

Where Sovereignty Lies: The Walker River Paiute Tribes Fight to Protect and
Defend Unceded

Lands and Sacred Sites Against U.S. Militarization

by

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A Thesis Presented in Partial Fulfillment
of the Requirements for the Degree
Master of Science

Approved July 2022 by the
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ARIZONA STATE UNIVERSITY

August 2022

ABSTRACT

The Walker River Paiute Tribes land is in question, despite their inherent sovereign right to protect and access to it. The argument posed in this document is that the United States (U.S.). military has two military bases that border the Walker River Paiute Tribe and illegally occupy their unceded lands, trust lands and sacred sites. Their land and sacred sites have been contaminated and destroyed by U.S. military ammunition and ordnance. The U.S. has militarized the Walker River Paiute Tribe in order to push the advancement and training of the U.S military. This thesis uses place-based learning methods to strengthen the connection that the Walker River Paiute Tribe has to the land and recognizes how colonialism, forced removal, and Indian policies have weakened the sovereignty of the Walker River Paiute Tribe. It also examines and spotlights the resistance to every intersectional attempt to destabilize and assimilate the Walker River Paiute Tribe. Case studies, law and order codes, case law and statutes are included in this thesis as foundational pieces to bringing this illegal activity before the Supreme Court. The tribe has an invested interest to these lands because they have occupied and cared for them for thousands of years. The Walker River Paiute Tribe demonstrates self-determination and the practice of sovereignty by remaining in opposition to the illegal activity that has been ongoing for over 75 years. Research findings from these studies answer the following questions: How has the U.S. militarization against the Walker River Paiute Tribe affected the sovereignty of the tribe and forced lifeway disruptions? How can connections be drawn between other Indigenous sacred sites and U.S.

militarization? And how global militarization can be paralleled to the militarization that has historically happened on American soil. Most importantly, this document produces a timeline of Walker River Paiute Tribe resistance to U.S. militarization since the establishment of each military base.

DEDICATION

To my Moo'a and Bea, without your guidance and unparalleled kinship, the knowledge of traditions and importance of carrying them all would not be present in my life and work. To my children, your ability to show me unconditional love when I absolutely needed it most will forever be appreciated in my heart. This thesis would not be possible without the encouragement and support of my family and friends. Thank you all for playing a pivotal role in guiding me throughout the years. The journey has been beautiful!

ACKNOWLEDGMENTS

I can never thank my mentors enough for the guidance and support I received from them throughout my educational journey. I wish to acknowledge firstly, with enormous gratitude, my thesis committee and mentors, Dr. David Martinez, Dr. Myla Vicenti Carpio, and Dr. Stephanie Fitzgerald. It is an honor learn from and work with each of you. To my long-time mentors and friends, Phoebe Cellitti and Elveda Martinez, you have guided me year after year to produce meaningful work, to be proud, and to give back in all that I do. The strength you showed me will never be lost. I hope I can continue to demonstrate that all of your teachings have been left in good hands and I will continue to be the best relative I can by always carrying your visions of the future.

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CHAPTER 1

INTRODUCTION

The Walker River Paiute Tribe (WRPT), traditionally known as the Agai Dicutta (Trout Eating) people and place, is located at the northwestern end of the Great Basin between two military bases: Fallon Naval Air Station (FNAS) and the Hawthorn Army Depot (HAD). For over 75 years, the WRPT has conflicted with the U.S. military and the federal government due to the illegal occupation and destruction of their land. These lands include sacred sites still recognized by the WRPT that are reserved to the WRPT through trust that the Department of the Interior holds for the benefit of an Indigenous tribe or individual tribal members.¹ Yet, the U.S. military's actions disempower the tribe from protecting, preserving, and restoring their traditional territory, land, and lifeways.

This thesis will examine: 1) the long-term damages to the WRPT land; 2) the effects this damage has had on the Walker River Paiute people; and 3) how these invasions force sovereignty dilution. Historical dealings between the U.S. military and the Walker River Paiute Tribe have been asymmetrical. They consistently benefitted the U.S. military and lacked real consideration and reconciliation that would fulfill the WRPT's wants and their needs. Encroachment from militarization and colonization has forced the WRPT to continue to fight for their land and sacred sites to ensure the futurity of Agai Dicutta lifeway.

¹ Sia Davis, Linda Tassin. " Trust Land." Trust Land Overview. Accessed April 29, 2021. <https://www.ncsl.org/research/state-tribal-institute/trust-land-overview.aspx>.

This thesis opens by detailing several histories: the establishment of the two military bases, HAD and FNAS; a tribal history of the Agai Dicutta, now known as the Walker River Paiute Tribe; and a review of Indian policies of removal, the rise of the reservation system, and how these impacted the WRPT. Next, the thesis defines militarization and explores its worldwide impact. This section reveals parallels between global militarization and the local impacts on the WRPT. It specifies how militarization has negatively impacted the WRPT by continual shelling of the area and its refusal to clear the area and restore the land, even though legally obligated to do so. Finally, the thesis outlines the establishment of President Bill Clinton's executive order mandating consultation with federally recognized Indian tribes, and the WRPT's struggles to engage the military based in this process. Resolutions have yet to be achieved and the thesis delineates various cases and materials that WRPT can use in future negotiations with the government and military. The WRPT continues to engage in the struggle and will not relinquish its responsibility to its people, the land, and its sacred sites. The thesis ends with these resolutions.

CHAPTER 2

THE ESTABLISHMENT OF THE HAD AND FNAS

Walker River Paiute tribal member and tribal elder Elaine Hicks provided vital information about the establishment of the Hawthorne Army Depot (HAD) and the Fallon Naval Air Station (FNAS). Mrs. Hicks worked professionally for the Hawthorne Army Depot as an Ammunition Worker (wartime) in the 1970s and later as a Security Guard from 2010 to 2014 (peacetime). The Hawthorne Army Depot (HAD) is a U.S. Army ammunition storage depot and claims the world title of being the largest depot in the world. It is located approximately 15 miles from the borderline of the Walker River Paiute Tribe. Construction for the depot began in July 1928, and the first delivery of high explosives to the HAD was in October 1930. When the U.S. entered World War II, Hawthorne quickly became the storage facility for rockets, bombs, and ammunition demanded for the war.

The HAD army depot was initially built after a 1926 explosion that destroyed the Lake Denmark, New Jersey, Naval Ammunition Depot. This explosion at Lake Denmark killed 21 people, seriously injured 53 others, and caused severe damage to surrounding communities. This incident may seem like a tragic story from the past that modern-day communities do not necessarily need to worry about. But, as always when dealing with heavy artillery, tragedies can occur at any time. For example, a quote from militarybases.com regarding the HAD history tells us that:

a deadly explosion at Nevada's Hawthorne Army Depot occurred in 2013 after a training

exercise for the Marine Corps. The 60-millimeter mortars were suspended until the accident had been reviewed. In total, eight US Marines were killed, and many others were wounded when a mortar exploded inside of its firing tube while the Marines were doing a mountain training exercise at the Hawthorne Army Depot. The investigation determined that it was human error to blame for the mortar explosion stating that “people didn’t follow correct procedures.”²

In this instance, the Walker River Paiute Tribe and community members are left defenseless. As Mrs. Hicks states: “The Hawthorne Army Depot had a vital mission of supporting the entire war effort from World War II, Vietnam and Desert Storm.”³ The threats to the WRPT continue until this day.

While this U.S. military base actively poses an everyday threat to the WRPT, the nation must also deal with a base to the north, the Fallon Naval Air Station (FNAS). Their Bravo-19 test range sits directly adjacent to the reservation border. For over 75 years, the tribe has been subject to continuous bombing, trespassing, and damage done to their land. The bombing was first documented on October 6, 1959, during a range inspection of the WRPT, done by Robert Taylor and Nat Hanson of the Bureau of Indian Affairs, Phoenix Area Office. They noted that the Cushman Well installation, located on the reservation, had been used as a target for the FNAS. Their findings concluded that the planes

² "Hawthorne Army Depot Base in Hawthorne, NV." Military Bases. October 08, 2017. Accessed April 01, 2021. <https://militarybases.com/nevada/hawthorne-army-depot/>.

³ Hicks, Elaine. "Hawthorn Army Depot Trespassing." Interview by author for American Indian Studies Course. April 10, 2021.

responsible for the damage were from the Naval Auxiliary Air Station, Fallon.⁴ The FNAS repeatedly bombs federal trust land and uses their sites as target practice. The effects they have inflicted upon the Paiute people have gone uncontested because of jurisdictional issues and the federal government's insufficient efforts to uphold the sovereign right of the Agai Dicutta people. The FNAS has unsuccessfully navigated Executive Order 13175 (consultation process) throughout their history of destruction and imposed themselves and their ordnances onto the land of the Walker River Paiute Tribe, leaving the land dead and unsustainable.

The bombs, both active and inactive, have been found and documented. Needless to say, they put the humans, livestock, and wildlife of the WRPT in serious danger due to the harmful effects of low-level flights' sonic disturbances and bombing within the reservation boundaries. The WRPT has made ample efforts to resolve the situation with proposals presented to the Navy base that have traveled up the chain of command, but these remain un-legitimized.

Both the HAD and the FNAS refuse to restore the WRPT land, situating themselves as a hierarchy with the Walker River Paiute Tribe that dilutes the sovereign status and nationhood. Despite the FNAS and HAD's constant push back against the Agai Dicutta people, the Walker River Paiute Tribe have fought endlessly for over 75 years to hold both military bases accountable for their attacks on Agai Dicutta land, people, and sovereignty.

⁴ Ladd, Burton A., *Land Operations 301.10.3-14 Walker R.* October 12, 1959.

CHAPTER 3

WALKER RIVER PAIUTE TRIBAL HISTORY

The Agai Dicutta (or Trout Eating) people, also known as the Numu People, the Northern Paiute People, and contemporarily known as the Walker River Paiute Tribe, have occupied the northern end of the Great Basin⁵ east of Walker Lake from time immemorial. Traveling from the mountain top today known as Mt. Grant⁶ (located directly west of Walker Lake), the Agai Dicutta came to the land of the Great Basin in boats when it was completely covered in water. The WRPT people originated around Agai Pah (Trout Lake or Walker Lake) and adopted the Trout Eaters/Trout Speakers name Agai Dicutta because of the plants and animals that grew and lived in the area.⁷ The Agai Dicutta Numu are deeply connected to the land and continue to protect and respect their sacred sites including the two most important: the Agai Pah and Kurwangwa (Mt. Grant). Agai Pah remains a significant site for the WRPT because it was traditionally their primary water source that contributed to the people's survival. Similarly, contemporary WRPT members hold Kurwangwa in high regard because it is where life for the Agai Dicutta began.

In his tribal history, historian Edward Johnson wrote about how the Paiutes inhabited the land, "They knew the earth's secrets: when and where the

⁵ Inter-Tribal Council of Nevada. 1988. *Numa, a northern Paiute history*. 93. Reno, Nev: Inter Tribal Council of Nevada.

⁶ Johnson, Edward C. *Walker River Paiutes: a Tribal History*. 15. Schurz, NV: Walker River Paiute tribe, 1975.

⁷ Johnson, Edward C. *Walker River Paiutes: a Tribal History*. 7. Schurz, NV: Walker River Paiute tribe, 1975.

edible plants grew, the habits and cunning ways of the desert and mountain animals.”⁸ Since the Agai Dicutta Numu resided in the land since its creation, they have intimate knowledge of their environment and are culturally and spiritually tied to this place. In their own history, the Agai Dicutta creation story tells how they came to this land:

Long ago, before the arrival of the People, the world was entirely covered with water. Suddenly a mountain called Kurwangwa began to emerge from the water. There were flames blazing mysteriously from its peak. The mountain is safe and is known today as Mt. Grant. Strong, cold winds blew out across the surrounding water and threatened to put out the fire on Kurwangwa. Luckily, the Sagehen flew to the rescue. She settled over the fire and fanned the water away from the flames with her wings. But she nestled so close to the fire that her feathers were singed by the fire, and today the feathers on the breast of the Sagehen are still black from being scorched by the fire on Kurwangwa. She fanned the water back from the fire until the mountain Kurwangwa had lifted itself high above the reach of the great body of water that was left, Agai Pah (Trout Lake) or Walker Lake as it is called today.⁹

The creation story then recounts how the people inhabited the land. Numa Na ah (the Father of all People) came from the south, and Ibidsii (the Mother of all

⁸ Edward C. Johnson, *Walker River Paiutes a Tribal History* (Salt Lake City: Univ. of Utah, 1975), [PAGE], p.7)

⁹ Edward C. Johnson, *Walker River Paiutes a Tribal History*(Salt Lake City: Univ. of Utah, 1975), [PAGE], p.15)

People) followed closely behind. They left footprints during their travel that remain visible around the area of Agai Pah. Numu Na ah taught his sons how to hunt and construct bows and arrows and told them secrets about hunting and how to stalk game in the mountains and arid countryside. Once, there was a plentiful number of ducks, mud hens, deer, antelope, and mountain sheep.

