

SOCIOLOGY OF WATER: POWER AND POLITICS

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## DEDICATION

For Doug Werhane, thank you for shoving sandwiches under the door  
and patiently waiting.

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## ABSTRACT

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### SOCIOLOGY OF WATER: POWER AND POLITICS

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Water issues are often studied as conflicts; less is studied on how resolutions are negotiated and maintained. A number of factors influence how conflicts are framed and how resolutions are determined regarding shared waters. This dissertation explores the power and politics regarding water practices and policy development. Understanding who makes decisions and how those decisions are made for water rights is critical to realizing the consequences of market based decisions, lawsuits, and negotiated settlements. Decisions often ignore ecological and social sustainability stewardship needs. Ritzer's theory of integrative social analysis is used to present three case studies. The first case addresses the international dispute between the United States and Mexico regarding the transboundary border of the Rio Grande River. The second case analyzes interstate conflicts between urban populations of Texas and the State of Oklahoma regarding the Red River Compact. The third case identifies power and conflict between governmental institutions and Oklahoma Indian tribes over the sale of Sardis Lake water. The cases build a linking research agenda to explain how macro and micro functions influence water discourse. In essence, sociology of water can be understood as "a practice in which structure and agency 'meet' to reproduce and transform society" (Mollinga 2008:7).

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## CHAPTER I

### INTRODUCTION: SOCIOLOGY OF WATER

*"Anyone who can solve the problems of water will be worthy of two Nobel prizes - one for peace and one for science."*

John F. Kennedy (1917-1963)

The General Assembly of the United Nations (UN) declared 2013 as the International Year of Water Cooperation. "Promoting water cooperation implies an interdisciplinary approach bringing in cultural, educational and scientific factors, as well as religious, ethical, social, political, legal, institutional and economic dimensions" (United Nations 2013a). This dissertation incorporates three case study research manuscripts that address various aspects of these issues. Each is related to sociology of water and the power and politics associated with negotiation and conflict for water resources. The first manuscript is "Transboundary Riparian Watersheds: Political Conflict and Power on the United States – Mexico Border" (Jordan-Werhane 2013). The second manuscript is "No Silent Surrender: U.S. Supreme Court Hears Red River Case." The final research manuscript is "Selling Sardis Lake: Commitment to Justice and Sovereign Nation Water Rights."

The three manuscripts highlight the facts that water issues are often studied as conflicts, but far less is studied on how resolutions are negotiated and maintained. A number of factors influence how conflicts are framed and how resolutions are determined regarding shared waters. This research contributes new knowledge to the field of

sociology by demonstrating how historical documents can be utilized to identify patterns of politics and power related to water disputes, and in turn, how politics and power affect negotiation of water conflicts. “The politics of water and the initiatives of social movements fighting to ensure protection of and fair access to water will be among the most important in human history” (Robinson 2013). This research illustrates the way in which historical documents can be utilized to identify patterns of politics and power related to water disputes and why these patterns occur. How water conflicts are reconciled is an increasingly important topic for sociological research. I argue that studying historical relations of water policy is similar to studying historical relations of slavery, Jim Crow laws, or the Civil Rights era. With a historical foundation, the ramifications of past policies become more clear when attempting to elucidate contemporary societal implications that result from the increasing numbers of and escalating severity of conflicts over the natural resource of water.

Conflicts over water have centered on a number of causes ranging from quantity, quality, economic development, privatization, disputes of unequal access, non-consumptive use (e.g. recreational, spiritual) expanding population densities, and environmental concerns (Barlow and Clark 2002; Iyer 2007; Mithen 2012; Prud’Homme 2011). Examples are abundant and can be complicated by hinging on more than one issue, such as quantity and quality or pollution and fishing rights. Increasingly, non-Western valuations of water are being recognized (McMichael 2012). Indigenous tribal rights are being asserted (Burrage 2013; McCool 2002; Mumme 2008). Social and

environmental values of water are frequently emerging as points of conflict for water policy and practices (Whiteley, Ingram and Perry 2008). Along with multi-faceted issues of conflict, disputes are further complicated by the element of negotiation of whether water conflicts are negotiated from a commoditization and economic perspective or whether water is a social good and whether it is a basic human right (Joy, Paranjape and Kulkarni 2008).

This research addresses some of these important issues. Three independent and specific case studies related to water disputes are analyzed. The first case informs the historical nature of dispute for the international transboundary waters of the United States and Mexico border of the Rio Grande River. The second case explains the interstate conflicts related to the Red River Compact water dispute between urban populations of north-central Texas and the State of Oklahoma. The third case studies the power and politics specific to a water conflict between two American Indian tribes and federal, state, and municipal agencies as it related to the economic rights to sell water from Sardis Lake in Oklahoma.

## **RATIONALE**

Colleagues in other fields of study, policy makers, community leaders, research funding organizations, and the general population of citizens concerned with water conflicts will likely find it important to read the descriptive elements associated with real-life examples and the implications for action. Understanding who makes decisions and how those decisions are made for water rights is critical to realizing the consequences of market

based decisions, lawsuits and negotiated settlements. Unfortunately, these decisions can ignore ecological and social sustainability stewardship needs (Prud'Homme 2011; Shiva 2002). The importance of stewardship is an essential component of water policy that is gaining recognition. The earth does not create new water and care for it must be utilized.

How much water does the earth have that must be cared for? Roughly, 97 percent is ocean and saline (salty) water. The remaining three percent is fresh water. However, less than one percent of that fresh water readily available. Most is frozen as permanent snow in the Arctic regions (Holden 2014; Perlman 2014). For perspective, if the entire world's water was represented by ten thousand raindrops, 97 percent or 9,700 raindrops would be the ocean's salty share. The remaining three percent represents the fresh water; that would be 300 raindrops. Ice, glaciers and snow has frozen 204 of those 300 raindrops. Another 90 of those freshwater raindrops are under the ground, known as ground water. All the remaining freshwater raindrops represent surface water; it is the visible water we see in freshwater lakes and rivers. This is represented by six raindrops. These six raindrops of freshwater sources provide drinking and irrigation water.

Ground water, although we cannot see it, is a vital factor to the health of nature and society. Roughly 25 percent of water in the United States used for drinking and irrigation is obtained from the underground water. Most of this water can be extracted from within one-half mile of the surface and is particularly valuable for the more arid, western United States where less surface water is available (Perlman 2014). Increased urbanization further degrades the quality of water in many areas (Couch 2002). The

world population increases by about 81 million people each year. By 2013, the world population reached 7.2 billion (United Nations 2013b). Additionally, increased consumerism exacts a toll for water availability.

The overarching research agenda of this project is to explore the emerging field, sociology of water. Specifically, the three case studies build a foundation to address the sociological aspects of how macroscopic and microscopic influences affect the power and politics of water discourse. Numerous societies around the world are experiencing frequent and intense water disputes. Water conflicts and the way they are reconciled is an increasingly important topic for today's societies. It is a topic that demands interdisciplinary collaboration, including contributions from the discipline of sociology. Ecology, political economy, geography, anthropology and political science are areas of intersectionality regarding many water disputes. In essence, sociology of water can be understood as "a practice in which structure and agency 'meet' to reproduce and transform society" (Mollinga 2008:7). It is the understanding of macro and micro functions and how they impact water concerns. Sociology of water provides a framework from which to study the social construction of knowledge that is applied to water discourse. Agencies and actors are working within a culture of values and practices that are responsible for determining what knowledge is applied and accepted for water discourse.

There is no question that water is important to society. The importance of sociological philosophy and the science of water predate Socrates. Thales of Miletus

Turkey (624 – 546 BC) is considered one of the seven sages of the Ancient World.

Socrates recognized him as the first person to proclaim that water is the primary element of all things. He considered it the original element of the universe. And second to water is life, Thales proclaimed all had a soul (McKirahan 2010). Because we have a soul, we have society. Society and environment cannot exist exclusive of each other.

Currently, the United Nations has eight primary millennium development goals identified to improve global society. The crucial role of water and water management is evident for these goals. With 70 percent of global freshwater usage directed at agricultural purposes, eradicating extreme poverty and hunger is closely aligned to food production. Access to clean drinking water has been essentially tied to combating HIV/AIDS, malaria, and other diseases, as well as reducing child mortality and improving maternal health. Universal primary education and promoting gender equality and empowering women are also related to obtaining better access to water, since many time consuming water collection duties are fulfilled by girls and women. Environmental sustainability and global partnerships for development are critically tied to the importance of creating ecologically sound practices and practical policies for interdependencies of shared water sources (UN 2014b).

Social equity and justice are parameters that intersect all frameworks for understanding water governance (Ballabh 2008). Increased environmental knowledge, particularly as it pertains to the importance of the role of water for good stewardship, has led to a heightened awareness to water policies and the associated implications for

selected populations as it relates to those policies. “With the onset of modern states, local ties have been replaced by new forms of linkages, through impersonal and distant market forces” (Jairath 2008:55). Nearly half (46 percent) of the earth is covered by transboundary river basins which affect 148 countries. Nearly 500 international agreements attempt to develop cooperative management and minimize conflicts related to shared waters. However, these arrangements only address about 40 percent of the basins (United Nations 2014). By default, international negotiations are a negotiation of cultures. This is particularly significant when considering “more than half of all accessible global freshwater run-off is currently withdrawn by human intervention” (Bandyopadhyay 2009:148).

Sociology of water is part exploration into the parameters of social equity and justice. International socio-political relations are examined in the first case study. Issues of water conflicts are increasingly becoming items on global agendas. By understanding how socio-political dynamics affect policy and negotiation, this dissertation contributes to the understanding of how water policies are negotiated. It illuminates social inequalities between rural and urban populations. World societies are increasingly becoming urban based. By studying the effects of water demands and water transport from rural to urban areas, this paper contributes to understanding the effects of increased urbanization. The practices of racial inequalities pertaining to American Indians, who have unique and sovereign rights, are evident in this research. The United States government, namely the Bureau of Indian Affairs, maintains particular duties and

obligations for the tribes. This case study elucidates the federal government's duties and the evolving political strength of Choctaw and Chickasaw tribal power specifically as it relates to land and water rights. Topics of economic rights to sell water and cultural valuation of water are addressed. In particular, sociology has begun to recognize alternative ways of knowing from voices that have historically been silenced, such as those from American Indians. These many aspects of sociology of water are examined through identifying the historical context and contemporary issues presented within the three case studies.

## **GENERAL LITERATURE REVIEW**<sub>[MC1]</sub>

Hierarchical socio-political structures and the development, application and interpretations of water laws exert a great deal of influence on how water conflict resolutions are addressed. In some instances, no laws exist for specific issues. Conflicting laws and policies of multi-jurisdictional interests hamper resolution efforts. Additionally, missed opportunities result from outdated policies and practices. Population growth and increasing consumerism are considered major factors for climate change and environmental degradation. The evolving valuation of water from a human right to a marketable commodity is a debate among scholars. Additionally, valuation of non-consumptive water usage is gaining attention, particularly among cultures that highly value water on a spiritual, cultural or religious basis.

Sociology of water is an intensifying subject related to global dialogues regarding global water crisis and associated environmental concern. Increasingly, water is a theme



of political conventions and development agendas between nations. “Any international negotiation is an encounter between cultures and a confrontation among values” (Faure and Rubin 1993). Political activities are pillars of influence and power (Mollinga 2008). Progressively, the privatization, governance and ability to control water management is directly related to political influence (Barlow and Clarke 2002; Gullion 2013; Iyer 2007; Mithen 2012; Mollinga 2008; Prud’Homme 2011; Shiva 2002). More recent sociological studies of water and environment reveal new patterns of understanding and knowledge (Shiva 2002; Wolf 2012). “Embodied theories of knowledge do not entail universalist or determinist approaches to questions of motivation, and may provide a foundation for a more culturally relative approach” (Ignatow 2007:128). MacGregor (2010) argues gendered issues of environment are woefully lacking in the social science literature. He further reports more research is needed on the gendered oppression and effects of environmental exploitation. Likewise, other ways of knowing are critical for fuller understandings. Somerville (2013) proposes creating “new maps that produce alternative stories and practices.” Aboriginal cultural knowledge is being lost and policy tends to ignore cultural ways of knowing that are often in a ‘language’ of art, drawings, map signs and stories.

