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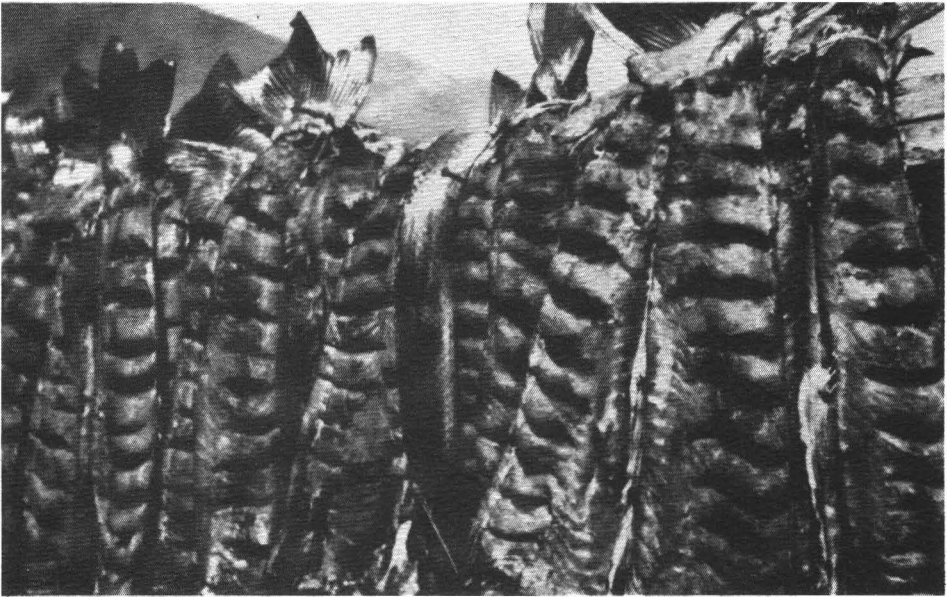
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Prospective authors should send their work to The Editor, *Nevada Historical Society Quarterly*, 1555 E. Flamingo, #238, Las Vegas, Nevada, 89109. Papers should be typed double-spaced and sent in duplicate. All manuscripts, whether articles, edited documents, or essays, should conform with the most recent edition of the University of Chicago Press *Manual of Style*. Footnotes should be typed double-spaced on separate pages and numbered consecutively. Correspondence concerning articles and essays is welcomed, and should be addressed to The Editor. © Copyright Nevada Historical Society, 1982.

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Fishing at Nixon, Nevada (*Nevada Historical Society*)



Dried and smoked cui-ui fillets (from *The Desert Lake*, by Sessions Wheeler, courtesy of Caxton Printers)

The Effects of Nevada State Fishing Laws on the Northern Paiutes of Pyramid Lake

MARTHA C. KNACK

SINCE THE FOUNDING of the United States, there has been debate over the relative scope of power of the federal government and the states.^o Actions of state and national authorities have been challenged, each by the other, for over two hundred years without clear resolve. One such incident involved an attempt by the State of Nevada to extend its suzerainty to a sector of federal jurisdiction over Indian affairs. Ironically enough, in this desert state the issue was fish.

Law regulating Indian affairs is federal law. This federal jurisdiction has four historical roots — the United States Constitution, Congressional legislation, decisions of the Supreme Court, and administrative structure.¹ The Constitution gives to the federal government the sole right to arrange treaties with foreign nations, implicitly including Indian tribes. In the eighteenth century, native societies were in fact independent, sovereign nations. Looming on the western borders and militarily powerful in relation to the struggling confederacy of disunited states, tribes were potentially extremely important to the newly independent country. Indian treaties were critical matters of foreign policy, a federal concern. Since

^o Previous versions of this paper were read before the American Society for Ethnohistory in San Francisco, 23 October 1980, and the Great Basin Anthropological Conference in Salt Lake City, 5 September 1980. I am grateful for the comments of participants at both of these meetings.

¹ For authoritative discussions of law pertaining to Indians in the United States, see Felix S. Cohen, *Handbook of Federal Indian Law* (Washington, D.C.: U.S. Government Printing Office, 1942; reprint ed., Albuquerque: University of New Mexico Press, c. 1972); Monroe E. Price, *Law and the American Indian* (Indianapolis: Bobbs-Merrill, 1973); and David H. Getches, Daniel M. Rosenfelt, and Charles F. Wilkinson, *Federal Indian Law* (St. Paul: West Publishing Company, 1979).

one tribe often had lands adjoining or overlapping several states, and since much of the contact between Indians and Anglo-Europeans was commercial, the Constitution explicitly reserved for the federal government all regulation of trade with the Indians.² It would have been far too easy for a real or perceived inequity in a trading transaction to escalate into an international incident and threaten needed military alliances. On the basis of this constitutional authority, Congress immediately began to pass legislation regulating relationships with native tribes, such as the series of Trade and Intercourse Acts. Challenges to and violations of federal laws naturally were decided through the federal court system, all the way to the Supreme Court.

