APPENDIX 3

Western Shoshone Defense Project
I. Introduction

The Western Shoshone Defense Project (WSDP) was founded in 1992 to serve as a monitoring and advocacy project for the ongoing federal threats against grandmothers Mary and Carrie Dann who have been very vocal in their assertion of land rights and human rights. The WSDP has grown into an organization that now serves to monitor and advocate over the entire Western Shoshone homelands, spanning across Nevada and into portions of Utah, Idaho and California. Founded out of a dire need to protect Western Shoshone treaty-rights, land and culture, the Western Shoshone Defense Project has established numerous cultural preservation, community education, and public outreach initiatives to preserve their traditional assets. The mission of the Western Shoshone Defense Project is “To affirm Newe (Western Shoshone) jurisdiction within Newe Sogobia (Western Shoshone homelands) by protecting, preserving, and restoring Newe rights and lands for present and future generations based on Newe cultural and spiritual traditions.”

Originally, a small grassroots organization of volunteers, the Western Shoshone Defense Project has grown into an organization with paid staff working in three program areas:

- The Mining and Environment Program works to ensure the long-term health of the Newe Sogobia, and includes the development of research and development of legal strategies for the long-term protection of Newe Sogobia.
- The Land Recognition Program promotes Western Shoshone jurisdiction within treaty lands and develops methods of United States Federal Indian Law and Policy reform.
- The Cultural Program is designed to defend the Newe Sogobia and the cultural ties to the land by sharing and fostering traditional knowledge; and, other activities, such as cultural mapping.

For the past 17 years, the Western Shoshone Defense Project has emerged as an organization committed to actively preserving Western Shoshone rights and decision-making in relation to land. The Western Shoshone Defense Project is involved in ongoing efforts to monitor and prevent the theft and destruction of Shoshone lands as originally outlined by the Treaty of Peace and Friendship of Ruby Valley (1863) (Attachment A). Monitoring their assets allows the Western Shoshone Defense Project to utilize cultural assets that have remained undisturbed by massive strip mines. Through the ongoing monitoring of cultural assets, the Western Shoshone Defense Project’s cultural program provides the organization the means for retaining cultural knowledge for future generations. All of these activities are connected to the overall goal of regaining control of traditional Western Shoshone treaty lands.

II. History of Asset Stripping

Prior to the arrival of the new Americans, the Western Shoshone occupied vast amounts of land that encompassed territory recognized today as the states of Idaho, Nevada and Utah, as well as parts of California, Oregon, Wyoming, Colorado, New Mexico and Arizona. The Western Shoshone resisted
United States encroachment until 1863 when the federal government entered into a “Treaty of Peace and Friendship,” also known as the Treaty of Ruby Valley, with the Western Shoshone. The treaty was signed during the United States Civil War largely because the federal government recognized the need for peace as means for ensuring safe passage across Western Shoshone lands during the transportation of military resources. The treaty acknowledged Western Shoshone control over their homelands and provided for American easements across Western Shoshone land as well as some other mining and related activities.

The Treaty of Ruby Valley is one of over 800 treaties signed between Native nations and the federal government. As noted in article VI, paragraph two of the United States Constitution, treaties “shall be the supreme Law of the Land.” However, in the case of the Treaty of Ruby Valley, and countless other Native American treaties, treaty rights to land ownership and the protection of tribal sovereignty have been violated with little legal justification and have left native communities with few viable options for treaty acknowledgement and enforcement.

The Treaty of Ruby Valley is unique in that the Western Shoshone never ceded any land to the federal government. In fact, the large Shoshone Nation treaty area of approximately 62 million acres is explicitly outlined in the treaty as Shoshone Nation land (Attachment A). In a briefing paper prepared by the Indian Law Resource Center (ILRC) for the United Nations Human Rights Commission, the ILRC notes that the Western Shoshone “did not cede title to the lands, but merely gave to the U.S…limited access and use for specified purposes” (Amnesty International). However, in 1962, the Indian Claims Commission, a quasi-judicial body established by the federal government to resolve Native American land-claim disputes, redefined land title of the Western Shoshone, finding that “gradual encroachment” had effectively nullified historical land claims (Western Shoshone v. U.S. 11 Ind. Cl. Comm. 387, 416 919620, ICC Docket 326K and 327K Section 26, Findings 23, 24).