While Numu Na ah was resourceful in teaching his sons the secrets of the land for hunting and stalking prey, Ibidsii taught her daughters how to gather. Ibidsii taught her daughters which plants had edible roots, where to find them, and how to extract them with digging sticks.¹⁰ She also instructed her daughters how to select willow branches, tule leaves, and river grass to build homes for the winter.

Numu Na ah and Ibidsii are the foundational helpers that guide the Agai Dicutta people's existence, even today. The Walker River Paiute people consider their teachings as the reason they continue to live and persist. The people maintain a connection to the land and lake, considering them both sacred and necessary for their existence, even though both were removed from the hands of the Walker River Paiute people due to forced relinquishment in the reservation system. The WRPT consider this removal to be merely on paper, because they have always preserved a direct connection to these sacred spaces. As stated in the *Northern Paiute and Western Shoshone Land Use in Northern Nevada: A Class I Ethnographic/Ethnohistoric Overview cultural resources series no. 12:*

¹⁰ Johnson, Edward C. *Walker River Paiutes: a Tribal History*. (Schurz, NV: Walker river Paiute tribe, 1975), ([PAGE], p.16)

Most, if not all, of traditional origin and mythological places will likely be eligible for inclusion on the NRHP (National Register as a Historic Property) under Criterion A because they are associated with traditional and cultural events that have made a significant contribution to the broad patterns of Northern Paiute or Western Shoshone history. Some of these sites may be eligible under Criterion B because of their association with important beings, such as Numa na ah or Wolf.¹¹

The land that the Walker River Paiute Tribe traveled, cared for, and survived in relationship with for thousands of years is in what is now known as Northern Nevada. The land is north of the contemporary town Hawthorne, NV, (where the Hawthorne Army Depot is situated) and south of Fallon, NV (which includes the Fallon Naval Air Station) and is now home to a small reservation town called Schurz, NV.

¹¹ Bengston, Ginny. "Northern Paiute and Western SHOSHONE LAND USE IN NORTHERN NEVADA: A CLASS I ETHNOGRAPHIC/ETHNOHISTORIC OVERVIEW." Reno: SWCA, INC. Environmental Consultants, December 16, 2002. 83.

CHAPTER 4

INDIAN POLICIES AND REMOVAL

To fully understand the barriers that the WRPT currently face, it is essential to know the history of the Walker River Paiute Tribal Nation and the imposed policies and laws that continue to affect the WRPT's access to land. As noted, the WRPT's ancestors the Agai Dicutta, lived in the area around Agai Pah (Walker Lake) for thousands of years. They experienced a seasonal cycle of fishing, collecting foods, and hunting game, that enabled them to successfully prosper, until they were invaded by fur trappers, gold seekers, travelers, and explorers from the west coast, of what is now known as California in the early 1800s. Ultimately, U.S. government policies forcibly bound them to a reservation.

Although there were established colonies on the coast of what is now known as California in the late 1760s, invasion into the Great Basin did not begin until the early 1820s by the first fur trapper to cross the Sierras—Jedediah Smith.¹² In 1829, additional fur trappers and explorers led many travelers into the Great Basin territory. Eventually, gold-seekers from the east passed through on their exploration into California, and in the later years, they established mining camps in the Great Basin. Increased foot traffic into the Agai Dicutta territory and newfound resources drove the invader's desire to remove the Agai Dicutta people out of their way as they craved gold, minerals, and wealth. The settlers,

¹² Kien, Adrien. "Jedediah Smith: No Ordinary Mountainman." *Boise Weekly*, Sep 2009. <http://login.ezproxy1.lib.asu.edu/login?url=https://www.proquest.com/newspapers/jedediah-smith-no-ordinary-mountainman/docview/367360780/se-2?accountid=4485>
Kien, Adrian. "JEDEDIAH SMITH: NO ORDINARY MOUNTAINMAN.

who steadily expanded west from the 18th to mid 19th centuries viewed Native peoples as obstacles to their desire to settle the land. They followed the “doctrine of discovery,” or the European notion that as explorers discovered land, it gave them absolute legal title and ownership of the soil. This doctrine is largely responsible for the dilution of the sovereignty of Indigenous nations. Essentially, the doctrine constitutes land theft. This transfer of “ownership” from the discovering European nation to the U.S. supplanted the inherent sovereignty of Indigenous peoples over their ancestral lands. The doctrine of discovery, essentially ignored Native people’s historical connection to these territories as nations.¹³

As the self-proclaimed discoverers were on their way to shaping what would become the United States of America, the “Americans” used a British model to form the basis for the newly established U.S. land laws. The original land claims drafted by the U.S. government can be found in the Constitution (May 25, 1787).¹⁴ The Constitution also specifies the defining powers that establish who controls law making in state governments. The Constitution considers Indigenous nations as foreign nations, so the national government dealt with tribes accordingly, regarding both inter-state and international trade. Thus, the nationhood of all Native tribes was established through these founding

¹³ Wilkins, David E., and K. Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and Federal Law*. University of Oklahoma Press, 2002.

¹⁴ Research, LLC, Ethnohistory, and David Lewis. “How the Trade and Intercourse Acts Aided Colonization of Native Lands.” QUARTUX, April 25, 2020.

https://ndnhistoryresearch.com/2020/04/25/how-the-trade-and-intercourse-acts-aided-colonization-of-native-lands/#_edn7.

documents that still shape the U.S. today. Eventually, the United States government began to see Native tribes as a barrier to westward expansion and they claimed territory for the U.S., displacing most Native people from their territorial lands.¹⁵

In 1879, the U.S. military forcibly removed the Paiute people of the Great Basin. The hand-drawn maps of 1859, along with the reevaluated ones in 1874 that stole lands from the Agai Dicutta, did not adequately, in the eyes of the U.S. government, work to ensure that confinement was a guarantee. The Numu people continued to wander the lands that had always belonged to them, so the U.S. military attempted to remove them another way. On January 6, 1879, the U.S. Army followed an order to remove five hundred Northern Paiute Indians and relocate them 350 miles north—over two mountain ranges in the middle of a deadly winter. They compelled the tribe to trek north from the Great Basin to the Yakima Indian Reservation in Washington. The people were unprepared for such a march and lacked proper clothing and food, leaving them near starvation and dying from freezing temperatures, including a newborn birthed along the way. The following day, the newborn's mother also died, and left on the side of the road, with the other dead.¹⁶

¹⁵ National Geographic Society. "United States Westward Expansion." National Geographic Society, July 7, 2020. <https://www.nationalgeographic.org/maps/united-states-westward-expansion/>.

¹⁶ Gae Whitney Canfield, *Sarah Winnemucca of the Northern Paiutes* (Norman: University of Oklahoma Press, 1983), 155.

This tragic time of removal for the Paiute people, done for the direct benefit of westward expansion, demonstrates how the U.S. military historically follows a pattern to advance their interests at any cost to other nations. U.S. militarization imposed lifeway disruptions to almost every nation they have contacted, and they continue their systemic road to imperial domination. This process allows the military to influence and impose their priorities onto civilian lives, as they have always done to the Agai Dicutta people.

According to *A Teacher's Guide to Walker River Paiutes: A Tribal History* numerous policies and decisions made on behalf of the U.S. impacted or influenced the disruption of WRPT lifeway. Moreover, these policies supported the establishment of military bases that fed their desire to rule the area by force of militarization. By setting up a naval air station on the northern border of the WRPT and an army depot on the southern border of the reservation, the U.S. military treated the Agai Dicutta lands and sacred spaces as a disposable object that held/holds no value. They have systemically made it impossible for the WRPT to defend or prosecute the military and the federal government for encroachment.

In 1834, the foundational Indian Trade and Intercourse Act was passed to regulate trade with Native nations. The Act granted the federal government authority over Native Americans and Congress was the body that would approve or deny Indian people's industry or commerce. Then came the Indian Appropriations Act of 1871. Up until then, Native American tribes were recognized as independent nations with the ability to trade with the United

States. The Indian Appropriations Act of 1871, originally drafted as a routine bill intended to provide funding to Indian agencies, added a provision declaring that Native peoples did not belong to any specific nation. This provision prevented any Indian nation from entering into treaties with the United States, because they were not established as an “independent nation.”¹⁷ This 1871 act drastically shaped the status of and respect for tribal sovereignty moving forward. As stated in the Colorado Encyclopedia regarding the Indian Appropriations Act of 1871, “although it promised not to ‘invalidate or impair the obligation’ of previous treaties, the act was the first step toward eliminating Indigenous sovereignty.”¹⁸ These took away the Agai Dicutta’s sovereignty, which made their struggle to protect their sacred land and fulfill the obligations of their lifeways increasingly difficult. The people’s legal status after this 1871 decision situated them beneath the U.S., which opened at least one barrier for non-Native encroachment.

The *Dawes General Allotment Act of 1887*, also known as the Dawes Act, came next. It created land assignments to individual Indians, separated communal landholdings and sold the rest of the land to non-Natives. The Dawes Act impact was especially important during the late 1920s when the Hawthorne Army Depot established its military base and used the railway to transport material. I will elaborate on this later, but this process allowed the Carson &

¹⁷ Encyclopedia Staff, "Indian Appropriations Act (1871)," *Colorado Encyclopedia*, last modified March 08, 2021, <https://coloradoencyclopedia.org/article/indian-appropriations-act-1871>.

¹⁸ Encyclopedia Staff, "Indian Appropriations Act (1871)," *Colorado Encyclopedia*, last modified March 08, 2021, <https://coloradoencyclopedia.org/article/indian-appropriations-act-1871>.

Colorado Railway, later known as the Southern Pacific Railroad, to successfully invoke the General Allotment Act in a lawsuit that the WRPT brought forward against the railway because the tribe argued that they did not establish the right-of-way on the reservation. Also, this act pushed for Native individuals to give up their land in exchange for United States citizenship,¹⁹ further eroding their inherent right to sovereignty—as they had already belonged to a nation—by making them constituents of the U.S.

In 1906, the Burke Act authorized the secretary of the interior to decide whether an Indian person was “competent” to manage their lands. If the Indian person was deemed “competent,” the secretary could take the land out of trust, and the land would become taxable. This act removed self-determination of Native peoples ultimately regarding Native individuals as wards of the United States. If deemed incompetent, a Native person is subject to federal guardianship where the secretary of the interior becomes their decision-maker.²⁰ So, the 1906 Burke Act impacted the Walker River Paiute Tribe in that they have limited say in what can and cannot be done on their own land.

However, the policy most detrimental to the Agai Dicutta, was the 1874 executive order that established the Walker River Paiute Tribe and the reservation system. As stated by Matt Bischoff of the Nevada Historical Society Quarterly in 1994, “Indian policy of the United States government...sought to

¹⁹ M. Kaye Tatro, “Burke Act (1906),” *The Encyclopedia of Oklahoma History and Culture*, <https://www.okhistory.org/publications/enc/entry?entry=BU010>.

