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Native American Rights

Thought piece

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Funding Rural America: Finding New Grants for Small Communities

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*Our
Western
Shoshone
Elders who
are being
honored by
receiving
Pendleton
blankets for
sharing and
contributing
their stories.
They will be
put in The
Great Basin
Indian
Archives. It's
been a great
event so far.*

Continuing:
Native

American Rights <http://legal-dictionary.thefreedictionary.com/Native+American+Rights>

Reserved Rights Doctrine

Another crucial factor in the interpretation of Native American treaties is what is known as the reserved rights doctrine, which holds that any rights that are not specifically addressed in a treaty are reserved to the tribe. In other words, treaties outline the specific rights that the tribes gave up, not those that they retained. The courts have consistently interpreted treaties in this fashion, beginning with *United States v. Winans*, 198 U.S. 371, 25 S. Ct. 662, 49 L. Ed. 1089 (1905), in which the U.S. Supreme Court ruled that a treaty is "not a grant of rights to the Indians, but a grant of rights from them." Any right not explicitly extinguished by a treaty or a federal statute is considered to be "reserved" to the tribe. Even when a tribe is officially "terminated" by Congress, it retains any and all rights that are not specifically mentioned in the termination statute.

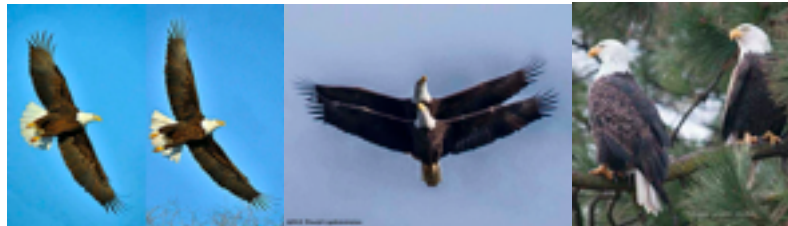
Federal Power over Native American Rights

Although Native Americans have been held to have both inherent rights and rights guaranteed, either explicitly or implicitly, by treaties with the federal government, the government retains the ultimate power and authority to either abrogate or protect Native American rights. This power stems from several legal sources. One is the power that the Constitution gives to Congress to make regulations governing the territory belonging to the United States (Art. IV, Sec. 3, Cl. 2), and another is the president's constitutional power to make treaties (Art. II, Sec. 2, Cl. 2). A more commonly cited source of federal power over Native American affairs is the [Commerce Clause](#) of the U.S. Constitution, which provides that "Congress shall have the Power ... to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Art. I, Sec. 8, Cl. 3). This clause has resulted in what is known as Congress's "plenary power" over Indian affairs, which means that Congress has the ultimate right to pass legislation governing Native Americans, even when that legislation conflicts with or abrogates Indian treaties. The most well-known case supporting this congressional right is *Lone Wolf v. Hitchcock*, 187 U.S. 553, 23 S. Ct. 216, 47 L. Ed. 299 (1903), in which Congress broke a treaty provision that had guaranteed that no more cessions of land would be made without the consent of three-fourths of the adult males from the Kiowa and Comanche tribes. In justifying this abrogation, Justice Edward D. White declared that when "treaties were entered into between the United States and a tribe of Indians it was never doubted that the *power* to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy."

Another source for the federal government's power over Native American affairs is what is called the "trust relationship" between the government and Native American tribes. This "trust relationship" or "trust responsibility" refers to the federal government's consistent promise, in the treaties that it signed, to protect the safety and well-being of the tribal members in return for their willingness to give up their lands. This notion of a trust relationship between Native Americans and the federal government was developed by U.S. Supreme Court Justice John Marshall in the opinions that he wrote for the three cases on tribal sovereignty described above, which became known as the Marshall Trilogy. In the second of these cases, *Cherokee Nation v. Georgia*, Marshall specifically described the tribes as "domestic dependant nations" whose relation to the United States was like "that of a ward to his guardian." Similarly, in *Worcester v. Georgia*, Marshall declared that the federal government had entered into a special relationship with the Cherokees through the treaties they had signed, a relationship involving certain moral obligations. "The Cherokees," he wrote, "acknowledge themselves to be under the protection of

the United States, and of no other power. Protection does not imply the destruction of the protected."