Understanding the complex issues that define water conflicts requires an understanding of various stakeholders and evolving patterns of social and political influence. Subtle shifts in political power are exhibited in periods of quiescence times as well as during events of escalating conflict. In particular, when multiple agencies and

multiple jurisdictional laws are in disunity, social capital is often employed by actors to strengthen their stated or desired positions. Contemporary land and water debates cannot be solely predicated on “mistaken notions about the primacy, rigidity, acceptance, and inevitability of the prior appropriation system...” (Shurts 2000:252). Twenty-first Century debates on water will require embracing the growing importance of addressing ecological needs that demand sufficient water allocation as understanding increases for the consequences of environmental degradation. Furthermore, water policies are being affected by both subtle and swift transformations in political knowledge and influence by selected stakeholders. In the case of American Indian water rights, selected tribal nations have relentlessly pursued their rights to sovereign power (Cattelino 2010.) Access to expert legal representation and better management of their economic opportunities including gaming, business development, and natural resources have greatly increased the political influence of various sovereign tribal nations.

In addition to sovereign tribes, geographically positioned nation states and regions exert political power. Upper basins for whom in the past allowed excess water to flow to lower basins now fear future demands of their own could be negated by past and current practices. A “use it or lose it” attitude has some upper basin regions practicing wasteful or economically irresponsible practices in order to maximize water usage, thus curtailing excess flows. These policies do not induce conservatorship or best practices for water sources (El-Ashry and Gibbons, 2009).

Another detriment to resolutions is conflicting economic policies between stakeholders. Varied water valuation methodologies affect the process of resolving conflict. Agreements can be made but further conflicts arise for numerous reasons. For instance, agreements related to quantity of access might not address quality (potability) of water. Conflicts arise when data discrepancies occur either through error or change. Significant climate change and drought conditions have sparked controversy over percentages of allocation when amounts have been over-allocated in contract, but are not available because of drying conditions (Dinar et al. 2007). Past treaties of resolutions are mentioned in the literature but the details are obscure or omitted (Balthrop and Hossain, 2010; Conca, 2008).

Debates over scarcity are countered with disproportionate use by industry and excessive consumption. Communities that promote non-native landscaping are a particular target for criticism. Oklahoma State Senator Jerry Ellis represents the population of southeast Oklahoma that is affected by water conflict with Texas. He questioned the argument of scarcity and contends their Texas neighbors are not suffering from thirst but common sense. “They want us to be a bunch of dumb Okies and give them our water for pennies on the dollar. But they don’t use their water wisely. Too many Texans water their sidewalks” (Carter 2013). Carter (2013) goes on to report “According to a 2011 study from the Texas Water Development Board, about 31 percent of the state’s single-family residential annual water consumption is dedicated for outdoor purposes.” Combined with wasteful practices, criticism is fueled with increased industrial uses of

water. “Fields of corn crumble to dust. My flowerbed withers and browns....Meanwhile five million gallons of water are diverted to crack/frack the [gas] well up the block. Five million gallons lost, contaminated with chemicals and radiation” (Gullion 2013:492). The perception that rich Texans want “dumb Okies” water is an attitude that is a lived experience throughout the world. In U.S.-Mexico industrial border region, babies consume Coca-Cola and Pepsi due to scarcity of clean drinking water. Yet, ample water is provided to the manufacturing facilities in the area. These facilities are mostly owned by private companies. In Lima Peru, poor residents pay three dollars for water compared to thirty cents paid by the rich. Lusaka Zambia finds their poor residents paying half their income for water (Barlow and Clark 2002).

Eighty-five percent of global water consumption is used for agricultural practices (Jury and Vaux, 2007). As populations increase, food needs will continue to rise. The value of water for agricultural purposes cannot be understated (Goetz and Berga, 2006). Traditional cultural practices of the arid area were to create irrigation systems along the floodplains for agricultural purposes. Pressure is mounting to divert usage for growing urban populations (Fernald, et al., 2007; Nitze, 2009). Governments and institutions support the increasingly market-driven focus prioritization over a human rights approach to water (McCaffrey, 1996; Prud’Homme 2011). Researchers argue a new framework must be constructed that mobilizes an interdisciplinary approach with collaboration between social, natural, and engineering scientists (Bandyopadhyay 2009; Carter and Charles 2010; Faure and Rubin 1993; Iyer 2007). This intersectionality of influences on

how water conflicts are framed and resolved provides the foundation for creating the three specific analyses of shared water conflicts presented in the case studies.

### **GENERAL LIMITATIONS**

As with all research, general limitations exist. For case studies “construct validity” is often cited as a primary concern. Relying on more than one document source for collecting sufficient amounts of operational data for the evidence was a precaution that was undertaken to ameliorate this limitation. Construct validity is closely associated with the limitation of the idea that case studies are biased due to “the researcher’s preconceived notions” (Flyvbjerg 2006:4). Applying Ritzer’s theory of integrative social analysis substantially reduced this possibility. Including both macro and micro affects of the cases ensured the research was not flawed because of the lack of consideration for multiple perspectives and conditions associated with the cases. Additionally, case study research is subject to the condition of a lack of generalizability. Experts agree a single case, Graham Allison’s Cuban missile crisis study, demonstrates generalizability and that it “forcefully demonstrates how a single case study can be the basis for significant generalizations” and can be used to determine whether a theory’s propositions are correct (Yin 2014:7). Indeed, results from a single case study can lead to reshaping how conflict resolution and policy decisions are made within the constructs of sociology of water. Each of the three cases presented here can be taken singly and the lessons learned can be generalized to not only water disputes but disputes of other natures.

Limitations also exist within the scope of the topics covered. This dissertation was limited to the exploration and analysis of three case studies. It was further limited to questions related to power and politics. The cases were chosen specifically to illuminate a selected number of parameters related to water conflict. A common element for each case was the inclusion of an historical perspective within the frame of analysis. Lessons can be learned from studying the past. Ancient hydraulic engineering has impacted the shaping of cultures. Karl Wittfogel (1896-1988) proposed the *hydraulic hypothesis*. It argues that it was the construction of large-scale water works that created an individual's dependence on society. And forthwith, these waterworks gave rise to the relationship between water and power (Mithen 2010). Water management and its relationship to the economic, social, and cultural development provide an opportunity for additional sociological inquiry which is undertaken with the three case studies presented.

## **GENERAL THEORY AND METHODS<sub>[MC2]</sub>**

A qualitative approach was utilized for the three case studies of water conflicts which identified the issues of inequalities related to political power. An explanatory study of each situation was examined for the purposes of explaining how and why certain conditions came to be and to explain the sequence of events that occurred (Yin 2014). The case studies were conducted utilizing Ritzer's integrative theory of social analysis (Ritzer 1991). (See Figure 1). This approach was selected after consideration of a number of other possible theories.

Conflict theory supports research with an overarching element that considers desire for power and control of resources as the axis. It illustrates power dynamics but is less applicable for studying the influence of structure, culture, norms and values. A political economy theory is ideally suited for a macroscopic examination of the topic but is less conducive for exploring the micro actions associated with conflicts and negotiations. Equally unsuitable, were theories of symbolic interaction, frame analysis, or Foucault's theory of power; they took a closer perspective to micro functions and analysis in their applications. Besides Ritzer's theory, Parsons' structures of social action adequately supported analysis of macro and micro structure. This application was eliminated for its lack of support for historical elements of time and change.

Therefore, after careful deliberation of all the parameters under investigation, I preferred Ritzer's theory of integrative social analysis was the appropriate theoretical basis for this research. Ritzer's theory is the lens through which the multiple dialectical relationships associated with each water conflict are examined. Rather than focusing on macro or micro orientations, Ritzer's theory created an effective tool for combining both. The overriding value of Ritzer's theory is its concise ability to view how macroscopic elements are manifested in the objective forms of judiciary, bureaucracy, architecture, language, and technologies of societies. The subjective influences of culture, norms and values are layers of analysis that will not be overlooked. Ritzer's theory is then bilaterally influenced with micro actions of individual stakeholders that create patterns of behaviors and interactions. Studying the interrelationships between macro and micro

dimensions of water conflicts allows for an understanding to emerge on how the dialectical relationships shape the conflicts and resolutions of water policies and agendas. The integrative theory of social analysis has been successfully utilized in a variety of applications of research studies from tourism to consumer credit (Ritzer 1995; Tazmin and Lee 2003). It is an appropriate tool and was applied to all three distinctly different case studies of water conflict.

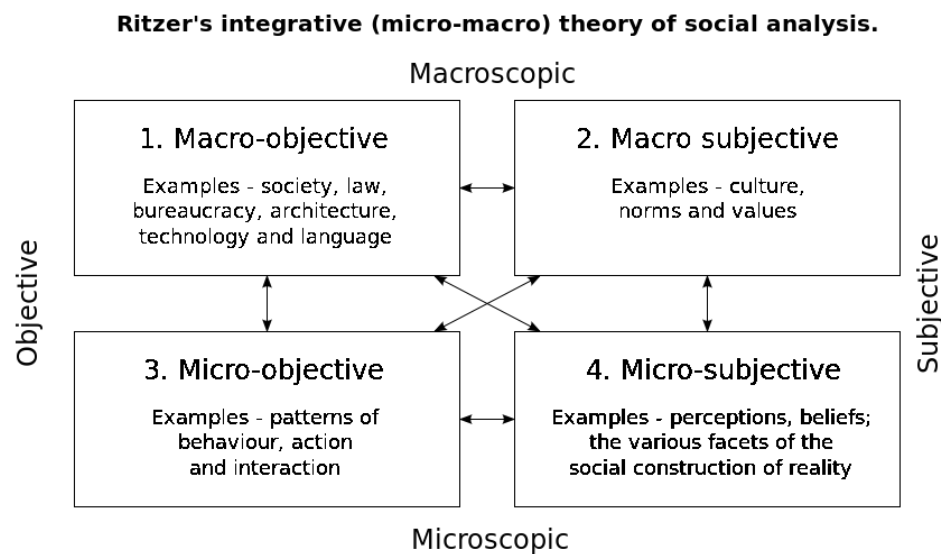


Figure 1 - Ritzer's integrative theory of social analysis

The case study approach provided satisfactory procedures for ensuring quality research (Yin 2014). Construct validity occurred through using several sources of data collection (e.g. treaties, laws, policies). A number of case studies have been produced using descriptive techniques and focusing on water conflicts (Alexander, Fassett and Williams 2012; Benson 2012; Faure and Rubin 1993). Internal validity was ensured with pattern matching and explanation building from a chronological arrangement of the data.



Replication logic for multiple case studies provided external validation (Yin 2014). Reliability was met through the development of case study databases (see Appendix B and Appendix C). The databases will allow future researchers to replicate the process and obtain the same results. With hundreds of cases related to water conflicts to choose from, a strategy for selecting three cases had to be undertaken. The information-oriented type of maximum variation of cases was selected. In total, 1,687 pages of text were analyzed for this project. The purpose of this choice was the ability to inform from various circumstances. In this regard, the three selected cases vary in their nature of the location, organizational structures, actors, conflicts, and historical context.

The first case involved the international riparian boundary disputes between the United States and Mexico. The second case involved interstate water transference disputes between Texas and Oklahoma that highlighted the urgency of urban population water needs. The final case evaluated sovereign nation rights for American Indian tribes and the powers afforded city, state and federal institutions and agencies.

## CHAPTER II

### HISTORICAL OVERVIEW

"The legal system ironically remains one of the last to perpetuate a form of racism."

