

“We’re not going to sit idly by:” 45 Years of Asserting Native Sovereignty Along the Missouri River in Nebraska

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Abstract

The Missouri River and its tributaries have been a source of sustenance, a method of transport, and a vital part of many Indigenous societies long before the arrival of colonizers. This river continues to play a vital role in the contemporary lives of many Native American people. In this essay, I consider the impacts of colonizing philosophies regarding land ownership and cases in the last half century where Native American communities challenged the settler state to maintain treaty rights and advocate for the health of the Missouri River. I focus on the work of water protectors challenging the Keystone XL and Dakota Access pipelines in the 21st century, *United States v. Winnebago Tribe of Nebraska*, and the Omaha Tribe of Nebraska’s defense of Blackbird Bend to expand on the historical legacy of Native people advocating to maintain treaty rights along the Missouri River. These cases illustrate how Native American communities push back against the settler state in courtrooms and through grassroots activism to defend their sovereignty, and the difficulties of maintaining legal rights in a settler state.

Keywords: *sovereignty; treaty rights; water rights; Native American activism; Native American epistemologies*

You think nothing of the land because the Great Spirit made you with paper in one hand and pen in the other, and although he made us at the same time, he did not make us like you. We think of nothing but what is on the land.

-Ho-Chunk negotiator, 1827 (as cited in Wilkinson, 1987-1988, p. 786)

Introduction

An important tenet in traditional Indigenous governance is the importance of land to social, spiritual, and economic facets of life. Indigenous people of the Americas have views regarding environmental stewardship and land management that differ considerably from Western perspectives. Native peoples had, and still maintain, complex connections to land and geographical spaces that are derived from centuries of living with the land. As Acoma Pueblo scholar Simon Ortiz (1998) has stated, Native Americans have been tasked with speaking for the land and future generations. This is not a duty to be taken lightly but is a reflection of a philosophy developed from millennia of living with the land and maintaining a relationship of sustainability rather than exploitation. I made the decision to focus on Native American communities in Nebraska for this article as I specialize in the history of Ho-Chunk people and I am a citizen of the Winnebago Tribe of Nebraska. However, I acknowledge that numerous Native American communities rely on the Missouri River and assert the importance of this water system. Each of these communities has their own histories that support the interconnectedness they have with the river and geographic regions.

This article considers how Native American communities have asserted their land rights and sovereignty against settler pressures to erode treaty land for development in the last half century. Colonizing structures continue to impact Native communities today as they strive to assert their sovereignty in preserving treaty land along the Missouri River. Native American sovereignty includes protecting and maintaining interconnected Indigenous practices of sustainability, moral economies, views towards gender equity, and spiritual lifeways. These epistemologies have been shaped by knowledge and close observation of the environment and contrast greatly with European forms of government and concepts of social control. This article begins by looking at tensions between settler philosophies and Indigenous epistemologies that inform views towards place, legal practices, and land development. These conflicting views have gained public attention through the recent #NoDAPL movement at Standing Rock. This pipeline battle is the most recent manifestation of Native communities working to assert cultural and political sovereignty through the legal system and grassroots action for the protection of land, water, the lives of women, human and non-human communities, and future generations. These interconnected issues are tied to land and water rights and are part of Native American epistemologies and lifeways. The struggle for Native American communities to speak for the land and defend traditional ways of knowing has been ongoing and is linked to the history of the Missouri River. The Missouri River has been colonized and heavily developed for commerce at the expense of indigenous eco-systems and animal communities. These animal communities and the Missouri River, itself, should be given more consideration in land development as they are considered in Indigenous land stewardship and Indigenous epistemologies. The history of channelization, development, and management of the Missouri River is intertwined with the legal histories and land rights of tribes along the river in Nebraska. The court case *United States*

v Winnebago Tribe of Nebraska and cases around Blackbird Bend demonstrate how the Winnebago Tribe of Nebraska and the Omaha tribe also utilized grassroots actions and the legal system to assert treaty rights and maintain political sovereignty over lands along the Missouri River. This history demonstrates that Native American communities will continue to assert cultural and political sovereignty and land rights despite the legal and social constraints put into place by colonizers.