²⁰ M. Kaye Tatro, “Burke Act (1906),” *The Encyclopedia of Oklahoma History and Culture*, <https://www.okhistory.org/publications/enc/entry?entry=BU010>.

concentrate the Indian populations on newly designated reservations.”²¹ In November 1859, Frederick Dodge, an Indian Agent, proposed that two reservations be established for the Northern Paiute people, one being at Pyramid Lake and one at Walker Lake.²² In doing this, the U.S. would open up the land for exploitation for resources and wealth, so long as the “Indians” remained restricted to lands that seemed useless. Dodge stated in his request, “I respectfully suggest that the North West part of the valley of the Truckee River including Pyramid Lake, and the North East part of the Valley of Walker River including the lake of the same be reserved for them, the localities and boundaries of which are indicated on the accompanying map. These isolated spots, embracing large fisheries surrounded by mountains and deserts, will have the advantage of being their home of choice.”²³ In this 1859 proposal, the major water source that had provided the futurity and existence of the Agai Dicutta Numu, Agai Pah (Walker Lake), was included in the reservation maps that Dodge proposed. The reservations were finalized and set aside in 1859 at Pyramid Lake and Walker River Indian Reservation, which included both lakes that resided

²¹ Bischoff, Matt. “Nevada Historical Society Quarterly.” Reno: Nevada Historical Society, 1994. 263.

²² Johnson, Edward C. *Walker River Paiutes: a Tribal History*. 28. Schurz, NV: Walker River Paiute tribe, 1975.

²³ Carey, Dr. Andrew. “8. The People of Pyramid Lake (U.S. National Park Service).” National Parks Service. U.S. Department of the Interior. Accessed February 9, 2022. <https://www.nps.gov/articles/pyramidlakepaiute.htm>.

within those boundaries. This plan opened up the remaining land for further invasion.²⁴

At this point the United States General Land Office set aside land for the establishment of reservations in these areas under “Indian Purposes.” As stated in *A Teacher’s Guide To Walker River Paiutes: A Tribal History*, “Across the country, Indian groups were placed on reservations generally smaller and poorer than their original lands. As at Walker River, non-Indians threatened Indian lands, resources, and ways of life.”²⁵ Confinement to reservations severely impacted the continuation of normal every day and seasonal life for the Walker River Paiute people. On March 19, 1874, the WRPT was officially re-established by executive order under the administration of Ulysses Grant.²⁶ This forced confinement was a U.S. policy intended to isolate the Agai Dicutta people and restrain them to territory far outside of the newly developing self-claimed U.S. territory. Bischoff of the Nevada Historical Society Quarterly highlights the reservation system and states, “The reservation was a way in which to separate Indians from whites, thereby protecting the whites from the Indians, and vice versa... another

²⁴ Carey, Andrew W.. "Questions of Sovereignty: Pyramid Lake and the Northern Paiute Struggle for Water and Rights." (2016). https://digitalrepository.unm.edu/anth_etds/79.P

²⁵ Johnson, Edward C. *A Teacher's Guide to Walker River Paiutes: A Tribal History*. 13. Schurz, NV, NV: Walker River Paiute Tribe, 1978.

²⁶ “Home - Walker River Paiute Tribe: Agai-Dicutta Numu.” Walker River Paiute Tribe | Agai Dicutta Numu, May 30, 2020. <https://www.wrpt.org/agai-dicutta-numu/>.

perceived bonus of the reservation system was the opening of land to Euro-American entry.”²⁷

While the reservation system roughly began in the mid-1820s, as stated in *The Indian Reservation System* by Terry O’Neill, the first idea of controlled confinement of the Agai Dicutta by the federal government was in 1859, and in 1874 they solidified the new boundaries of the WRPT Indian reservation. While many policies and laws have diluted the sovereignty of Native nations, the reservation system is one of the longest successful policies implemented that still serves this purpose today, in 2022. Under the reservation system, American Indians are forced to live within clearly defined zones designated to their respective tribe and community that “allowed” them to retain their citizenship within their own independent tribe.²⁸ This meant that the U.S. government told the tribes that they now lived on a reservation that essentially had borders separating them from the U.S. *A Teacher’s Guide to Walker River Paiutes: A Tribal History* states: “Growing numbers of settlers disrupted the lives and resources of the People. The creation of the reservation in 1859 marked the beginning of a new way of life at Walker River.”²⁹ Borders were established and

²⁷ Bischoff, Matt. “Nevada Historical Society Quarterly.” Reno: Nevada Historical Society, 1994. 263.

²⁸ The Reservation System. Accessed March 28, 2021.

<http://www.nebraskastudies.org/en/1900-1924/native-american-citizenship/the-reservation-system/>.

²⁹ Johnson, Edward C. *A Teacher’s Guide to Walker River Paiutes: A Tribal History*. 13. Schurz, NV, NV: Walker River Paiute Tribe, 1978.

replaced with promises made by the U.S. to accommodate Native people on reservations with food, goods, money, and protection in return.

The reservation system slowly destroyed the traditional Native lifeway. Access to everyday necessities, such as fishing and hunting were denied. Nevada state and Hawthorne Army Depot mismanagement disrupted access to the lake for fishing. Agai Pah is a dying lake that no longer sustains any life. Similarly, confinement to reservations prevented the WRPT from free access to the land to hunt and gather around the lake. Further, open access to Mt. Grant was stripped from the WRPT due to change in “ownership” of the land. Because of such policies, conflict arose between many tribes because of demand for resources.³⁰ While Native access to the land was restricted, settlers could misuse and destroy the land at will.³¹ The reservation policy greatly undermined the nationhood and the sovereignty of the WRPT, but facilitated the U.S. military’s ability to push an agenda that favors their interests.

The reservation system faltered because promises made to Native peoples were never fulfilled. As Terry O’Neil states in the reservations and resistance chapter of *The Indian Reservation System*, lands that have always been occupied by each respective tribe. Occupants possess or inherently retain

³⁰ The Reservation System. Accessed March 28, 2021. <http://www.nebraskastudies.org/en/1900-1924/native-american-citizenship/the-reservation-system/>.

³¹ Gordon Gregory Aug. 10, 2011 From the Print Edition Like Tweet Email Print Subscribe Donate Now. "Re-watering Nevada's Dying Walker Lake." High Country News – Know the West. August 10, 2011. Accessed April 29, 2021. <https://www.hcn.org/issues/43.13/re-watering-nevadas-dying-walker-lake>.

the right to enjoy the uses and advantages of such properties without interruption, destruction, or contamination.³² This entitlement was supposed to be privileged to the occupant until it was fairly and justly divested of it. However, the WRPT never ceded their territory, not through a treaty or any other way. The reservation system told them that the land was no longer theirs, thus allowing the military bases to contemporarily function on stolen land. These historical policies incrementally gave the federal government more and more power, and they still serve their purposes today. The U.S. continues to function as a guardian of the WRPT and they still work out ways to take and destroy their land, and disrupt their lifeways in the process. This is contemporarily followed through by militarization and destabilization done so by the federal government and executed by the military.

³² O'Neill, Terrence J. *The Indian Reservation System*. San Diego, CA: Greenhaven Press, 2002.

CHAPTER 5

HISTORY OF U.S. MILITARIZATION AND DESTABILIZATION

The U.S. has always wanted the land that Native tribes have resisted relinquishing. They refused to give up their inherent sovereign right to life, land, and culture. The Walker River Paiute Tribe has been dealing with obstacles that many other Native communities have struggled with, including land destruction, trespassing, and land disputes due to forced removal. From the 1800s to 2000s, Native peoples have felt the everyday practice of militarism and militarization, where militarism is the belief that the country should maintain a strong military capability to defend or advance their interests. As noted, the U.S. systemically situated the cavalries near reservation borders to enforce assignment of the Native populations to their reservations. However, U.S. militarization extends beyond its approach towards Indian Reservations. U.S. militarism focused on maintaining a robust military capability with continual preparation and training. Such activities help them maintain a military powerhouse that invades other nations, destabilizes them, and controls them. These patterns are applied to Native nations prior to the advent of the reservation system and continue well into the 21st century. To illustrate, this thesis will review the U.S.d military's relationship with the Apache of present-day Arizona and the Sioux of present-day South Dakota. It will then turn to a discussion of the processes of destabilization and dismantlement and end with a review of militarization's impacts in modern Hawaii.

In 1868 President Ulysses Grant created the “Peace Policy,” designed to remove corrupt Indian agents who directly supervised Native tribes and replace them with Christian missionaries who he deemed superior to the tribes.³³ Grant called for reform between the BIA and Native tribes but contradicted himself by continuing to support westward expansion through settler migration and territorial expansion. Expansion necessitated forced removal from Native lands, so that settlers could have access to them. To facilitate their removal, Grant developed programs of forced assimilation. He required agricultural training, and established schools and churches and forced Native peoples to Christianity. Although this policy was designed to create and maintain peace, the policy fell short of that, as stated in the book *American Indians/American Presidents* by Clifford Trazer :

In reality, the policy rested on the belief that Americans had the right to dispossess Native peoples of their lands, take away their freedoms, and send them to reservations, where missionaries would teach them how to farm, read and write, wear Euro-American clothing, and embrace Christianity. If the Indians refused to move to reservations, they would be forced off their homelands by soldiers.³⁴

The military reinforced Grant’s policies in Apache lands when the 9th Cavalry transferred to the District of New Mexico during the winter and spring of 1875 and 76.

³³ Courtesy National Archives and Records Administration. “President Grant Advances ‘Peace Policy’ with Tribes - Timeline - Native Voices.” U.S. National Library of Medicine. National Institutes of Health. Accessed June 10, 2022. <https://www.nlm.nih.gov/nativevoices/timeline/342.html>.

³⁴ Trafzer, Clifford E. *American Indians, American Presidents: A History*. New York: HarperCollins, 2009. 102-103.

Over the next six years they were thrust into what had been a 300-year struggle to subdue the fiercely independent Apaches. In 1874 - sparked by pressure from greedy contractors supplying the reservations, and by cattlemen, lumber men, and settlers hungry for Apache land – the U.S. government approved a policy of concentrating the Apaches on a select few reservations.³⁵ These policies drastically disrupted Apache lifeway because the U.S. ordered the cavalry to patrol Native communities to disorganize of traditional lifeways, presumably in the name of assimilation.

Like the control and monitorization of the Apache people and land, the 9th Cavalry was called to Sioux territory to subdue Sioux members from practicing the Ghost Dance, a practice they viewed as disruptive to their assimilation. This dance was given to the Sioux people by a Paiute messiah and leader named Wovoka. Through visions that came to Wovoka from his trance, practitioners believed that participating in the Ghost Dance ceremony would help restore life as it once was prior to invasion, resurrect the ghosts of Indians who had passed on, and return the staple food that whites had deliberately slaughtered. For the Sioux, this ceremony alarmed Dr. D.F. Royer, the newly appointed agent at Pine Ridge at the time, and he called for troops to protect him and his staff.³⁶

A narrative that Native peoples, especially those that resisted forced assimilation, were violent, justified U.S. militarization. The Indian Wars

³⁵ "Buffalo Soldiers." International Museum of the Horse. Accessed March 28, 2021. <http://imh.org/exhibits/online/legacy-of-the-horse/buffalo-soldiers/>.

³⁶ Koster, John. "Sioux Agent Daniel F. Royer Saw Dancing and Panicked." *Indian Life*, 2010.

Campaign, after the Civil War, was the longest campaign ever waged by the United States military.³⁷ The public supported such efforts largely because of the effectiveness of the U.S. military in painting Native peoples as ruthless individuals in need of “civilization.”

U.S. Militarization policy has at its core, destabilization, and dismantlement. Destabilization works to upset the stability of a targeted region or system, in particular the government, while dismantlement takes existing institutions apart. Destabilization is used to conquer, kill, destroy and by way of dismantlement. Historically, the U.S. destabilizes entire regions through force, destruction, and assimilation.

U.S. destabilization reinforces American exceptionalism, because it typically imposes, by way of militarization, American systems on other nations, regardless of the nations’ desires. The U.S. continues to destabilize other countries for self-advancement, as they continue to do to sovereign Indian Nations on stolen soil. In an article written by Tom Engelhardt in *The Nation* regarding the occupation of Middle Eastern countries, he states, “Were talking about full-scale invasions, long-term occupations and nation-building programs, first in Afghanistan and then in Iraq.” The U.S. entered these Middle Eastern countries, stayed long-term, and forced economic deprivation. The destabilization that comes from this is sovereignty dilution, destruction of the land with no way to restore it, forced removal of the wildlife and cattle, and desecration of sacred

³⁷ *Great Plains Quarterly* Vol. 27, No. 1, Winter 2007, pp. 62.

sites. These practices create long-term disconnections to culture because the conquered people no longer have access to these lands. Because of this, place-based teachings of these sacred places, stewardship of these lands and direct and cultural connections are lost.