*In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided*  
By: Walter R. Echo-Hawk II

In order to fully appreciate the magnitude of the impact past experiences bring to the conditions of power and politics related to water discourse and negotiation, each of the case studies that will be presented deserve full attention to the historical conditions that preceded the conflict. The historical overview will provide the reader with an enhanced understanding of how past and shared experiences become knowledge. In turn, that knowledge becomes objective reality. Repeated actions become habitual and are reproduced almost without thought. "Habitualization carries with it the important psychological gain that choices are narrowed" (Berger and Luckman 1967:53). The process of repeated actions leads to an institutional history that directs the actions of the participants. In the following histories, it is presented that water negotiations are very much influenced by the historically embedded actions of actors within organizations. Institutions, core to societies, create an objective reality that antedates an individual actor's birth. The history itself is not accessible to one's biographical recollection. Yet, it maintains a coercive power through sheer force of facticity (Berger and Luckman 1967). Many sociological theorists agree with this assertion. George Simmel (1971) states the shackles of history exerted onto the individual's mind are oppressions as strong as any

external agency. Understanding the prevailing psychological perspective of water conflict participants can aid in recognizing opportunities for conciliation. Additionally, as some parties find their historical truths are subjected to the regimes, or games of truth. The rules for discourse are assembled “to which the true and false are separated and specific effects of power attached to the true” (O’Farrell 2005:65). It is for this reason that when analyzing the power and politics of water conflict, it is necessary to understand how vulnerabilities are constructed for the frame of experience. One must “consider the specific conditions under which illusion, delusion, and deception are easily produced” (Goffman [1974] 1986:448).

The conditions for these experiences and beliefs about those experiences can be traced back several generations that lead to the construction of institutional history. In 1786, the Treaty of Hopewell designated land to the Choctaws for the purposes of living and hunting. The Treaty stated that any person that is not Indian that attempts to live on the land designated to the Choctaws “shall forfeit the protection of the United States of America, and the Indians may punish him or not as they please” (Kappler 1904:12). This language points to a measure of sovereignty and self-determination for tribes. Tribes were to be afforded the power to rule their own dominions.

Subsequent treaties between the Choctaws and the United States government negotiated various issues of the early 1800s. Between 1801 and 1820, a total of six treaties were ratified in fairly rapid sequence. The 1801 Treaty of Fort Adams proclaimed that the “Choctaw nation of Indians, do hereby give their free consent” (Kappler 1904:56)

for an interstate roadway (wagon trail) to be constructed through the Choctaw Nation land, and “Shall be and continue forever, a high-way for the citizens of the United States and the Choctaws (Kappler 1904:56). Relinquishing the land was via “quit claim for ever, all their right, title and pretension to the land” (Kappler 1904:57). Unlike a right-of-way easement, the quit claim effectively removed all rights and ownership to the land from the Choctaws. For their relinquishment, they were provided “two thousand dollars in goods and merchandise... and three sets of blacksmith’s tools” (Kappler 1904:57). In 1802, the Fort Confederation Treaty required the Choctaws to quit claim about ten thousand acres that essentially consisted of the grounds where Fort Confederation existed. In return, the Choctaws received the sum of one dollar. The land cession was “For the mutual accommodation of the parties, and to perpetuate that concord and friendship, which so happily subsists between them” (Kappler 1904:63). The treaty ratified the following year proffered a few more concessions in exchange for land. This 1803 Treaty of Hoe Buckintoopa, provided that the Choctaws were to receive “fifteen pieces of strouds [blanket material], three rifles, one hundred and fifty blankets, two hundred and fifty pounds of powder, two hundred and fifty pounds of lead, one bridle, one man's saddle, and one black silk handkerchief” (Kappler 1904:69-70). Land cessions continued. In 1805, the Mount Dexter Treaty provided that \$50,500 was to be given to the Choctaws, of which \$48,000 was to be applied to their debts with merchants and traders (Kappler 1904).

This series of treaty negotiations clearly identifies the Indians in a subordinate position. It is well documented that access to alcohol was an adverse factor towards Indian assimilation and economic independence. “A trader could only sell the same person so many pots and blankets, but alcohol led to excessive demand and overuse....One English company estimated that liquor made up eighty percent of its sales to the Choctaw” (Miller 2012:33). Traders and government representatives readily supplied alcohol during merchant transactions, land exchanges and treaty negotiations (Blackhawk 2006; Blaisdell 2000; DeRosier 1960; Mancall 1995; Miller 2012). The effects of alcohol and land transactions are documented as far back as 1639-1654. In a 1717 petition disputing those land transactions it was argued the transactions were invalid because “Indians when drunk would for a bottle of strong liquor sign any paper presented to them” (Banner 2005:62). About one hundred years later, the same tactic still prevailed. In 1803, President Jefferson suggested the best way to procure Indian land was through the establishment of trade, including alcohol, and liberal credit lines as standard federal Indian policy. “Because we observe that when debts get beyond what the individual can pay, they become willing to lop them off by cession of lands” (Banner 2005:143). This strategy was not reserved for Choctaw or Chickasaw tribes. During 1879-1880 “bribery, alcohol, and intimidation” facilitated a four million acre land cession from the Ute tribe (Blackhawk 2006:224).

In 1816, the Treaty of Fort St. Stephens allowed the United States to successfully acquire additional Choctaw land that bordered the land acquired in the Fort Dexter treaty.

Roughly ten thousand acres of Choctaw land were exchanged for “the sum of six thousand dollars annually, for twenty years; they also agree to pay them in merchandise” (Kappler 1904:137). What was sold for twelve dollars per acre in 1816, adjusted for inflation in 2012 dollars, the Choctaws would have received \$160 per acre - and their trinkets.

The 1820 Treaty of Doak’s Stand resulted in the Choctaws ceding half of what remained of their native homeland. The language presented in the treaties is carefully considered and highlights the power differential. The treaty language referred to the amount as “a small part of their land” (Kappler 1904:191). The “small part of land” included the rich Mississippi River frontage including the southeastern half of the present day State of Arkansas and the west-central one-third of river frontage for the State of Mississippi. Additional terms referred to the removal as it is the *wish* of the Choctaws to be removed. “For the purpose of aiding and assisting the poor Indians, who wish to remove... and to enable them to do well and support their families, the Commissioners of the United States ... give to each warrior a blanket, kettle, rifle gun...” (Kappler 1904:192). No mention is made of alcohol or black silk handkerchiefs. While not apparent within the Choctaw treaty, it should be noted in treaty negotiations with other tribes, the kettle was an item of scorn. The minutes of the secretary recorded for a five day treaty council held with the Crow tribe regarding their removal in August of 1873 in Montana Territory revealed that negotiations had been ongoing for four days. On the fifth day, an Indian woman entered the discussion room. Upon overhearing the talk between

Felix R. Brunot, who was serving under President Ulysses S. Grant as Chairman of the Indian Commissioners, and a tribal elder; the Crow woman appeared unable to remain silent any longer. “I am woman and ought not to speak...but I want to speak...You bought our land before, and gave us kettles that would not hold water” (Brunot et al. 1874:123).

Although a discussion has been provided for the role of alcohol in transactions, the Treaty of Doak’s Stand explicitly directs the government agents to curtail access and use of alcohol. “In order to promote industry and sobriety amongst all classes of the Red people...the agent appointed to reside here, shall...seize and confiscate all the whiskey which may be introduced into said nation...”(Kappler 1904:193). In addition to limited English proficiency, what effects alcohol had in treaty negotiations cannot be quantified at this time and are lost to history. What we can consider is the fact that some English speaking whites, often traders, fur bearers, and missionaries intermingled with the tribes; they often married into the tribe. They often served as counsel, interpreters, and witnesses to treaty negotiations. Although the tribes had some English speaking skills and interpreters, it should be noted that the Treaty was signed by Andrew Jackson and Thomas Hinds, as Commissioners for the United States. A total of ninety-nine Choctaw Chiefs and Warriors signed the agreement. Some of their names were Chatamakaha, Hakatubbee, Henekachubbee, Muttahubbee, Tuskanohamia and others of Choctaw dialect. All but four signed their agreement to the Treaty terms by writing an “X” beside their name. The four persons capable of signing their name in English were signors with

English names: Captain James Pitchlynn, Captain Joel H. Vail, George Turnbull, and Alex. Hamilton (Kappler 1904:194-195).

At this juncture, in 1826, tribes were adamant in their refusal to sign more treaties. That year, the proposed treaty became known as the 1826 Refusal of Chickasaws and Choctaws (Choctaw 2010). During October and November of 1826, additional proposed treaties were presented to the Choctaws and Chickasaws. Over the course of the many weeks, it became clear the tribes steadfastly refused. No matter the persuasive intents of the Indian Agents, they returned to Washington D.C. and described their efforts as “an entire failure to succeed” (Choctaw 2010:1). So taken aback were the agents as to the complete and total breakdown of negotiations, they communicated to the government [President of the Senate] that “It was important to our Government that everything appertaining to the correspondence with those nations, as well as their feelings towards the United States, should be communicated to you in person...in a more clear and pointed manner than it could be done in a written communication” (Choctaw 2010:1). The Indian Agents communicated they had tried to explain to the Indians “the many advantages that would result to their nation by such removal” and that they have a ‘special agent’ who has spent some time in “active and zealous in communicating with the chiefs and leading men of the nation, endeavouring to prepare their minds for a cession of their lands. But it seems to have no other effect than to prepare them for an organized opposition” (Choctaw 2010:4). The holdout did not last. Although they refused to sign another treaty, with the ascension of Andrew Jackson to the United States Presidency in 1829, one of his



first orders of power was to sign the 1830 Indian Removal Act, “An Act to provide for an exchange of lands with the Indians... the President [shall] solemnly assure the tribe...the United States will forever secure and guaranty to them, and their heirs or successors the country so exchanged” (Library 1831:411-412). The declaration of land forever was sealed shortly after Jackson’s address to Congress which outlined his priorities for how the Indian removal would proceed.

“It gives me pleasure to announce to Congress that the benevolent policy of the Government, steadily pursued for nearly thirty years, in relation to the removal of the Indians beyond the white settlements is approaching to a happy consummation. Two important tribes have accepted the provision made for their removal...it is believed that their example will induce the remaining tribes also to seek the same obvious advantages” (Library 1832:ix).

With the full force and effect of the Presidency, the Choctaws had little recourse but to submit and they signed the 1830 Treaty of Dancing Rabbit Creek. It forced the tribes out of their eastern homelands in Mississippi and relocated them. The removal process became known as the Trail of Tears. It is not a singular event or a singular route. It refers to the era of relocation of numerous Indian tribes that were forcibly removed to Oklahoma in order for white expansionism to flourish. Numerous clans and various tribes travelled westward along several different routes to the designated “Indian Territory” now known as Oklahoma. The Treaty of Dancing Rabbit Creek is considered one of the primary documents outlining the Chickasaw and Choctaw rights to the lands and waters

of Oklahoma presented in *Chickasaw v. Fallin*. The salient provisions rested on the specific Treaty language providing “present and future use water rights, regulatory authority over water resources, and right to be immune from state law and jurisdiction” (Burrage, Rabon and Greetham 2011:2). This preservation of rights was further upheld by the United States Congress before admitting Oklahoma to statehood in 1907 by the provision of a disclaimer of authority over Indian rights and property (Burrage, Rabon and Greetham 2011).

The removal process pushed numerous tribes onto smaller and smaller tracts of land. While the Choctaws originally claimed virtually all of what is the southeastern quarter of the current State of Oklahoma, when the Chickasaws were being relocated, the Choctaws ceded the western portion of their quadrant to the Chickasaws. It was inevitable discord would result when disagreements ensued. Disagreements between tribes occurred for a number of reasons. Traditional tribal governments were decimated when elders succumbed to the harsh conditions of the removal. Another contribution to the rapid loss of tribal knowledge was the “Wave after wave of epidemics that each destroyed 30 to 50 percent or more of a tribe” (Miller 2012:32). As tribes relocated to Indian Territory, they had to rebuild their homes, communities, and societies. They suffered economic stress as many arrived with few belongings and little preparation for farming. Large game, primarily bison, became more difficult to hunt; alcohol was more readily available and had negative consequences. Notwithstanding, despite the oft portrayal as all tribes being similar, tribes possessed distinct cultures and values,

languages and spiritual beliefs separate and unique to their own tribes. The clashing of cultures brought on yet another treaty. As the full effects of removal became clearer, in 1835, the United States government implemented the Camp Holmes Treaty. In essence, it instructed all the tribes to get along with each other and not molest or injure members on their way to or from hunting grounds as they might pass through each other's areas. Not all tribes were friendly with each other before removal. The stress to their cultures and communities after removal only served to further foster situations of discord. Having removed thousands and thousands of members of various tribes onto the lands of Oklahoma, it could only be expected that disharmony developed. Currently, there are 38 federally recognized tribes that claim Oklahoma as their home, the highest number within the contiguous states. The only state that surpasses this number is Alaska, home to 229 recognized tribes (NCSL 2014). The 1835 agreement requested the tribes live in harmony, in return, the Indians received more "presents" when they signed the treaty.