(De)Colonizing Settler Philosophies

For the Native nations living alongside the Missouri River, the Missouri was and continues to be a substantial part of their lives. This interconnectedness with the land has been brought to the forefront of the public most recently with the Standing Rock Sioux Water Protectors and their fight against the construction of the Dakota Access Pipeline. This community action has been called the largest gathering of Native nations within the last century. The actions of the Oceti Sakowin to protect the Missouri River is part of a longer history of maintaining the interrelated health of water and communities. The Missouri River has been a source of sustenance, a method of transport, and a vital part of many Indigenous societies long before the arrival of settlers. It was connected to the economy of many tribes, and like many significant geographic features has a spiritual component. As a Ho-Chunk person (Winnebago Tribe of Nebraska), I was told by family members about the power of the water spirits that inhabited the tributaries of the Missouri River and the springs it fed. In the discussion of preserving the health of waterways, the spiritual aspects of these environmental features are often left out of the conversation or quickly disregarded by settler communities. The concept of inspirited sacred spaces counters Western philosophy that secularizes geographic areas and perpetuates the perspective that humans have the divine right to use and exploit land and water as they deem fit. This Western philosophy can be traced to Christian roots and Genesis which proclaims, "And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth" (Genesis 1:26, King James Bible). This ideology wills the earth to mankind, but specifically to Christians. Pawnee scholar Walter Echo-Hawk (2012) describes Christian rights to land and property as informing "legal fictions" that are foundational to systems of Native land dispossession (p. 46). These legal fictions were utilized to erode Native American sovereignty, legitimize land dispossession of Native people, and rationalize the destruction of waterways for economic purposes and development into the 21st century. As Standing Rock Sioux scholar Vine Deloria, Jr. (1999) comments, "There are few tribes, for example, that would teach that humans are superior to animals, almost every tribe believing that each species forms a family or a people and has a specific relationship to humans, who merely constitute another species" (p. 28). Indigenous peoples have a separate philosophy regarding their relationship with their lands that directly counters the Western perspective of supremacy, exploitative economic systems, and philosophies that are the foundation of the legal and social norms in the United States. A philosophy of kinship and stewardship characterizes traditional Indigenous perspectives of their relationship with their ancestral territories and the beings that rely on the earth for survival. Many Indigenous people have origin stories wherein they emerge from the Earth. This sacred connection to particular geographic spaces (land and water) informs the traditional cultures and philosophies of Indigenous peoples and emphasizes the concept of

inspired places. Many contemporary Native people consider this relationship to geographic places and traditional philosophies as they develop policies for their nations and in preserving traditional knowledge. Therefore, preserving these connections to place and environmental principles are directly related to the sovereignty of Native nations and Native epistemologies that inform traditional culture.

Although the American Indian Religious Freedom Act was passed in 1970, it does little to protect sacred spaces from exploitation. The American Indian Religious Freedom Act (AIRFA) guarantees to Native Americans access to religious sites, use and possession of sacred objects and the freedom to worship through traditional ceremonial rites. The Native American Rights Fund (1979) stated following President Carter's signing of the act that "Because Native American religions are so culturally removed and different than their own, non-Indians do not see them as having the same status as 'real' religions" (p. 1). Nearly fifty years after the passage of the AIRFA, Native Americans find themselves still having to defend their sacred sites and spiritual practices.

The violence inflicted on the peaceful water protectors at Standing Rock in the fall of 2016 is a continuation of the colonial project to divest Native people of their spiritual and cultural practices, challenging political and cultural sovereignty of Native nations. There are a number of moving parts in considering the call to protect the Missouri River and water sources. This goes beyond the flagrant environmental racism that is occurring in the case of the Dakota Access Pipeline, where the projected pipeline route was shifted below the city of Bismarck in North Dakota, so that if there was a leak, which is always a possibility, it would mainly effect Standing Rock's water sources. An oil leak would also impact the water sources of all communities south of Standing Rock, including other Native nations. The Winnebago Tribe of Nebraska and Omaha Nation are two of the nations that would be impacted from a pipeline leak. Over the years Native Americans in Nebraska living along the Missouri River have continuously balanced advocating for the health of water sources and their communities by invoking the sacredness of water sources, the need to preserve the health of land and waterways for future generations, and above all the sovereignty of tribal governments to protect their communities and enforce treaty agreements made with the United States government.

Challenging land exploitation in the 21st century

Native American activism against the construction of TransCanada's proposed Keystone XL Pipeline and Energy Transfer Partner's Dakota Access Pipeline reflects the legal battles for tribal sovereignty that characterize the 20th century. These settler projects of resource extraction and land exploitation are seated in colonial philosophies and are acknowledged as threats to Indigenous epistemologies of environmental and community wellness. The Keystone Pipeline system is a multi-phased project constructed by TransCanada to build an oil pipeline system from Alberta, Canada to refineries in Illinois and Texas. Construction of the pipeline has moved at a slow pace due to the protests of environmentalists, land owners whose property falls in the path of the pipeline, and Native people; it continues to be supported by those who believe that the pipeline poses no environmental threat, will encourage the growth of the U.S. economy and jobs, enable better trade relations between the United States and Canada, and those who would prefer oil trade with Canada over other countries. As of 2014 forty percent of the total project has been built, and the southern portion of the pipeline called the Gulf Coast Pipeline, is functioning (Brady & Horsley, 2014; Mufson, 2014). The 1,179 mile northern leg of the pipeline remains to

be constructed. The southern section of pipeline received approval from the Army Corps of Engineers but the northern section of pipeline that crosses the Canada/U.S. border requires a Presidential permit. The pipeline was vetoed by President Barack Obama in 2015 but there is still the possibility that it can reappear as part of a new bill.