One landmark court decision written in 1831 was fundamental in defining federal-Indian relations. By that time, westward expansion of the states had surrounded several tribes. In 1830, the state of Georgia claimed jurisdiction over the lands of one such enclave of Cherokees and the question eventually reached the Supreme Court. In deciding this case, Chief Justice Marshall asserted a relationship between tribes, states, and the federal government which was to become vital in Indian history for the next one hundred years:

though the Indians are acknowledged to have an unquestionable and, heretofore, unquestioned right to the lands they occupy, and that it shall be extinguished [only] by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations³

The declaration that tribes retained ownership of their land until they intentionally yielded it through treaty or other explicit act, was later broadened into a general principle of Indian law. The Court elaborated that a

settled doctrine of the law of nations is, that a weaker power does not surrender its independence — its right to self-government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state.⁴

Therefore, as remnants of previously sovereign nations, Indian tribes retained, in theory if not in practice, all powers not formally abdicated,

² U.S. Constitution, art. I; sec.8.

³ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 8 L. Ed. 25 (1831).

⁴ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832).

for as long as the tribe retained continuous identity. In addition to recognizing tribal sovereignty, Marshall added that "they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."⁵ This formalized the previously somewhat vague notion of federal trust responsibility to protect Indian lands, as a trustee does the property of his ward. The Bureau of Indian Affairs (BIA), founded in 1824, was assigned the parental role which Marshall also designated for the federal trustee, to tutor tribesmen in culturally acceptable habits and behaviors, during their period of "pupilage."

Thus through the Constitution and custom, Indian affairs rested legislatively, judicially, and administratively squarely within federal jurisdiction. This federal jurisdiction was exclusive and denied state power, as the Supreme Court explicated: "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress."⁶

Despite the recognition of an exclusive federal-tribal relationship long before Nevada was even a territory, in the particular historical sequence under examination here that state assumed an active role. In constitutional law, those powers not explicitly delegated to the federal government are retained by the states. Thus items not mentioned in the Constitution lie within the jurisdiction of state law. One such omission is the regulation of fish and game. Therefore, Nevada, like other states, did assume control of fishing and passed laws regarding licenses, seasons, and catch limits.

This produced a nearly inevitable conflict. Did Nevada have the right to regulate fishing by Indians on a federally-administered Indian reservation? State jurisdiction over fishing in state waters collided with federal jurisdiction over Indian affairs. This abstract question of governing powers became overt political conflict between 1875 and 1925, as Nevada attempted a series of imaginative maneuvers to circumvent federal jurisdiction and gain control over Indian fishing on the Pyramid Lake Indian Reservation.

Before the arrival of Anglo-Europeans in the Great Basin, native peoples had utilized a wide variety of ecological microniches to extract usable resources; each had a specialized technological and behavioral adaptation. One of the least recognized of these specializations was the

⁵ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 8 L. Ed. 25 (1831).

⁶ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832).

riverine and lacustrine. For over 7,000 years, the sloughs and shallow terminal lakes of the Humboldt had provided edible cattail roots and pollen, building materials, excellent duck hunting, and, of course, water itself.⁷ The other short, shallow, and ephemeral rivers and springs throughout the Basin provided necessary resources, but the two unique river systems of the Truckee and the Walker, with their deep, cool, terminal lakes, provided the extra bonus of abundant fish.

Northern Paiutes at Pyramid Lake had made an elaborate adaptation to their local wetlands.⁸ In addition to extensive use of marsh plants for food and manufacturing, they focused on the capture of two fish species — the Lahontan cutthroat trout and the cuiui. Like its salt water cousin the salmon, the cutthroat trout, a freshwater, anadromous fish, returned upstream between January and March to its birthplace to spawn. The rest of the year, it lay deep in the cool depths of Pyramid Lake, the only place on earth it was native. The cuiui was a bottom sucker, whose soft flesh easily filleted. It also came to the Truckee banks and shoals to spawn. The Paiutes developed a series of specialized tools to harvest these fish — willow weirs, fishing platforms, basketry traps, sloats, sinkers, harpoons, dip nets, prepared fields of white pebbles for night fishing, and compound hooks for single and set lines. While they made tule rafts, these and their other techniques were not usable in the deep, rough lake waters, so that much of the year the primary species of fish were inaccessible to them. But when the fish neared shore to spawn, the shallow-water technology of the Paiutes supplied an ample harvest. Large numbers of fish were then dried and stored for year-round use.