There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing the Comanche and Witchetaw nations and...between the Cherokee, Muscogee, Choctaw, Osage, Seneca and Quapaw nations or tribes of Indians....Every injury or act of hostility by one or either of the contracting parties on the other, shall be mutually forgiven and forever forgot. Indians having freely and willingly entered into this treaty...shall receive presents immediately after signing, as a donation from the United States; nothing being asked from these nations or tribes in return, except to remain at peace with the parties hereto" (Kappler 1904:435).

Despite the disputes, the Choctaws and Chickasaws began to recognize the mutual benefits of collaborating towards achieving mutual goals. The Chickasaws, now residing on the western boundary of the Choctaw territory in extreme southeastern Oklahoma had

their district formalized for them in the 1855 Doaksville Treaty. It was signed to clarify the boundaries for the two nations. This Treaty supported the Chickasaw's position as claimants to the Sardis Lake water dispute.

A decade after Doaksville, the Choctaw and Chickasaw tribes jointly entered into another treaty with the United States government. The 1866 Choctaw and Chickasaw Treaty granted railroad right-of-ways through their territories. "Just as they had opposed removal, the full-bloods led opposition to grants of land to the railroads. They knew that the railroads would bring an increase of white population into their country" (Morrison1987:47). Once again, their desires were overridden. The treaty also required the tribes to aid yet another tribe facing removal: the treaty was to allow for the moving of the Kansas tribe onto areas held by the Choctaws and Chickasaws. Furthermore, the treaty outlined the autonomy of the tribes by declaring their right to establish a council, set laws and courts and reflected that the "General assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes (Kappler 1904:922). And most importantly to this case, the treaty declared the land was to be held in "severalty" where the land is held by one person or one legal entity. The purpose "it is believed that the holding of said land in severalty will promote the general civilization of said nations, and tend to advance their permanent welfare and the best interests of their individual members" (Kappler 1904:923). Traditional American Indian culture reflected that land was not "owned" by any one person. Land was free to use. It was a natural resource that could not be sold. Full-bloods vehemently opposed individual

land ownership. “Half-breeds and adopted citizens were more inclined to consider allotment in severalty” (Morrison 1987:65).

Opening for individual land ownership gave the United States power to divide the tribe and allowed for “negotiations” with individuals. Between 1887 and 1934 the assimilation efforts to convert large tracts of tribally owned land to individual plots was particularly egregious (Canby Jr. 1988). The 1887 Allotment Act, commonly known as the Dawes Act, forced the issue of assimilation to white society values of individual land ownership. Eastern Oklahoma tribes, including Chickasaws and Choctaws, were especially susceptible to graft, greed and gross negligent abuse when their lands became eligible for individual sales. In 1908, newspaper ads and posters prominently advertised Oklahoma Indian land for sale (Banner 2005). Railroad companies advertised selected train routes to the new state of Oklahoma. “Uncle Sam opens the way to the Indian Lands... eight million acres of land now belonging to the Cherokee, Creek, Seminole, Choctaw and Chickasaw Indians...the Indian owner may sell it to any person that chooses to buy it. This will give the homeseeker an exceptional opportunity to purchase some of the most fertile land of Oklahoma at prices from \$10 to \$30 an acre” (Oklahoma Historical Society 2014).

When asked what the expected results were to having individual ownership of the real estate, one familiar with the territory replied “I think lots of Indians would be homeless for the reason that a good many of the Indians do not understand the English

language, and there are a lot of grafters ready to take advantage of it. Probably in some instances they would make them drunk and get a deed from them” (Frazier 1930:5318).

As Indian Territory land became more readily available, white settlement proliferated. According to the provisions of the 1906 Oklahoma Enabling Act, Oklahoma was admitted to the union in 1907 under the conditions that the new State “was compelled to disclaim all right and title to Indian lands...and the federal government expressly retained its exclusive authority over Indian matter” (Henderson 2011:12). The conditions did not prevent individual land sales from occurring on Indian lands.

In 1930, United States Senator Lynn Frazier was serving as chairman of the Committee on Indian Affairs and led a five day hearing in southeast Oklahoma to learn the true nature of Indian Affairs. Testimony of Jessie Moore, who was born and reared in the Chickasaw Nation was now living in Oklahoma City and employed as Clerk of the Supreme Court of Oklahoma. She sought to provide testimony illuminating land injustices.

Well, first. Senator [Frazier], it seems to me that there should be greater cooperation between the department at Muskogee and the county judges of the State. ...I investigate guardianship estates of Indian minors. I will give you one illustration....This involved a little girl's royalty under a valuable inheritance...her father's allotment. It was sold, so the petition read, in order to pay her actual expenses of living.... [She] had \$20,000 on deposit at Muskogee. I asked the county judge why it was that this valuable property was sold at a sacrifice when she had this money on deposit. He said, “Well, Mrs. Moore, we have no knowledge whatever of the property of these Indians in Muskogee” (Frazier 1930:5340).

Testimonies continued lamenting irregular land sales involving widows and orphans. There was a general consensus some Indians did not understand the value of land or even the value of money and that stricter regulations were needed. “Certain abuses of the laws governing restricted lands of members of the Five Civilized Tribes and their heirs, within the State of Oklahoma, have developed to such an extent that it is the opinion of many familiar with this question that such abuses merit the careful consideration of Congress” (Frazier 1930:5466). One witness to the testimonies submitted the following account.

I am a Choctaw Indian...and I live in Pushmataha County, Oklahoma.... The commissioners...appraised the land at \$900.... Julius Frazier came to my house.... I got in the car with him and...V. Bronaugh... and we...went to the court clerk's office and Bronaugh handed a check to the clerk for \$600 and I signed a paper or a receipt. Then...we went ...to a bank....the banker counted out \$600 in \$20 bills and laid them on the counter, and Bronaugh picked them up and kept them....Bronaugh did not give me any of the \$600 or say why he took it....I never had the money in my hand, for the reason that Bronaugh picked it up off the bank counter.... I have never received the money for the land.... (Frazier 1930:5475)

Individual land allotments were spuriously removed from Indian holdings. In 1885, Indian reservations consisted of roughly 166 million acres of land. By 1934, it had been reduced to 52 million acres of land remaining in Indian control (McCool 2002).

As lands surrounding the Indians were carved away at a rapid pace after 1885, a new theory related to the waters of Indian lands was being formulated. The doctrine of federal reserved water rights was a theory of water rights that emerged as a result of the 1908 Supreme Court ruling, *Winters v. United States* (Greetham 2012). Commonly

referred to as the Winters Doctrine, it ruled that “federal reservation of lands from the public domain will be presumed to include waters adequate for accomplishing the purposes of the reservation” (Greetham 2012:2). By the time of the *Winters* decision, a number of water projects for dams, reservoirs and irrigation were being constructed. The primary beneficiaries were interest groups of the locally oriented projects which were constructed within influential congressional districts.

Water projects were an escalating federal expenditure. Highly politicized, there were twenty-four political action organizations pushing for water projects during the *Winters* era (McCool 1994). During this period of eroding American Indian rights, projects were often constructed through Indian lands with little or no regard for Indian rights. The Winters Doctrine began to address this omission and became the cornerstone of legal precedence for Indian water rights. The court made two important pronouncements. The encroaching developers wrongfully entered the river, built large dams and reservoirs, and diverted the waters causing deprivation of waters to the Indians. “This diversion of the water...has continued until the present time, to the irreparable injury ...for which there is no adequate remedy at law” (Winters 1908). Winters addressed the omission of Indian interests in the construction of water projects. It further ruled it was immaterial whether treaty or reservation doctrine was explicit or implied regarding water rights; the clear intent was that the all the waters went with the land for Indians use. “All of the waters ...are necessary for ... the Indians, and to encourage habits of industry ...it is essential and necessary that all of the waters of the river flow



down the channel uninterruptedly and undiminished in quantity and undeteriorated in quality...” (Winters 1908:2). The ruling was a significant declaration for Indian water rights and is considered one of the strongest elements upholding Indian water rights. This judicial commitment to justice has been firmly upheld for over a century (Cosens and Royster 2012).

Following *Winters* in 1934, the *Indian Reorganization Act*, also called the *Wheeler-Howard Act* was an important recognition that lands and resources belonging to American Indians should be better conserved for tribal benefits. Somewhat making amends for the disastrous 1887 Allotment Act, the 1934 decision acknowledged the tribal belief in community over individual. The *Indian Reorganization Act* contained support for tribes adopting their own constitutions and elected tribal leaders (Schaefer 2012). While the Act did support tribal sovereign nations’ ability to negotiate their own destinies, minimal funding for Indian water projects was difficult to procure. Meanwhile funding for U.S. Army Corps of Engineers projects proliferated. The Corps continued to expand as one of the most powerful government agencies. Their federal dam and reservoir building continued in targeted congressional districts (McCool 2002). One project was the Sardis Lake reservoir.

American Indian lands were taken through the democracy of American government. The era of disposition and cultural annihilation has been reasonably compared to the legal framework that allowed for the removal of Jews (Echo Hawk 2010). “Government removal of indigenous groups from their aboriginal lands is

considered an act of genocide in the world today” (Echo Hawk 2010:114). Land was taken; treaties were broken, unscrupulous management of Indian property prevailed through the twentieth century. During this time, the specificity of water rights, and its important role in economic development was beginning to gain attention.

Consideration of how tribal representation is not adequately present for water valuation and administration of Oklahoma waters can be compared to the repeated efforts of the American Indians to communicate their cultural valuation and rights to their original lands. Historical documents recorded their repeated attempts to share their cultural values and beliefs in an effort to inform their position regarding giving up their land and natural resources. Indians sent the following message to the President of the United States in 1794. “I do not think there is a son capable of selling the grave of his mother. Were we to sell our lands, The Grand Source of Life would be displeased, for we should also sell the bones of our fathers.... Tell the great chief [United States President] what I have just said; they are our unanimous sentiments” (U.S. Congress 1832).

Thirty-six years later, in 1830, the Indians continued to reiterating the same significance for their cultural values. The message was eloquently acknowledged by the congressional representative for Massachusetts, the Honorable Edward Everett in his speech on the floor of the House of Representatives regarding the Bill for the Removal of the Indians. He reminded his congressional colleagues of the importance of Indian values when he stated “‘We will not sell the spot which contains the bones of our fathers,’ is almost always the first answer to a proposition for a sale. The mysterious [spiritual

burial] mounds ...are objects of reverence” (U.S. Congress 1830). Everett implored his colleagues in the House of Representatives to vote against the Bill for the Removal of the Indians or face the regret that history would foretell of their decision if they followed through with forced removal. “The evil, sir, is enormous; the violence is extreme...the inevitable suffering incalculable.... Nations of dependent Indians...driven from their homes.... You cannot explain it, you cannot reason it away....And we ourselves... when the interests and passions of the day are past, will look back...with self reproach and regret as bitter as unavailing” (U.S. Congress 1830:1079).

When French political observer and author, Alexis de Tocqueville (1805-1859), explored America between the years of 1831-1833, he witnessed the “democracy” of America and detailed its many attributes that particularly applied to white citizens of the United States, regardless of class basis. However, when writing his treatise, he closed with some final thoughts he could not leave unsaid. It addressed the decidedly undemocratic treatment of negroes [*sic*] and Indians. “I should be sorry to have my reader suppose that I am coloring the picture too highly; I saw with my own eyes several of the cases of misery which I have been describing; and I was the witness of sufferings which I have not the power to portray”( Tocqueville 2013:18). In our attempts at understanding the prevailing conditions surrounding particular events, we are often relegated to only having access to one account of the events, namely, the official United States government version. These events are frequently recorded from the ethnocentric position of the Indian Agents, War Department soldiers and congressional letters and reports. For the following

example, we have two other perspectives for which we can rely on to obtain alternative viewpoints.