The proposed northern section of the pipeline would pass through six states, including Nebraska. The former governor of Nebraska gave approval for the construction of the Keystone Pipeline in 2013 but that approval came with the caveat that TransCanada had to acquire approval, or claim by eminent domain, all necessary lands in the pipeline route within a two year timeframe (Bergin, 2015). TransCanada did not meet this deadline as two lawsuits developed regarding the constitutionality of the governor's approval. Landowners brought suit that the governor's approval bypassed the Nebraska Public Service Commission and the claiming of land through eminent domain was unconstitutional. The Nebraska State's Public Service Commission approved the pipeline's path through the state in 2015. This review considered soil permeability, environmental impact, distance to ground water and methods to minimize impact on natural resources but did not have to consider the safety of the pipeline (Bergin, 2015). The pipeline's safety and the effects that it could have on the water resources of the area has been the primary concern for Native people whose homelands would be affected by the pipeline.

Although the proposed Keystone Pipeline route was not on reservation lands or lands held in trust, the proposed route crossed Native homelands, Oceti Sakowin treaty lands, significant sources of water for the area, possible burial sites, and is antithetical to Native American views regarding land stewardship and spirituality. TransCanada's original route for the pipeline crossed over the Sand Hills region of Nebraska which is located over the Ogallala Aquifer. The aquifer is a vital water source for Nebraska and surrounding states. Despite public outcry, other proposed routes of the pipeline still crossed the aquifer (Boos, 2015). Dallas Goldtooth (Dakota and Diné) Keystone XL Campaign Organizer for the Indigenous Environmental Network noted the Ogallala Aquifer "provides enormous resources to the agricultural breadbasket of America, the potential for a spill is far too great of a risk for not only tribal members but for non-native people to take in this region" (Boos, 2015). Various anti-pipeline groups including Bold Nebraska, Oceti Sakowin leaders, the Brave Heart Society, and Ponca tribal members rallied in 2013 to bring attention to the need to protect the land that the pipeline would cross. This area included part of the Ponca Trail of Tears and burial sites (Johnson, 2013). These sites are intimately connected to the Native American communities of the area and have been slated as disposable by the settler state, reflecting the continuation of interconnected violence enacted on Indigenous land and Indigenous people. However, Native American advocacy for lands further strengthens cultural sovereignty of communities in asserting Indigenous epistemologies and political sovereignty by engaging with state and federal governments.

In considering the interconnected wellness of environment and communities, Native American water protectors and activists have highlighted the social impacts of environmental exploitation. Gendered violence and sex trafficking of Native women increase upon construction of pipeline projects, as seen in the mining and pipeline industries in the Dakotas (Pember, 2013). Since 2008, there has been a doubling and tripling of sexual assaults, domestic violence, and sex trafficking incidents in North Dakota that correlates with the boom of hydraulic fracking of the Bakken formation (Pember, 2013). In an *Indian Country Today* interview with Faith Spotted Eagle, a Yankton Sioux activist and advocate, she noted:

There is a correlation between sexual violence and oil development and beyond...why would these men care about assaulting the earth, when they don't live there and will leave as soon as their jobs end? A KXL person told me that they would be there a short 18 months and my response is: If a woman or man gets raped during that 18 months, the trauma doesn't end after 18 months—it lasts a lifetime (Ross, 2015).

The connection between the treatment of the land and women is rooted in Native American epistemologies and is linked to colonization. As part of the colonial project, Indigenous women's bodies have been slated for violence and are viewed as disposable by colonizers. This perspective has been fostered overtly and covertly within the U.S. legal system since the formation of the United States. Native women as connected to the land through Indigenous epistemologies are heavily impacted by the violence inflicted on the land. European views regarding gender, violence, and treatment of land have been carried over and incorporated within the United States government, creating an ideological and philosophical rift with Indigenous concepts which continues into the present. As water protectors fight against the exploitation of land and water, they are also fighting for the safety of women and future generations. A decolonial approach towards land management considers the interconnected impacts between the health of the environment and communities.

