

The taking of land for non-Indian water development followed a typical pattern. Regardless of Indian consent, the land would be taken and the tribe compensated with however much money the Indian's few friends in Congress could procure. As distributive policy this was atypical because, while benefits were concentrated among those receiving water from the project, the costs to Indians were concentrated as well. [FN174] Yet, as McCool concludes, the Indians "were not sufficiently powerful to do much about it." [FN175] The federal "construction engineers ... and dam erectors have an uncanny knack for discovering that the only feasible and economic way to do what must be done will ... necessitate taking the Indian's land." [FN176]

One example of this outrage is the reservoir formed by **Garrison Dam** in North Dakota, "Lake Sacajawea." [FN177] The lake is the result of the Bureau of Reclamation's and Corps of Engineers' Pick-Sloan plan for the Missouri River. [FN178] The Pick-Sloan plan has been called "without *571

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doubt, the single most destructive act ever perpetrated on any tribe by the United States The Plan eventually involved and violated the treaties of almost all tribes living on the Missouri and its major tributaries in the states of South Dakota, North Dakota, Montana and Wyoming" [FN179] The agencies took "extraordinary care not to inundate any of the white towns that were situated along the Missouri river." However, "no such intricate gerrymandering of reservoir outlines was even attempted" for the Indian tribes living there. [FN180] The Corps of Engineers wanted to build the Garrison Reservoir precisely upon the location of the best winter cattle range in North Dakota, which happened to belong to the Three Affiliated Tribes of the Fort Berthold Indian Reservation, the Mandan, Hidatsa, and Arikara Tribes. [FN181]

The creation of Lake Sacajawea continued the policies that eroded Indian land holdings. When the Three Affiliated Tribes negotiated the Fort Laramie Treaty of 1851 with the United States, the tribes reserved to themselves some 12.5 million acres. [FN182] By 1944, through successive executive orders and Acts of Congress, often without the consent or knowledge of the tribes, that land base was reduced to 643,000 acres. [FN183] The Pick-Sloan plan continued the government's tradition of unilaterally taking Indian land and offering to negotiate only after beginning construction. [FN184] The Federal Government's money could not compensate *572

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tribes for their unwilling surrender of their land. **Garrison Dam** flooded about 150,000 acres of tribal land where the Indians grazed their cattle, and where 325 Indian families had their homes, schools, and hospitals. [FN185] The tribes strongly opposed the flooding and made that opposition known. [FN186] They offered alternatives, but in vain; their opinions, lives, homes, and well-being were ignored. Today the reservation remains divided in half by the massive lake, a permanent flood on tribal land that provides "flood control" for non-Indians. [FN187] With their best land *573

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flooded, the tribes no longer possess the means to be self-supporting, and welfare payments to the reservation have risen steadily. [FN188]

Unfortunately, Pick-Sloan type takings are not unique, and Congress has been slow to respond to the unfairness with which Indians have been treated. "The catalogue of instances in which Indian land has been taken for the public good extends to California, Arizona, Idaho, Montana, New York, South Dakota, Pennsylvania and elsewhere." [FN189] Congress recently considered a bill to pay the Three Affiliated Tribes and the Standing Rock Sioux (affected by the Pick-Sloan Plan's construction of the Garrison and Oahe Dams, respectively) a "more fair" amount of money, to return the land that was not flooded, and to fund irrigation projects. [FN190] In 1990, Congress held the first oversight hearing in 80 years "on the subject of Indian irrigation projects," with Chairman Inouye saying: [I]n the light of the importance of the 125 Indian irrigation projects authorized by the BIA [not one of which has been finished] ... to Indian agriculture, economic development, water use, and conservation, virtually all the complex problems that face Indian country today, the lack of oversight as to the status of these projects cannot be justified.... [B]ut that's the past, and today, hopefully, we begin a new chapter, a chapter which I am committed to assuring will not be a story of neglect and ... inattention. [FN191]

However, the reality is that "neglect and inattention" would have been better for the tribes. Tribal resources have been the subject of rather too much attention by hungry westerners. Thus, the tribes

should be compensated not only for the use of their resources for all these years, but also for denial of what they were promised so long ago - the right to ***574**

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be self-supporting, to live their own lives in dignity and peace on their reservations. The history of Indian efforts to secure a homeland and the federal response is a history that must be known and acknowledged in order to discuss "Indian water rights" in any just way.