As was common in the Great Basin after American settlement, Northern Paiutes had not signed treaties with the United States. Therefore the tribe never specifically yielded its aboriginal hunting and fishing rights. In 1859, just before the discovery of the Comstock Lode, which would bring tens of thousands of white men into western Nevada, the Bureau of Indian Affairs requested the General Land Office to set aside two large river sinks as Indian reservations — Pyramid Lake, sink of the Truckee River, and Walker Lake, terminus of the Walker River. In other areas of the state white farmers and ranchers were already displacing

⁷ E.g., L.L. Loud and M.R. Harrington, *Lovelock Cave*, University of California Publications in American Archaeology and Ethnology 25, 1929; R.F. Heizer and L.K. Napton, *Archaeology and the Prehistoric Great Basin Lacustrine Subsistence Regime As Seen from Lovelock Cave, Nevada*, University of California Archaeological Research Facility Contributions 10, 1970.

⁸ Nellie Shaw Harner, *Indians of Coo-yu-ee Pah (Pyramid Lake)* (Sparks, Nevada: Dave's Printing and Publishing, 1974); Willard Z. Park, Field notes from Pyramid Lake, unpublished ms., in the collections of the University of Nevada, Reno; Catherine S. Fowler and Joyce E. Bath, "Pyramid Lake Northern Paiute Fishing: The Ethnographic Record," paper read before the Great Basin Anthropological Conference, Reno, October 1978.

native populations. The early Indian agents recognized that these two lakes would provide an economic base for the fishing Paiute bands as they progressively lost control of other resource areas. As a chance result, however, the only two major permanent lakes in the state were placed within Indian reservations. Indians thus controlled the dwelling zone of the various food fishes, but not the spawning beds of the anadromous one.⁹

Following the federal policy of teaching Indians Anglo ways, the BIA through its local agents introduced farming to the Pyramid Lake Reservation. Paiutes resisted all attempts to turn them into irrigation agriculturalists, and instead continued active subsistence fishing. Their seasonal surplus, coming in winter, found a ready market in the nearby mining camps whose white residents were too busy "striking it rich" to bother producing their own food. Less than twelve years after the founding of the reservation, Paiutes were already selling \$10,000 worth of fish annually in Reno and Virginia City.¹⁰ Since the sale price fluctuated from three to seven cents per pound, this meant that Paiutes were shipping between 40 to 100 tons of fish each year from Pyramid Lake. Throughout the nineteenth century, fish sales far outstripped the profit from *all* other forms of reservation enterprise combined. It also continued to provide a major portion of the Indian diet.

Paiutes thus rapidly commercialized their one and only significant resource — fish from the lake. Of course, Anglo entrepreneurs were not content to leave this lucrative trade to the Indians. White men soon had nets strung across the Truckee River within reservation boundaries and even invaded the lake itself. During the 1870s, the United States Army was called out repeatedly to clear the reservation of trespassing white fishermen. By 1878, such violations had become so general and flagrant that nine arrests were finally made. These white men were convicted of trespassing on federal property, but were never sentenced, and they eventually received Presidential pardons.¹¹ By pursuing even this inconclusive case, the BIA had indicated, however reluctantly, that it did intend to protect Pyramid Lake from blatant commercial exploitation by non-Indians. Public reaction to this defense of Indian property was exemplified by an editorial in the *Reno Weekly Gazette*:

The decision of the U.S. Courts, that the Pyramid Lake reservation is valid and binding is of great importance to Reno and the whole coast. It ties up the lake

⁹ Lake Tahoe is the only other deep, perennial lake. Because it is an interstate body of water, it does not fall within the sole jurisdiction of Nevada.

¹⁰ C.A. Bateman, letter to Edward P. Smith, Commissioner of Indian Affairs, 30 September 1873. Reprinted as Letter #41, *Annual Report of the Commissioner of Indian Affairs for 1873* (Washington, D.C.: U.S. Government Printing Office, 1874), pp. 253-256.

¹¹ It was an election year. *U.S. v. John Leathers*, U.S. District Court Nevada, 1 July 1879.

from all but the few lazy Indians who will have a monopoly of the fine fish which have hitherto been shipped to all parts of Nevada and California. This will not only deprive people everywhere of a real luxury, but what is of more importance to us, it will kill a valuable industry, which would in time add materially to our resources. . . .¹²

While the newspaper pleaded the public benefit of free enterprise, it and the state lawmakers were not willing to let that lucrative commerce rest in Indian hands. The legislature soon petitioned Congress to abandon Pyramid Lake as a reservation, arguing that the fish trade was valuable, that Anglos were being excluded from its benefits and prosecuted in federal courts, and that this should be stopped. Meanwhile, the state declared, the BIA allowed Indians to fish on the federal reservation "without regard to the fish and game laws of the State."¹³ Of course, in so doing Paiutes were well within their legal rights. They retained, from tribal sovereignty, the right to hunt and fish as they chose within the boundaries of retained tribal land, for they had never given the federal government or the state authority to regulate these activities. Further, according to the Supreme Court decision, Indian country was not part of any state, and therefore state law had no power on a reserve. Paiute behavior on their own reservation was simply beyond state control.