Hal Brands writes in *Why America Can't Quit The Middle East*, "One of the most persistent myths about U.S. foreign policy is the idea that America desires—due to greed, messianic ideological impulses, or simple imperial presumptions—to dominate the Middle East. In reality, American policy has long been torn by two conflicting imperatives: The need to protect enduring U.S. interests, on the one hand, and the desire to stay clear of the region's unending headaches, on the other hand."³⁸ The U.S. has pushed forward, disregarding whatever it destroys to serve its interests, and it has detrimental effects.

Attacks on sacred lands globally, further perpetuates the "manifest destiny" of America. The psychosocial impacts it has on Native and Indigenous populations are negative because it subconsciously situates Native and Indigenous populations as a predecessor to the U.S.

and leaves them vulnerable because it disrupts what little connection is left between their identity and sacred life. Militarization and colonialism are the backbone that has shaped America, and a prime example of this today is the everyday attacks on Hawaii. "Militarism continues to distort the cultural and

³⁸ Brands, Hal. "Why America Can't Quit the Middle East." Hoover Institution, March 21, 2019.

<https://www.hoover.org/research/why-america-cant-quit-middle-east>.

political environment like a magnet pulling at particles of iron... the racist ideology which drove the U.S. expansion into the Pacific and the Caribbean in the nineteenth century.”³⁹

One of the Indigenous Hawaiian’s central conflicts with the military is the control over the land. Hawaii is the most densely militarized region under the U.S. control. It occupies roughly 5% of the land.⁴⁰ Like the Walker River Paiute Tribe, the issue for both Indigenous Hawaiians and the Agai Dicutta People is how to maintain sovereignty and cultural survival. The colonized people of the Asia-Pacific region view the U.S. military as a “super cop” that suppresses insurgences and monitors conflict threatening transnational capital. They are told that the U.S. military is positioned there for protection when, in reality, the military’s function is primarily to maintain and protect U.S. interests. As in other areas, globally, the U.S. military has expropriated and occupied important Indigenous Hawaiian religious sites, fishing, farming, hunting, and gathering areas. The military justifies such actions by claiming that Indigenous groups have “ceded lands,” but that is not the case in almost every instance. “In 1898, nearly 1.8 million acres of former national and crown lands of Kingdom of Hawai’i were illegally taken by the United States.”⁴¹ This land grab displaced the

³⁹ Kaihiro, Kyle. "Nation Under The Gun: Militarism and Resistance in Hawai'i." Cultural Survival. March 01, 2000. Accessed April 05, 2021.

⁴⁰ Kaihiro, Kyle. "Nation Under The Gun: Militarism and Resistance in Hawai'i." Cultural Survival. March 01, 2000. Accessed April 05, 2021.
<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/nation-under-gun-militarism-and-resistance-hawaii>.

⁴¹ Kaihiro, Kyle. "Nation Under The Gun: Militarism and Resistance in Hawai'i." Cultural Survival. March 01, 2000. Accessed April 05, 2021.

Indigenous Hawaiians and cut off their access to homelands, including fishing, hunting, and ceremonial spaces.

As mentioned earlier, militarization also negatively impacts cultural survivance. The displacement from traditional homelands has been a tool of colonization used to perpetuate cultural genocide because Indigenous group's genealogy, spirituality, and livelihood are deeply rooted in maintaining direct connections to the land. As with the WRPT, ceremonies that are place-based are one of the most common connections that bridge the land, the culture and the community. As reported in the Cultural Survival Quarterly Magazine:

"Military uses of the land conflict with fundamental Hawaiian values of aloha '...in a (love for the land) and m...lama '...ina (to care for the land). Typical environmental impacts include the destruction of ecosystems and protected species and contamination by solvents, organic compounds, fuels, explosives, chemical weapons, heavy metals, radioactive substances, and unexploded ordnance. Large-scale construction projects associated with the military have destroyed agricultural lands and cultural sites. As a result, traditional and customary practices such as farming, fishing, hunting, gathering, and worship have been irreparably harmed or extinguished in certain areas."⁴²

<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/nation-under-gun-militarism-and-resistance-hawaii>.

⁴² Kaihiro, Kyle. "Nation Under The Gun: Militarism and Resistance in Hawai'i." Cultural Survival. March 01, 2000. Accessed April 05, 2021.

<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/nation-under-gun-militarism-and-resistance-hawaii>.

Efforts from the WRPT to halt U.S. military actions have been long-lasting and the militarization continues to disrupt Agai Dicutta lifeways well into the 21st century. The U.S. has historically shown patterns of invasion that favored the agencies established by the U.S. over the Native people who never surrendered their lands, and they continue into the 21st century to protect the advancement of settlers on taken land. The United States of America, also known as the “land of the great” and “the land that takes,” has been using warfare to advance itself as a nation since its establishment. Only this time, the land of the Agai Dicutta peoples is being directly impacted to prepare the U.S. to militarize other nations outside the boundaries by continuously illegally occupying and destroying the WRPT’s land while training. The 75+ year occupation of the Walker River Paiute Tribe, allows the U.S. to situate itself above the WRPT because the worldviews, lifeways, and acknowledgment of sacred spaces are disregarded, even with the enactment of the 1970 National Environmental Policy Act (NEPA).

The National Environmental Policy Act (NEPA) ostensibly ensured that land assessments are done prior to environmental decision-making. Title I of NEPA contains a Declaration of National Environmental Policy that requires the federal government to ensure that man and nature can exist in productive harmony. Through NEPA, all practicable means must be exhausted to maintain these conditions.⁴³ In the case of the WRPT, this act was signed into law roughly

⁴³ United States Environmental Protection Agency. “What Is the National Environmental Policy Act?” EPA. Environmental Protection Agency. Accessed April 11, 2022. <https://www.epa.gov/nepa/what-national-environmental-policy-act>.

30 years after establishing both military bases, and mandated assessments be done to remedy any current damage, remove any debris, and retroactively compensate for illegal occupation of the WRPT. Yet, the Fallon Naval Air Station (FNAS) continues to push for expansion and further endangers the tribe and its constituents. Even with the act, the US military has never been able to adequately refrain from all subsurface, surface, and airspace that belongs to the WRPT. For instance, the FNAS released the draft environmental impact statement in November of 2018, and the second sentence in the introduction states, “The Navy trains 100 percent of deploying naval aviation and naval special warfare units at the Fallon Range Training Complex (FRTC). The training conducted here is critical for defending and securing the United States and its interests abroad.”⁴⁴ Yet, the training continues to threaten the local environment.

The WRPT have resisted and clearly defined their opposition to any expansion, trespassing, and expropriation of their land. They have fought in courtrooms in Washington D.C. and maintain grassroots activist movements to fight against the land’s desecration and their removal from their land. The destruction of the ecosystems and contamination of the land has forced the WRPT to remain in a constant state of war with the U.S. government. I use the term “constant state of war” to describe attacks on the WRPT as a nation, their land, and their livelihood because they are to be recognized as a nation. Should

⁴⁴ United States. Fallon Range Training Complex Modernization. Draft Environmental Impact Statement (EIS) for the Bombing Range Expansion Research Project. Volume 1. Section 3.1-3.10. Fallon, Nv. :Naval Facilities Engineering Command Southwest Code EV21.SG, 2018.

the U.S. drop a bomb on any other nation they formally respect as a nation, such as in Asia or Europe, it would be an act of war. Not so with Native nations.

Through misinterpretation, inaccessible language written into formal documents, and outright thievery of land, the U.S. has successfully obtained control of Indigenous lands for their interests and the manifest destiny of westward expansion. The Indigenous Hawaiians and the Walker River Paiute Tribe lands were never ceded, never surrendered. Through the land laws still valid in the constitution, the land was never fairly taken or obtained. The land the military bases are occupying and destroying is stolen Walker River Paiute land.

The U.S. military claims to have a trust responsibility to assist the protection of tribal territories. However, Winona LaDuke highlights how the federal government has always supported U.S. military interests. She mentions how the Department of Defense attempts to justify its mission to defend America and quotes authors Gregory Hook and Chad L. Smith from *The Treadmill of Destruction: National Sacrifice Areas and Native Americans*, "Certain activities-such as weapons testing, practice bombing and field maneuvers-may have had effects on tribal environmental health and safety as well as tribal economic, social and cultural welfare."⁴⁵ As the U.S. continues to damage, destroy, and fail to abide by the jurisdiction of the WRPT by trespassing onto their land, their justification disregards the WRPT sovereignty. The bombing of their land and

⁴⁵ Hooks, Gregory, and Chad L. Smith. "The Treadmill of Destruction: National Sacrifice Areas and Native Americans." *American Sociological Review* 69, no. 4 (August 2004): 558–75. <https://doi.org/10.1177/000312240406900405>.

attacks have kept the tribe and the U.S. at war since the establishment of both military bases.

CHAPTER 6

MILITARY ATTACKS ON TRIBAL AND SACRED WRPT LAND

Contemporary tribal relations with the U.S. military no longer deal with their efforts to patrol the reservation lines and ensure confinement. Yet, the displacement and disruption of Walker River Paiute lifeway remains. Their activities have negatively impacted the people's source of livelihood, the Agai Pah (Walker Lake) and the lands around Mt. Grant, to the point that the Lake is dying and much of the land is unusable.

The Hawthorne Army Depot repeatedly planned and attacked Walker Lake, ultimately creating an impact area that lies within it. "The munitions were fired from buildings on the depot onto impact areas that lie within the lake. The southern extend of Walker Lake straddles the northern boundary of the depot and as the lake has receded over the years, more and more of the unexploded ordnance, or UXO, has become exposed."⁴⁶ The Hawthorne Army Depot attempted to locate and remove a large number of ammunitions fired between the 1940s and the 1970s into the impact areas within Walker Lake. In 1974 it was recorded that over 6,000 pieces of munitions and munitions debris were located and removed, weighing more than 75 tons.⁴⁷ The sizes of the munition ranged

⁴⁶ "Environmental Clean-Up at Walker Lake, Nevada." *Targeted News Service*, Jun 20, 2012. <http://login.ezproxy1.lib.asu.edu/login?url=https://www-proquest-com.ezproxy1.lib.asu.edu/newspapers/environmental-clean-up-at-walker-lake-nevada/docview/1021194698/se-2?accountid=4485>.

⁴⁷ "Environmental Clean-Up at Walker Lake, Nevada." *Targeted News Service*, Jun 20, 2012. <http://login.ezproxy1.lib.asu.edu/login?url=https://www-proquest-com.ezproxy1.lib.asu.edu/newspapers/environmental-clean-up-at-walker-lake-nevada/docview/1021194698/se-2?accountid=4485>.

from 2.75-inch rockets to 5-inch zunis and antisubmarine rockets. The deliberate attacks on Agai Pah, one of the most sacred spaces for Agai Dicutta survival, is a major contributor to contamination around and in the dying lake that Walker Lake now has become.

A 2000 Army Integral Natural Resources Management Plan documented that, “four sites on Mount Grant have been identified as containing contamination due to military activities and one historic mining site on Mount Grant is a possible source of mercury contamination. In addition, the southern end of Walker Lake has been contaminated through the military firing live ammunition into the lake waters, and two contaminated water plumes north of the munitions storage buildings pose an unknown hazard to the lake.”⁴⁸

A 1977 Army instillation assessment performed at the depot identified these four contaminated sites on Mt. Grant as the Marine Corps Rifle Range, the Police Pistol Range, the Naval Inshore Operations Training Command Maneuver Area, and the Cottonwood/Canyon Camp Dixie Marine Maneuver Areas. Threats like the Naval Inshore area, located adjacent to the WRPT, on Mt. Grant, and near Agai Pah, have been reported as a hazardous area containing high-explosive grenade and mortar rounds, in addition to other dangerous ordnance. Also documented was the use of live ammunition testing (mostly ground-launched rockets) on the southern shore beach of Walker Lake from the 1940s-

⁴⁸ Federal Facilities. “Federal Facilities: Further Review of Hawthorne Army Depot-Land Management Proposals Needed.” govinfo.gov, September 21, 2000.

<https://www.govinfo.gov/content/pkg/GAOREPORTS-NSIAD-RCED-00-251/html/GAOREPORTS-NSIAD-RCED-00-251.htm>.

