of September 30 to $77,735.17 as of December 31, 1953. In view of the above situation, plans to approve additional applications for cash or cattle were suspended for an indefinite period.⁴⁹ A letter from the Commissioner of Indian Affairs Emmons re-confirmed the suspension of

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⁴⁶ Quoted in Ibid.

⁴⁷ Quoted in Ibid.


credit activities "because of the high delinquency rate and the unsatisfactory condition of loans."  

Without credit or cash the Three Tribes faced many daunting obstacles to realizing their dream of rebuilding their agrarian economy. Previously, they had grazed cattle in the well-sheltered bottomlands without any outlay of money for improvements. Approximately ninety-six percent of all timber and forestry lands heretofore utilized by the Three Tribes were now inundated by the Garrison Dam. After the inundation there was little timber in the residual segments and only a limited supply of timber for fence post and fuel. They could no longer go to the timber for house logs or posts because the timber was being inundated. The wild fruits were nearly gone and the abundant game driven out because it had no cover. The livestock would require corrals, feed lots, and barns to replace the natural cover of the timber. How did the government expect the Three Tribes to accomplish this given the discontinuation of credit and cash?

J.B. Smith, Sr., a tribal member conveyed his frustrations, "Perhaps the Federal Government is authorized to exercise plundering in the national interest. It can be safely said that the Indians have done most of the giving and the United States most of the taking." The point is that from the period of Cherokee removal to the relocation of the Three Tribes during the 1950s, a period of 120 years, little was learned and US

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50 Ibid.


government agencies continued a pattern of dispossessing Indian tribes, though with new reasons and tools.

The Garrison Dam and Cherokees removal disrupted a chosen path of limited assimilation by the Cherokees and the Three Tribes and forced cultural changes. With one sweeping stroke, the government removed every single material vestige of the habitat of a sovereign people. The Three Tribes, like the Cherokees, were torn from everything they and their forefathers knew and cherished.

The Three Tribes were being pulled root and branch from an ancient setting where an ecological balance had been worked out over generations. They were left to make their way in a less favorable environment; this disruption of their dreams and way of life need not leave them without opportunities for a fruitful future. Their relocation from their valley homes served as the final chapter of a long history of continuous living on the banks of the upper Missouri River by the Arikara, Hidatsa, and Mandan Indians. Secretary of the Interior Oscar L. Chapman having heard of their formal acceptance of the provision of Public Law 437 released the following statement in 1950.

All of us here recognize what it means for the Fort Berthold Indians to give up their historic homes for the construction of Garrison Dam. They have sacrificed much for the benefit of our citizens in that area.53

The words of John Quincy Adams in his first annual Congressional address on December 6, 1825 continue to ring true today: “Our Relations with the numerous tribes of aboriginal nature of this country, scattered over its extensive surface and so dependent even for their very existence upon our power, have been during the present year [1825]

highly interesting." Andrew Jackson's words also echoed in the hearts of federal policy makers when he said, "The States which had so long been retarded in their improvement by the Indian tribes residing in the midst of them are at length relieved from the evil, and this unhappy race." The basic problem was one of two cultures in conflict.

From the standpoint of land use the relocation of the 1950s may have been more disruptive than the other major crises in the Three Tribes' history: the smallpox epidemic of 1837 and the abandonment of Like-a-Fish-hook village in the 1880's. One can argue that the Indians were "root-bound." Unfortunately that assumption smacks too much of the nineteenth-century view that European American culture was manifestly superior to that of the Indians and that the task was simply to force "the Indian" to adopt the culture of the dominant society. The building of the dam and its consequent destruction of the old way of life constituted yet another example of persistent federal and state efforts to force the native people of this continent to assimilate.

United States Indian policy is characterized by a determination to do certain things to "the Indian" for their own good, assuming that non-Indian society, as the inheritor of a superior civilization, knew better than the Indian what the latter's best interest were. Henry David Thoreau said, "If I knew for certain that a man was coming to my house with the conscious design of doing me good, I would run for my life." The Three Tribes had no place to run.

54 President Adams's quoted in Richardson, Vol II, 306.
55 Ibid., 294.
56 Thoreau, Walden and Other Writings (1845), 295.
CHAPTER FIVE
CONCLUSION: LEGACY OF CONTROL

Following the relocation of the Three Tribes, focus now turned towards rebuilding the community and an economy turned upside down by the Garrison Dam. During the 1960s and 1970s the reservation continued in a state of uneasiness as a cash economy slowly began to emerge. Like the phoenix, the Three Tribes were destined to rise from the ashes and emerge from the flood as vibrant as they were before the Garrison Dam was constructed.