On the same day of a particularly disturbing event that epitomized the lack of democracy in America, Tocqueville wrote a letter to his mother. He described the day he experienced to her. The emotions conveyed in the letter can be interpreted much like an ethnographer's field notes in an unedited and uncensored presentation. Four years after the letter to his mother, Tocqueville publishes *Democracy in America*, the event is revisited and recorded for a second time. As it happened to be, on one of the exact days and places Tocqueville conducted his journey through America, he was fortuitously a participant to and bore witness to a segment of the Trail of Tears, the forced emigration of Native American tribes from their eastern homelands to the designated Indian Territory [Oklahoma]. The event occurred early on the morning of December 25, 1831 in Memphis Tennessee, on the banks of the Mississippi River. It was one of the coldest and brutal winters ever recorded for the area. Later, in the evening of that same day, Tocqueville remained in his cabin aboard the ferry, whilst the band of Choctaws remained in their own quarters of the vessel. Tocqueville, a member of the French elite, penned this letter to his mother, Louise-Madeline-Marguerite le Pelletier de Rosambo, Countess de Tocqueville. He documented for this member of elite society what transpired as he perceived the events amongst a burdened civilization of Choctaw Indians.

We had not left yet: it was a question of embarking our exiled tribe, its horses and its dogs. Here began a scene which, in truth, had something lamentable about it. The Indians advanced mournfully toward the bank. First they had their horses go aboard; several of

them, little accustomed to the forms of civilized life, took fright and plunged into the Mississip[p]i, from which they could be pulled out only with difficulty. Then came the men...then the women carrying their children attached to their backs...burdened down with loads containing their whole wealth...Finally the old people were led on. Among them was a woman one hundred and ten years old. I have never seen a more appalling shape. She was naked save for a covering which left visible, at a thousand places, the most emaciated figure imaginable. She was escorted by two or three generations of grandchildren. To leave one's country at that age to seek one's fortune in a foreign land, what misery! Among the old people there was a young girl who had broken her arm a week before; for want of care the arm had been frozen below the fracture. Yet she had to follow the common journey....When everything was on board the dogs approached the bank...and began howling frightfully....In the whole scene there was an air of ruin and destruction...one couldn't watch without feeling one's heart wrung. The Indians were tranquil, but sombre and taciturn....We will set them down tomorrow in the solitudes of Arkansas. One must confess that it is a singular fate that brought us to Memphis to watch the expulsion... (Tocqueville 1986:68-73).

With time and reflection, Tocqueville recounted the event four years later for his documentary saga, *Democracy in America*. Essentially, the emotions of his recollections remain the same.

It was then the middle of winter, and the cold was unusually severe; the snow had frozen hard upon the ground, and the river was drifting huge masses of ice. The Indians had their families with them; and they brought in their train the wounded and sick, with children newly born, and old men upon the verge of death. They possessed neither tents nor wagons, but only their arms and some provisions. I saw them embark to pass the mighty river, and never will that solemn spectacle fade from my remembrance. No cry, no sob was heard amongst the assembled crowd; all were silent. Their calamities were of ancient date, and they knew them to be irremediable. The Indians had all stepped into the bark which was to carry them across, but their dogs remained upon the bank. As soon as these animals perceived that their masters were finally leaving the shore, they set up a dismal

howl, and, plunging all together into the icy waters of the Mississippi, they swam after the boat (Tocqueville [1885] 2007:239).

Besides the Tocqueville versions of the event, we have a similar version of an event told from the perspective of a young Choctaw boy crossing the Mississippi by boat. Like many cultures, Choctaw history is preserved through oral history. Tim Tingle recounts the story told to him of the story of his great, great grandfather who was but a boy on the Trail of Tears, and was now travelling with his older brother and father on the Trail of Tears. Their mother had died on the walk a few days prior to their arrival at the river. The family had a dog that was still with them travelling on the walk. When they arrived on the bank of the Mississippi river, events unfolded for the little Choctaw boys, much the same as they had for the French observer, Tocqueville.

There was no room for the dogs on the boat. We were all so crowded and huddled together...I sat between my father and big brother, holding tight onto mother's bone bundle. I knew I would never cross this river again. Once we crossed this river, we would never go back. Then I realized I would never see Little Dog again. All of the dogs on the shore must have thought the same thing. They started howling...The dogs howled and cried. They knew they would never see their people again. Then I heard barking. It was Little Dog. He had jumped in the river and was swimming after us! ...He was yelping and trying to swim to the boat. I couldn't let him drown. I stood up and ran to the rail. "Little Dog!" I shouted. "Over here, Little Dog!" A big woman pushed me away from the rail. "We don't have food for people. No dogs on the boat!" she said. She waved her cane over the rail and hit Little Dog on the nose. He sank into the black water (Tingle 2003:47-48).

Contrasting reports are found throughout the historical documents. “The Army was in charge [of removal], and official reports tended to emphasize how smoothly things were proceeding” (Banner 2005:225). This comparison rings familiarly to the reports from the State of Oklahoma and the OWRB on how well water planning and administration is progressing now that the natural resource being exploited is the water.

“Many people believe that Tribal Nation water rights, along with a multitude of other Tribal rights, are issues of justice and obligation” (Cox 2012:4). Late in the twentieth century, trends began to evolve that supported these beliefs related to tribal relations. The federal government increased their protectionism and is decidedly active in enforcing tribal obligations and matters of justice. As this case study revealed, recent judicial decisions have further upheld tribal rights.

As part of these matters of justice, we now know that one of the reasons presented to justify removal of Indians from the land, is because the Indians were portrayed as a hunting society, rather than one of farming and cultivating. The pastoral agricultural pursuits were favored by the Europeans arriving into the United States. This argument is not wholly valid. It is well known the Indians did practice agrarian pursuits (Banner 2005; Burton 1991; Echo-Hawk 2013; Miller 2012). “It was perhaps a purposeful strategy in which Euro-Americans chose to ignore Indian...abilities because they wanted to justify taking those ...for themselves (Miller 2012:10). A macro-objective example of this architecture presented by the white establishment is presented by the Governor of Georgia, George R. Gilmer (1790-1859) in his efforts to remove the Indians from land

being settled by white encroachment. “The millions of acres of land which are now of no value, except to add to the gratification of the idle ambition of the chiefs, must be placed in the possession of actual cultivators of the soil, who may be made the instruments for the proper administration of the laws” (Gilmer 2013:318). Dominant bureaucracies create the laws that favor their preferred usages of the natural sources. It was inferred the Indians were decidedly hunters and wanderers. Yet, the evidence, provided by the government agents themselves is that a pointed reason the tribes refused to move to Oklahoma was because their crops were still in the ground and not ready for harvest. They were growing “crops of corn...for breadstuffs, and that they would not leave them until they were gathered in and secured, lest in their absence they might be destroyed” (Choctaw 2010:4). Echo Hawk explains “The roots of removal began with the development of putative racial distinctions that justify the supposed racial superiority of the dominant majority group” (2010:114). The ideology for removal is being embedded in micro-subjective levels of perceptions and beliefs of the white settlers. This was accomplished through formal and informal micro-objective patterns of behavior, actions, language and bureaucracy. It occurred on both the macroscopic and microscopic levels to promote a white cultural bias that the Indians were not as capable of agricultural pursuits, despite the strong evidence otherwise.

In response to Georgia’s order that the Indians must vacate the land, the Indians, in a micro-objective position, responded with their own interaction and took their case to the U.S. Supreme Court, where their sovereign status was upheld. In the case, *Cherokee*



*Nation v. State of Georgia* (1831), the Supreme Court determined a tribe of American Indians does form “a distinct political society, separate from others, and capable of managing its own affairs, and that they were the rightful owners of the soil which they occupied” (Marchand 2010). The court denied defining a tribe as a “foreign nation”. It did rule tribes hold a political status unlike most any other political entity. They are not “States” of the United States nor are they completely foreign nations. Through this sovereign status “The Indians are acknowledged to have an unquestionable...right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government...”(Marshall 1831). The Honorable Chief Justice John Marshall (1755-1835) delivered the majority opinion of the Court which outlined the status of American Indian tribes and more specifically the relations in which contracts and negotiations are to be held. He refers to the U.S. Constitution for guidance. “The objects, to which the power of regulating commerce might be directed, are divided into three distinct classes-foreign nations, the several states, and Indian tribes. When forming this article, the convention considered them as entirely distinct” (Marshall 1831). Marshall is joined in his opinion by Justice Henry Baldwin (1830-1844), who offered “The only remaining clause of the constitution to be considered is the second clause in the sixth article 'All treaties made, or to be made, shall be the supreme law of the land'” (Marshall 1831).

Justice Smith Thompson (1823-1843) provided his remarks and was joined in his opinion by Justice Joseph Story (1812-1845). “Other departments of the government...have treated this nation [Cherokee] as such. They have considered it

competent, in its political and national capacity, to enter into contracts...if these contracts contain matter proper for judicial inquiry...why should we refuse to entertain jurisdiction of the case?" Thompson goes on to refer to his guiding document, again, the Constitution. "Under the constitution, the judicial power of the United States extends expressly to all cases in law and equity, arising under the laws of the United States, and treaties made or which shall be made, under the authority of the same" (Marshall 1831). While acknowledging the strong sovereign position of the Indians, the federal court held that the case "raised 'political questions' that courts are not empowered to decide" (Echo Hawk 2010:88). With this position, the U.S. Supreme Court dismissed the Cherokee's case stating tribes cannot file lawsuits, thus denying political, human, and property rights based on race. It would historically be recorded as one of the ten worst cases of Indian Law (Echo Hawk 2010). By denying a racial group access to the democratic courts, it epitomized Ritzer's theory of social analysis between the functions of the macro-objective law and bureaucracy as it is influence by the macro-subjective white culture and values to be upheld and promoted.

This event, as well as others, influenced the perceptions of treatment of minority voices into the next two centuries. The following three case studies outline how the sociological conditions of societies have direct and significant impacts on how water conflicts are negotiated and maintained. The knowledge of these historical decisions against the oppressed are embedded in how participants approach water dialogue.

CHAPTER III  
TRANSBOUNDARY RIPARIAN WATERSHEDS: POLITICAL  
CONFLICT AND POWER ON THE RIO GRANDE

*“Power lay in controlling access to water.”*

*Thirst*, by Steven Mithen<sup>[MC4]</sup>

**INTRODUCTION**<sup>[MC5]</sup>

Shared land borders are often a stage for conflicts. The concept of shared and flowing water boundaries increases the complicated matters of dispute. This union of where land meets water is known as the riparian zone. Conflicts related to transboundary riparian areas are manifested within international power struggles related to water issues of flow control, flooding, damming, aquifers, pollution, navigation, access, and economic rights to sell. The imbalance of power related to the vital natural resource of fresh water is exhibited through multi-faceted aspects that include economies, governments, institutions, military strength, international social capital, and the geographic loci of the water sources.

This paper will analyze the conflicts and power exhibited in a case study of United States and Mexico transboundary riparian watersheds. Specifically, Ritzer’s integrative theory of social analysis will be applied to the interrelationships of the macro

and micro structural orientations that are framed within the conflicts and powers related to the shared water for these two North American countries. The comprehensive data collection contained in the Transboundary Freshwater Dispute Database (TFDD) will be utilized for this research.