The Anglo public was angered by this situation, however, and demanded that the state legislature take action. The Nevada Territorial legislature in 1861 had already defined trout as a sport fish, thereby asserting that fish were no longer to provide human subsistence, but to exist as a luxury for those with leisure time for recreation.¹⁴ That legislative body had also imposed a definition of appropriate sporting technique, which was derived from the Anglo-European cultural past. It declared the hook and line only were to be used for trout capture, and it forbade native spears, nets, traps, and weirs, as well as white-introduced methods of grabhooks, poison, and dynamiting. Growing Anglo pressure forced extension of ethnocentric definitions to include when fish could be caught. The spawning season therefore became an unacceptable time to catch fish.¹⁵ This, of course, immediately negated all the native shallow-water techniques, which were only effective when the fish

¹² Anonymous, "The Reservation Fishermen," *Reno Weekly Gazette*, 10 July 1879, p. 1, c. 2.

¹³ Nevada State Senate and Assembly, "Joint Memorial and Resolution relative to Pyramid Lake Reservation in the State of Nevada," 29 January 1877. This and following references to territorial and state laws were taken from the microfiche reprint of *Session Laws of the American States and Territories--Statutes of the Nevada Legislature* (Westport, Conn.: Redgrave Information Resources, 1973), microfiche edition.

¹⁴ *Statutes of the 1st Territorial Session*, p. 32.

¹⁵ *Statutes of the 4th Legislature*, pp. 109-110.

emerged to reproduce. The number of species controlled under state law gradually increased and catch limits were imposed. Nevada laws required fish ladders on dams and forbade anyone to fish at the base of these Anglo-introduced obstructions. However, still unsure of its jurisdiction over native hunting and fishing rights, the legislature specifically exempted subsistence fishing by both off- and on-reservation Indians from these early regulations.¹⁶

It is a peculiarity of most streams in Nevada that they only flow intermittently. They are further reduced by irrigation, damming, and diversion into unscreened irrigation ditches, thus making small streams unprofitable for commercial scale fishing. Only the two major, permanent rivers with deep-water sinks remained profitable, but these were enclosed in Indian reservations. As the 1879 trespass prosecution exemplified, the federal government, by law trustee over the properties of its Indian wards, appeared to be willing to protect these reservation lakes from major non-Indian encroachment. Thus Anglos were prevented by nature and by federal jurisdiction from developing an Anglo commercial fishing enterprise in any of the waters of the state of Nevada. The only politically active lobby interested in fishery matters was composed of the sportsmen. They had proven their strength by getting early general legislation passed. Now angry at the Pyramid Lake situation and evincing clear anti-Indian sentiment, their pressure mounted until in 1891 the Nevada legislature passed the first of a series of restrictive fishing laws directly inimical to the successful Indian fishing industry at Pyramid Lake.

Logically, any trade requires two components — a source of production, which the Indians possessed, and market, which lay outside the reservation and within state jurisdiction. Since the state could not prevent Indians from actually fishing, instead it decreed:

it shall not be lawful for any railway corporation, express company, or other common carrier, or private parties, to ship or transport for sale, any of the river, lake, brook or salmon trout taken from the rivers, lakes, or other waters of this State, during the said [closed] season [from 1 January to 1 June].¹⁷

In and of itself, this law would not appear to be discriminatory. However, since Indians were in possession of the only commercially viable fisheries, and since their technologically useful season was limited to the designated closed spawning season, Indians were essentially the only persons affected by the new regulation.

¹⁶. *Statutes of the 8th Legislature*, pp. 179-180.

¹⁷. *Statutes of the 15th Legislature*, pp. 84.

The railroad which passed through the Pyramid Lake reservation immediately refused to accept shipments of Indian-caught fish for market, from either the Indians themselves, the reservation trader or the agent. The stage line on the western edge of the reserve did likewise. Indians therefore began carrying fish to market in their own wagons. This was dangerous, since, rightly or wrongly, the state claimed jurisdiction over them as soon as they left reservation boundaries. Pyramid Lake fishing profits, then 90% of all reservation income, dropped from over \$8,000 the year before to none, as a direct result of the new Nevada state fish law. Within a single year, two thirds of the cash flow to the Pyramid Lake Paiute community had evaporated.