These issues resurfaced in 2016 with the proposed construction of the Dakota Access Pipeline in North Dakota. The actions of the water protectors in 2016 illustrates a continued legacy of Native activism to protect the water quality of the Missouri River and to preserve sovereignty. Additionally, the actions of the water protectors challenge the continuation of the colonial project, building and exploiting resources to benefit the settler state. The actions at Standing Rock also illustrate to a new generation the militaristic and violent nature of the settler state to control Native American bodies and land. Native nations have shown that they will not stand by and watch the continued destruction of their homelands by issuing letters and proclamations in solidarity with the water protectors that denounce the militarized response of the state police. Native nations also assert tribal sovereignty by issuing letters directly to federal agencies. On September 8, 2016 the four Nebraska tribes, the Omaha, Winnebago, Ponca, and Santee Sioux continued practices of collaboration by issuing letters in opposition to DAPL. A young Omaha girl delivered the letters to the US Army Corps of Engineers to emphasize the need to protect water sources for future generations. Additionally, the young girl's actions demonstrate the continuation of Native women's leadership amidst the gendered violence that continues to take place in the settler state. This political act mirrors the Standing Rock Sioux youth who ran 2000 miles from Cannonball, North Dakota to Washington, DC in August 2016 to emphasize their opposition to the Dakota Access Pipeline. Youth led actions demonstrate the resilience of Native American people and their intent to protect sovereign rights for future generations.

Tribal governments have voiced their solidarity with the Standing Rock Sioux Tribe by issuing proclamations and letters against the Dakota Access Pipeline, bringing to the forefront that this is also an issue of Native sovereignty that will impact multiple states and communities down river. In envisioning a decolonial future, tribal governments working together and strengthening their political relationships by standing in solidarity with other Native communities and governments, reinforces Native sovereignty and government relations with the settler state. Maintaining these alliances is important for the success and strengthening of modern Native nations. On October 28, 2016, the Winnebago Tribe of Nebraska addressed a letter to

President Obama and Attorney General Lynch decrying the militarized state actions against water protectors and the need to protect the Missouri River and sacred lands from further desecration.

The homeland of the Winnebago Tribe of Nebraska is downstream from the Standing Rock Sioux Reservation, and the Missouri River runs through the Winnebago Tribe’s Reservation. Many Tribes and other United States citizens draw their drinking water from the Missouri River...The President, the Secretary of the Interior have primary influence on Indian affairs for the United States, and we ask that you use that influence to protect our water and our people (White, F. White to Barack Obama, October 28, 2016).

The letters and support of the Sacred Stone Camp illustrates how contemporary tribal governments and communities are continuing to exercise their sovereign rights to challenge and question the actions of the settler government. Any development involving the Missouri River is a multi-tribal issue that should warrant the inclusion of dialog with these tribes. Through this dialog, the federal government would be honoring treaties and the rights of Native American tribes to ensure the protection of their tribes and homelands.

Water quality is extremely important for protecting the communities that rely on the Missouri River for survival. The activism taking place to protect ancestral homelands, and the role of Native nations standing in solidarity with these protectors, is part of a longer history of the survivance of Native American people. In the 21st century, Native American communities continue to assert their sovereignty and maintain connections to each other and to the land for future generations. The pipeline protests are an extension of the Native American history of activism for the protections of human rights as the Indian fishing wars, the occupation of Alcatraz Island, and Wounded Knee II in the 1970s. The historical importance of these acts challenge the beliefs of many non-Native people who suffer from historical amnesia, disregarding the violence that serves as the foundation of this nation, and calls on the settler state to honor treaties that make the modern state possible.

Histories, Communities, and the Health of the Missouri River

The “big muddy” or Nĩšoc in Hocak has played a vital role in the history and contemporary lives of many Indigenous people. This history remains at the forefront of many Native American community members as they continue to act as stewards of the river. In the teaching of United States history, the Missouri River is discussed as playing a key role in westward expansion and in the U.S. nation building narrative. It is most commonly connected to the Lewis and Clark expedition (1804-1806) that was commissioned to explore the Missouri River, establish settler land claims to dispossess Native people, and to find a method of water concourse to the Pacific Ocean for commerce. The Missouri River is the second longest river in North America and considered one of the “Great Rivers of the world” by the USGS Columbia Environmental Research Center (2016) as it “drains nearly one sixth of the area of the United States.” The construction of dams by the U.S. Army Corps of Engineers and channelization of the Missouri River over the past century have shortened the river’s length. According to Daniel McCool (2002) five dams alone flooded 350,667 acres of Indian lands on five reservations (p. 122). This flooding illustrates the disregard for Native lands and communities in Missouri River development projects. The lower river has gone through extensive channelization to deepen it for barges and other water transport. One stretch of river that has not been channelized is located

between Yankton, South Dakota and Ponca, Nebraska. This stretch has been studied during flooding periods for researchers to gain an understanding of the impacts of floods on river eco-systems, observation not possible in regions where the river has been substantially altered (Hytrek, 2013). In general, the river today looks very different than it did a century ago but it still stands as a significant geographical feature for multiple communities. When considering the history of the Missouri River and the lives impacted by infrastructure projects implemented through the settler state, a decolonial perspective calls for the inclusion of the eco-systems and fish communities to be part of this conversation in addition to Native nations.