1980s. The area, including part of the lake surface, has been placed on an off-limits list by the Nevada Division of Environmental Protection because of the present danger of unexploded ordnance.⁴⁹ Not only does this pose a continued threat to the life of the tribal constituents living on reservation, but it proves that an ongoing attack on sacred sites and tribal land has continued uncontested, and forced remediation has never been applied or enforced by the federal government.

The Fallon Naval Air Station has been bombing the Walker River Paiute Tribe since 1944, but it was not until 1959 that the WRPT could prove it. On Tuesday, October 6, 1959, Robert Taylor and Nat Hanson of the Nevada Indian Agency were surveying the land in Section 4, Township 14 North, Range 30 East, M.D.M and doing a range inspection of the Walker River Reservation. They concluded that this area, well within the boundaries of the WRPT, was used as a target for heavy aerial gunnery.⁵⁰ Burton Ladd, superintendent of the Nevada Indian Agency, discussed these coordinates in a letter written to Mr. Frederick M. Haverland, Bureau of Indian Affairs Area Director of the Phoenix Area Office on October 12, 1959. Included in this letter was proof that the air station had illegally fired artillery at reservation buildings and used them as targets. Two-inch rocket casings and several 75 caliber casings were found in numerous craters. Building

⁴⁹ Federal Facilities. "Federal Facilities: Further Review of Hawthorne Army Depot-Land Management Proposals Needed." govinfo.gov, September 21, 2000. <https://www.govinfo.gov/content/pkg/GAOREPORTS-NSIAD-RCED-00-251/html/GAOREPORTS-NSIAD-RCED-00-251.htm>.

⁵⁰ Ladd, Burton A., *Land Operations 301.10.3-14 Walker R.* October 12, 1959.

inspections revealed that some of these casings had entered and ejected, passing completely through. This 1959 inspection also concluded that the FNAS trespassed onto the WRPT land. The FNAS's bombing range located immediately adjacent to the northern boundary of the WRPT reservation threatened Cushman Well, used by tribal cattlemen. It was situated only 3 to 4 miles from the range. On October 23, 1959, Frederick M. Haverland contacted the commanding officer of the Naval Auxiliary Fallon Naval Air Station to inform him of these findings. In his letter, he also reports that matters had been taken up with the Solicitor of the Bureau of Indian Affairs Phoenix Area Office and advised the commanding officer to take steps to prevent any re-occurrence of the incidents. Haverland cautions the Commanding officer by stating, "Human life as well as property might be jeopardized."⁵¹ Haverland directed the Nevada Indian Agency to appraise the damages that had already occurred and determine if the Walker River Paiute Tribe would be compensated for the damages. In response to the letter submitted to the commanding officer, he acknowledged the possibility that the Cushman Well damage was a direct result of his aircraft. The Commanding officer C.K. Olson reassured Haverland that they briefed and advised pilots to avoid any further incidents. He re-emphasized boundary requirements and planned to relocate the flight line in an east-west direction that would reduce the possibility of ammunition expended in the direction of the

⁵¹ Haverland, Frederick M. *Land Operations 344.11.1*. October 23, 1959.

WRPT.⁵² That was in 1959. The problem's resolution is still yet to be completed, at this writing in 2022.

The live ordnance found on the WRPT has rendered the land unfit for cattle grazing and the tribe was forced to stop using the land. As stated in the "For Damage, Injury, or Death" Federal Torts Claim document filed by Chairman Anita Collins on October 1, 1991, this displacement forced overgrazing in other portions of the reservation, and caused a shortage of feed for the cattle.⁵³

After the exposure of the military's contamination and trespassing in the 1960s through late 1980s, the tribe started documenting the physical damage with their available resources. In 1966, in a portfolio of all related information labeled Appendix A-H, it was documented by the WRPT (with picture evidence) that the FNAS had been trespassing and damaging WRPT land. Five sets of pictures were used as evidence of the physical damage, and four individuals who worked on the project as land surveyors signed and notarized the statements supporting the claims.⁵⁴ On March 6, 1986 the news disseminated when a Reno Journal Article reported that the FNAS had been bombing the WRPT, destroying their land, and illegally occupying their territory.⁵⁵

Tribal oral histories also reveal stories of bombs found. Elveda Martinez, told me a story of when she and Marlene Begay, both longtime activists in the

⁵² Olson, O.K. *30:AWC:ta 5890 Ser: 1862*.

⁵³ 43-R0597 Oct. 1, 1991. 28 U.S.C., sections 2671-2680

⁵⁴ Walker River Paiute Tribe. Appendix A-H. 25 CFR Part 169. Sections 169.3(a), 169.12, 169.13.

⁵⁵ Walker River Paiute Tribe. Appendix C. Documentation Of The Physical Damadge.

fight against the Fallon Naval Air Station, had the floor to speak at a meeting regarding this issue of live bombs on WRPT land. Marlene spoke at a meeting regarding the contamination and trespassing of tribal lands where environmentalists and senators, some who traveled from Washington D.C., were present. She told a story of a little boy who was walking to school and found something unusual. He had no idea what it was, so he took it with him to school. Upon arriving at school, he presented it to the faculty who quickly became alarmed. They knew it was a bomb. Marlene said “Imagine a little boy bringing a bomb to you. I know this is true because that little boy is my cousin.”⁵⁶

Other WRPT oral histories have documented that additional live bombs have been found within the WRPT boundaries. Written into the *MT ADS Demonstration at the Walker River Paiute Reservation Schurz, NV- November 1998*, by J.R. McDonald and H.H. Nelson out of the Naval Research Laboratory- Washington D.C., on page 58 it notes that “Eleven metallic targets were recovered on the eastern 500 meters of the transect including 9 OE scrap items and one live BDU 33, target T1-30.”⁵⁷

While finding live bombs on the WRPT is not uncommon, the tribe knew that they needed more evidence than what has been passed down through oral history and stories. The tribe dug deeper and conducted more interviews that led to legitimate evidence. In the interview transcription taped on January 3, 1991,

⁵⁶ Elveda Martinez (Walker River Paiute Tribal Member, Tribal Administrator, Navy Negotiation Committee Member) in discussion with the author, October 29, 2020.

⁵⁷ McDonald, J.R., and H.H. Nelson. “MTADS Demonstration at the Walker River Paiute Reservation Schurz, NV - November 1998.” The Naval Research Laboratory, 58.

retired Bureau of Indian Affairs Range Manager (July 1963 to December 1979)
Charlie Fisher, who worked out of the Western Nevada Agency and assigned to
Nevada Indian Reservations, states:

I was a range conservationist for the BIA and I was inspecting the range near Cushman Wells located south of the bombing range on the northern end of the Walker River reservation. At the Cushman Wells, I observed quite a few holes around the well and couldn't figure what they were. The holes were two to three feet deep and four feet in diameter.

I called Tom Cook (of the extension service) and he and I and Walter Voorhees of the Walker River Paiute Tribal Council went out to inspect. I recall the water trough was demolished and an explosion had damaged the water tank. I took photos of the water trough and the tank damage. One photo even had a dummy bomb still in the hole, but all my photos did not come out.

Walter Voorhees and I reported the damage to the navy immediately and the navy assured us that it would not happen again. They didn't pay much attention to Walker River Reservation.

Another time that year, my son and I were out east of Cushman Wells and found a grey box; we picked it up and it started to smoke and we took off.

We went into Schurz and called the navy. They denied anything was

dropped on the reservation. We went back out there right after that and it was gone; What it was, we will never know.⁵⁸

Similarly, Tom Cook, retired University of Nevada Extension Agency from 1963 to 1981, who worked out of Fernley, NV with the Nevada Reservations, released a statement in the same month and year, January 1991, that validates Fisher's claims that the Naval Air Station contaminated WRPT land.

As the tribe revealed the military's illegal activity, the military responded by hiding their wrongdoings and brushing them under the carpet. The Fallon Naval Air Station is aware that their illegal actions continue, as it is an admission of guilt to actively cover up a crime. Nevertheless, Fallon Naval Air Station has yet to be held accountable for their 75 plus years of trespassing on federally protected trust land. This failure to rectify the situation leaves the WRPT with the same issues, even today.

⁵⁸ Fisher, Charles. Verification of the damage that occurred Cushman Wells in 1966. Other, January 16, 1991.

CHAPTER 7

CONSULTATION

On November 6, 2000, Bill Clinton signed the Executive Order 13175- Consultation and Coordination with Indian Tribal Governments, which formally made it mandatory to consult with Tribal governments on issues that directly impact the tribes. Consultation between agencies and Native Nations establishes permanent ties and relationships to the lands and resources that are managed and affected by federal agencies or facilities. Generally, consultation is based on extensive research of cultural resources and concerns that Native Nations specifically identified as points of concern.⁵⁹

Like other tribes under the 25 U.S.C. 479a.⁶⁰ act, which recognizes federally Indian Tribes. The Walker River Paiute Tribe is a federally recognized tribe acknowledged by the Secretary of the Interior. Still, consultation and agreement between Native Nations and the U.S. are difficult. The American Indian Writers Subgroup produced a preface in the book titled, *American Indians and the Nevada Test Site: A Model of Research and Consultation*, that states, "From an American Indian perspective, the history of tribal-agency relations in the context of legal compliance and government-to-government consultation on

⁵⁹ Stoffle, Richard W., et al. *American Indians and the Nevada Test Site: a Model of Research and Consultation*. G.P.O., 2001, 23.

⁶⁰ House of Representatives, Congress. "25 U.S.C. 479a-1 - Publication of list of recognized tribes". Government. U.S. Government Publishing Office, December 30, 2010. <https://www.govinfo.gov/app/details/USCODE-2010-title25/USCODE-2010-title25-chap14-subchapV-sec479a-1>

the Nevada Test Site (NTS) may be best described as a history of conflict resolution.” Also defined in the same book it states:

Consultation is a term commonly used to describe a process by which American Indian people with aboriginal or historic ties to public lands are identified and brought into discussions about cultural resources in those lands. Consultation involves a fundamental decision on the part of a government agency to share some decision making with American Indians, and U.S. Department of Energy Nevada Operations Office (DOE/NV) has made this decision explicit in its American Indian and Alaska Native Tribal Government Policy (2000).⁶¹

The WRPT has struggled tremendously in their efforts with the U.S. military bases to acknowledge this process and then fulfill their obligations by adequately conducting “extensive research of cultural resources and concerns.” Consultation is also difficult because of differences and understanding of sovereignty and how the land should be preserved. In 2005, as part of consultation, the Navy signed a Memorandum of Agreement (MOA) with the WRPT. A MOA is a document specifying on what projects or objectives the parties agree to cooperatively work. The Navy and the WRPT agreed to a plan for the safe removal of all ordnance found on tribal land. Outside of the cleanup, nothing else was mentioned in this MOA regarding the “real” and demanding issues of contamination and trespassing.

⁶¹ Stoffle, Richard W., et al. *American Indians and the Nevada Test Site: a Model of Research and Consultation*. G.P.O., 2001, 22-23.

On October 29, 1990, during the consultation process, Elveda Martinez (Walker River Paiute tribal member, Tribal Administrator and Navy Negotiation Committee Member), Captain Rackowitz (1991 Commanding Officer of the FNAS) and LT Massey drafted up a 10-year lease for the polluted area of the WRPT reservation with live ordnance dropped by the Navy over the years.⁶² The numbers were originally proposed for the 10-year lease plan as \$500 dollars an acre annually. But, to be helpful and in good faith to the Fallon Naval Air Station, the WRPT reduced the number significantly to \$50 dollars an acre because the land in question is large and encompasses 5,560 acres.

In a document written to Amy Kelley, Naval Facilities Engineering Command Southwest, regarding an environmental impact statement and failure to conduct adequate consultation on the Navy's part, Lisa Hanf states, "We understand the Navy considers tribal consultation to be ongoing; however, we are concerned that the Navy's efforts, thus far, fell short of ensuring that the tribe was aware of the public comment period for the Draft Environmental Impact Statement (DEIS)."⁶³ As of March 18, 2015, tribal consultation with the WRPT consisted of only two letters sent to the tribe. One announced the scoping period in 2013 and the other was an announcement of the availability of DEIS.

⁶² Collins, Anita. *Mr. Dennis Drennan, Director, Real Estate Division, Western Division, Naval Facilities Engineering Command: Regarding 10-Year Lease Plan*. January 31, 1992, 1-2.