A BIA inspector recommended that a test case be taken to court immediately to challenge the legality of this application of state law to Indian-caught fish.¹⁸ He argued that Pyramid Lake was in essence a private hatchery, being enclosed completely within the trust property of the federal government. Fish caught in it were not caught in state waters at all and therefore state jurisdiction did not apply. Not only was his suggestion ignored, but also the BIA ordered Indians to comply with state definitions of the proper methods and seasons, and distinctions between commercial versus subsistence fish species. In 1890, the Secretary of the Interior wrote the Commissioner of Indian Affairs:

Your action in instructing the Agent at the Nevada [Pyramid Lake] Agency to prohibit his Indians from killing or catching fish in the waters of said reservation, during the spawning season, and to forbid them from taking fish at any time except with hook and line, is approved, and in accordance with your recommendation, California Fish Commission is hereby authorized to take, under supervision of the said Agent, spawn or fish for spawn for the purpose desired. . . .¹⁹

The purpose was to provide sports fishing for non-Indian fishermen elsewhere.

Agents redoubled their efforts to convert Paiutes to farming, but without success; and Indians continued discrete resistance, including smuggling fish to out-of-state markets in California. Nevada closed off this option in 1901 by forbidding interstate traffic in Nevada-caught fish.²⁰ Paiutes continued to provide some of the best Reno hotels with fresh fish year round on a friendly basis, accepting payment only during

¹⁸. C.C. Warner, letter to T.J. Morgan, 4 November 1891. In Record Group 75, National Archives, Washington D.C. BIA Letters Received--Nevada--1891--#40352.

¹⁹. John Noble, Secretary of the Interior, letter to T.J. Morgan, Commissioner of Indian Affairs, 14 January 1890. In Record Group 75, National Archives, Washington, D.C. BIA Letters Received--Nevada--1890--#21924.

²⁰. *Statutes of the 20th Legislature*, pp. 119.

the legal season. When discovered by law enforcement officers, the restaurants asserted that the fish had just been taken from the deep freeze where they had rested since last summer. The state then forbade possession by restaurants and cold storage warehouses. In 1909, it prohibited "gifts" of fish, another creative Paiute subterfuge.²¹

By 1910, the general trend of the future was becoming obvious.²² From the city of Reno downstream there was a dead zone where fish could not breathe because decomposing garbage, thrown into the river, was absorbing all the oxygen. Derby Dam and others which had been constructed formed high barriers. Relatively few fish could successfully negotiate the inadequate fish ladders. Fish swam out into irrigation canals and ditches, only to be stranded when the water was turned off. But most of all, the dams and ditches diverted water from the natural streambeds, often as much as 50% of the total flow. There simply was not enough water for fish to maneuver through shallows and get upstream to spawn. Furthermore, many fish, such as trout, were extremely sensitive to temperature, which warmed as the water became more shallow. For these and other reasons, the numbers of fish in the major river systems of northern Nevada began to decline rapidly and noticeably. Despite the proven effects of these Anglo-introduced environmental changes, the sportsmen's lobby and the state legislature chose to blame the fishery decline on the "slaughter" by Paiute subsistence fishermen.

In 1911, all large fish species, except cuiui which Anglos did not regard highly, were declared to be game fish, thus placing them under state management. On the grounds there was a need to conserve game fish for the benefit of the "general public" (which meant non-Indian sportsmen), the legislature attempted to force compliance with Anglo ideas of proper fishery management. Therefore, they declared that no one could, at any time, possess more than ten game fish or ten pounds of fish on any one day for his own use or for sale. Shippers were forbidden to transport, warehouses to store, or restaurants to buy more than this number from any one individual. All game wardens and sheriffs were by law required actively to enforce these regulations and empowered to search cars, camps, barns, and homes anywhere in the state and to seize fish and violators. The prejudiced law even specified that "in case Indians. . . shall be in such numbers as to be beyond the reasonable

²¹. *Statutes of the 24th Legislature*, pp. 38.

²². Since the submission of this manuscript to the *Quarterly*, a new monograph has come to my attention which details nicely this series of events. John M. Townley, *The Truckee Basin Fishery, 1844-1944*, Water Resources Center Publication #43008, Desert Research Institute, University of Nevada System, Reno, November 1980.

power of any fish or game warden of the state fish commission to control, or in case of forcible resistance" wardens could call on all civil authorities for assistance.²³ The law went on to state that "it shall be no defense in any prosecution for violation of any of the provisions of this act that the trout or other fish in question were taken or killed outside the State of Nevada [as on federal property]; nor shall it be any defense . . . that the trout or fish were taken or killed by any one other than he in whose possession said trout or fish were found."²⁴

To test the applicability of this law and to protect his own trade, the federally licensed reservation trader accepted ten fish from each Paiute fisherman in the spring of 1914, separately wrapping and labeling the different lots. The state game warden came into the reservation and arrested him. Because of the Supreme Court decision that reservations are not part of states, the trader argued in court that the fish had not been caught in Nevada state waters, that he had not been in Nevada when arrested, and that the warden had no jurisdiction on federal property. Thus neither he nor the fish in his possession fell under state law. Further, the fish did not belong to him, but to the original fishermen for whom he was merely transporting them on consignment. Despite his arguments, he was found guilty under state law, sentenced, and fined. The BIA never again attempted to challenge the state's jurisdiction over the fish of Pyramid Lake.²⁵