In previous cases, the Supreme Court has held that aboriginal title can be lost in only three ways:

1) An Act of Congress evidencing a clear intent to extinguish title to specified lands,
2) Official Indian abandonment or cession (Indians cede land by treaty or ask for and receive a reservation smaller than or different from their aboriginal title lands)
3) Conquest by the United States in a just and lawful war.

In the Western Shoshone case, none of the three legal tests required to extinguish Indian land title have been met. Nonetheless, the Indian Claims Commission ruled in 1979 that, under the guise of “gradual encroachment”, the Western Shoshone title had been extinguished. Although the Indian Claims Commission could never trace the historical record to establish a date of proposed abandonment, the Claims Commission eventually cited the date of abandonment as July 1, 1872. Further, the Claims Commission ruled that the Western Shoshones were to be compensated for only 24 million acres of land. This amount of acreage was based on a map created by anthropologist, Dr. Omer C. Stewart, an expert witness for the Claims Commission. There are discrepancies between Dr. Stewart’s map and the Western Shoshone Sacred Lands Association assessment of 62 million acres of land outlined in the treaty area. The Sacred Lands Association has based their assessment on the places named in the 1863 Treaty of Ruby Valley (Amnesty International). Nevertheless, a final judgment in the case was rendered in 1979 awarding the Western Shoshone $27 million – just 15 cents per acre, including $9 million for the land, $12.5 million for mineral and subsurface rights, and $4.6 million for the value of minerals removed prior to July 1, 1872, the date of valuation. On December 19, 1979, the Secretary of the Interior Department
received a check from the United States Treasury Department as final payment of this case and the money was deposited into a trust account for the Western Shoshone. Since that time, the Western Shoshone have continually refused to accept the monetary settlement, and funds have remained in the trust account for over thirty years. While many may argue that acceptance of the United States payment would enhance the livelihood of Western Shoshone communities, the Western Shoshone Defense Project and the communities they work with believe that the cultural, spiritual, legal and political rights of their treaty areas outweigh the monetary judgment offered by the federal government.

Today, the Bureau of Land Management continues to target Western Shoshone peoples living in the Ruby Valley treaty areas for eviction. Massive strip-mines also ravage Western Shoshone lands, polluting and destroying the environment. The United States government also contributes to the devastation of Western Shoshone lands by disposing of radioactive waste in a holding facility within Yucca Mountain, a place of cultural and spiritual significance for the Western Shoshone people.

III. Attempts to Regain Control of Assets

In 1973, during the same period when the Indian Claims Commission was attempting to justify non-Indian encroachment on Western Shoshone lands as legal abandonment, a federal official from the Bureau of Land Management (BLM) accused Western Shoshone tribal members Mary and Carrie Dann of trespassing on land allocated in the Treaty of Ruby Valley. The Dann sisters argued that they were not trespassing, and asserted that their cattle were grazing on traditional Western Shoshone land recognized in the 1863 Treaty of Ruby Valley – land their family had used and occupied since time immemorial. The BLM quickly rejected their arguments and in 1974, the United States filed suit against the Dann sisters for trespassing.
After a series of court battles and including several appeals, the United States Supreme Court ruled in 1985 (*United States v. Dann*, 470 U.S. 39, 1985.) that the Western Shoshone had been paid for the land because the federal government had deposited funds into a trust account for Western Shoshone. This payment, the Court found, barred the Dann sisters from raising a defense of aboriginal title (the right to use and occupy land) against federal officials. Despite the ruling, the Dann sisters did not give up. Since 1985, they have been engaged in countless court appeals and have appeared before numerous international bodies and tribunals in an effort to hold the federal government accountable for the violations of the Treaty of Ruby Valley (Indian Law Resource Center).

Through their activism, the Dann sisters have played an instrumental role in forming the direction and mission of the Western Shoshone Defense Project. As respected community elders, they have been at the forefront of developing legal strategies and cultural programs to retain the Western Shoshone’s cultural connection to the lands outlined in the Ruby Valley treaty. Today, they continue to engage in grassroots organizing to combat the ongoing destruction of Western Shoshone lands and conduct public education campaigns to illuminate the injustices the Western Shoshone people have endured for more than 100 years.

