

Native sovereignty and waters of the West

Sovereignty — it’s a word heard more commonly these days. Not so long ago, this term was largely relegated to legal and legislative domains, but things seem to have changed — today sovereignty is on the lips of a wide array of people, from journalists in Hawai’i to anglers in Wisconsin, from activists in Nevada to bureaucrats in Washington. And for good reason — indigenous rights organizations and tribal governments themselves have brought the issues and ideas behind native sovereignty more fully into the public view.

Sovereignty encompasses the idea of governance of a people by that people. The rights of a sovereign are:

- to establish and maintain territorial boundaries,
- to create and enforce laws that protect citizenry,
- to connect disparate communities through establishing a sense of identity.

Fundamentally, sovereignty is a concept about the meaning, extent and structure of government — that is, its relative authority,

autonomy, and responsibilities.

While sovereignty doesn’t lend itself well to quantitative gauges, there is ample evidence that indigenous peoples — the diverse native peoples within the United States, collectively called American Indians, Native Alaskans and Hawai’ians — have made remarkable strides in asserting

their rights as sovereigns. Consider the active court systems of tribal governments in the United States as well as the police forces, social service agencies, transportation planning

centers, educational institutions, and water planning organizations that are operated as institutions for and by indigenous peoples. This is not to suggest that all is settled and native sovereignty is widely understood and well-accepted. The dimensions and characteristics of native sovereignty are, in fact, regularly contested, sometimes rather vehemently by state government representatives who challenge or stand in opposition to native and tribal sovereignty. Recent examples are evident in decisions of the U.S. Supreme Court, in which lawsuits pitted states against native groups or American Indian tribes over various dimensions of sovereignty. These include:

- a decision in 1991 regarding the sovereign immunity of the state of Alaska relative to two native communities;
- a decision in 1993 about the tribal authority of the Cheyenne River Sioux to regulate hunting and fishing as opposed to the authority of the state of South Dakota;
- a decision in 1996 concerning the resolution of disputes between the Seminole Tribe and the state of Florida over reservation gaming;
- a decision in 1997 about whether the Coeur D’Alene Tribe or the state of Idaho had jurisdiction over submerged lands under a lake; and
- a decision in 2000 regarding the water rights allocations of tribes along the lower Colorado River relative to states of Arizona and California.

These last two U.S. Supreme Court decisions involve conflicts between Western states and tribes over water matters, but it was a judicial decision 99 years ago — the 1908 U.S. Supreme Court case *Winter v. United States* — that has become a landmark for all subsequent water allocation that involve tribal governance and Western states. The “Winters” case, as it has come to be known, involved a dispute over waters of the Milk River in northern Montana between the Indians of the

Fort Belknap Indian Reservation and settlers who had arrived during the waning years of the 19th century after the tribal land base had been diminished. In 1905, the U.S. Bureau of Indian Affairs, who had developed irrigation on the reservation, requested the U.S. Department of Justice take action against the settlers to ensure an adequate supply of water for crops on the tribe’s reservations. In its capacity as trustee for the tribe, the U.S. Department of Justice filed suit in U.S. District Court and the United States and the Fort Belknap Tribe won not only this case but subsequent appeals in the Ninth Circuit Court and U.S. Supreme Court. The decision of the U.S. Supreme Court in this case forms the foundation of the reserved water right (or Winters) doctrine that is used to this day as a guide to allocating waters between tribal governments and water users in Western states.

The essential elements of the reserved water rights doctrine have come to be understood as:

- whether explicitly stated or not, treaties and agreements made between the United States and Indian tribes imply a reservation of both land and water, in order to make the land habitable;
- the basis for a reserved water right claim is to meet the purpose of the reservation, as set forth in congressional treaty, executive order or federal statute;
- reserved water rights are based on federal laws rather than state laws;
- unlike the prior appropriation system of water allocation adopted by many western states, reserved rights are reserved indefinitely;
- the amount of a reserved right is based upon a determination of the resources available on the reservation, regardless of how many people historically or currently reside on the reservation;
- the priority to use water (or the “seniority” of the water right) is generally based upon the date when the reservation was established.


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Art Curating

by Marjorie Vecchio, director of the Sheppard Fine Arts Gallery

In the years since the Winters case, in addition to federally designated Indian reservations, other federal reservations of land have also been granted reserved water rights, such as military reservations or National Parks.

An example of how native sovereignty connects to the realm of water rights can be found in the Northern Arapaho and the Eastern Shoshone of the Wind River Reservation. The Shoshone were granted land rights to the Wind River Reservation under a treaty in 1868 and a decade later the Arapaho were moved by the U.S. Army onto the Wind River Reservation. Since that time, the boundaries of the reservation were changed through a series of land cessions and restorations, but both tribes remained on the reservation. Despite their traditional differences, both tribes came together to secure water rights for the places both valued on the reservation. In 1985, after years of conflict and litigation between the tribes and the state and ranchers, a court decree awarded the Wind River tribes more than a half-million acre-feet* of senior water rights to the Big Horn River and Wind River.

Exerting their powers as a sovereign government, the tribes developed and enacted a Water Code in 1990 and, under the terms of the code, the tribes issued a permit for instream flows for the reservation to enhance conditions for fisheries and to ensure flows through the reservation. The state of Wyoming disputed the administration of water rights by the tribes as well as the instream flow permit that had been issued, and in 1992 the Wyoming Supreme Court ruled in favor of the state. While the tribes have not had success in asserting their administrative powers over water, they were able to secure water rights for the reservation and, in the process, developed institutional capacity that allows them to continue work on water rights matters and exert the powers as sovereigns. 

*An acre foot of water is the volume of water it takes to cover an acre of land to a depth of one foot, or approximately 325,853.4 U.S. gallons. An acre foot of water is roughly the amount of water a family of four uses annually.

1. A curator designs exhibitions by theme or artists, chooses the artists and then goes through their artwork deciding which pieces to show.

2. Many artists are “crossing over” to curate in order to reclaim artistic freedom in exhibitions, which in most institutions — museums and commercial galleries — are inspired by the market and audience income rather than the joy and intelligence of art.

3. Some artists prefer to have a conversation with a curator and design their own exhibitions, or make new work for the show, which is an exciting (or scary) prospect for a curator.

4. Studio visits with artists can end up as three-hour discussions.

5. Some curators follow, support and show the same artists for a lifetime.

6. Until recently, curators never went to school to learn their craft; they often just fell into it and programs did not exist. In the last 15 years, many master of arts programs for curatorial studies have popped up around the globe. This is a controversial topic in the art world as many believe the development of these programs are a part of the commercialization of higher education and doesn't make better curators.

7. Sheppard Gallery spends on average two to eight days installing an exhibition.

8. Not all exhibitions are purely between an artist and curator. If an artist is represented by a commercial gallery, the curator also has to deal with the dealer as an intermediary, often for approval of the exhibition, image rights for photographs, shipping of artworks, any sales that occur, etc.

9. Staying informed about the newest contemporary art means traveling to at least one or more international art fair each year,

10. A curator has another equally time-consuming and important job — especially in smaller galleries — as a writer. They have to write grants, public relations pieces, catalog essays and curatorial statements.



Photo by Jean Dixon

Marjorie Vecchio

Marjorie Vecchio, Ph.D., is the first professional curator to serve as director of the Sheppard Fine Arts Gallery since it opened in 1960 as one of the few experimental, professional, contemporary art spaces in northern Nevada. Vecchio will curate “Orion’s Belt,” her first exhibit as gallery director at the University of Nevada, Reno, Sept. 10 to Oct. 5.