## **LITERATURE REVIEW**

Water issues are often studied as conflicts, but far less is studied on how resolutions are negotiated and maintained (Balthrop and Hossain 2010; Diner 2012; Dombrowsky 2010). A number of factors influence how conflicts are framed and how resolutions are determined regarding shared international waters. Hierarchical socio-political structures and the development, application and interpretations of water laws exert a great deal of pressure on how resolutions are addressed. In some instances, no laws exist for specific issues or conflicting laws that exist. Another detriment to resolutions is conflicting economic policies between stakeholders. Early evidence of water policy in the region is explicated in the hierarchical socio-political structure of the Hohokam Indians. They acted quickly to resolve disputes around 800 A.D. among the irrigation network that served farmers for extensive miles of the Salt River Valley area located about one hundred miles north of the Mexican border. Archeological remains support the hypothesis that high level members of the villages lived on an elevated mound at key junctures of water routes. It is likely they enjoyed benefits of the water and were able to quickly identify and resolve issues amongst nearby users (Cech 2009).

Complex and varied water valuation methodologies affect the process of resolving conflict. Issues related to these various complications are well covered in the literature, and date back to the 1800s. The United States and Mexico resolved to work together and codify boundary issues of the naturally evolving riverbanks of the basins as early as 1884 with a treaty agreement finalized in Washington D.C. for both countries. Shortly thereafter in 1889, the *Convention on boundary waters: Rio Grande and Rio Colorado* was established. Following five years of inactivity, the two nations began annual extensions. This process was then halted and it was not until 1944 when a more comprehensive treaty, *1944 Rivers Treaty*, was negotiated that broadened the scope of their concord to include the Colorado, Tijuana Rivers, and of the Rio Grande. In the 1960s the United States agreed to lend water to Mexico for irrigation of crops. During the 1970s and 1980s the border countries further resolved to work collaboratively on issues of salinity in the Colorado River Basin and issues of environmental pollution related to hazardous discharges. Matters of conveyance were addressed in the 1990s (Giordano and Wolf 2002). Agreements can be made but further conflicts arise for numerous reasons. For instance, agreements related to the quantity of access from the Rio Grande were agreed upon. Quality of water was not. When it was determined pollution was occurring from the Mexican border, new resolutions had to be determined to address the pollutants. Conflicts occur when data discrepancies occur either through error or change. Significant climate change and drought conditions have sparked controversy over percentages of allocation when amounts have been over allocated in contract, but are not available due

to drying conditions (Dinar et al. 2007). Past treaties of resolutions are mentioned in the literature but the details are obscure or omitted (Balthrop and Hossain 2010; Conca 2008).

Governments and institutions support the increasingly market-driven focus prioritization over a human rights approach to water. Around the turn of the twenty-first century, Mexico vociferously complained to the United States that the increased settlement and irrigation of the western United States was affecting the Rio Grande river flow in the Juarez region. In a show of supreme political force, in 1895, the United States Attorney General ruled in favor of the United States that it held absolute territorial sovereignty over water rights. By language, this ruling precluded an absolute territorial integrity positioning. This ruling followed communications between Mexican diplomats imploring attention to the eroding water conditions and responses from Washington D.C. declaring that their evidence purported dry conditions as being the likely cause of Mexico's woes. It further reported it decidedly was not due to massive western settlements and expansive irrigation on the United States side of the transboundary riparian zone as the likely causes of low water flow (McCaffrey 1996).

Differences are underscored when international war crimes are applied as criminal law in a traditional ex post event punitive and judicial arena, versus applications of international laws of water that are primarily used as a tool ex ante in the course of the negotiations. This bears out when international water laws are a tool of political force (Eckstein 2008). A thorough analysis of the approval of the *1944 Rivers Treaty* reveals

the underlying political dimensions of the time. Former United States President Franklin D. Roosevelt had been instrumental in bringing nations together to counter the ongoing World War II atrocities. Pre-United Nations (UN) talks had been underway for two years. Roosevelt was determined to build alliances in his own backyard of the Central and North American continent nations. Acquiescing to Mexico's demands for a water treaty would most likely ensure Mexico's support of Roosevelt at the upcoming 1945 UN Conference to be held in nearby San Francisco (United Nations 2012). Negotiating transboundary water rights improved the political atmosphere for acquiring international solidarity at the UN level.

Conflicting economic policies and water laws between entities that share waters can be detrimental to negotiations (Draper 2007; Kibel and Schutz 2007). Joint commissions and ad-hoc committees are created to address transboundary water issues. The International Boundary Waters Commission between the United States and Mexico was designed with authority to address flood control, hydropower, sanitation, and water storage. Newer complications of environmental protection were addressed comprehensively in the broader contracts of the North American Free Trade Agreement. Thusly, an additional layer of bureaucracy was created with a new institution, the Commission for Environmental Cooperation (Conca 2008; Frisvold and Caswell 2000). In addition, the La Paz Agreement, the Southwest Consortium for Environmental Research and Policy, the Good Neighbor Environmental Board, the Border Environment Cooperation Commission and the North American Development Bank have all been

created within a ten-year period from 1983 to 1993 (Dinar 2012). Hierarchical political structures are still evident. In 1995, then-Texas Governor Bush declared, “Texas will not support a loan of Texas water to Mexico, as this would jeopardize the welfare of many of our Citizens” (Huston 2011:10-11). This statement was uttered on the heels of denying a “water loan” to Mexico when their annual proportion allocation had already been realized by May of that year.

In some cases of conflict, no laws exist. The underground aquifers along the border are being depleted and contaminated by users on both sides of the boundaries with little regard to future impacts. Draft articles have been penned by the United Nations to codify international water law for transboundary aquifers. Resolutions ask for nebulous “equitable and reasonable utilization and no significant harm” Eckstein (2011:279). Each country claims domestic national laws governing their own use of aquifers. Texas, New Mexico, Arizona, and California all claim certain states rights. Unenforceable agreements have been reached in selected locations, such as the *1999 Memorandum of Understanding* between City of Juárez, Mexico Utilities and the El Paso Water Utilities Public Services Board of the City of El Paso, Texas

Understanding the complex issues that define water conflicts requires an understanding of how water is valued. A good amount of literature is available on how water pricing and valuation is determined and the missed opportunities that result from outdated policies and practices. Upper basins for whom in the past allowed excess water to flow to lower basins now fear future demands of their own could be negated by past



and current practices. A “use it or lose it” attitude has some upper basin regions practicing wasteful or economically irresponsible practices in order to maximize water usage, thus curtailing excess flows. These policies do not induce conservatorship or best practices for water sources (El-Ashry and Gibbons 2009). Traditional cultural practices of the arid area were to create irrigation systems along the floodplains for agricultural purposes. Pressure is mounting to divert usage for the growing urban populations (Fernald, et al. 2007; Nitze 2009). Eighty-five percent of global water consumption is used for agricultural practices (Jury and Vaux 2007). As populations increase, food needs will continue to rise. The value of water for agricultural purposes cannot be understated (Goetz and Berga 2006).

This intersectionality of influences on how water conflicts are framed and resolved sets the stage to conduct a case study analysis of the issues affecting the Mexico-United States shared waters.

## **METHODS AND THEORY**

A qualitative approach is utilized by conducting a single revelatory case study of selected transboundary riparian conflicts and identifying the issues of inequalities related to the Mexico-United States transboundary riparian water zones. An explicatory analysis of specific situations will be examined utilizing Ritzer’s Integrative Theory of Social Analysis (Ritzer 1991). Ritzer’s theory is characterized in the macroscopic levels as manifested in the objective forms of judiciary, bureaucracy, architecture, language, and technologies of societies. The subjective influences of culture, norms and values are

layers of analysis that should not be overlooked. This theory is then bilaterally influenced with micro actions of individuals that create patterns of behavior and interactions. Studying the interrelationships between macro and micro dimensions of water conflicts allows for an understanding to emerge on how the dialectical relationships shape conflict and resolution.

## **DATA**

The Transboundary Freshwater Dispute Database (TFDD) was created and is maintained by the Oregon State University Department of Geosciences, in collaboration with the Northwest Alliance for Computational Science and Engineering. It is a compilation of full texts of 400 water-related treaties. It contains 39 United States interstate compacts in which some contain data that link to the transboundary riparian water zones along the United States and Mexico borders. The TFDD has an annotated bibliography of water conflict resolution as well the negotiating notes from fourteen case studies of water conflict resolution. The negotiating notes are particularly helpful in understanding the underlying nuances of political power and international social capital that is exerted on issues of transboundary riparian watersheds. A comprehensive news file of international water-related disputes and dispute resolutions are available and can be compared to the descriptions of indigenous and traditional methods of water dispute resolution (Wolf 2012).

A total of 43 treaties have been recorded between the United States and Mexico that include language governing the transboundary riparian watersheds, beginning with

the seminal *1848 Treaty of Guadalupe Hidalgo* which ended the two-year Mexican American War and declared the international border between the countries would be the Rio Grande River.

## **ANALYSIS**

Measuring the intensity of disputes has been coded for conflict and cooperation related to transboundary riparian water issues through the creation of a water intensity bar scale. To quantify the intensity of conflicts, the Basins at Risk (BAR) water intensity scale was created, “BAR Scale.” It has unit ranges from -7 to +7 (Wolfe 2012). The BAR Scale takes into account varying issues of conflict such as quantity, infrastructure and economic development; and levels of intensity of conflict. Declared war over water is represented at the most extreme -7 level. Declared war over water has been documented from as early as 2500 BCE in Mesopotamia over the Tigris River (Jarvis and Wolfe 2010). Conflict at the -6 and -5 are severe negative events resulting in death and armed military involvements. Zero (0) represents a neutral stance and no significant conflicts. +7 indicates the highest level of cooperation over shared waters when states unify into one nation. The United States- Mexico situation has long enjoyed the position in the range of peaceful conflict, usually measured at the +4 to +6 levels of unified cooperation and treaties. However, serious negative conflicts have been documented between the United States and Mexico since the 1800s and continue today. Conflicts at -3 have occurred at least twice in 2001, both disputes over water quantity disbursements for the

Rio Grande River. In 1989, the two countries also experienced two conflicts at -3 over water quantity involving the shared Colorado River (Wolfe 2012).

The most recent agreement, Minute 319, considered an extension of the *1944 Water Treaty*, was signed in November 2012. The five year agreement has been hailed as satisfactorily collaborative for both countries. Effects of drought, climate change, and expanded population growth in the arid west are the primary concerns. They have been addressed in the forms of humanitarian and environmental improvements for the Mexican parties and strengthening United States' implementations for conservation, environmental stewardship, storage, and infrastructure projects. Both countries are expecting mutual benefits from the provisions of the agreement (IBWC 2012).

Major themes emerged in the analysis. Benefits and complications of multi-agency and multi-issue revealed the complexity of situations (Dombrowsky 2010). Overlapping district, state, national and international water laws and traditions influenced the outcomes of conflicts (Ries 2008; Salman 2007). Political changes, political power, and international social capital weighted events (Blomquist 1992; Draper 2007; Huston 2011). And finally, water valuation impacted negotiations (Nitze 2009).

Explaining the positive outcomes of the multi-agency and multi-issue situation has been referred to as a "diffusion of innovation" (Blomquist 1992). The methodology has elements of success that a comprehensive water plan is not capable of accomplishing with the same level of effectiveness. Blomquist specifically illuminates this microscopic analysis through the examples of working groups in the southern California region.

Applying Ritzer's process of integrated theory of social analysis, the engaged parties objective behaviors and actions included the ideas brought forth by attorneys and engineers gaining knowledge by working in overlapping regions. Board members and staffers often sat on multiple organizational structures and brought knowledge and innovation to new groups of learners. Individual water user experienced overlapping jurisdictions in respect to irrigation, salinity, or environmental protocols. Working with multiple governmental agencies created the conditions for the subjective basis defining the social construction of their realities as neighbors with shared water consumptions (Blomquist 1992).

Conversely, there are numerous international water governance organizations with overlapping jurisdictions and purposes where the diffusion of innovation is hampered by an unseen challenge. As they attempt to mete out cooperation and compromise they can remain unaware of silent politics that have the capability of undermining the intended work of the organizations. The strength of politics is not stagnant. Its strength is often directly correlated with the ebbs and flows with the force of economies. The stronger and more diversified the economies, the stronger the power of the country. Transboundary water organizations are often unconscious of evolving situations of power. For instance, population growth and increases in industrial usage can eventually sway political discord regarding power over quantities of water or quality of water discharges and environmental concerns (Raleigh and Urdal 2007). Issues, mostly of access, were addressed in the earliest of agreements. Political discord occurs when newer

concerns of environmental impacts and increased population consumption and industrial usage have not been as adequately addressed (Sanchez-Munguia 2011).