⁶³ Hanf, Lisa B. "Draft Environmental Impact Statement for Military Readiness Activities At Fallon Range Training Complex, Nevada (CEQ# 20150017)." United States Environmental Protection Agency Region IX, 18 Mar. 2015, 1.

Prior to that, the WRPT met with the Navy four times. The first, on October 29, 1990 was attended by the FNAS Commanding Officer, three WRPT representatives, four BIA representatives, the Navy Facilities Engineering Command (Western Division), and one FNAS representative. The attendees discussed many issues but the most prominent was the ordnance found on the WRPT across over 3,000 acres, buried ordnance on the property, bombs found 5 to 40 ft deep, and a 2,000-pound bomb 40 feet under the surface that was found but never recovered.⁶⁴

In the second meeting, on November 1, 1990, the tribe and the FNAS met with the Commanding Officer, FNAS Legal Officer, the FNAS Environmental Expert, two FNAS representatives and six representatives for the WRPT. This November meeting was conducted at the reservation line, and they discussed the 3,850 acres of reservation land that was contaminated. As stated in the meeting minutes for this consultation, Captain Rackowitz said the “land can never be guaranteed to be 100% safe.”⁶⁵

The third meeting was slightly different because it was scheduled as the first negotiation meeting and conducted on December 27, 1990. In attendance was the new WRPT negotiation team (Anitta Collins, Irwin Miller, Pat Kelly & Elveda Martinez), Negotiation Expert Dr. Ahmed Kooros (AK), Navy

⁶⁴ Walker River Paiute Tribe/Fallon Naval Air Station Bombings Meeting Minutes, October 29, 1990, Walker River Paiute Tribe, Water Resources and Land Department, Schurz NV.

⁶⁵ Walker River Paiute Tribe/Fallon Naval Air Station Bombings Meeting Minutes, November 1, 1990, Walker River Paiute Tribe, Water Resources and Land Department, Schurz NV.

representatives (Commanding Officer Rackowitz), public works representative/environmentalist, attorney Mike Quinn, Wes Williams (WRPT), Charles Quartz (WRPT), Floyd Rathbun (WRPT), and the SCS Range Conservationist. This meeting was one of the first times there had been any discussion on how to move forward and publicly acknowledge the negative impacts that affect the WRPT due to the FNAS illegal activity. The agenda issues encompassed the positive economic impact on Fallon, negative impacts on the WRPT, Cushman well damage, and overgrazing. The FNAS argued that the tribe needed to provide “more evidence” documenting the FNAS contamination of WRPT lands, despite the evidence amassed during the 20 years of research. Such behavior highlights the federal governments unwillingness to serve the interest of the WRPT, who they vow to protect as a federally recognized tribe, over the interest of the U.S. militarism.

The fourth and final consultation meeting held at the FNAS on January 17, 1991 covered the WRPT's interest in pursuing legal action. This time they titled their agenda *Walker River Paiute Tribe-Walker River Indian Reservation vs. United States Department of the Navy*. This meeting aimed to estimate a cost for settlement for the construction of a new well to replace the damaged to Cushman well, to estimate the cost of feed for cattle due to overgrazing and displacement,

and to discuss the Federal Tort Claims Act. The WRPT also spelled out how they would move forward to create a strategy to resolve the settlement.⁶⁶

This meeting was the last consultation style meeting done so by the two parties because: 1) turnover in leadership for the WRPT, and 2) the FNAS argued that it was inappropriate for them to negotiate claims against the Navy. As stated in a response letter to the January 17, 1991 meeting, “NAS Fallon does not have the authority to ‘negotiate’ your claims against the Navy... It is not, however, appropriate that we make ‘Navy Suggestions’ or discuss ‘Strategy to Proceed on Settlement’ per items 6 and 7 of your proposed agenda.”⁶⁷ The FNAS used jurisdiction as the precursor to hide from any accountability for their direct actions, adding to the reasons why this issue has never been corrected until today. Even after the 2000 executive order was signed, formal consultation between the FNAS and the WRPT failed to occur.

In 2021, there has been an Intergovernmental Executive Committee established “for the purpose of exchanging views, information, and advice relating to the management of the natural and cultural resources”.⁶⁸ This committee was established after the National Defense Authorization Act for Fiscal Year 2021 (NDAA FY2021) enacted it into law on January 1, 2021. This

⁶⁶ Walker River Paiute Tribe-Walker River Indian Reservation vs. United States Department of the Navy. Meeting Minutes, January 17, 1991, Walker River Paiute Tribe, Water Resources and Land Department, Schurz NV.

⁶⁷ Rackowitz.M.R. Receipt of Letter Dated January 14, 1991 to Anita Collins. Other, January 16, 1991.

⁶⁸ “Intergovernmental Executive Committee (IEC).” Fallon Range Training Complex Modernization. Accessed May 1, 2022. <https://frtcmmodernization.com/IEC>.

law is now listed as Public Law 116-283. Nevertheless, the FNAS still states that the act considers any consultations as informal. Therefore, any views or concerns shared do not need to be considered as part of the formal consultation process that Executive Order 13175 requires. Because of this informal consultation, the priorities of the WRPT have been re-directed to the committee, instead of allowing them to take this issue to the federal government directly.

CHAPTER 8

CASES AND MATERIAL

Defining Tribal Borders

The Walker River Paiute Tribe has struggled prosecuting the military bases in this long historical fight to protect their lands. Jurisdictionally, they have found it difficult to define the reservation boundaries and assert their authority. As a result, it is extremely difficult for the tribe to settle claims. The complexities of tribal jurisdiction have also hindered the process of settling claims. Federal Indian Law and Policy is a distinct body of law and forms the bases for maneuvering through jurisdiction for desired outcomes for Native nations. It essentially tells the tribes what lawful actions and processes are, once their tribal court options have exhausted. Roughly 400 tribal justice systems are intact in the boundaries of the U.S., but federal laws ensure that the tribal courts only hold minimal sovereignty. Nevertheless, several tribes have gone against the federal government in cases of trespassing, land title and sovereignty. Those cases currently formulate the bases between Indian tribes and the federal government.

Tribal justice systems and the Court of Indian Offences (CFR courts) both provide service for Indian tribes through the Title 25 CFR Part 11. Title 25 CFR Part 11 includes the application and jurisdiction of CFR courts, defines CFR offenses (personnel and administration), criminal procedure, criminal offenses, civil actions, probate proceedings, appellate proceedings, children's court, minors in need of care procedures and child protection and domestic violence

procedures.⁶⁹ Tribal courts are funded through Public Law 638 Tribal Priority Allocations (TPA) and are sovereign courts protected through Title 25 United States Code 3601. Under Title 25 United States Code 3601, the Bureau of Indian Affairs (BIA) is mandated to provide training, technical support, funding to all Tribal courts-which also includes CFR courts.⁷⁰

Further support comes from the Tribal Justice Support (TJS) Directorate that develops and enhances the Tribal justice system. Included in this support is respect for traditional justice systems and coordination between federal, state, and tribal courts. Laws and ordinances enacted by a Tribe's governing body that have been approved by the Assistant Secretary of Indian Affairs supersede the code of federal regulations 25 CFR part 11 that governs CFR courts. However, felonies that involve Indians within the defined "Indian Country" as stated under 18 U.S. Code, Section 1511, are federal crimes that are required to be heard in Federal court. Criminal cases that involve non-Indians in Indian Country are often brought forward in a state court.⁷¹ The above is just a brief overview of the complexity of tribal jurisdiction and courts, but it spotlights the barriers that the Walker River Paiute Tribe endures when attempting to prosecute the U.S. military for the illegal occupation and desecration of their land and sacred sites.

⁶⁹ Cfr. "25 CFR 11." eCFR. Accessed June 3, 2022. <https://ecfr.io/Title-25/pt25.1.11>.

⁷⁰ Tribal Court Systems. Indian Affairs. Accessed June 3, 2022.

<https://www.bia.gov/CFRCourts/tribal-justice-support-directorate>.

⁷¹ "Tribal Court Systems." Indian Affairs. Accessed June 3, 2022. <https://www.bia.gov/CFRCourts/tribal-justice-support-directorate>.

Being restricted to these reservation lands is a colonial concept that has disconnected tribal members from their sacred spaces. Access to WRPT lands that they have enjoyed since time immemorial are no longer accessible and the tribe has fought to regain harmonious access since settlers invaded their territory. Reservation boundaries have clearly been defined more than once for the WRPT-In 1859 and 1874. The Walker River Paiute Tribal Court Title 3 explains and defines the Law and Order Codes of the WRPT⁷². This establishes the jurisdiction of the WRPT and defines what trespassing is under 3-30-010. Essentially, the trespasser onto WRPT property is subject to any injury the property owner or possession holder argues is caused by the invasion. Law and Order Code 3-30-020 states that a party or individual who intentionally disrupts the personal property of another is subject to any damage suffered by "reason". Damage is defined by damage or injury to the property, as well as loss of use of the property. Law and Order Code 3-30-020 is vital when discussing military occupation on the Walker River Paiute Tribal territory.⁷³

Defining tribal boundaries for jurisdictional purposes, most often for the protection of the land, has been equally difficult throughout the nation. In the 1990's, members of the Menomonee Nation of the Oneida Indian Reservation similarly struggled because the state police claimed tribal members were illegally

⁷² Walker River Paiute Tribe- Tribal Courts. Title 3: Torts - Original Statue with Amendments and All Proposed Changes. PDF. <https://www.wrpt.org/agai-dicutta-numu/law-order/>.

⁷³ Walker River Paiute Tribe- Tribal Courts. Title 3: Torts - Original Statue with Amendments and All Proposed Changes. PDF. <https://www.wrpt.org/agai-dicutta-numu/law-order/>.

fishing in the dam. The police arrested the tribal members, even though they had been fishing in it since 1930. The state argued that the dam was under U.S. government control, since they seized the bank from the Menominee in 1829 as part of the Fort Howard Military Reservation designed to safeguard its nearby army post. Because the Oneida Indian Reservation was established in 1838, they argued that the arrest was illegal and the boundaries defined by the 1838 reservation establishment allowed them to fish in the area. The courts struggled with defining the precise boundary of the Oneida Indian Reservation. State law conflicted with federal law because the state argued that the U.S. had established full control of the disputed Duck Creek bank in 1829, predating the establishment of the Oneida Reservation.⁷⁴

Boundaries for Indian Reservations must be clearly defined to accurately define jurisdiction. Although the WRPT's dispute is not regarding a state and federal conflicting decision, it is similar in the sense that it battles with two defined reservation borders: the first including the lake and Mt. Grant, and the second without. In Nevada, a neighboring reservation to the Walker River Paiute Tribe known as the Fallon Paiute Shoshone Tribe (FPST), went through their tribal court system to bring a case forward regarding trespassing within their boundaries. *Nevada v. Hicks*, 533 U.S. 353 (2001) was a court case that

⁷⁴ Oberly, James. "Decision on Duck Creek: Two Green Bay Reservations and their Boundaries, 1816 1996." *American Indian Culture and Research Journal* 24, no. 3 (2000): 39-76. <http://login.ezproxy1.lib.asu.edu/login?url=https://www.proquest.com/scholarly-journals/decision-on-duck-creek-two-green-bay-reservations/docview/212221037/se-2?accountid=4485>.

established the boundaries of the FPST when a warrant was issued for an off-reservation crime of an individual living on the FPST reservation land. A claim was filed in the Tribal Court against the individual wardens. The FPST alleged trespassing and abuse of power against the state of Nevada. The individual also accused the state police of violating his constitutional rights remediable under 42 U. S. C. § 1983.