Quite to the contrary, the federal agency forced Indian compliance with state regulations, even to the extent of handing Indians over to game wardens and asking other Indians to inform on violators.²⁶ The Pyramid Lake Indian agent argued that this "voluntary" compliance was a politically useful tool with which to encourage the legislature to reduce pressure against Indians. He habitually accommodated white sportsmen with passes to fish on the reservation.²⁷ He recommended that the lake, reserved for the "use and benefit" of the Indians residing there, be opened totally to whites. Further, he allowed the State Fish and Game Commission to gather spawn at the Truckee's mouth for the benefit of the very sportsmen whose lobby had instigated the restrictive legislation in the first place.²⁸

²³. *Statutes of the 25th Legislature*, pp. 61.

²⁴. *Ibid.*, pp. 64-65.

²⁵. *Ex parte Crosby*, Nev. Sup. Ct. No. 2187, 149 Pac. 989 (1915).

²⁶. James Jenkins, postcard to W.H. Philipson, 2 March 1923. In Record Group 75, National Archives, San Bruno, Calif. BIA Letters Received--Nevada--1923.

²⁷. Washington J. Endicott, Inspector for the BIA report to Cato Sells, Commissioner of Indian Affairs, 1920, pp. 27-29. Record Group 75, National Archives, Washington, D.C. BIA--Nevada file 154--#73495-20.

²⁸. J.D. Oliver, letter to the Commissioner of Indian Affairs, 12 July 1917. Record Group 75, National Archives, Washington, D.C. BIA--Nevada file 115--#79423.

Paiutes disagreed with this agency policy of cooperation and began a campaign of non-violent protest. They physically removed Anglo-owned boats from the lake, including one owned by the county sheriff, and deposited them in the surrounding sagebrush.²⁹ They saw denial of white access to the lake as a more effective political policy than the agent's theory of cooperation, but they were censured by BIA authorities. When they attempted to send a delegation to the legislature to express their point of view, it was intercepted by the agent and sent home. Their petition was never forwarded by the agency office. The agent gave orders to his subordinates: "You must discourage 'meetings' of Indians that take them from their work and do nothing but unduly excite them. . . . The 'talk habit' must be stopped wherever possible."³⁰ He blamed the Indians' own persistent fishing efforts for the increasingly repressive legislation. Continued subsistence fishing, smuggling, and expressed resentment of the Anglo-imposed regulations brought on, he said, retaliatory legislation. He continued to act as an agent for the state, enforcing state fish laws on the reservation where state jurisdiction did not extend.

In 1920, the Nevada legislature responded to this pacifistic agency policy by making shipment for sale illegal not only in winter, but year round.³¹ Thwarted in his political maneuverings, the agent then retaliated by closing Pyramid Lake to casual Anglo sport fishing. The public became outraged, and the press called for the immediate allotment of reservation land to individual Indians and destruction of the reserve as a tribal homeland.³² The agent lost his job. His replacement reinstated a policy of appeasement and negotiation. The new agent declared that "Indians who violate the regulations will not be allowed to fish at all, or to sell fish,"³³ and he ordered tribal police to enforce state fishing laws on the reserve. Promising public access to Pyramid Lake as long as Indians could control boat rental and other service jobs, he won a legislative concession in 1923.³⁴ Indian-caught fish could now be tagged as such and sold directly to consumers in season, but only if caught by hook and line and only to the ten fish limit. Tags were sold to the

²⁹ Anonymous, "Indians in War Paint at Pyramid Lake," *Carson City News*, 15 June 1915, p. 1.

³⁰ J.E. Jenkins, letter to H.W. Philipson, 10 January 1923. In Record Group 75, National Archives, San Bruno, Calif. BIA Letters Received--Nevada--1923. Bill of Rights guarantees of freedom of speech and assembly did not directly apply on Indian Reservations. Indians were not citizens at this time.

³¹ *Statutes of the 30th Legislature*, pp. 361. Interestingly, this law specifically and superfluously disclaimed application to interstate bodies of water, to wit Lake Tahoe, the only deep-water lake with commercial fishing potential still in Anglo hands.

³² Anonymous, "Settle the Reservation," *Reno Evening Gazette*, 11 August 1921.

³³ J.E. Jenkins, letter to H.W. Philipson, 14 March 1923. In Record Group 75, National Archives, San Bruno, California. BIA Letters Received--Nevada--1923.

³⁴ *Statutes of the 31st Legislature*, p. 357.