Since the establishment of the Western Shoshone Defense Project, the organization has been critical in increasing domestic and international recognition of the U.S.’s violation of the Treaty of Ruby Valley. Having exhausted all domestic legal remedies in the U.S., the Western Shoshone Defense Project have appeared before the United Nations and other international bodies in efforts to bring attention to
the blatant violation of treaties by the United States. In 1993, the Indian Law Resource Center filed a petition on behalf of the Dann sisters to the Inter-American Commission on Human Rights (IACHR). The IACHR is an international organization comprised of autonomous entities of the Organization of American States1 charged with investigating human rights complaints against governments in the western hemisphere.

In 2003, the IACHR ruled that the Western Shoshone rights of due process, property and equity had been violated. Moreover, the Commission ruled that the federal government had failed to negotiate with the Western Shoshone as a nation and failed to operate in accordance with international human rights law, norms and standards. This ruling was significant in that it was the first time the United States has been formally sanctioned for its treatment of Native peoples in the United States. While the condemnation of the United States for the violation of Western Shoshone Treaty Rights by IACHR has been forceful, the IACHR has no legal standing in the domestic affairs of the U.S.

On March 10, 2006, another international body issued a strongly worded decision in favor of Western Shoshone treaty rights. The United Nations Committee on the Elimination of Racial Discrimination (CERD) “urged the U.S. to ‘freeze’, ‘desist’ and ‘stop’ actions being taken or threatened to be taken against the Western Shoshone Peoples of the Western Shoshone Nation. In its decision, CERD stressed the ‘nature and urgency’ of the Shoshone situation and urged the U.S. to comply with their recommendations (Indian Law Resource Center).2 Similar to the IACHR decision, the U.S. has ignored recommendations of the CERD and continued to resist abiding by the Treaty of Ruby valley.

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1 The Organization of American states is a regional multilateral forum that brings together the nations of the Western Hemisphere to strengthen cooperation on democratic values, defend common interests and debate the major issues facing the region and the world. The OAS is the region’s principal multilateral forum for strengthening democracy, promoting human rights, and confronting shared problems such as poverty, terrorism, illegal drugs and corruption (OAS at a Glance).

2 The CERD recommended the following: “The Committee recommends to the State party [the U.S.]that it respect and protect the human rights of the Western Shoshone peoples, without discrimination based on race, colour, or national or ethnic origin, in accordance with the Convention. The State party is urged to pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands…The Committee urges the State party to take immediate action to initiate dialogue with the representatives of the Western Shoshone peoples in order to find solution acceptable to them, and which complies with their rights under, in particular, articles 5 and 6 of the Convention. In this regard also, the Committee draws the attention of the State party to its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources…The Committee urges the State party to adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the State party’s obligations under the Convention: a) Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers; b) Desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples; c) Stop imposing grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting, fishing and gathering, as well as arrests, and rescind all notices already made to that end, inflicted on Western Shoshone people while using their ancestral lands.
IV. Contemporary Significance

The mission and goals of the Western Shoshone Defense Project demonstrate that treaties outline and define contemporary Indian assets and provide significant tools for community action and asset control and preservation. The Western Shoshone Defense Project relied upon the Treaty of Ruby Valley as a document fundamental to the protection of Western Shoshone land, cultural values and the ecosystems located upon their traditional lands. Though the federal government has violated the Treaty of Ruby Valley, and stolen land from the Western Shoshone people and government, the Western Shoshone Defense Project is at the forefront of efforts to regain control and access to lands and other assets located within the tribal land base.

Under its Native American Asset Watch Initiative, First Nations Development Institute has supported various cultural programs of the Western Shoshone Defense Project in their ongoing efforts to promote cultural activities in relation to their traditional lands. These cultural programs are delivered to members within their local communities – some through interactive traditional outdoor camps. Cultural programs like these are directly connected to Western Shoshone land and thus facilitate the sharing and fostering of traditional Western Shoshone knowledge. Additionally, these programs are directly connected to asset-mapping activities.