The federal government has often used this trust relationship to justify its actions on behalf of Native American tribes, such as its defense of Indian fishing and hunting rights and the establishment of the Bureau of Indian Affairs. Perhaps more often, however, the federal government has used the claim of a trust relationship to stretch its protective duty toward tribes into an almost unbridled power over them. The United States, for example, is the legal titleholder to most Indian lands, giving it the power to dispose of and manage those lands, as well as to derive income from them. The federal government has also used its powers in ways that seem inconsistent with a moral duty to protect Indian interests, such as terminating dozens of Indian tribes and consistently breaking treaty provisions. Because the trust responsibility is moral rather than legal, Native American tribes have had very little power or ability to enforce the promises and obligations of the federal government.



Several disputes have erupted over the relationship between the federal government and Native Americans. Beginning in 1998, beneficiaries of Individual Indian Money (IIM), which is held in trust by the federal government, brought a [Class Action](#) against the secretary of the interior and others, alleging mismanagement and breach of fiduciary duties against trustee-delegates of the funds. The case has spawned dozens of orders and rulings by the U.S. District Court for the District of Columbia.

In 1999, the district court in *Cobell v. Babbitt*, 91 F. Supp. 2d 1 (D.D.C. 1999), found that the secretary of the interior and others had violated their fiduciary duties and ordered the secretary to file quarterly reports detailing progress in fulfilling these orders. The U.S. Court of Appeals for the District of Columbia Circuit affirmed this ruling in *Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001). Since the appeals court ruling, the district court has considered numerous motions and has issued several orders, including a holding that the secretary of the interior and the secretary of the Treasury were guilty of civil [Contempt](#) for refusing to comply with a court order to produce certain documents.

Other issues involving the federal government's power over Native Americans have likewise resulted in litigation. The struggle to define the jurisdictional boundaries between Native American tribal courts and state courts has occupied the federal courts for many years. Although Indian reservations are deemed sovereign states, both Congress and the U.S. Supreme Court have placed limitations on their sovereignty. Therefore, as specific issues arise about tribal court jurisdiction, the federal courts must intervene to decide these cases.

Such was the case in *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001), in which the U.S. Supreme Court ruled that tribal courts do not have jurisdiction to hear federal [Civil Rights](#) lawsuits concerning allegedly unconstitutional actions by a state government officer on tribal land. The case arose when the home of a member of the Fallon Paiute-Shoshone Tribes of western Nevada was searched under suspicion that the tribe member had killed a bighorn sheep in violation of Nevada law. The tribe member brought a federal civil rights lawsuit against the game warden who had searched his house. The suit was brought in tribal court, which ruled that it had jurisdiction to hear the claim against the warden.

The district court and the U.S. Court of Appeals for the Ninth Circuit both found that the warden was required to exhaust his remedies in the tribal court before proceeding to federal court. The U.S. Supreme Court, per Justice [Antonin Scalia](#) disagreed, finding that Congress had not extended the jurisdiction of tribal court to hear federal civil rights claims. The case severely limits the scope of tribal jurisdiction.

Hunting and Fishing Rights

Hunting and fishing rights are some of the special rights that Native Americans enjoy as a result of the treaties signed between their tribes and the federal government. Historically, hunting and fishing were critically important to Native American tribes. Fish and wildlife were a primary source of food and trade goods, and tribes based their own seasonal movements on fish migrations. In addition, fish and wildlife played a central role in the spiritual and cultural framework of Native American life. As the Court noted, access to fish and wildlife was "not much less necessary to the existence of the Indians than the atmosphere they breathed" (*United States v. Winans*, 198 U.S. 371, S. Ct. 662, 49 L. Ed. 2d 1089 [1905]).

When Native American tribes signed treaties consenting to give up their lands, the treaties often explicitly guaranteed hunting and fishing rights. When the treaties created reservations, they usually gave tribe members the right to hunt and fish on reservation lands. In many cases, treaties guaranteed Native Americans the continued freedom to hunt and fish in their traditional hunting and fishing locations, even if those areas were outside the reservations. Even when hunting and fishing rights were not specifically mentioned in treaties, the reserved-rights doctrine holds that tribes retain any rights, including the right to hunt and fish, that are not explicitly abrogated by treaty or statute.

Controversy and protest have surrounded Native American hunting and fishing rights, as state governments and non-Indian hunters and fishers have fought to make Native Americans subject to state hunting and fishing regulations. The rights of tribal members to hunt and fish on their own reservations have rarely been questioned, because states generally lack the power to regulate activities on Indian reservations. Tribes themselves have the right to regulate hunting and fishing on their reservations, whether or not they choose to do so. Protests have arisen, however, over the rights of Native Americans to hunt and fish off of their reservations. Such rights can be acquired in one of two ways. In some instances, Congress has reduced the size of a tribe's reservation, or terminated it completely, without removing the tribe's hunting and fishing rights on that land. In other cases, treaties have specifically guaranteed tribes the right to hunt and fish in locations off the reservations. In the Pacific Northwest, for example, treaty provisions

commonly guaranteed the right of tribes to fish "at all usual and accustomed grounds and stations," both on and off their reservations. Tribes in the Great Lakes area also reserved their off-reservation fishing rights in the treaties they signed.