In other instances, political change arrives swiftly and without notice.

Transboundary water organizations, namely the International Boundary and Water Commission (IBWC), have enjoyed relative freedom from politics. The IBWC is largely staffed with engineers and field experts. Indeed, it is one of the very few United States federal institutions that are not headquartered in Washington D.C. It is based with a home administrative office in El Paso Texas. The long tenured organization, evolved from the *1944 Rivers Treaty* has endured with little political interference until most recently, when in 2005 the organization's primary United States agent was appointed and then quickly dismissed by the United States President of the time. After more than one hundred years, politics finally caught up with water organizations (Mumme and Little 2010).

According to the oft cited *Harmon Doctrine* of the 1890s, "A country has the right to use the fluvial waters which lie within its territory without any limitation whatsoever, regardless of the effect of this utilization on the other countries" (Vukovic 2008). The *Harmon Doctrine* was the stated position of the United States as penned by the Attorney General at the time to address the United States and Mexico dispute over the Rio Grande River. The doctrine generated from the power base of the upper riparian country, clearly benefited the U.S. position. However, when the United States and Canada have conflict over water, the United States becomes the lower basin country and then wishes to adopt the stance of rights preferred in the "principle of absolute territorial

integrity, which means that a country cannot utilize the waters of an international river in a manner which might cause *any* detrimental effects on co-riparian territory” (Vukovic 2008). The politics of water rights is often confounded with motives associated with the valuation of the waters.

"By treaty we had promised them [Mexico] a million and a half acre-feet of water. But we hadn't promised them *usable* [emphasis theirs] water” (Kibel and Schutz 2007:235). Valuation of water is not solely related to a cost per unit. The quality of water can be too high in salinity (salt) which renders the water non potable for human consumption. High salinity water can destroy agricultural fields. In 1960, the United States began draining saline water into the Colorado River, and deducted that water quantity as part of their required allocation to Mexico (Wolf 2012). Thusly, issues of quality are but one measure in the valuation of water.

The notions of economic measures are now being computed with the ecological ramifications for wildlife and biosphere conditions. Furthermore, water valuations are more often addressing Pareto optimality. Notably, spiritual and cultural valuations, recreational valuation and associated tourism economies, and the availability of water for future generations. Usage costs must now also attempt to address and predict unforeseen expenses associated with environmental policies such as erosion control and salinity (Turner et al. 2004).

Water valuations are predicated on social issues that demand an economic analysis that balances resources and increased demands between agricultural expansion

projects and urban population growth; all the while motivating conservation practices and avoidances of pollution. Expectations for traditional use must be counter-balanced with consideration for higher-value usage. The economic valuation of water includes incentive and disincentive practices. Water tariffs and pollution charges are but two examples. Furthermore, issues of cost-benefit, cost-effectiveness, and efficiencies are taken into consideration (Smuck and Schmidt 2011).

## **CONCLUSION**

The United States and Mexico are two nations that share more than transboundary riparian watersheds. Discussions should be extended to beyond the limits of where the water meets the soil. Discussions should embrace the shared realities of the politics between Washington D.C. and Mexico City. They should embrace the shared impacts to migratory songbirds and other biospheric conditions. Solving transboundary dilemmas should recognize all levels of scale from the local individual that dips a handful of water from the flow to international organizations and stakeholders that construct Hoover-like dams. Contributions towards solutions should be valued by those made at the informal level. Likewise, formal agreements are crucial in defining responsibilities required from both countries (Lopez-Hoffman, et al. 2009).

Valuations of water and its usages will continually need to be reevaluated with the position of how can reasonable incentives be implemented that encourage conservation, reuse, and protection of the transboundary riparian watersheds (Quealy 2008).

Furthermore, as the waters flow and change, so do the conditions in which usage and



agreements are bound. Unexpected or catastrophic events such as the 2010 earthquake that imparted significant damage to the Mexican water infrastructures can cause an abrupt disruption to agreed terms and conditions. Perhaps the newest 2012 agreement between the United States and Mexico for their transboundary riparian watersheds will herald an era of shared waters, as well as an era of peace between neighbors and governments.

CHAPTER IV  
NO SILENT SURRENDER: U.S. SUPREME COURT  
HEARS RED RIVER CASE

*“No natural resource has greater significance for the future of Texas than water.”*

Andrew Sansom, Meadows Center for Water and the  
Environment

**INTRODUCTION**

This case study reveals the historical context of American Indian water rights for two tribes in Oklahoma and ultimately whether Oklahoma and the tribes have advantageous water rights over another state, Texas, in regards to the Red River. This case study utilizes Ritzer’s theory of integrative analysis to consider important areas of microscopic and macroscopic events and activities that relate to both subjective and objective examples of behaviours, actions, policy and law that identify the powers and conflicts specifically related to the Oklahoma and Texas dispute regarding water allocations from the Red River.

Not only is the Red River the boundary line between the states of Texas and Oklahoma, the Red River waters of the dispute are geographically situated within the current boundaries of the Choctaw and Chickasaw Nations in southeastern Oklahoma. This investigation recounts selected treaties with the tribes, the Red River Compact,

selected legal rulings, and a summation of events leading up to and including the recent U.S. Supreme Court case *Tarrant Regional Water District v. Herrmann et al.*, No. 11-889 (2013) (Tarrant 2013).

Beginning with the treaties enacted with American Indian tribes during the eighteenth and nineteenth centuries, we can see evidence of how issues of power and property conflicts began. This is also the beginning time of available written legal precedence of power and control related to American Indian Nations. Before the treaty era, a number of tribes claimed the southeastern portions of the United States as their homelands. Anthropologists have recorded oral histories that point to the possibility of millions of Indians living in the Americas in the pre-Columbian period, prior to 1492. The arrival of Columbus and European explorers brought diseases that decimated the Indian populations that lacked immunities or genetic tolerances for smallpox, measles, and other ailments. In part, this annihilation gave rise to the ethnocentric belief that Europeans were superior to tribes of Indians. In the 1600s, pre-Colonial European explorers brought settlers that found the new land inhospitable in regards to their ability to recognize and find edible roots, plants and berries. Early European settlers depended on the American Indians for assistance and cooperation. Soon, the Europeans, greedy for land to homestead and farm, massacred the Indians, and “forced them to relocate to reservations where land was worthless and uninhabitable” (Yang 2000:73). Relocation of American Indian tribes to Oklahoma was secured through a part of the hundreds of treaties and agreements that proliferated from 1778-1883.

This research project takes an extensive historical analysis of how water rights for Oklahoma Indian tribes have been grossly omitted from the policies of water management leading up to the Red River Compact.

## **HISTORICAL BACKGROUND: TREATIES AND U.S. GOVERNMENT INDIAN PROGRAMS**

The 1830 Treaty of Dancing Rabbit Creek between the Government of the United States and the Choctaw Nation ceded to the Choctaws land in southeastern Oklahoma in exchange for their lands in Mississippi. The treaty states “Wherever well founded doubts shall arise it shall be construed most favourably towards the Choctaws” (Kappler 1904:314). In the two centuries following those words, numerous subsequent treaties, documents and agreements have been in effect.

We can see the micro influences of particular individuals that affected policies toward American Indians. Vine Deloria, Jr. (1933-2005) was an American Indian scholar, prolific writer, and educator. His works exposed many twentieth century Americans to the circumstances of Indian cultures (Echo Hawk 2010). In 1933, President Franklin D. Roosevelt appointed Harold Ickes (1874-1952) as Secretary of the Interior. Ickes’ wife, Anna, spoke Navajo and wrote a book about her experiences with the tribe (Crum 1991). Ickes, born of lower socioeconomic status, championed the rights of American Indians, African Americans and the disenfranchised. Felix Cohen (1907-1953), of Jewish ancestry, received a Ph.D. from Harvard and a law degree from Columbia. Cohen joined the Interior staff and wrote the *Handbook of Federal Indian Law* in 1942. Initially, the

treatise was to be produced as a co-effort between the Interior department and the Justice department as an Indian Law Survey project. Cohen, as lead author of the project, was fired from his position for reasons that were never quite clear although conjecture points to anti-Semitism. “Pervasive anti-Semitism experienced by Cohen may have given him profound empathy with Indian tribes and their desire to avoid assimilation. Thus, anti-Semitism may have inadvertently helped motivate positive developments in federal Indian law” (Washburn 2009:3). Subsequent editions of Cohen’s text are still in use today. Cohen, known for his anthropologic studies and pluralistic philosophy, advocated an interpretation of the law that appreciated diverse understanding of cultural needs and values. Buttressing the realities of individuals such as these agents for social change against the macro conditions of the conflicting cultures and the powerful bureaucratic administration reveals the depth and complexity of the problems related to addressing American Indian rights.

Beginning in the 1960s and 1970s, a revival of tribal identities begins to emerge as independent tribes unite their political efforts. The pan-Indian movement is popularly described in *The Return of the Native: American Indian Political Resurgence* by Stephen Cornell (1998). He explicates the social deconstruction of Indianness through the centuries led to the contemporary emergence of tribes working together in order to increase their political power. Cornell agrees a sense of supratribalism, or pan-Indianism emerged when distinct tribes began to realize they needed to put aside their individual tribalism, and band together as supratribes to defend their lands and waters against white

encroachment. Reiterating beliefs that Indians were sub-human beings, it allowed whites to claim rights to Indian resources without guilty consciousness, according to Cornell. These micro-subjective beliefs explain the social construction of reality as whites wished it to be. Hence, treaties and programs of United States governmental agencies effectively curtailed remaining vestiges of political powers of any tribe.

### **RED RIVER COMPACT**

The Red River Compact is a document between the member states of Oklahoma, Texas, Arkansas, and Louisiana. Promotion of interstate comity is one of the principal purposes of the Compact. It is designed to address equitable apportionment, water quality and pollution, conservation, and flood control. It is written that the Red River Compact is intended to address water disputes in a manner that would remove controversy that might result in water rights litigation between the member states (Texas Statutes 1979). The Compact is a result of the Water Code Title 3. River Compacts, Chapter 46. Red River Compact, Section 46.001 was signed in 1978 by the commissioner for each of the participating states. Each state's commissioner was appointed by the Governor of the State they represented. The compact was then approved by R.C. Marshall, representing the United States. The Texas Natural Resource Conservation Commission is compelled, through language of the Water Code, to cooperate and furnish factual data related to the waters (Texas 1979). With a principal purpose of promoting interstate comity and to remove causes of controversy, the Compact has specific provisions delineated:

- Water uses are subject to availability of water;
- Any state that does not use allocated water is not deemed to have relinquished or forfeited their rights to such use;
- The Compact does not allow for the interference with the rights of a signatory state to regulate water within its boundaries.

Other writings have discussed the technical and commerce questions related to the water authority (Andrew 2011; Chapman 1985; DuMars and Curtice 2012; Maule 2009; Willingham 2009).

Choctaw and Chickasaw Indian tribes have sovereign nation rights which impact disputed water allocations of the Red River Compact. Erosion of Indian power is best defined from the period of forced relocations that removed tribes from their original homelands to Indian Territory. Collectively, these forced marches are described as the Trail of Tears and occurred during the 1830s through 1840s. The relocations were conducted under harsh conditions without adequate supplies or means of transportation (wagons and horses). Significant numbers of Indians died along the route suffering from exposure, illness and disease, and lack of adequate food.

It was then the depths of winter...The Indians brought their families with them; there were among them the wounded, the sick, newborn babies, and the old men on the point of death...the sight will never fade from my memory. Neither sob nor complaint rose from that silent assembly (Tocqueville [1835] 1966:199).

