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 involves 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.

Kate A. Berry is an associate professor of geography. She is also the president of the Association of Pacific Coast Geographers, an organization of more than 600 professional and academic geographers in eight Western states and two Canadian provinces.
Ten Things You Didn’t Know About…

Art Curating

by Marjorie Vecchio, director of the Sheppard Fine Arts Gallery

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 fairs 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.

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.