Sturgeon and indigenous eco-systems

The shortening of the Missouri River for commerce translates into the loss of acres of wildlife habitats. The endangered least tern bird species and the threatened piping plover nest along the river during the summer months. The least tern reached endangered status primarily due to damming and changes to the river system that have destroyed the sand bars needed for nesting. This nesting disruption has also impacted the piping plover resulting in its threatened status. Recreational activities along rivers and sandbars are also cited by the U.S. Fish and Wildlife Service (2016) as responsible for disturbing least tern nests. Within Nebraska, the Missouri River is home to the endangered pallid sturgeon, walleye, sauger, paddlefish, and silverfin fish communities. Since it is difficult for most people to differentiate between the endangered pallid sturgeon and other sturgeons, there is a year-round ban on sturgeon fishing on the Missouri River. The pallid sturgeon has lived in the Missouri River for approximately 70 million years and is a remnant of the Cretaceous era. Pallid sturgeons can live to be over 40 years old, grow up to 80 pounds, and reach six feet long. Their reproduction has been drastically impacted by the changes to the river system (U.S. Fish & Wildlife Service, 2016b). Male pallid sturgeons reach sexual maturity at 7 to 9 years of age, while females reach maturity in 7 to 15 years of age with 10-year intervals between spawning. The damming and channelization of the Missouri River has been the primary factor impacting the sturgeon's ability to spawn, as the sturgeon is no longer able to travel freely upstream to spawn or feed, and often does not reach the age needed to spawn. Changes to the river, including the formation of lakes, create environments that the pallid sturgeon are unable to navigate. This restriction of movement has decreased the numbers of pallid sturgeon, resulting in its endangered status.

In a decolonial approach to managing the river, an argument could be made to restore the river to its original state. Although hatcheries and habitat restoration projects have increased the number of pallid sturgeon in the river, researchers have noted restoring the river to its natural state, which would include widening the river, would improve conditions for the sturgeon. Barge companies that utilize the Missouri River to transport goods, people who want more water for recreation activities, and stakeholders concerned with flood control are among those who pushback against this environmental strategy (Canon, 2016). Water protectors throughout the 20th century have advocated for the land, future generations, and the communities who are unable to speak for themselves, including the non-human communities that also call the Missouri River home. As one of the oldest residents of the river, the pallid sturgeon should be included in the discussion of the impacts of pipelines or changes made to the Missouri river. The following cases, *United States v Winnebago Tribe of Nebraska* and *Blackbird Bend*, illustrate how Native nations in Nebraska fought in courtrooms to maintain sovereignty and jurisdiction to lands along the Missouri River, despite settler encroachment. These cases illustrate how Native American

communities have historically challenged land management practices antithetical to Native epistemologies and attempts to erode tribal sovereignty.

United States v Winnebago Tribe of Nebraska

As expressed previously, Native American communities have their own relationships and histories connecting them to the Missouri River. For the Winnebago Tribe of Nebraska, the Missouri River was used as a means to escape the starving conditions of Crow Creek, South Dakota in the late 1800s. Following various removals and relocations, the Ho-Chunk were forced to live in Crow Creek with little resources to sustain the people. Ho-Chunk history recounts their time at Crow Creek as marked by tragedy and characterized by the fatal mismanagement of money by U.S. government officials tasked with providing supplies to the Ho-Chunk. The Ho-Chunk utilized the Missouri to travel down to their allies, the Omaha and negotiate for the land that would become the Winnebago Village reservation. The seal of the Winnebago Tribe of Nebraska marks the importance of this founding of the modern Winnebago nation by illustrating a Ho-Chunk man stepping out of his dugout canoe from the banks of the Missouri River. Additionally, the seal illustrates the boundaries of the Winnebago reservation in blue, highlighting the river.¹ For the Winnebago Tribe of Nebraska and the Omaha Tribe, the Missouri River frames the eastern edge of their reservations. The 1865 treaty between the Winnebago and United States defines the boundaries of the Winnebago reservation in accordance to the river as follows, "...the United States agree to set apart for the occupation and future home of the Winnebago Indians, forever...commencing at a point on the Missouri River four miles due south from the north boundary-line of said reservation" (as cited in Kappler, 1904). A little more than a century later, this treaty would be tested by the United States Army Corps of Engineers in the case of *United States v Winnebago Tribe of Nebraska*.