The Three Tribes had new dreams of economic prosperity and self-sufficiency having survived the federal government’s attempt to terminate their relationship. On May 10, 1985, the charter to create the Garrison Unit Joint Tribal Advisory Committee (JTAC) was signed by the Secretary of Interior Donald P. Hodel.¹

The purpose of this committee was to assess the compensation provided the upper-Missouri tribes, to include the Three Tribes, by the federal government when their lands were taken for construction of the Pick-Sloan plan.

This report included findings and recommendation which undertook, as the Garrison Diversion Unit Commission (GDUC) recommended, “to find ways to resolve

inequities” borne by the tribes. Based upon GDUC recommendations the JTAC made the following conclusion:

1. Development of irrigation on remaining Tribal lands would reduce the Three Tribes loss of their economic base and good farmlands. The study concluded that up to 107,000 acres could be developed for agriculture on Fort Berthold.

2. The Three Tribes should be permitted to develop docks, campgrounds, resorts, picnic areas, etc. along the lakeshore as part of Tribal economic enterprise. The former Indian lands comprising the represent excess lands and the shorelines should be restored to the tribes.

3. The tribe’s right to water will be protected in a significant and beneficial manner by utilizing water on the irrigation project and municipal, industrial and rural system described in the report. The quantification of other users should be carried out in cooperation with the tribe.

4. The tribes are entitled to the replacement of infrastructure destroyed by Federal action...a bridge for access between the communities and central facilities and adequate secondary access roads.

5. Preferential rights to electrical power not to exceed 10 MWH.

6. The tribes clearly were not compensated in an amount calculated by a methodology that accounted for the unique circumstances and values taken from the tribe. The Committee received testimony from two economic experts who utilized methodologies designed to account for those unique circumstance and values. Utilizing both formulas for the Fort Berthold Reservation results in compensation due between $178.4 million and 411.8 million.

Congressional response to the recommendations of the JTAC would culminate in the passage of the Equitable Compensation Act in 1992 in which the Three Tribes were promised 36,000 acres of land to be returned and the sum of $149.2 million. However, despite these findings the Three Tribes still faced an uncertainty remained for these dreams to be realized.


In the JTAC’s final report, the detailed costs analyses of irrigating 107,000 acres of reservation land seemed insurmountable. Construction costs were estimated to exceed $133 million 1986 dollars. To date, less than 4,000 acres of land are irrigated.\(^4\)

Of the thirty-three recreation sites along Lake Sakakawea, only eleven fell within the boundaries of the Fort Berthold reservation and the Corps managed seven of those. Of the four sites managed by the tribes, only the Four Bears recreation area has significant development. The dream of expanded recreation and tourism to North Dakota is another dream unrealized.

At the time of the JTAC’s final report, neither the state of North Dakota nor the Three Tribes had pressed for quantification of the reserved water rights under the *Winters* doctrine. Accordingly the Three Tribes have expressed no desire to identify or quantify their water rights.\(^5\) Were they to do so, some estimates conclude that they would possess rights to all waters within the Garrison reservoir, something the states would certainly not embrace.

The Three Tribes want a bridge near Highway 8 across Lake Sakakawea to provide quicker egress to the agency at New Town. The North Dakota State Highway Department has estimated the cost of building a bridge across Lake Sakakawea to be about $60 million.\(^6\)

The culture of the Three Tribes depended upon village life and agriculture. Their economic lives, as well as their social lives, were structured around the use of the only

\(^4\) Ibid., 16.

\(^5\) Ibid., 19.

\(^6\) Ibid., 26.
remaining bottomlands of their reservation for ranching and farming pursuits. Reports of
the MRBI documented that the Three Tribes, by the 1940s, were economically self-
sufficient. The bottomlands of the Missouri basin had served them for a hundred years
and were characterized in these reports as a “natural factory,” or “a productive engine,”
that provided for all the economic and subsistence needs of tribal members. 7

Congress recognized that the bottomlands represented a significant portion of the
economic prosperity of the Three Tribes. Section 6 of the War Department’s Civil
 Appropriations Act of 1947, known as the Indian Limitation Clause, prohibited the
construction of the Garrison Dam until suitable replacement, or lieu lands were found by
the War Department and offered to the Interior Department for the Three Tribes. The
inability of the War Department to offer suitable lands in lieu of the lands lost was
identified by the JTAC as a severe failing.