Indians, and the federal agent persisted in enforcing state law on the reservation. Two years later the daily limit was raised to twenty-five tagged fish per Indian fisherman, which still was not enough for a man to support a family through commercial sales.³⁵

This tentative truce between the Paiutes and the state of Nevada was broken in 1926, when Indians forced closure of the state spawn gathering operation at the mouth of the Truckee River. Nevada had been gathering spawn there since 1914 with the informal permission of the agency, in order to raise trout fry in state hatcheries for distribution to various streams. Indians maintained that the process killed fish and was unnecessary since trout had always reproduced in the river without human interference. State Fish and Game authorities and sportsmen's groups were infuriated by what they saw as an Indian lack of concern over fish propagation. Paiutes had forced the closure of the spawn gathering station several times over the years, but each time they were pacified by the state's hiring more Indian helpers or other short-term economic benefits.³⁶ Each time spawn gathering was stopped however, tempers flared and tensions mounted. State authorities then circulated reports that Indians were exceeding their "privileged" limits and were slaughtering fish *en masse*.³⁷ Reservation rumors were that the only time sales limits were enforced was in retaliation for such denial of access to spawn. The public now called for reinstatement of the restrictive laws to "save the trout from extinction."³⁸

The fish population was indeed declining, but not for the reasons cited by the public. Year after year, Nevada state hatcheries failed to return as many fry to Pyramid Lake as they had promised to do, while at the same time planting the majority of their crop in non-Indian areas. Meanwhile, the very factors which had created the need for artificial fish propagation in the first place were not being corrected. These causes for fish death lay far outside either Indian or BIA control. Industrial and urban pollution was increasing and the state legislature refused to take any effective action. A far greater problem was the withdrawal of hundreds of thousands of acre-feet of water by federally-sponsored reclamation projects. These restructured the mouth of the Truckee so that fish physically could not get upriver to spawn. Because of lessened inflow of fresh water, the salinity of Pyramid Lake increased.

³⁵. *Statutes of the 32nd Legislature*, p. 250.

³⁶. Carson Indian Agency, *Annual Report, 1926*, sect. IV, p. 2. Record Group 75, National Archives, Washington, D.C. BIA--Nevada files--1920 -B-140.

³⁷. Nevada State Fish and Game Commission, *Biennial Report of the Commission, 1925-1926* (Carson City: State Printing Office, 1927), pp. 4-6.

³⁸. *Ibid.*

As fish populations declined, the Indians got more angry and less cooperative. The state, in despair, asked the U.S. Bureau of Fisheries to take over spawn gathering duties in 1930, but the same problems arose again. All spawn gathering was stopped temporarily.³⁹ Relations between the Pyramid Lake Paiutes and the state had reached a bitter impasse.

This stalemate was broken in 1934 by passage of a major piece of federal legislation which totally reorganized Indian affairs. Since the abandonment of treaty negotiations sixty years before, the federal government had ignored tribes as total entities. Rather, it had denied that the tribe was a legitimate voice of the reservation community and had chosen to deal with each Indian person privately as an individual. The new Wheeler-Howard Act reversed this trend and once again legally recognized tribes. Reservation groups were authorized to form corporations in order to jointly manage the land and resources remaining to them, remnants of their tribal hereditament. In accordance with the general tenets of Indian law, tribal councils represented previously sovereign entities, and they retained all self-governing powers not historically yielded to the federal trustee in any explicit way. One of the rights which the new tribal councils thus possessed was the power to pass ordinances and regulations necessary to carry out their charge to "own, hold, manage and operate. . . property of every description," real and incorporeal.⁴⁰

The Pyramid Lake Paiutes organized a tribal council under the Wheeler-Howard Act in 1936. Since they had signed no treaties explicitly yielding hunting or fishing rights, they retained tribal powers to regulate these within reservation boundaries. They immediately formed a Fish and Game Committee which began tense negotiations with the state. The major point of contention remained the decreasing number of fish available and mutual recriminations over the cause of that decline. The formal existence of the tribal council with its federally-defined power made it clear that the previous casual extension of state law onto the reservation would no longer be tolerated. To fill the legal void, the tribal council, upon the advice of its fish committee, passed a series of regulations to control on-reservation fishing. To avoid confusion, these closely paralleled state laws concerning seasons and fishing methods.⁴¹ A further power which the Pyramid Lake Tribal Council acquired under its constitution was the ability to issue local taxes and

³⁹ Fred J. Foster, letter to Thomas B. Snoddy, 12 December 1932. Record Group 75, National Archives, Washington, D.C. BIA--Letters Received--Nevada--1932.

⁴⁰ 25 U.S.C.A. 477.