On March 24, 1970 the Army Corps of Engineers, working with the states of Iowa and Nebraska, began plans for the Oxbow Lakes, Snyder-Winnebago Complex on the Missouri River, and attempted to seize Winnebago land. The dams and channelization of the Missouri River that were described earlier resulted in the creation of the Snyder and Winnebago lakes on the Iowa state side of the river and Glover's Lake on the Nebraska side of the river. The Oxbow Lakes project was proposed as a plan to stabilize the Snyder and Winnebago lakes for the opening of "a big-scale public playground for swimming, boating, fishing, and camping" (Hendrick, 1970). This complex was designed as a recreation facility requiring the use of land that was part of the Winnebago Tribe's reservation. The Winnebago tribe was working with the Army Corps of Engineers to develop Glover's Lake in Nebraska but there had been no mention of developing Winnebago land in the state of Iowa. In order to gain control of this land, the Army Corps of Engineers attempted to condemn these sections in 1970, so they could be acquired by eminent domain. These actions were challenged by tribal members through protests and court actions. Through the resilience and advocacy of Ho-Chunk people, *United States v. Winnebago Tribe of Nebraska*, reached the 8th circuit court of appeals in 1976. In an *Akwesasne Notes* (1970) article reporting on the case, Felix White, a Winnebago Tribal Council member is quoted as stating, "...we're not going to sit idly by. We're going to fight it out

¹ A black and white version of the Winnebago Tribe of Nebraska seal is available on their website (winnebagoTribe.com). A colored version of the seal can be viewed on the Ho-Chunk Community Development Corporation website (hccdc.org).

in court. We're going to use their own instruments of war. We're not coming with spears and bows and arrows but with the very laws the white men made! And...we're going to beat 'em!" In addition to the court battle, protests were staged on Winnebago land as recounted by activist and Winnebago community leader Reuben Snake:

the Winnebago Navy was created to oppose the United States Army Corps of Engineers and the condemnation of our land... We made some large signs that said, 'This is Winnebago Indian land by treaty of March 8, 1865. No Trespassing.' We loaded up these big signs on the rowboat, attached the rowboat to the back of the runabout, and set sail across the Missouri (as cited in Fikes, 1996).

These protests drew more attention to the case, and raised questions that could potentially affect many Native nations. The Army Corps of Engineers rested their argument for the condemnation of Winnebago land on the Flood Control Act of 1944, which approved building projects, and their assessment of the area commissioned by Congress that "the best use of the lands" would be "recreational". As noted by Daniel M. Rosenfelt, one of the attorneys for the Winnebago tribe, "So now we are asking...if a treaty can be abrogated except by act of Congress. This is a question which concerns all Indians everywhere who hold their lands by treaty" (Hendrick, 1970). If this case ruled in favor of the Army Corps of Engineers, it would have the potential to create a precedent of bypassing authorization from Congress regarding land held in trust, would question treaty land ceded to Native Americans "forever," and strengthen standards prioritizing the use of Native land held in trust for the benefit of the non-Native public. In other words, non-Native recreation would be considered "the best use" of Native lands held in trust by the U.S. government, further eroding tribal political sovereignty and self-determination.

However, in this case the court ruled in favor of the Winnebago Tribe of Nebraska, reaffirming the need for clear authorization from Congress "before Indian Property Rights may be taken" as an understanding of the trust relationship between the U.S. government and Native American tribes (*United States v. 687.30*, 1971). As part of the final brief, the United States Department of the Interior states that they oppose the position of the Army Corps of Engineers and are in support of the Winnebago Tribe of Nebraska's position. The final brief states that the intent to abrogate treaty rights must be clearly manifested by Congress (*United States v. Winnebago Tribe of Nebraska*, 1976). This case can be considered a success for Indian land rights, treaties, and sovereignty, a win against an agency that is considered to be the "oldest natural resource agency in the federal government" and one of the most powerful agencies considering its history of erecting dams regardless of their impacts on Native American communities and land (McCool, 2002, p. 122). However, it is critical to note that treaties can still be abrogated by acts of Congress without the consultation of Native American tribes. This creates the potential to undermine Native American sovereignty over their own treaty lands in the United States and places the settler state in a position to enact policies with detrimental impacts for their own gain. This could result in the approval of land policies with long lasting damaging effects to Native nations.² United States policy is structured to benefit the settler state, however Native nations will not slip away quietly and enable the United States to exploit their lands and dissolve governmental relationships as demonstrated in the history of activism in the last half century. Courtroom battles and protests to protect lands have emphasized the need for

² For a more in depth discussion of treaty rights and federal Indian law see Deloria and Wilkins (2005), Echo-Hawk (2012), Corn tassell and Witmer II (2011), and Deloria and Lytle (1998).

modern Native nations to continue to protect their treaty rights and safeguard their political sovereignty.