Ultimately, however, Congress failed to pay the Three Tribes just compensation
that permitted them to replace the lost land base of 155,000 acres. The $12.5 million
settlement was offered to the tribes as a “take it or leave it” proposition. The following
table assesses the income associated with the Tribe’s taken lands.

Table 5. 1986 agricultural incomes associated with the Three Tribe’s taken lands. 8

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<td>30,000</td>
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<td><strong>$15,278.0</strong></td>
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7 Ibid., 30. See the MRBI reports produced from 1947 to 1972 for additional description of Fort Berthold’s
self-sufficiency and the river environment. U.S Department of the Interior, Bureau of Indian Affairs,

8 Ibid., 35.
The idea that the Three Tribes deserved equitable compensation was further attested to by the testimony of Dr. H. Paul Friesma’s report on the social and economic impacts of the Three Affiliated Tribes attributable to the Garrison Dam. The adverse effect of the Garrison Dam on the Three Tribes’ existence was clear and beyond reasonable dispute. Dr. Friesma’s report further reinforced the JTAC’s conclusion that, prior to the taking act of 1949, the Three Tribes were a self-sufficient and well-integrated society. The JTAC concluded that the original compensation amount of $12.5 million was inadequate to permit the Three Tribes to rebuild their economic base.\(^9\)

Congressional action was required to remedy the situation and provide just compensation for the wrongs done the Three Tribes.

Six years after the JTAC’s final report in 1986, Senator Kent Conrad of North Dakota introduced the bill that would eventually became the Three Affiliated Tribes Equitable Compensation Act of 1992, Public Law 102-575. Nearly fifty-years after their lands were taken, the Three Tribes were provided $149.2 million and promised the return of 46,800 acres.\(^10\) The funds were placed in trust while the interest was to be made available to the Three Tribes to support for tribal needs and continued economic development.

On February 4, 1993, Tribal Chairman Wilbur D. Wilkinson delivered the State of the Reservation address entitled; “There will be a better Tomorrow.” In it he declared:

\(^9\) Ibid., 36.

\(^10\) Although the JTAC called for just compensation the BIA strenuously opposed the idea and more research is needed to explore their rationale.
Today, I see a new age of prosperity ahead for our people which will make us a self-sufficient, stand-alone government utilizing its greatest resources; the land and the people.\textsuperscript{11}

Having sought compensation for over fifty years the Three Tribes were now realizing some of their dreams as Chairman Wilkinson's statements in 1993 attest. Already the Three Tribes were benefiting from PL 102-575 with the return of 5,800 acres of land to tribal ownership and an additional 41,000 acres pending.

He touted many of the positive developments that had occurred on the reservation to improve quality of life for tribal members. From construction of the Fort Berthold Community College, expansion of Northrop's aircraft manufacturing facilities to the investment of $400,000 in making the raising of bison an economic reality.\textsuperscript{12} The Three Tribes are showing signs of economic recovery and realization of their dream of a self-sufficient and prosperous nation.

But all the rebuilding is yet to be completed. "In closing," said Chairman Wilkinson; "I feel that there is great potential for us. It is up to us, working together in unity, to see our potential, our opportunities as things that can become real for us, and act on these points. I see a new propensity ahead for the Mandan, Hidatsa, and Arikara people. We have the people, we have the resources, we created the opportunities, and we will realize the benefits. It is only a matter of time."\textsuperscript{13} The Three Tribes have come full circle and may yet realize their dreams that were once flooded by the harnessing of the

\textsuperscript{11} Wilbur D. Wilkinson, "There will be a Better Tomorrow," State of the Reservation address, 4 February 1993. Missouri River Diversion Project Collection, North Dakota Institute for Regional Studies, North Dakota State University, Fargo, North Dakota.

\textsuperscript{12} Ibid., 3-11.

\textsuperscript{13} Ibid., 15.
mighty Missouri and like the Cherokee, successful in their new situation, they adapted after all.

Prior to the Garrison Dam the Three Tribes had maintained their subsistence lifeways for hundreds of years. When the first French traders entered the region in the mid-1700s they encountered a series of villages and a people with a rich agrarian heritage. The Three Tribes were more than just living off the land, they were thriving as traders amongst other plains tribes and the newly arrived Europeans promised even greater prosperity. Their hopes for continued growth were to be dashed by changes that were thrust upon them by an expanding nation and increased contact with non-Indians.

The Three Tribes at the time of the Garrison Dam were still agriculturists and the environment in which they thrived, the Missouri River bottom was provided more than just subsistence levels of crops, the future of an agrarian economy appeared bright. Tribal members utilized the region's resources extensively being careful to not ever-use the land, but then the waters came.

