



WESTERN SHOSHONE DEFENSE PROJECT

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Mission: To affirm Newe (Western Shoshone) decision making over Newe Sogobia (the people's earth mother) by protecting, preserving, and restoring Newe rights and lands for present and future generations based on cultural and spiritual teachings and traditions.

The Western Shoshone Defense Project (WSDP) was established in 1991 and was endorsed by the Western Shoshone National Council. Activities include seeking (nationally and internationally) the recognition and endorsement of the 1863 Treaty of Ruby Valley to enhance the protection of land, water and biodiversity as we defend our traditional homelands against the destruction of mineral extraction and the adverse effect on our treaty and human rights. Our issues have been submitted to international forums including the Organization of American States (OAS), Inter-American Commission on Human Rights (IACHR) and the Committee on the Elimination of Racial Discrimination (CERD).

Addressing issues:

1. Update on human rights violations caused by the U.S. as determined by the Inter-American Commission on Human Rights (IACHR) and the Committee on the Elimination of Racial Discrimination (CERD) in 2002 and 2006.
2. An International Forum to assist in the resolution of treaties made between colonizing governments and Indigenous Nations.
3. Ensuring prior approval of large-scale projects, including extractive industry that environmental impact assessments are prepared with meaningful participation of affected communities including Indigenous Peoples.
4. Strengthening legislation to enforce consultation for projects having impact on traditional territories of Indigenous communities
5. Improvement of existing laws governing protection of sacred and traditional places beyond present day reservation boundaries to further protect religious freedom and to reflect the vision of Indigenous Peoples definition of sacred.
6. Ensuring Indigenous Peoples have full access to redress violations perpetrated on and against their lands and territories.

Background of the Western Shoshone Treaty

With the signing of the 1863 Ruby Valley Treaty, the U.S. government entered into a Nation-to-Nation agreement. The Treaty recognized Western Shoshone territory and allowed the U.S. safe passage and certain allowances for U.S. citizens. The Treaty did not cede land.

The United States claims to be able to unilaterally abrogate treaties made with Indigenous Nations any time. See, for example, *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); *South Dakota v. Bourland*, 508 U.S. 679

(1993), *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977). This has resulted in Indigenous Nations being denied their lands, resources, hunting and fishing rights and protection of areas of cultural and spiritual significance.

Trusteeship

A principle of federal Indian law is the United States' claim that there exists "a general trust relationship between the U.S. and the Indian people." *U.S. v. Mitchell*, 463 U.S. 206, 225 (1983). See, *Cobell v. Norton*, 240 F.3d 1081, 1098 (D.C. Cir. 2001) ("the government has longstanding and substantial trust obligations to Indians.") As a result of this claimed "trust relationship", territories of Indigenous communities, and property of Indigenous individuals, is said to be held in legal "trust" status for them by the U.S. See, *Cherokee Nation v. Georgia*, 30 U.S. 1, 16-17 (1832). Such a "trust relationship" could benefit Indian Peoples in some situations. However, there are many obstacles in the law frustrating the ability of Indian beneficiaries, tribal and individual, to hold the U.S. accountable through either administrative procedures or litigation. In fact, in some cases, such as the Western Shoshone, the U.S. has used this "trust" relationship directly against the Indian people it is supposed to be "protecting". See *infra*, section IV, at 14-15 (the United States used the notion of trustee to accept money on behalf of the Western Shoshone against the wishes of most of the Western Shoshone people).

The violations suffered by the Western Shoshone have persisted and in fact intensified, contrary to the recommendations by the Inter-American Commission on Human Rights¹, and the Committee on the Elimination of Racial Discrimination². The findings by these international bodies confirm that the behavior of the U.S. is inconsistent with its obligations under relevant international human rights law.

Background and History

The United States recognized certain boundaries of the Western Shoshone territory and agreed to compensate the Western Shoshone for certain uses of their lands³. Since that time, there have been no amendments nor formal abrogation of the treaty. Despite the existence of this treaty, the U.S. now defines Western Shoshone land as federal government or "public" land.

The U.S. has persistently denied the Western Shoshone people their rights to traditional lands, having wrongfully determined those rights were "extinguished" through a discriminatory and unjust administrative proceeding. In that proceeding, the Indian Claims Commission (ICC), a commission established by the U.S. Congress to adjudicate Indian claims, adopted a "stipulation" that Western Shoshone land title had been extinguished through acts of "gradual encroachment" through attorneys and a committee, not representative of the people. Based thereon, the Indian Claims Commission set aside monies for the presumed taking of lands.

The problems faced by the Western Shoshone are all the more egregious because the U.S. refuses to act on the recommendation by the IACHR and the UN CERD Committee. On December 27, 2002, the Inter-American Commission issued a final report finding the U.S. in violation of the rights of Western Shoshone petitioners to equality before the law, to a fair trial, and to property under articles II, XVIII and XXIII of the American Declaration of the Rights and Duties of Man⁴. The Commission found the Indian Claims Commission

¹See *Dann Case v United States*, Case 11.140, Inter-Am. C.H.R., Report No. 75/02, OEA/Ser.L/V/II.1117, doc. Rev. 1 (2002) available at <http://www.cidh.org/annualrep/2002eng/USA.11114.htm> ("Dann Case").