The Western Shoshone Defense Project has started to use geo-spatial technology to monitor plant and animal life on their homelands. This effort is linked to the organization’s efforts to monitor environmental destruction by outside companies engaged in coal mining and to monitor hazardous dumping by the U.S. government. Education and mapping efforts like these provide a mechanism for community engagement and ensure the survival of traditional practices.

The Western Shoshone Defense Project recognizes that the continued development and promotion of traditional lifeways are fundamental to the survival of all indigenous nations. Through their cultural preservation efforts, the Western Shoshone have empowered communities to keep fighting for treaty rights and have provided direction for shaping patterns of resistance to U.S. efforts aimed at the confiscation and destruction of Western Shoshone land. As a result the Western Shoshone Defense Project has created a strong sense of hope for the future of the Western Shoshone peoples.

First Nations understands the importance of the Western Shoshone struggle for the protection of their treaty rights. Recognizing the innovative strategies that the Western Shoshone have developed, First Nations has previously supported the Corporation of Newe Sogobia, a nonprofit organization created in 1992 by the Western Shoshone National Council. The Corporation of Newe Sogobia was created to increase the value of pine nuts on Western Shoshone lands. The Corporation of Newe Sogobia has actively demonstrated control over pine nut harvests by developing harvests to sell. Money raised by the Corporation of Newe Sogobia is used to support Western Shoshone cultural and spiritual events including annual fall and spring gatherings, healing ceremonies, an annual walk/run around Yucca Mountain, cultural education projects for youth, events promoting donations for land acquisition, and programs to provide business opportunities for tribal members.
Lessons Learned

Native American Treaties are Essential Assets
Since its inception, the Treaty of Ruby Valley has guided the mission, goals and direction of the Western Shoshone Defense Project. The Treaty of Ruby Valley outlines the vast amount of land and natural and physical resources owned by the Western Shoshone. The treaty also provides the backbone for the development of various strategies developed by the Western Shoshone Defense Project to promote and strengthen traditional cultural values related to Western Shoshone land. Without these essential activities to guide the organization and the communities they serve, traditional knowledge may have been distorted and lost.

As demonstrated by the Corporation of Newe Sogobia's efforts to capitalize on natural assets in their treaty lands, the Western Shoshone are using the Treaty of Ruby Valley as an active and present document to develop and pursue long-term strategies to identify, cultivate and control their assets. These activities demonstrate that treaties are a fundamental asset for many Native nations. Although the history of treaty-making between Native nations and the U.S. is complicated, at times involving fraud and in many instances outright violation and abrogation, treaties continue to be fundamental to the ongoing struggle to protect, control, preserve, leverage and utilize tribal assets. In large part, treaties define the assets that Tribes own and provide the basis for tribal efforts to control those assets.

Tribal Grassroots Organizations
The Western Shoshone Defense Project demonstrates that tribal grassroots organizations are essential mechanisms to further treaty rights and sovereignty and continue the promotion of Native American traditions and culture. Both the Western Shoshone Defense Project and the Corporation of Newe Sogobia demonstrate that tribal grassroots organizations can be significant mechanisms for utilizing, controlling and developing Native American assets. Protecting and essential tribal assets like treaty rights, sovereignty and culture, and organizing around these assets, are significant motivating factors in fostering community development and empowerment.

The Western Shoshone Defense Project and the Corporation of Newe Sogobia, like many other grassroots organizations in Indian Country, have lasting impacts on indigenous communities. Native grassroots organizations in Indian Country are diverse. Not only do these organizations support treaty rights, sovereignty and culture, as with the Western Shoshone, other tribal grassroots organizations in Indian Country support efforts of homeownership and individual savings, and they also provide essential services such as financial education and short-term loans. These grassroots organizations all provide support for community development and empowerment and foster overall tribal goals of strengthening tribal sovereignty and attaining economic security for “present and future generations based on [tribes'] cultural and spiritual traditions” (Western Shoshone Defense Project).

Not all Native Assets Can be Monetize
The Western Shoshone have continually resisted efforts of the Bureau of Indian Affairs to compensate the Western Shoshone for the claimed “extinguishment” of land title. While some have argued that the Western Shoshone should accept payment for the land, the Western Shoshone mantra is “Western
Shoshone homeland, Newe Sogobia, has never been for sale!” Moreover, accepting payment for land would void the inherent right of the Western Shoshone lands outlined in the Treaty of Ruby Valley. The Western Shoshone Defense Project has consistently pressed their message that Western Shoshone culture, language and traditions cannot be separated from the significance of land.