These off-reservation rights have led to intense opposition and protests from non-Indian hunters and fishermen and state wildlife agencies. Non-Indian hunters and fishermen resent the fact that Indians are not subject to the same state regulations and limits imposed on them. State agencies have protested the fact that legitimate conservation goals are compromised when Indians can hunt and fish without having to follow state wildlife regulations. The U.S. Supreme Court, however, has consistently upheld the off-reservation hunting and fishing rights of Native Americans. In the 1905 case *United States v. Winans*, it ruled that treaty language guaranteeing a tribe the right to "tak[e] fish at all usual and accustomed places" indeed guaranteed access to those usual and accustomed places, even if they were on privately owned land.

The most intense opposition to Native American off-reservation hunting and fishing rights has occurred in the Pacific Northwest, where tribal members have fought to defend their right to fish in their traditional locations, unhindered by state regulations. In a series of cases involving the state of Washington and local Native American tribes, the federal courts ruled on aspects of the extent and limits of tribal fishing rights. In a 1942 case, *Tulee v. Washington*, 315 U.S. 681, 62 S. Ct. 862, 86 L. Ed. 1115, the Court ruled that tribal members could not be forced to purchase fishing licenses because the treaties that their ancestors had signed already reserved the right to fish in the "usual and accustomed places."

That case was followed by a series of cases involving the Puyallup Indian tribe that became known as *Puyallup I*, *Puyallup II*, and *Puyallup III*. In the first of those cases, the Court ruled that the state of Washington has the right, in the interest of conservation, to regulate tribal fishing activities, as long as "the regulation meets appropriate standards and does not discriminate against the Indians" (*Puyallup Tribe v. Department of Game*, 391 U.S. 392, 88 S. Ct. 1725, 20 L. Ed. 2d 689 [1968]). In the second case, the Court ruled that the state's prohibition on net fishing for steelhead trout was discriminatory because its effect was to reserve the entire harvestable run of steelhead to non-Indian sports fishermen (*Department of Game v. Puyallup Tribe*, 414 U.S. 44, 94 S. Ct. 330, 38 L. Ed. 2d 254 [1973]). In its ruling, the Court declared that the steelhead "must in some manner be fairly apportioned between Indian net fishing and non-Indian sports fishing." Finally, in *Puyallup III*, the Court ruled that the fish caught by tribal members on their reservation could be counted against the Indian share of the fish (*Puyallup Tribe v. Department of Game*, 429 U.S. 976, 97 S. Ct. 483, 50 L. Ed. 2d 583 [1976]).

This notion of a fair [Apportionment](#) of fish was clarified by *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), in which the court determined that treaty language guaranteeing tribes the right to take fish "in common with all citizens of the Territory" guaranteed the Indians not just the right to fish but also the right to a certain percentage of the harvestable run, up to 50 percent. This decision set off a firestorm of controversy throughout the Pacific Northwest. Hundreds of legal disputes erupted over the allocation of individual runs of salmon and steelhead, and state and non-Indian fishing interests attacked the decision. The U.S. Supreme Court ultimately upheld the decision in a collateral case, *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n* 443 U.S. 658, 99 S. Ct. 3055, 61 L. Ed. 2d 823

(1979). In that case, the Court upheld the district court's ruling and went on to clarify the details of the way the fish should be apportioned. Writing for the majority, Justice [John Paul Stevens](#) stated that the treaties guaranteed the tribes "so much as, but no more than, is necessary to provide the Indians with a livelihood—that is to say a moderate living." A "fair apportionment," he said, would be 50 percent of the fish, emphasizing that 50 percent was the maximum, but not the minimum, amount of fish to which the Indians were entitled.

The Court resolved a decade-old legal dispute in 1999 involving Indian fishing and hunting rights with the decision in *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 119 S. Ct. 1187, 143 L. Ed. 2d 270 (1999). It ruled in favor of the Chippewa Indians' right to fish and hunt in northern Minnesota without state regulation. By a 5-4 vote, the Court upheld an appeals court decision finding that the tribe's rights under an 1837 treaty were still valid. The ruling marked a final victory for the tribe in its long fight to assert its treaty rights and to defend its cultural traditions.