²See *Decision 1(68) (United States of America)*, U.N. ESCOR, CERD, 68th Sess., U.N. Doc. CERD/C/USA/Dec/1 (Apr. 11, 2006),

³See *id.*

⁴See *Dann Case*, *supra* note 1 at para. 5.

proceedings to be flawed on several human rights grounds⁵. The fundamental problem with the proceeding was that the issue of whether Western Shoshone rights to land were truly extinguished was not actually litigated by the ICC or the subsequent Court of Claims and that Western Shoshone individuals and groups were not permitted to intervene in those proceedings to contest the presumed “extinguishment” of title⁶. The Commission recommended that the United States provide the petitioners with an effective remedy for the infringements of Western Shoshone property rights over ancestral lands⁷. It affirmed that this should occur through legislative or other measures consistent with the above articles of the American Declaration⁸. Finally, the Commission recommended that the United States review its laws, procedures and practices regarding Indigenous peoples, in particular the right to property⁹.

The United States defied not only the findings and recommendations of the IACRH, but also the recommendations of the United Nations CERD. In 2001, CERD issued Concluding Observations in respect to the United States’ first periodic report to the Committee under the Convention on the Elimination of all Forms of Racial Discrimination¹⁰. CERD warned the U.S. that it must protect the rights of ethnic minorities, including the Western Shoshone, as guaranteed by the Convention, particularly its articles 1, 2 and 5¹¹. The Committee noted in particular the “persistence of the discriminatory effects ... and destructive policies with regard to Native Americans” as factors impeding the implementation of the Convention¹². CERD recommended the United States “ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5(c) of the Convention”¹³. It also reminded the United States to adhere to its General Recommendation XXIII on Indigenous Peoples, which stresses the importance of securing the “informed consent” of indigenous communities and calls, *inter alia*, for recognition and compensation for loss¹⁴. These findings from CERD urged the United States to alter its policies regarding the treatment of indigenous land rights, which are crucial to the physical, cultural and spiritual survival of the Western

⁵See Dann Case, *supra* note 1 at paras. 140-143.

⁶See e.g. Caroline L. Orlando, *Aboriginal Title Claims in the Indian Claims Commission: United States v. Dann and its Due process Implications*, 13 *Envir. Aff.* 215, 241 (1986). See also Steven Newcomb, “Western Shoshone Crisis: Is the U.S. Nation of Arbitrary Laws?”, *Indian Country Today*, March 10, 2003.

⁷See Dann Case, *supra* note 1 at para. 173.

⁸See *id.*

⁹See *id.*

¹⁰See CERD Concluding Observations of the Committee on the Elimination of Racial Discrimination: (United States of America) U.N. Doc. No. CERD/C/59/Misc.17/Rev.3, para.5 (August 2001).

¹¹See *id.* at paras. 393, 398, and 400.

¹²CERD Concluding Observations, *supra* note 11 at para. 384

¹³CERD Concluding Observations, *supra* note 11 at para. 400.

¹⁴See CERD Concluding Observations, *supra* note 2 at para 393. See also CERD General Recommendation XXIII, on indigenous peoples, adopted August 18, 1997, U.N. Doc. CERD/C/51/Misc. 13/Rev 4. (1997) [hereinafter “CERD General Recommendation XXIII”]. The Committee also called for the recognition and compensation for loss. CERD encouraged the United States to use ILO Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries as a guide. See International Labor Organization Convention (No. 169 of 1989) concerning Indigenous and Tribal Peoples in Countries (entered into force 1991).

Shoshone.

In the time since the Inter-American Commission issued its final report and CERD issued concluding observations regarding the Western Shoshone, the U.S. has done nothing to attempt to remedy the human rights violations identified by these bodies¹⁵. Instead, the U.S. has intensified its policies and rulemaking that threaten Western Shoshone homelands.

CONCLUSION

The U.S. failed to address and correct the injustices of its laws and policy with respect to the Western Shoshone, even in the face of decisions and recommendations of international human rights bodies. In fact, the U.S. continues to ignore its obligations under international law, in particular the right of self-determination, culture, and equal protection. Without further attention by international human rights bodies, Western Shoshone's rights under the Treaty of Ruby Valley to occupy and control their traditional lands and resources, and their rights to exercise and sustain their culture are at risk of being permanently damaged.

The domestic laws and policies of the United States perpetuate a legal system that legitimizes discriminatory and racist practices in terms of failing to protect their rights to property, religious freedom, protection of spiritual sites, control and management of resources, and self-determination. Despite the existence of a fully ratified treaty, the Western Shoshone people serve as an example of the imminent threats that the Indigenous Peoples of the United States are facing as a result of the United States' policies and practices described in this submission.

The Human Rights Council is urged to take note of the situation that the Indigenous Peoples of the United States face in its upcoming Council session. In particular, the Council is urged to take note of the discriminatory treatment that the Indigenous Peoples of the United States continue to endure; the United States' inaction regarding the recommendations of other international human rights bodies; and overall disregard of international law and institutions. We urge the Council to coordinate with ongoing efforts by other treaty monitoring bodies, to ensure urgent action is taken against the United States in matters where Indigenous Peoples are facing imminent harm.

No national human rights commission or institution exists in the United States. An International Forum to address the issue of International Treaties made between Indigenous Nations and colonizing governments should be the U. N. Decolonizing Committee, an entity already established that works with occupied territories. An international forum is needed to address treaty issues in a fair and meaningful manner.

Respectfully,

Fermina Stevens, Director
Western Shoshone Defense Project

¹⁵A second request for urgent action was submitted to CERD in July of 2005 highlighting all branches of United States governments disregard to previous recommendations made by CERD. It also noted continuing threats on Western Shoshone ancestral lands. As a result of a hearing on the matter at its last meeting, CERD issued additional questions to the United States based substantially on the submission made on behalf of the Western Shoshone people. The U.S. response, expected at the end of 2005, will be examined at CERD's 68th session, to be held in February 2006.