This case exemplifies the flaws within the Tribal Court and State Court processes.⁷⁵ Without establishing clear boundaries of the Walker River Paiute Reservation, it is near to impossible to establish what is considered trespassing. It is also difficult to settle claims. For instance, a case that the WRPT brought to the federal court system was the United States of America, Plaintiff, the Walker River Paiute Tribe of Nevada and Robert Benton Et al., Plaintiffs-appellants, v. Southern Pacific Transportation Company Et al., Defendant-appellees. 542 F.2d 676 (9th Cir. 1976). Under 25 CFR § 169.1. Indian trust lands are protected and those who violate the law are subject to federal jurisdiction prosecution. On October 1, 1991, the Walker River Paiute Tribe forwarded an endorsed a "Dispute Analysis" dated February 26, 1991 to the Office of Judge Advocate General, Department of the Navy, Alexandria, VA. The dispute analysis was a claim for damage, injury, or death, that was sought to seek a total settlement cost for past and present damages, from 1959 to present (at the time that settlement

⁷⁵ "Nevada v. Hicks, 533 U.S. 353 (2001)." Justia Law. Accessed July 13, 2021. <https://supreme.justia.com/cases/federal/us/533/353/>.

cost proposed was for the years 1959-1991).⁷⁶ As Anita Collins, WRPT 1991 Chairman, states:

In accordance with 25 CFR, #169 (3a):

“No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the written consent of the Tribe.”⁷⁷

Protection of tribal trust land falls under the jurisdiction of 25 CFR but despite having this knowledge, the military bases still fails to abide by the law. The WRPT attempted to use the Federal Claims Act to solidify their case because the Federal Claims Act states, “The U.S. would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act of omission occurred.” At this writing, in 2022, the problem still stands.⁷⁸

The Walker River Paiute Tribe continues to fight for their lands because the U.S. military, with protection from the federal government, undermines their sovereignty and serves military interests over the WRPT, who never ceded their territories. The Walker River Paiute Tribe has had to deal with trespassing and contamination for over 75 years due to the establishment of the army depot and the railways that supply them. The Southern Pacific Railroad built a rail system in

⁷⁶ Martinez, Elveda. “*A Dispute Analysis*”-*WALKER RIVER PAIUTE TRIBE VS. UNITED STATES NAVY* – 26 February 1991. October 10, 1991.

⁷⁷ Collins, Anita. *Mr. Dennis Drennan, Director, Real Estate Division, Western Division, Naval Facilities Engineering Command: Regarding 10-Year Lease Plan*. January 31, 1992, 1-2.

⁷⁸ Collins, Anita. *Mr. Dennis Drennan, Director, Real Estate Division, Western Division, Naval Facilities Engineering Command: Regarding 10-Year Lease Plan*. January 31, 1992, 1-2.

1881-1882⁷⁹ directly through the Walker River Paiute Tribe Reservation under the justification that they hold the right-of-way. Under *25 C.F.R. (1983) § 169.3 Consent of Landowner to grants of right-of-way* states: (a) No right-of-way shall be granted over and across any tribal lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe⁸⁰. The right-of-way is defined in 43 U.S.C §1761⁸¹ as a right to make a way over a particular piece of land for transportation use. It is an easement that is granted or reserved over the land for such purposes as highway, public footpath, rail transport, canal and electrical transmission lines, and oil and gas pipelines. This was problematic when dealing with federal lands reserved for the Walker River Paiute Tribe. Railroads pass directly through the WRPT to transport explosives to and from the Hawthorne Army Depot. During World War I, the railroad system was assumed by the federal government and began to operate under the governments patrol.⁸²

⁷⁹ "United States of America, Plaintiff, the Walker River Paiute Tribe of Nevada and Robert Benton Et al., Plaintiffs-appellants, v. Southern Pacific Transportation Company Et al., defendants-appellees. United States of America, Plaintiff-appellant, v. Southern Pacific Transportation Company Et al., Defendants-appellees, 543 F.2d 676 (9th Cir. 1976)." Justia Law. September 10, 1976. Accessed April 17, 2021.

<https://law.justia.com/cases/federal/appellate-courts/F2/543/676/338483/#fn1>.

⁸⁰ National Archives And Records Administration. *Code of Federal Regulations: Right-of-way Over Indian Lands*, 25 C.F.R. 1983. Periodical.

<https://www.loc.gov/item/cfr1983074-T25CIP169/>.

⁸¹ House of Representatives, Congress. "43 U.S.C. 1761 - Grant, issue, or renewal of rights-of-way". Government. U.S. Government Publishing Office, December 30, 2010. <https://www.govinfo.gov/app/details/USCODE-2010-title43/USCODE-2010-title43-chap35-subchapV-sec1761>

⁸² "The Nevada Railroad System: Physical, Operational, and Accident Characteristics." The Nevada Railroad System: Physical, Operational, and Accident Characteristics

In 1976 the WRPT sued the Southern Pacific Railroad in the 9th Circuit Court stating that the right-of-way is void because the tribe owned the right-of-way. In the suit they also stated that they wanted a permanent injunction against future trespass and money damages for trespass and punitive damages.⁸³ The U.S. also instituted a second suit on behalf of the WRPT and the district court ordered the two matters be consolidated. In both suits the theory was the Southern Pacific Railroad and its predecessors never received or obtained a valid right-of-way to operate through or on the lands of the Walker River Paiute Tribe.

This dispute has a long history. In 1882 the Carson & Colorado Railway (later re-named as the Southern Pacific Railroad) entered into agreement with the “chiefs, headmen and heads of a majority of families”⁸⁴ from the Walker River Paiute Tribe. The Carson & Colorado Railway stated that they believed they “honestly and in good faith complied with all legal requirements” that were needed to obtain a right-of-way across the reservation by offering \$750 dollars, a

(Technical Report) | OSTI.GOV. September 01, 1991. Accessed April 17, 2021.
<https://www.osti.gov/servlets/purl/139185>. I-4.

⁸³ "United States of America, Plaintiff, the Walker River Paiute Tribe of Nevada and Robert Benton Et al., Plaintiffs-appellants, v. Southern Pacific Transportation Company Et Al., defendants-appellees. United States of America, Plaintiff-appellant, v. Southern Pacific Transportation Company Et Al., Defendants-appellees, 543 F.2d 676 (9th Cir. 1976)." Justia Law. September 10, 1976. Accessed April 17, 2021.
<https://law.justia.com/cases/federal/appellate-courts/F2/543/676/338483/#fn1>.

⁸⁴ "United States of America, Plaintiff, the Walker River Paiute Tribe of Nevada and Robert Benton Et al., Plaintiffs-appellants, v. Southern Pacific Transportation Company Et Al., defendants-appellees. United States of America, Plaintiff-appellant, v. Southern Pacific Transportation Company Et Al., Defendants-appellees, 543 F.2d 676 (9th Cir. 1976)." Justia Law. September 10, 1976. Accessed April 17, 2021.
<https://law.justia.com/cases/federal/appellate-courts/F2/543/676/338483/#fn1>.

promise of free transportation, and additional promises to the tribe. This written agreement was subject to final ratification by Congress but was never ratified, despite four bills being introduced for this exact purpose. In 1902, Congress ordered that specific reservation sections open to white settlement. They employed a series of statutes mixed with an agreement for allotments in exchange for irrigable lands and cash payments made directly to individual tribal members. In this Congressional agreement, tribal grazing and timber lands were set aside and they deemed that the tribe “cede(d)... and relinquish(ed) to the United States all right, title and interest”⁸⁵ to the rest of the tribal lands that remained. In 1906 these lands that were “ceded and relinquished” were opened to settlement by presidential proclamation but were subject to disposal under the existing laws of the U.S. To be exact, “after the 1906 cession and allotments, 25.72 miles of the line crossed ceded lands, 17.75 miles traversed tribal lands and 7.0 miles intersected allotted lands.”⁸⁶ The Central Pacific Railway Company (successor to the Carson & Colorado and predecessor of the Southern Pacific Railroad) filed amended maps in 1925 to the Department of the Interior to gain

⁸⁵ "United States of America, Plaintiff, the Walker River Paiute Tribe of Nevada and Robert Benton Et al., Plaintiffs-appellants, v. Southern Pacific Transportation Company Et Al., defendants-appellees. United States of America, Plaintiff-appellant, v. Southern Pacific Transportation Company Et Al., Defendants-appellees, 543 F.2d 676 (9th Cir. 1976)." Justia Law. September 10, 1976. Accessed April 17, 2021.

<https://law.justia.com/cases/federal/appellate-courts/F2/543/676/338483/#fn1>.

⁸⁶ "United States of America, Plaintiff, the Walker River Paiute Tribe of Nevada and Robert Benton Et al., Plaintiffs-appellants, v. Southern Pacific Transportation Company Et Al., defendants-appellees. United States of America, Plaintiff-appellant, v. Southern Pacific Transportation Company Et Al., Defendants-appellees, 543 F.2d 676 (9th Cir. 1976)." Justia Law. September 10, 1976. Accessed April 17, 2021.

<https://law.justia.com/cases/federal/appellate-courts/F2/543/676/338483/#fn1>.

benefit of the 1875 Act. The 1875 Act was also earlier known as the General Railroad Right of Way Act of 1875, which would ultimately grant the railway the right-of-way over the lands they wanted to occupy on the Walker River Paiute Reservation. In 1926 these maps were approved but in 1936, 13.25 miles of railway line that was once deemed “ceded lands” was restored to the Walker River Paiute Tribe.

Conflict inevitably arose and after a long battle with the federal courts and the Southern Pacific Railroad. A 1976 ruling concluded that Indian Law was an “even older policy” that long surpassed the granting of the easement that was in violation.⁸⁷ The good-faith agreement argued in court was not valid and it was ruled that the Southern Pacific Railroad had trespassed on the WRPT for 90 years. As noted throughout this thesis, the U.S. military has illegally occupied the Walker River Paiute Tribe’s land for far too long, which the federal government seemingly ignores. The trust responsibility to the WRPT has been derailed on all jurisdictional levels and the jurisdiction of the WRPT has held no parallel standing as a Nation with sovereign rights in the eyes of the U.S. government. By defining clear and concise reservation boundaries, the WRPT would have a foundation to secure and assert their authority against entities like the military bases.

Securing Tribal Authority

⁸⁷ "United States of America, Plaintiff, the Walker River Paiute Tribe of Nevada and Robert Benton Et al., Plaintiffs-appellants, v. Southern Pacific Transportation Company Et Al., defendants-appellees. united States of America, Plaintiff-appellant, v. Southern Pacific Transportation Company Et Al., Defendants-appellees, 543 F.2d 676 (9th Cir. 1976)." Justia Law. September 10, 1976. Accessed April 17, 2021. <https://law.justia.com/cases/federal/appellate-courts/F2/543/676/338483/#fn1>.

When positioning yourself to settle claims, especially when prosecuting other nations who are in violation, it is important for the WRPT to establish tribal authority. Defining the boundaries is the first step to asserting authority for the purpose of settling claims. The 2006 U.S.C Title 25 Indians Chapter 15 (Constitutional Rights of Indians Subchapter I- Generally Sec. 1302) thoroughly defines how tribes have a constitutional right to self-govern as long as said tribe follow sec. 1302. This section allows for the establishment of Tribal Governance for the WRPT to enforce their jurisdiction within their boundaries of the WRPT reservation.⁸⁸ The Walker River Paiute Tribes Courts Title 1 describes the authority granted to the Tribal Court. It defines the constitution and by-laws of the Walker River Tribal Court system and helps resolve disputes between the WRPT, its members, and those in violation of the laws drafted by the Tribal Court. The Tribal Court provides a forum for the resolution of other disputes that arise with the Tribal Court's jurisdiction and enforces Law and Order. This Title states that territorial jurisdiction of the Tribal Court extends to all Walker River Paiute tribal territory within the reservation boundaries, inclusive of trust and non-trust land, and all roads, water, and bridges, and to any lands which may be added to the reservation in the future. Per Federal Law, any matters that are not covered in "Tribal Court" Section 1-30-10 and 1-30-20, allows the Tribal Court to apply any U.S. laws that are applicable by any other court of general jurisdiction

⁸⁸ "2006 US Code :: Title 25 - INDIANS :: CHAPTER 15 – CONSTITUTIONAL RIGHTS OF INDIANS :: SUBCHAPTER I - GENERALLY :: Sec. 1302 - Constitutional Rights." Justia Law. Accessed July 13, 2021. <https://law.justia.com/codes/us/2006/title25/chap15/subchapi/sec1302>.

from any state or administrative agency of the U.S. This section is applicable to ending the continued military occupation on the Walker River Paiute tribal territories.⁸⁹

The WRPT has faced both barriers to asserting their authority on tribal lands and successes. 25 U.S.C. 5305 (Definitions) § 5301 is a Congressional statement that addresses historical findings which have resulted in the unsustainable nation-to-nation relationship between the United States (U.S.) and Tribal Nations and the disproportionate amount of power the U.S. holds over Tribal Nations. This article references Tribal Nations' unwillingness to relinquish sovereignty to the United States government, despite a long history of government-sanctioned efforts to restrict and diminish tribal sovereignty by imposed policies and law. Tribal Nations have always and will continue to be self-determining, which is a major reason as to why they have not compromised their livelihood or their inherent right of sovereignty. Moreover, the article defines that the federal services given to Tribal Nations have resulted in disservice rather than aid. The article also addresses how the Federal government's role in Tribal affairs, historically and present, has deprived Tribal Nations of their ability to self-govern and forced the "domestic dependent nation" state to remain.⁹⁰ Although the WRPT and the tribal court of the WRPT has been constitutionally established

⁸⁹ Walker River Paiute Tribe-Tribal Courts. Title 1: Tribal Court - Original Statute Verbatim with Amendments and All Proposed Changes. PDF. <https://www.wrpt.org/agai-dicutta-numu/law-order/>.