Brought by the tribe in 1990, the lawsuit proved highly controversial in Minnesota, which regarded it as a threat to the \$54 million in tourism revenue generated by the Mille Lacs Lake resort industry. But two lower federal courts and the U.S. Supreme Court rejected the state's arguments that the 162-year old treaty had been invalidated by presidential order, later treaties, and even by Minnesota's gaining of statehood. The U.S. Supreme Court's majority opinion, written by Justice [Sandra Day O'Connor](#), detailed the history of the treaty and subsequent actions that the state, nine counties, and landowners claimed had rendered the treaty invalid. She found nothing in this historical information that had bearing on the continued validity of the treaty.

[Te Kaea's video](#) [TE MATATINI 2013 - Te Waka Huia](#) [03:33](#)

Thought piece:

<http://www.inc.com/mark-cuban/playbook-biggest-mistake-social-media.html>

Fresh water thinking

From the looks of the list of appointees to the Governor's Drought Forum, I'm wondering how serious he is about solutions for the drought. The same state department heads, who are all good people, will most likely come up with the same old policies and regulations. They have jobs already, and the drought, while important, may not be personal or urgent enough. The Forum has a huge task and should be looking for dreamers, innovators and practitioners to collaborate.

What's really missing are people who have been and will be seriously impacted by any recommended drought measures—local governments, tribes, water organizations such as irrigation districts and small water companies, ranchers, business owners, conservationists, well owners and urban dwellers. All have a stake in what's recommended. Where are they on the governor's lists? We need practical solutions that are daring, affordable and sustainable. Please call and ask the governor to include more varied representatives on his Drought Forum. If you're interested, go to <http://drought.nv.gov/>

Susan Lynn, Reno

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## **Executive Order**

Governor Sandoval established the **Nevada Drought Forum** on April 8, 2015 to bring together the best minds, managers and all interested stakeholders to assess the drought in Nevada, identify best conservation practices and policy needs, and make recommendations to the Governor regarding next steps. In his Order, Governor Sandoval also mandated full water audits of State facilities and implementation of water conservation strategies at State facilities. Additionally, Governor Sandoval urged local governments and private citizens to conduct similar audits and conserve water in consultation with local water authorities.

The Nevada Drought Forum was established to:

1. Build on the activities of the existing Nevada Drought Response Committee;
2. Evaluate key findings and next steps identified in the Western Governors' Drought Forum Final Report as they relate to Nevada;
3. Meet with relevant stakeholders including, but not limited to, agricultural producers, municipal water suppliers, the industrial sector, recreation interests, Tribal Nations, and members of the general public; and
4. Determine, with input from stakeholders and the public, the elements of a final report to the Governor.

**Executive Order**

[Click here](#)

## **Nevada Drought Forum Schedule**

### **May 15, 2015**

- State agencies provide summary of current and planned actions, and related authorities pertaining to drought to Nevada Drought Forum
- Municipal water providers and Federal agencies provide summary of current and planned actions related to drought and drought conditions to the Nevada Drought Forum

### **June 15, 2015**

- Nevada Drought Forum releases Nevada Summary of Current Actions

### **June 23, 2015**

- Western Governors' Drought Forum Final Report Released

### **July 1, 2015**

- Nevada Drought Forum outlines possible topics and objectives for stakeholder discussions, and issues additional call for specific information

### **August 31, 2015**

- Interested stakeholders respond to call for information from Nevada Drought Forum and provide Nevada Drought Forum summary of current actions and challenges relevant to recommendations of the Western Governors' Drought Forum Final Report

**September, 2015** (Dates TBD)

- Nevada Drought Forum convenes multi-day Drought Summit in Carson City
- November 1, 2015**

- Nevada Drought Forum delivers final written report to the Governor

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### **Webinar Spotlight:**

#### ***Funding Rural America: Finding New Grants for Small Communities***

When has it ever been easy to secure funding for rural communities? Is there a way to level the playing field so rural nonprofits as well as small towns and counties/boroughs can compete for both government and private sector grants? What are the other options for financially supporting a rural project whether you are a nonprofit or local government? Are collaborative efforts worth the effort? And, of course the biggest question: Who is funding rural America?

These, and other relevant questions, along with current trends affecting rural funding will be addressed in this webinar presented by Cynthia Adams, CEO of GrantStation. This webinar will be held on Thursday, June 18, 2015.

**[Register for Funding Rural America: Finding New Grants for Small Communities](#)**

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**<http://www.inc.com/mark-cuban/playbook-biggest-mistake-social-media.html>**

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**HUD announces the following ONAP Vacancy**, Lead Grants Evaluation Specialist, GS-13, in Chicago, IL. Vacancy Period is June 10-24, 2015.