⁴¹ Pyramid Lake Tribal Council, minutes, 11 February 1937. Unpublished ms. in the Nevada and the West section, Library of the University of Nevada, Reno.

employ a staff. Therefore they initiated a tribal fishing license, which was required in addition to the mandatory state license for non-Indians fishing on the reservation. Then they employed game wardens to enforce tribal regulations. Through a series of formal contracts with the state, a number of administrative solutions were gradually hammered out. Tribal game wardens were recognized as having authority over non-Indians on reservation lands and water.⁴² The state regained the privilege of gathering spawn at the mouth of the Truckee. In turn, the tribe allowed cuiui to be declared a game fish.⁴³

All the while, more water was being withdrawn from the Truckee River upstream for irrigation; the surface level of Pyramid Lake was declining; and the fish population was dwindling. By 1950, it was clear to all parties concerned that historical Anglo actions had brought about a new reality. There was no chance for the Paiute population to use fish as a subsistence base, even on their own reservation. There only were enough fish for sport and recreation.

The tribal council has recently taken action to assure its authority over sport fishing on Pyramid Lake. In 1973, the tribe acquired grant monies to build a small fish hatchery on a tributary stream along the western shore of the lake.⁴⁴ In this way, fish species which normally ran upstream off the reservation to spawn could be artificially propagated completely within reservation boundaries. Interjurisdictional disputes with the state could be avoided. The hatchery opened in early 1975 and a second hatchery was completed in 1981 in order to increase breeding capacity. In 1976, when the tribal fishery management contract with the state came up for renewal, Paiutes chose to break all ties with the state.⁴⁵ The tribal council reclaimed the independence guaranteed them by their constitution and the immunity from state jurisdiction assured them by the entire structure of federal Indian law.

For over one hundred years, the state of Nevada attempted to impose its laws on the Northern Paiutes of Pyramid Lake. It declared which fish could be caught and where, as well as the techniques to be used. At first, the state tried simply to assume jurisdiction over Indians living on reservations, and then it employed a series of circumventions. Indians were cut off from sales markets and arrested as soon as they left federal

⁴². Attorney General, *Opinions*, 28 April 1950, no. 914.

⁴³. Pyramid Lake Tribal Council, minutes, 5 March 1948. Unpublished ms. in the Nevada and the West section, Library of University of Nevada, Reno.

⁴⁴. Doris Cerveri, *Pyramid Lake: Legends and Reality* (Sparks, Nevada: Western Printing, 1977), p. 23.

⁴⁵. David Galat, Research Associate, Colorado Cooperative Fishery Research Unit, personal communication, 10 April 1980.

trust land. Indian agents were encouraged to enforce state law on the reservation itself. The opportunity to commercialize the one productive resource of the reservation was denied Paiutes by the imposition of state law; economic development was thereby blunted, prosperity stopped, and the local economy allowed to stagnate. Meanwhile, Anglo economic developments, dependent on water diversions to agriculture, mining, and urban areas, produced drastic changes in the fishery population. The state defined fish as a luxury suitable only for sport, and subsequent Anglo actions assured that this would be so.

Nevada's attempted intrusion of state power into recognized federal and tribal jurisdiction does not stand alone in history. The United States Supreme Court early observed that Indians "owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies."⁴⁶ This adversary relationship is much in evidence today. For instance, the state of Washington is currently embroiled in a controversy over issues of tribal hunting and fishing rights, in this case ones explicitly guaranteed by treaty.⁴⁷ Various states have attempted to extend their taxation onto reservation residents, earnings, resources, and sales.⁴⁸ Public Law 280 allowed states to assume criminal and civil jurisdiction over reservations, initially without tribal consent.⁴⁹ Recent court decisions have eroded tribal claims to jurisdiction over non-Indians violating tribal law on reservations.⁵⁰

The protection of Indian tribes under the law has, since *Worcester v. Georgia* in 1832, always rested on their alliance with and support by the federal government. If tribes are made subject to the whim of state legislatures, well known for their permeability by local interests and hostility to Indian rights, the future may well see more encroachments such as the one Nevada launched against Paiute fishing at Pyramid Lake.

⁴⁶. U.S. v. Kagama, 118 U.S. 375 (1886).

⁴⁷. American Friends Service Committee, *Uncommon Controversy: Fishing Rights of the Muckle-shoot, Puyallup and Nisqually Indians* (Seattle: University of Washington Press, 1970); U.S. Commission on Civil Rights, *Indian Tribes: A Continuing Quest for Survival* (Washington, D.C.: U.S. Government Printing Office, 1981), esp. chap. 3.

⁴⁸. U.S. v. Rickert, 188 U.S. 432 (1903); Oklahoma Tax Commission v. U.S., 319 U.S. 598 (1943); McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973); Williams v. Lee, 358 U.S. 217 (1959); Washington v. Confederate Tribes of the Colville Reservation, 48 U.S.L.W. 4668 (1980).

⁴⁹. 25 U.S.C.A. 1321.

⁵⁰. Oliphant v. Suquamish, 435 U.S. 191 (1978).