Blackbird Bend

While the Winnebago Tribe of Nebraska was challenging the Army Corps of Engineers, the Omaha Tribe of Nebraska and the state of Iowa were embroiled in a legal battle concerning Blackbird Bend on the Missouri River. This case involved the changes that had taken place on the Missouri River's main channel due to the extensive building of dams and channelization conducted by the Army Corps of Engineers with the support of regional businessmen and farmers. These efforts were an attempt to control the flooding and overall unpredictability of the river. Before the construction of dams, the river regularly experienced fluctuations in water volume and depth that could be aggravated by ice-out in the spring, a phenomenon where ice jams form causing floods in some areas (Schneiders, 1999). Neola Walker (Ho-Chunk) notes in an interview in 1970 the worst flood she experienced during her childhood.

In 1940, we had a terrible flood. And at the time we were living just a little ways down here [from the powwow grounds]. The flood waters came during the night, there was one, you know, the whole family drowned. All the damage was, the Indian people didn't have really too much they had these little homes along the creek here. But everything they owned was in them homes. They all got flooded out. Everything was ruined, and a lot of the homes, even today homes down on the lower part there, they are sitting right on the silt that came along with the flood. There is no way that they can fix those homes up anymore. Pretty soon they will fall apart, and they will have to find something else to live in. But the flooding was terrible, and there was no agencies, and that was the first time, you know, Red Cross came to Winnebago to my knowledge.

In her interview, Walker connects the severity of this flood to the erosion caused by the neighboring white farmers leasing Indian land. This erosion worsened the impacts of Missouri floods. She also credits the introduction and promotion of contour farming written into leases in the 1960s as preventing further severe flooding. The Missouri river floods impacted more than farm land, flooding impacted the lives of the Winnebago Tribe and Omaha people whose reservations are framed by the river. Shifts from traditional ecological knowledge including the disruption of seasonal migrations of traditional village and agricultural sites contributed to the devastating impact of the river floods. The Missouri River was characterized as a river that could not be contained and was subject to extreme flooding by the Army Corps of Engineers and settler governments. This perspective informed land and environmental policy that would lead to the Blackbird Bend case impacting the Omaha nation.

The Missouri river flood of 1943 spurred Congress to enact the Flood Control Act of 1944 (58 Stat. 887) that resulted in the construction of dams, reservoirs, and levees (Schneiders, 1999). The Nebraska/Iowa border is defined by the course of the Missouri River. Throughout the 1940s the Missouri River's course shifted over Omaha treaty land known as "Blackbird Bend". Black Bird bend is an area of land that had always been part of the Omaha ancestral territory, and is named for Omaha Chief Blackbird. As the river's course stabilized after damming and channelization Blackbird Bend was left on the Iowa side of the river. Being separated from the rest of the Omaha reservation, non-Indians in Iowa encroached on the bend (Scherer, 1998). William H. Veeder (1974), water rights specialist for the Bureau of Indian Affairs, states in the Blackbird Bend memorandum in support of the Omaha tribe, "Any reliance upon the Missouri

River in a state of nature for a boundary was clearly misplaced. For, as stated by the Supreme Court [in *Nebraska v. Iowa* (1972)]: '...by 1943 the shifts of the (Missouri) river channel had been so numerous and intricate, both in the natural state and as a result of the work of the Corps of Engineers, that it would be practically impossible to locate the original boundary line' between Iowa and Nebraska" (p. 19). The Omaha tribe began to work to regain more than eleven thousand acres, or seventeen square miles, of their land affected by the movement of the river by filing a claim with the BIA in 1966 (Scherer, 1999). During the trial process Omaha tribal members participated in several sit-ins and occupations of the land in dispute. Many participants in the initial occupation that took place in 1973 identified themselves as members of the American Indian Movement (AIM) (Scherer, 1999). These occupations were non-violent although there were accusations that gunshots had been fired on the Omaha tribe during one action and that the local authorities did nothing to investigate these claims (Scherer, 1999). The twenty-year long legal battle was characterized by frustration at how long it took to reach a legal decision and the decision itself. In 1987, members of the Omaha tribe physically barred surveyors from 700 acres of land that had been awarded to the state of Iowa. This resulted in the federal district court judge holding the entire Omaha tribal council in contempt of court and jailing them overnight, only releasing them when the tribe passed a resolution to observe the court's ruling (Scherer, 1999). This tactic of imprisoning Native American leaders has been used over the centuries by colonizers to gain compliance and dampen protests. The continued use of this tactic illustrates the perpetuation of colonial thinking in contemporary relations between Native nations and the United States government.