⁹⁰ "25 USC 5304 - Definitions." Govregs. Accessed May 26, 2021. https://www.govregs.com/uscode/title25_chapter46_section5304.

for the purpose of self-governance, Indian policies have weakened the ability to fulfill the jurisdictional aspect of self-governance for the tribe. One case that shows the restrictions on tribal sovereignty is *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). This Supreme Court Case is an example of how non-Native occupation on tribal territories can infringe on tribal sovereignty, as our tribal courts do not have jurisdiction to prosecute non-Native perpetrators. When tribal laws are unable to prosecute non-Native people within the reservation boundaries Native people living on reservation lands become vulnerable and unprotected and creates opportunities for reservation lands to become targets for crime. However, the WRPT can reference other historical acts to make their case, such as the Major Crimes Act (1855) that implies that this regulation violates tribal rights to self-govern.⁹¹ The lack of communication within the Nation to Nation relationship and the entities which are intended to maintain law and order results in an ultimately unsustainable system.

The Processes for Settling Claims

The Federal Torts Claim Act (FTCA), a federal legislation enacted in 1946, should protect the WRPT by providing a legal means of compensation for long-term suffrage of property loss and damage caused by the negligence and wrongful act of the U.S. military, found under 28 U.S.C. §1346(b), §1402(b), §2401(b), and §§2671-2680. This act generally provides a process for recovering “monetary damages from the U.S. under circumstances where the U.S. would be

⁹¹ "Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)." Justia Law. Accessed December 7, 2020. <https://supreme.justia.com/cases/federal/us/435/191/>.

liable in accordance with the law of the place where the negligence or wrongful act or omission occurred.”⁹² The act is crucial for the WRPT to reference when dealing with the Fallon Naval Air Station (FNAS) because the WRPT has requested monetary settlement for long-term damages and negligence. Further, the WRPT wants compensation for the FNAS’s illegal occupation that rendered the land useless.

Another useful reference for the WRPT in their dealings with the military bases is 43 U.S.C. 1601. These congressional findings and declaration policy were established to accommodate the needs for a fair and just settlement regarding all claims by Alaska Natives and Native groups. The Walker River Paiute Tribe can mirror claims, reasoning, and intent by established Native reservations of Alaska in land claims. One of this settlement’s foundational purposes was to maximize Native participation in decisions that directly affect their rights and property. This policy states that in the process of fulfilling the accommodations, racially motivated purposes may not be established without first engaging and agreeing to trusteeship or lengthy wardship. Further, the policy provisions shall not discriminate or diminish any prior right, privilege, or obligation of Natives as U.S. citizens.⁹³

⁹² “Federal Torts Claim Act (FTCA).” EPA. Environmental Protection Agency. Accessed June 7, 2022. <https://www.epa.gov/ogc/federal-tort-claims-act-ftca>.

⁹³ House of Representatives, Congress. "43 U.S.C. 1601 - Congressional findings and declaration of policy". Government. U.S. Government Publishing Office, December 30, 2011. <https://www.govinfo.gov/app/details/USCODE-2011-title43/USCODE-2011-title43-chap33-sec1601>

Walker River Paiute Tribe Title 6 (Evidence) defines evidence as documentation, objects, statements or answers given by witnesses as well as any other item that can be presented to a jury and/or judge and is judicially noticed. The Walker River Paiute Tribe has documentation dating back to 1959 regarding FNAS trespassing, contamination, and destruction to the reservation lands and on HAD's contamination of the tribes sacred sites. Should a case be brought before the Walker River Paiute Tribal Court, evidence can be provided that accurately meets the definition defined by the Law and Order Code. Evidence past and current reveal the timeline of the illegal activities of the Fallon Naval Air Station and the Hawthorne Army Depot. This evidence also demonstrates how resolution or corrections were never made, and it provides a conclusion of how the wants/needs of the Walker River Paiute people were never addressed.⁹⁴

The relationship between the tribe and the U.S. military has faltered on a large-scale because of the military bases unwillingness to stop, restore, recover their ordnance, and ensure none of this infringement reoccurs. Even with all of the federal policies and mandating that they claim to abide by, the U.S. military still finds ways to maneuver around it, especially since the federal government fails to step in. However, with the many court cases backed by statutes, the

⁹⁴ Walker River Paiute Tribe-Tribal Courts. Title 6: Evidence, 6-10-010 – 040720 Original Statue with Amendments and All Proposed Changes AT EDITS. PDF. <https://www.wrpt.org/agai-dicutta-numu/law-order/>.

WRPT will have more than enough support and evidence to move forward in court and remain resilient throughout the next step in this fight.

CHAPTER 9

WALKER RIVER PAIUTE TRIBE RESISTANCE

As noted above, the overturn of leadership from both the Walker River Paiute Tribe and the Naval Air Station resulted in negotiation and consultation gaps that resulted in failure to resolve several issues. Despite these difficulties, the tribe has been able to retain and defend their opposition to the Bravo-19 expansion, illegal occupation and contamination done by the U.S. military. Pursuant to the Resolution No. WR-63-82, the Walker River Paiute Tribe has resisted the expansion of such bombing range from the beginning stating in this 1982 resolution under the leadership of Chairman Anita Collins:

WHEREAS, the existence of the bombing ranges already poses a serious threat to residents of this reservation, and

WHEREAS, Naval jets continually “buzz” and fly extremely low over residential units on the reservation.

NOW THEREFORE BE IT RESOLVED that the Walker River Paiute Tribal Council hereby protests the application for public domain land for use by the U.S. Navy,

AND BE IT FURTHER RESOLVED that the Walker River Paiute Tribal Council hereby demands that all low-level flights over residential units on the reservation cease at once and that the appropriate government

officials take whatever action necessary to halt this present danger to the reservation.⁹⁵.

The U.S. Navy applied to the Bureau of Land Management (BLM) for 194,000 acres of public land that surround the four bombing ranges which included the land range adjacent to the Walker River Paiute Tribe in 1982. The Inter-Tribal Council of Nevada, Inc. backed the WRPT's protest by producing and implementing their own resolution stating:

BE IT FURTHER RESOLVED, that the Inter-Tribal Council of Nevada hereby demand that all low-level flights over residential units of Nevada Indian reservations cease at once and that the appropriate government officials take whatever action necessary to halt this present danger to tribal residents of these reservations, and

BE IT FINALLY RESOLVED, that the Executive Board of the Inter-Tribal Council of Nevada hereby authorizes the Executive Director to actively represent ITCN in joining other groups or individuals in protest of the proposed land withdrawal and to take whatever action is necessary through the media, congressional delegation or other government channels to halt this proposed action.⁹⁶

In a 1985 letter to Jeanne Whiteing, Deputy Director of the Native American Rights Fund (NARF), Tribal Chairman of the WRPT Elvin Willie Jr. reached out for assistance from NARF in establishing 10,000 ft. of airspace above the

⁹⁵ The Walker River Paiute Tribal Council. *RESOLUTION NO. WR-63-82*.

⁹⁶ The Inter-Tribal Council of Nevada, Inc. *Protest Proposed Land Withdrawal*.

reservation for the WRPT. He expressed his concerns of low-level aircraft flying and stated that they fly as low as 400-2,500 feet above ground level. The tribal council had come to the conclusion that the low-level flying of aircrafts over the reservation posed danger to the residents and stated, "It is our contention that the ownership of Indian land goes hand-in-hand with a certain amount of air space ownership, that the ownership entitles Indians to a certain quality of life and freedom to use the land as we see fit".⁹⁷ This letter, attached to the Resolution No. WR-61-85, requested assistance from NARF and highlights how the WRPT is inherently tied to the airspace directly over the reservation to protect the well-being of the members who reside on reservation.⁹⁸ "Across Indigenous epistemologies, indigenous peoples often view airspace similar to land in that both are living filled with relatives they must care for in return for the well-being of their communities."⁹⁹ This draws to the protection of the airspace for Indigenous peoples broadly but specifically for the WRPT, which is reasoning for on-going resistance to protect the airspace of the WRPT lands.

All of these efforts made from the Walker River Paiute tribal leadership throughout the continuous 75 years are acts of resiliency and resistance but also an act of decolonization. The WRPT has not caved in its stance of opposition but

⁹⁷ Willie, Elvin Jr. *Walker River Paiute Tribe Chairman*. July 23, 1985.

⁹⁸ Walker River Paiute Tribal Council. *RESOLUTION NO. WR-61-85*.

⁹⁹ Department of Health and Human Resources, U.S. National Library of Medicine, "Medicine Ways: Traditional Healers and Healing," Native Voices: Native Peoples' Concepts of Health and Illness, accessed March 29, 2018, <https://www.nlm.nih.gov/nativevoices/exhibition/healing-ways/medicine-ways/medicine-wheel.html>.

forecasts that the Bravo-19 expansion will result in another 75 years of unchallenged trespassing from the Fallon Naval Air Station.

On November 12, 1985 the chairman at the time, Chairman Elvin Willie Jr., released a report titled, *Comments of the Walker River Paiute Tribe on H.R. 1790*, that continued to position the Agai Dicutta people in opposition of the Naval encroachment and the expansion. The report reiterates that the Agai Dicutta people have an inherent sovereign right towards which the United States has a trust responsibility. Like many times before, he reaffirms the position of the WRPT people:

The Walker River Paiute Tribe is strongly opposed to the passage of H.R. 1790. Since the creation of the Walker River Paiute Reservation in 1859, the United States has consistently and repeatedly promised that the lands of the Reservation would be for the beneficial use of the Indians residing thereon. If implemented the expansion of the military bombing range will frustrate the fulfillment of those past commitments which cannot be satisfied without providing assurances that low-level flights over the Reservation will be stopped. The Tribe's objections to the military expansion are not new. For the past twenty years, our Tribe has complained to the Commander at the Fallon Naval Air Station of the number of low-level flights over the residential area of the Reservation...Under the proposed bill, the Tribe would be subjected to supersonic flights as well as increased activity resulting from expansion.

Being so close to the bombing ranges, the Tribe has documented experience of the following:

- Accidental dropping of live ordnance near residential areas of Reservation.
- Ricocheting inert missiles impacting on the Reservation.
- Fatal crashes of military jets within the Reservation.
- Destruction of Tribal property due to above.¹⁰⁰

The WRPT attempts to cease both the low-level flying and the trespassing of their land are overlooked and often intentionally dismissed by the Naval Air Station and the Supreme Court.

¹⁰⁰ Willie, Elvin Jr. *Comments of the Walker River Paiute Tribe on H.R. 1790*. 12 November 1985, 1-3.

CHAPTER 10

CONCLUSION

The U.S. federal government has implemented many policies that have forced the dilution of sovereignty of the Walker River Paiute Tribe. Forced militarism and illegal occupation by the Fallon Naval Air Station and the Hawthorne Army Depot has historically impacted the WRPT negatively, created disconnections to the land and sacred sites, removed access to place and left the tribal constituents and community in repetitive danger year after year. The land and sacred sites of the WRPT still suffer at the hands of the U.S. military, resulting in disruptions to their connection to the land and place-based knowledge. Despite the WRPT being met with many barriers, they have continued to remain resilient in the long-lasting fight to protect the lands they come from and the sacred sites that hold significant value to the community's existence and future. The WRPT's stance against the U.S. militarization is a testament to the past, the present and the future of the cultural survivance for the Agai Dicutta. As long as there is a relative on this earth, the fight continues.

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