"My memories of the garden down where we lived in the valley there, before the dam, everything grew very well," recalled Martin Cross, Tribal Chairman in the 1940s and 1950s. "We raised beans, corn, squash that we would harvest so that we could eat it during the winter," he continued, "after the dam my Dad had a garden and there was no comparison, the ground was hard and when the potatoes would grow, they would be just around the roots, maybe two or three little ones. The ground was hard, it was prairie."\textsuperscript{14}

The lifeways had changed and gone forever were the fertile lands of the Missouri River.

Phyllis Old Dog Cross, who was fifteen at the time of the Garrison Dam construction tells how her Dad, prior to the dam, was a farmer and rancher near the community of Parshall. “We had normal things you do on a farm, a garden, cows, chickens, the kids all had horses. After the flood [construction of the Garrison Dam no more horses, no more chickens, no more nothing.” The communities in which the Three Tribes had thrived were strained by the loss of land and ways of living many had known recalled Phyllis, “So I think the total way of life was wiped out, and we all had to kind of figure out what it is that, what the new way was going to be.”

Where once families would go out and gather berries, now the berries were even harder to find, if anyone was even looking. “Well, the trees, the wild berries now are harder to find, if you can find them. That used to be normal activity of all families, now I don’t see anyone picking wild berries anymore.” The Three Tribes had adapted non-Indian ways out of necessity, they had moved to cash-based economy and many tribal members sought work in factories such as Northrop or in convenience stores. No longer would they hunt deer or pick berries or plant gardens. Many who remember these days convey the sadness of lost lifeways, “I miss my horses so much it just still brings tears to my eyes, it just seemed so unfair to be treated that way.”

As a teenager during the relocation of her family from Elbowoods to Parshall, Marilyn Hudson explained how this new generation, since the dam, seemed un-connected

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16 Ibid.

17 Ibid.

18 Ibid.
to the loss and the communities under water, "I wonder if people realize that at one time there were thriving communities under the water [Lake Sakakawea]." In 1955, although the relocation to Parshall was abrupt, she recounts how the Three Tribes faced these changes, "New challenges, new directions, working...it's hard to really...people didn't just sit and think about what happened. They kept on with life—probably harder then ever, you know, to readjust, start over again so it was a very busy time."20

The forced changes to the lifeways of the Three Tribes didn’t mean the elimination or complete assimilation of the Three Tribes. They have certainly adapted well and now with the increased resources of the JTAC and the Equitable Compensation Act, they have additional means by which to ensure that their culture remains an integral part of what makes America the special place it is. We can not erase the past, nor can we ignore it. We can, however, look to the Three Tribes as an example of how flooded lifeways can precipitate social change and how a culture can survive in any environment. As Chairman Wilkinson’s 1993 state of the reservation attests, there will be a better tomorrow.


20 Ibid.
APPENDIX A: EPILOGUE

They will tame you, Old Missouri,
Guide your urge to reach the sea.
Build a wall to spread your waters
Over woodland, field, and lea.

Then will yoke you, Old Missouri,
To their whirring dynamo-
Sweep the shadows from the prairies
With the power of your flow.

Man has tossed a butte and hilltop
Across your current wild and free.
Nevermore will Old Missouri
Flow unfettered to the sea.
(H.R. Martinson, Bismarck, 1951)¹

THREE AFFILIATED TRIBES

¹ Back cover of North Dakota Outdoors, Aug 1951.
APPENDIX B: LIST OF SUPREME COURT WATER CASES

Winters v. United States, 207 U.S. 564 (1908)

Skeen v. United States, 273 F.2d. 93 (9th Cir. 1921)

United States v. Powers, 305 U.S. 527 (1939)

United States v. Walker River Irrigation District, 104 F.2d 234 (9th Cir. 1939)

United States v. Ahtanum Irrigation District, 236 F.2d 321 (9th Cir. 1956), cert. Denied, 352 U.S. 988 (1957)

Arizona v. California, 373 U.S. 546 (1963)

United States v. District Court for Eagle County, 401 U.S. 521 (1971)

United States v. District Court for Water Div. 5, 401 U.S. 527 (1971)

United States v. Cappaert, 508 F.2d 313 (9th Cir. 1974)

United States v. Akin, 504 F.2d 115 (10th Cir. 1974)


United States v. New Mexico, 438 U.S. 696 (1978)


United States v. Adair, 723 F.2d 1394 (9th Cir. 1983)


APPENDIX C: LIST OF TERMS

**Acre-Foot** – the amount of water required to cover one acre to a depth of one foot. An acre-foot equals 326,851 gallons or 43,560 cubic feet. This volume measurement is used to describe a quantity of storage in a reservoir.