The open positions are posted on [www.usajobs.gov](http://www.usajobs.gov). Links to the internal and external job announcement posts are listed below for reference.

Please share with others who may be interested.

15-HUD-969 (Internal)  
<https://www.usajobs.gov/GetJob/ViewDetails/>



[406466900](#)

15-HUD-970-P (External) <https://www.usajobs.gov/GetJob/ViewDetails/406467900>

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### **L.A. Film Festival Exclusive: Trailer For Native American Drama 'Mekko'**

When Hollywood decides to make movies about Native people, it's not often that they turn to the Native community for their input. But what makes the upcoming in [blogs.indiewire.com](https://blogs.indiewire.com/) By Kevin Jagernauth

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[Myron Dewey](#) shared [AJ+'s video](#).

Talking about what has happened to our people didn't seem as a common talk amongst my peers in high-school, it wasn't until Haskell Indian Nations University I really understood the cause and effects of how boarding school impacted our family and Paiute/Shoshone people.

We will all need to heal on our own schedule, many of our people who are not conscious yet to the history of our Indigenous People, take time to learn....one day your children and or grandchildren will want to know as well as non-natives. We will have to understand de-colonization and how to re-traditionalize the effects of colonization. Peshu u

### **Canada's Cultural Genocide 01:45**

[AJ+](#)

Canada's official commission called the school program for its native people “cultural genocide.” Music Courtesy of [A Tribe Called Red](#).

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[Myron Dewey](#)

**This lake is called Agai-Pa**, which sustained the Agai-Dicutta (Trout Eaters) for thousands of years until western encroachment.

Now due to several factors like military bombing in the lake, the river cut off with a Dam and drought, The Agai-Dicutta (Trout-Eaters) also known as the Paiute People, have 0 trout in the lake.

When the traditional harvesting areas change the indigenous people know, when the traditional foods is gone the indigenous people know, when the medicine is gone, the traditional all people know and when Mother Earth changes the indigenous people know for we are spiritually, physical and metaphysically connected through harvesting our traditional homelands.

The earth is changing to adapt and clean herself...and so are her people..

[02:32](#)

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**Online education for a better planet [Sponsored by University of Wisconsin]**

*“Sustainability is development that meets the needs of the present without compromising the needs of future generations.”*

The needs of our world are always changing, and more than ever we're seeing a crucial demand for sustainability-minded business practices. To help meet that demand, we've designed both a Bachelor's degree and a Master's degree in Sustainable Management offered through the University of Wisconsin-Stout.

Whether you're looking at a first-time degree or want to broaden your current skill set, here's what you need to know:

- Courses are **100% online**, taught by real UW professors, and designed to fit around your schedule.
- You can **enroll from anywhere** across the country, wherever you have internet access.
- Get a competitive edge in today's society by becoming a leader who can implement the **triple bottom line** in business.
- **Contribute to the greater good** by learning how to foster vibrant communities, a healthy environment, and strong profitability.

Get started on your next step – check out our website to learn more about the degree you're interested in. We can't wait to hear from you.

[Bachelor's in Sustainable Management](#)

[Master's in Sustainable Management](#)

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### [Will Your Child be Rich or Poor? 15 Poverty Habits Parents Teach Their Children](#)

When I travel the country speaking to high school and college students about exactly what they need to do to become financially successful in life I always...

richhabits.net



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[How Teens Can Become Millionaires](#)

[Whether you have never stepped foot in a bank or you are actively saving and investing for your future, all it takes is a little effort and a lot of patience to become confident in your financial d...](#)

Dave Ramsey · Apr 21, 2015

[Randy NagitsyShoshone Grammar for Everybody](#)

Learning Shoshone has been a true test  some days I question if it is possible. I am thankful for my instructors I have in class, and reviewing words with my grandma. Keep up the fight for your language everyone. One day at a time.  now that I'm working with Verbs, and looking at sentence structures. OMG it gets over whelming. Some days i just sound like chewbacca. Lol. Thankful for the chance to learn.

[Ford Shifts Grant Making to Focus Entirely on Inequality](#)

America's second biggest grant maker will also double the share of grants it gives for operating support.

Schools Have Failed First Nations by Lying About History

indiancountrytodaymedianetwork.com

Environmental group initiates FOIA lawsuit against NPS for new rule allowing Tribes to gather in...

The materials are here, on PEER's website. Among the arguments being made are that tribes are not... turtletalk.wordpress.com