The last legal case involving Blackbird Bend took place in 1993, and was a counterclaim filed by Iowans whose land had been occupied since 1975 by members of the Omaha tribe (Scherer, 1999). At the conclusion of the trials, the Omaha tribe regained 1900 acres of the land they were seeking (Scherer, 1999). Although this was an "imperfect victory" as described by historian Mark R. Scherer (1999), the Omaha tribe maintains their connections to their ancestral homeland along the Missouri River, and joins other tribes in continuing to assert their treaty rights. The path of the Missouri River and the changes wrought on it through efforts of the settler state to control it and conform it for non-Native recreation at the expense of Native sovereignty, illustrates the potential for the weakening of Indigenous land rights and autonomy through the settler state's court system. The political actions of Native people to protect water sources and land rights is connected to the preservation of Native sovereignty. This is a struggle that continues into the 21st century and has gained momentum as mineral companies work to exploit lands for financial gain and for the benefit of the settler state rather than Native people. Government to government relations between the United States and Native American tribes were reinforced in the United States Constitution and treaties. However, erosion of Native American political sovereignty and attempts at discounting treaties for the benefit of the settler state characterize federal Indian law. The attempted destruction of this sovereignty for non-Native profit, reasserts white supremacy over lands and characterizes the legal tensions between Native nations and the United States.

Conclusion

Despite the Flood Control Act, damming and channelization, the Missouri River demonstrated its continued ability to flood fairly recently. Before these infrastructure projects, the Missouri

River's natural state included flooding seasons and the river displayed its need to return to this state in 2011. Over average rainfall and snowmelt combined to result in a horrendous flood from Montana to Missouri. In the United States Government Accountability Office report (2014) composed for Congress on the Missouri River flood and in evaluation of the Army Corps of Engineers, they describe that the Army Corps took appropriate action and had "to release a record volume of water from the dams to prevent the dams from being overtopped, which could have caused catastrophic dam failure" (p. 2). Like the flood of 1940 described previously by Neola Walker, the flood had serious consequences for the communities along the river. 4000 families had to evacuate their homes and the flood resulted in five deaths (Bell, 2016). In an article looking at the impacts of the flood on the Missouri River ecosystems, Tim Cowman of the Missouri River Institute, University of South Dakota stated, "Really, the river is trying to get back to a similar state as it was before" (Hytrek, 2013). The force of the river to return to its original state draws to the forefront the folly of Western attempts to harness the river and the danger of pursuing this type of land management and resource exploitation.

In the summer of 2011, I flew into Omaha's Eppley International Airport to visit with family and conduct archival research. My family was keeping me updated on the flooding that was impacting the region and our tribe. Despite this, I was not expecting to see houses, barns, and fields completely underwater as the plane dropped altitude and prepared for landing. To my surprise the water had reached the airport's tarmac. The Omaha airport was spending millions of dollars to remain open and to keep the waters at bay. During my visit, one of my relatives took me to the hills to survey the flooded fields on reservation land. One of my relatives remarked that this was the way the river was supposed to look. This was how the river looked when the Winnebago people first arrived in the area from Crow Creek. The conditions of the Missouri River and its fluctuations are known to those experienced with living along the river. When I first heard of the proposed oil pipeline routes crossing the Missouri River, I thought about the threat of contaminating this significant source of water, the impacts for the environment, agriculture, and communities but also the potential damage that could occur if contaminated water flooded the region.

As Indigenous people have moved into the 21st century, they continue to assert their sovereign rights and maintain their stewardship roles in caring for the land. Discussion of the interdependence between human communities and the environment is needed to understand governance from an Indigenous perspective. This brief survey of cases where Native American communities asserted their land rights and spoke for the health of the Missouri River illustrates Native people's connectedness to these issues that have lasted despite the violence of removal and attempted dislocation from their homelands. This removal from their homeland was an attempt by colonizers to sever relations between Native people, their lands, and the interdependent relations that serve as the crux of their culture. From the fish and birds that make the river their home, to the Ho-Chunk who relied on the river for travel, and the peoples who relied on the river for centuries for sustenance, the Missouri River is an important source of survival for many communities and is rich in history and cultural connections. Native peoples recognize the river as a living archive, part of their history and communities that is intrinsically tied to the health of their communities. The last 45 years is rich with examples of how Native communities have worked to maintain their connections to the Missouri River and exercise sovereignty over treaty land. The cases highlighted in this article include the actions of water protectors in challenging the construction of oil pipelines in the 21st century, *United States v Winnebago Tribe of Nebraska*, and the Omaha Nation's fight for Blackbird Bend. These

historical moments demonstrate that Indigenous communities will continue to fight for sovereignty over stolen land and will not sit by while the land is exploited and violated.

The work of Native American communities and allies has been effective in bringing to the forefront the problems and environmental impacts of U.S. energy development and the communities that will be negatively impacted from these energy policies. The courtroom battles and activism of Native American communities represent the fight for future generations, the preservation of traditional values and philosophies, and countering of Western narratives of environmental disposability. While Indigenous communities consider what a decolonized future looks like and how to move towards healing, they will continue to refer to Indigenous knowledges and histories, essentially asserting their sovereignty despite the limitations of U.S. federal Indian law.

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