**Appropriation, Doctrine of Prior** – with respect to water, refers to the system western states use to assign and distribute quantifiable amounts of water, in the form of water rights; system operates on a first-in-time, first-in-rights basis.

**Dam** – any barrier which impounds or diverts water

**Drainage Area** – the amount of area drained by a river system to include all tributaries and associated streams

**Earthen (or earthfill) dam** – an embankment dam in which more than 50% of the total column is formed of compacted fine-grained material. These are the most common type of dams because their construction involves using materials in the natural state, requiring little processing

**Embankment** – fill material, usually earth or rock, placed with sloping sides and usually with length greater than height. All dams are types of embankments

**Flood** – the inundation of a normally dry area caused by high flow, or overflow of water in an established watercourse (such as a river, stream, or drainage ditch), or ponding of water at or near the point where rain fell

**Flood Control** – reducing the risk by building dams and/or embankments and/or altering the river channel

**Floodplain** – the land area of a river valley that becomes inundated with water during a flood

**Hydroelectric Generation** – the production of electric power through use of the gravitational force of falling water

**Impoundment** – a body of water gathered and enclosed (such as in a reservoir) for economic and other water-supply needs

**Irrigation** – the controlled application of water to arable lands to supply water requirements not satisfied by rainfall

**Kilowatt-Hour (kWh)** – a basic unit of electrical energy which equals one kilowatt of power use for one hour

**Mainstem** – the principal river in a basin, as opposed to the tributary streams and smaller rivers that feed into it

**Mitigation** – measures taken to offset, or compensate for, damage to natural systems caused by a particular project or human activity

**Quantification** – defining the amount and timing of a water right
Reservoir – a manmade facility, often behind a dam or other obstruction, for the storage, regulation, and controlled release of water
Riparian – pertaining to a river (e.g. the riparian zone)
Riparian Zone – the habitat found on stream banks and river banks, where semi-aquatic and terrestrial organisms mingle
River – a natural stream of water emptying into an ocean, lake, or another river
River Basin – drainage area of a river and its tributaries

Taking – refers to the transfer of dominion or control of property from a private owner to the government against his or her consent
Tributary – a stream or river that flows into another stream or river and contributes water to it

Water Rights – priority claim to water. A legal right to use a specific amount of water from a natural or artificial body of surface water for general or specific purposes such as irrigation, mining, power, domestic use, or instream flow
Watercourse – a natural stream channel that, depending on the season, may or may not contain water
Winters Doctrine – a legal document arising from the case of Winters v. U.S., US Supreme Court, 1908, 207 US 564, that holds that, upon the creation of a federal reservation on the public domain, the reservation has appurtenant to it the right to divert as much water from streams within or bordering it as is necessary to serve the purposes for which the reservation was created

PRIMARY SOURCES

Manuscript Collections

Four Bears Museum, Tribal Archives, Fort Berthold Indian Reservation, New Town, North Dakota.

Mary Scott papers, 1910-1968. E.B. Robinson Dept. of Special Collections, Chester-Fritz Library, University of North Dakota, Grand Forks, North Dakota.

Missouri River Diversion Project Collection. North Dakota Institute for Regional Studies, North Dakota State University, Fargo, North Dakota.


Roy Dobson Papers, 1940-1965. State Historical Society of North Dakota, Bismarck, ND.


Federal Government Documents


State Government Documents


Tribal Documents


Statements from a General Meeting between the Corps, BIA officials, and tribal members, Elbowoods, ND: Fort Berthold, May 27, 1946.


Newspapers

Bismarck Tribune (June 1943 – Oct 1951)
Sanish (N.Dak) Sentinel (July 1943 – June 1948)

Interviews

North Dakota Road Studies arranged by the State Historical Society of North Dakota, 23 June 1999


SECONDARY SOURCES

Theses


Books


**Periodicals**


MacGregor, Gordon. “Attitudes of the Fort Berthold Indians Regarding Removal from the Garrison Reservoir Site and Future Administration of Their Reservation.” *North Dakota History* 16 (January 1949): 31-60.


Shane, Ralph M. “A Short history of the Fort Berthold Indian Reservation” *North Dakota History* 26 (Fall 1959): 120-140.