Other Native nations have also refused to accept payment for past treaty violations. For instance, the Sioux Nation has refused to accept payment for the theft of their sacred Black Hills. Many individuals in mainstream America do not understand the significance of land to tribal communities. Land shapes the lifeways of tribal societies; it informs tribal traditions, cultures, beliefs systems and language. As the Western Shoshone case demonstrates, these things cannot be bought and sold.

**Diversification of Legal and Political Strategies**

The Western Shoshone Defense Project has been at the forefront of legal and political struggles to get the U.S. government to recognize their inherent rights to land and sovereignty. Though the 1985 U.S. Supreme Court case, *U.S. v. Dann*, limited the legal recourse of the Western Shoshone in U.S. courts, the Western Shoshone have taken their case to the international bodies to publicize and draw attention to their cause. The international arena can be a significant factor in developing diverse strategies for Native American asset control. Though the U.S. government often ignores judgments and sanctions of international bodies, the international arena is a means to draw attention and scrutiny to issues surrounding Indian assets.

**Community Engagement**

The various programmatic efforts of the Western Shoshone Defense Project are directly aimed at engaging the various Western Shoshone communities. Their efforts are directly aimed at strengthening and promoting cultural learning. These activities include cultural and spiritual gatherings, which provide essential mechanisms to continue Western Shoshone lifeways and traditional practices. The organization also conducts educational sessions and conferences in Western Shoshone communities aimed at educating their communities about ongoing legal and political battles of treaty lands as well as sustainable development.

An informed and involved tribal populace is essential to the development of a healthy and sustainable nation. Educating tribal members allows the community to be informed about the current and future direction of the organization. It also provides an essential forum for community input about the direction of the organization.

**Asset Mapping as a Strategy for Asset Control**

Under a grant provided to the Western Shoshone Defense Project under the Native American Asset Watch Initiative, the organization engaged in geo-spatial mapping of their treaty area. This allowed the organization to involve various Western Shoshone communities in tracking and monitoring significant cultural assets within their treaty area. This information will be essential as the Western Shoshone Defense Project develops future plans for community engagement and future legal strategies.

Monitoring cultural assets within treaty areas is essential for Native American nations. This allows tribes to know what they own and provides a mechanism to document external encroachment, environmental and ecosystem destruction. It will also allow the organization a basis for monitoring culturally significant sites, plants and other culturally significant physical and natural assets.
Summary

Despite efforts by the U.S. government to steal and control Western Shoshone assets defined under the 1863 Treaty of Ruby Valley, the Western Shoshone Defense Project is a grassroots organization dedicated to preserving Western Shoshone treaty rights, sovereignty and promoting the preservation of cultural values. The organization has utilized the Nation’s treaty as a document to shape the mission, direction and goals of the organization. Refusing to allow their land title to be extinguished and monetized by the federal government, the Western Shoshone Defense Project has organized various programs and community efforts to inform their various communities about their land rights and the ongoing legal and political battles to regain control of their assets. Currently, the Western Shoshone Defense Project is pursuing a strategy of asset mapping to document and record the assets within their treaty area and to document the destruction of assets by the massive strip mines and toxic dumps that are currently ravaging their lands.

V. Conclusion

The case demonstrates that asset based development strategies in Native American communities are diverse and closely intertwined and complicated by federal Indian law and policy. Though the U.S. government has attempted to seize and control Native American assets, tribal Native American nations continue to fight for control over their assets and continue to use treaties as essential assets in formulating strategies for control. The development of diverse legal strategies and grassroots organizations can lend significant support to tribal efforts for asset control.
Works Cited


Treaty of Peace and Friendship. United States Treaty with the Western Shoshone, 1863. October 1, 1863, 18 Statutes at Large 689.

Cases


Attachment A

Newe Sogobia and Nevada Gold Mines

© Western Shoshone Defense Project 1999
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Steven J Crum, *The Road On Which We Came*, University of Utah Press, 1994