It was not the tears of the Indians for which the forced relocations are identified, but the tears of the witnesses to the utter brutality and insensitivity, such as described by de Tocqueville. The Trail of Tears is one of the most central facets that delineate a new life, such as it was, for tribes forced to relocate to a land they were unfamiliar with. Yet, agreeing to relocation was to guarantee their sovereign status. One of the boundaries for

this new homeland was the Red River. The events of relocation are deeply embedded in perceptions, beliefs and the social construction of reality for descendants. Additionally, the historical perception of American Indians and the colonial treatment of tribes by government policy and agents is evident in the current Red River water dispute.

A major weakness of the Compact is its omission of Indian rights from the apportionment of water in the Red River (Chapman 1985:88). Furthermore, the Red River Compact does expressly state “Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority, in, over and to water of the Red River Basin” (Texas 1979). This language can be inferred as the impetus that the role of the United States in the Compact negotiation is to continue its duties as protector of the tribes’ best interests. “These clear terms [of the Red River Compact] protect the Treaty rights in, over and to water that the Nations have asserted” (Burrage 2013:2).

## **DATA, METHODS AND THEORY**

The guiding research question for this project is: why or how do water usage agreements of the Red River Compact grant favorable benefits to one state over other participating states of the Compact? Namely, does an upper basin partner, Oklahoma, have a favored benefit compared to a lower basin partner, Texas?

This project uses case study analysis of data that included historical treaties, agreements, statutes, and legal proceedings that revealed the depth of conflict between powerful agencies, marginalized groups, and organizations affiliated with water disputes



surrounding the Red River. By using the theoretical framework of Ritzer's integrative theory of social analysis (Figure 2), this paper examined a revelatory, single case study to determine whether selected water usage agreements granted favorable benefits to one state over others. The rationale for the single case study is that the materials available regarding the Red River conflict are in sufficient quantity and variety to represent itself as a critical case for testing the theory of whether one group of water users receives favorable water allocations through the Red River Compact. Access to documents is available for analysis that previously has been difficult to obtain. Treaties, compacts, legal documents, memorandums, letters and court records have typically been physically housed within the geographic location of their jurisdiction. The Internet has made access to documents available that allow for comparison and analysis of said documents that heretofore were not easily obtainable.

Ritzer's theory of integrative social analysis was applied to the macro-objective influences of law, bureaucracies and language as well as macro-subjective elements of culture, norms and values. Additionally, patterns of behaviors and actions were uniquely tied to perceptions, beliefs, and social constructions of realities. The sociological value of following Ritzer's theory for these analyses was to understand how the centuries of interactions and events came to influence the water conflict of the Red River Compact.

**Ritzer's integrative (micro-macro) theory of social analysis.**

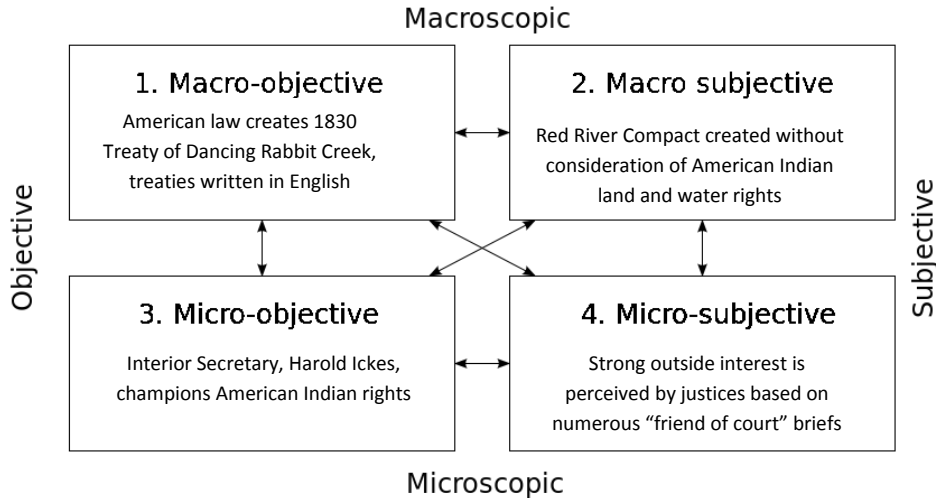


Figure 2 – Red River Compact elements of integrative conditions for analysis

Data for this analysis consists of principal documents that trace the ownership and usage provisions for water of the Red River in Oklahoma and Texas. The 1830 Treaty of Dancing Rabbit Creek is a fundamental document that ceded Oklahoma to the Choctaw Nation. It outlined the rights and benefits the Choctaws were to receive for accepting the Treaty. Treaties were initially construed under the direct auspices of the War Department (Army).

In addition to historical documents that portray the emotions and conditions of a particular time that help us to understand the differences between American Indian and white perspectives, this case study included analysis of today's issues and considered the Red River Compact, a more technical and legal document. It is directly associated with the court documents related to and including *Tarrant v. Herrmann* (2013). Documents are generally prepared for use by others, and not primarily for the promotion of the case

study. As the principal investigator of the case study analysis, interpretation of the contents is conducted from the approach of discovering patterns, power structures, context, inequalities of representation, omissions, and accuracy of water access for identifiable users. The process of analysis begins with detailing a timeline of documents constructed that relate to the Red River waters. Multiple sources of data are examined and categorized to better yield identifiable patterns that support or refute whether agreements grant favorable water benefits to selected users over others and the stated or implied positions of the articulating parties.

Primarily a technique of pattern matching logic determines whether predicted patterns of favoritism are demonstrated. Pattern matching allows for comparing empirically based patterns with predicted ones. The predicted patterns of variables included indicators, or lack thereof, of preferential conditions that benefited selected stakeholders. Patterns were revealed through the analysis of six different components: frequencies, magnitudes, structures, processes, causes, and consequences (Babbie 2011). With pattern matching, an explanatory narrative is constructed to illuminate insight regarding the processes of public policy as it relates to affected populations. These patterns are explained through narrative.

While not necessarily precise, the value of narrative reflects the propositions for causal links, that in turn, are beneficial in recommendations for future policy implementations or contribute to building sociological theory. It is the shaping and ordering of the experiences that allowed us to understand the actions of the actors. In

turn, organizing the events to show the connections and consequences of actions and events over time further the understanding (Chase 2011). C. Wright Mills identified biography, history, and society as the trilogy of components for narrative inquiry (Chase 2011). Narrative reveals the changing contexts of power and constraints of the interdependencies regarding water resource management practices of the Red River.

### **UNITED STATES SUPREME COURT AGREES TO HEAR RED RIVER CASE**

Applying Ritzer's theory of integrative social analysis to the documents and actions related to the water dispute of the Red River reveals the macro-objective position of the Tarrant Regional Water District (Tarrant). This is a Texas state agency that is charged with providing water to metropolitan communities in the Dallas-Fort Worth Texas area. The specific conflicts with Oklahoma over allocation of water began in early 2007. Tarrant claimed they should be allowed to "reach" into Oklahoma to appropriate water. Oklahoma disagreed with this assertion and the Oklahoma Water Resources Board (OWRB), acting under their authority, denied the water appropriation application. Rudolf Herrmann serves as chairman of the board for OWRB, and hence, is named as the lead defendant in the case filed by Tarrant. Attempts at conciliation failed. In 2009, the United States District Court, in the Western District for Oklahoma ruled on the case in favor of Oklahoma. Upon appeal, in 2011, the case was heard in the United States Court of Appeals, Tenth Circuit. Again, Oklahoma prevailed. Still determined to have Oklahoma's water, Texas sought an audience with the United States Supreme Court. During the 2009-2010 court session, 8,159 cases were received on appeal. They agreed to

hear arguments for a mere 82 of them (Black and Boyd 2013). Does a correlation exist for which party might receive the most benefit from having the Supreme Court hear the case? Factors exist for determining the likelihood of the case being heard. One reason is the “importance of selecting cases to resolve legal conflict” (Black and Boyd 2013:1127).

Thusly, in January 2012, with avenues of reconciliation between the states appearing to be closed in the case of *Tarrant v. Herrmann* (2013), the U.S. Supreme Court petitioned for a *writ of certiorari* (sersh-oh-rare-ee), which is an order from a higher court to a lower court to send all the documents related to the case proceedings in order for the higher court to review the lower court's decision. This action was quickly followed with amicus briefs (friends of the court filings) and distributions for conference. One such brief was filed on behalf of the Chickasaw and Choctaw Nations. Although they have their own legal battles with the State of Oklahoma regarding disputes over the waters of Sardis Lake, the Nations submitted a brief on behalf of Oklahoma asserting that certainly the member state of Texas (Tarrant) had no rights to reach into their tribal nation territory for water (Burrage 2013).

Strong evidence of outside interest in a case signals the Court that the case has importance. “Presence of interest group support is especially useful in leveling the playing field between litigants with a resource advantage (i.e., the “haves”) and those that are resource poor (i.e. the “have nots)...weak litigants’ briefs are likely to be less well argued... the presence of amici [friend of the court] can help make up this difference” (Black and Boyd 2013:1128-1129). A total of nineteen briefs were filed in this case. In a

somewhat unexpected action, the Court invited Donald B. Verrilli, Jr. Solicitor General (SG) Counsel of Record to express the views of the United States' position for the case regarding Oklahoma water rights through a brief. The justices highly value when the SG opines. The SG is often referred to as the tenth justice (Black and Boyd 2013). Verrilli, Jr. was succinct in his analysis of the tribal position "Accordingly, water rights of the Tribes [Chickasaw and Choctaw] may be relevant to the amount of excess water available" (Verrilli, Jr. 2012:20). The jurisdiction and rights of the waters flowing from the Indian Territory (Oklahoma) cannot ignore tribal treaty obligations.

Previously, Tarrant attempted to buy water from the Choctaws and Chickasaws. This attempt was unsuccessful (Sotomayor 2013). This action follows the logic if Tarrant attempted to purchase the water, then surely the water was not considered to be in the apportionment defined by the Red River Compact. When negotiations for purchase failed, the tactic was amended. Tarrant now claimed the water was in fact, theirs for the taking and pursued that interpretation for the Red River Compact. Additionally, in 2009, Tarrant entered into a memorandum of understanding to buy Red River water from the Apache Tribe of Oklahoma (Chalepah and Oliver 2009). Tribal water rights are at the core of *Winters v. United States*, (1908) a Supreme Court case of the 1907-1908 session that is heralded as a doctrine that supports Indian reserved water rights. In essence, it claims the "establishment of an Indian reservation carries with it a reservation of water" (Cosens 2012). "The Court wrote that 'ambiguities occurring will be resolved from the standpoint of the Indians'" (Henderson 2011). This case study explores the question of

whether, when it comes to the Red River Compact water dispute, one group is treated more justly than another in the policy and practice of water resource allocation.

## **THEORETICAL FINDINGS**

Ritzer's theoretical approach of integrative analysis helps us understand water resource related conflicts. It does so by providing a methodology that supports the ability to take apart the whole of the conflict from both microscopic and macroscopic aspects of history, time, actors, and events; then placing the contexts into individually integrative pieces. The pieces can be observed more precisely when not hidden within the overall context of a situation. It more fully informs us how the pieces bear influences on each other and how those influences are acted upon by individuals, agencies, organizations, and nation states. Hence, through this new understanding, we gain knowledge in understanding overt as well as underlying motivations and ramifications of the water issues, negotiation, and legal recourse that often results in unfair rewards to one party and disadvantages to another. With this greater understanding of knowledge, greater potential to reach peaceable and lasting agreements is more likely.

Conversely, as Ritzer's theoretical approach illuminates the challenges presented on water discourse, this case study can equally inform us about Ritzer's theory. Rich and thick content analysis presents an in-depth analysis for numerous microscopic and macroscopic elements of evidence for any social phenomenon. This case study presents a many-sided examination of an event from more than the perspective of current issues on the surface. Although a case study is often perceived as not generalizable, by skillfully

incorporating Ritzer's theory, the methodology could be applied to numerous case study investigations that seek to understand differences in nature of behavior between groups or societies as a whole.

Furthermore, this case study establishes piece by piece how Ritzer's theory illuminates the understanding and informs social analysis. The macro-objective and macro-subjective contexts for the causes and conflicts related to water conflict of the Red River Compact. This is evidenced from our earlier review of the historical American Indian Treaties and U.S. government Indian programs. We begin to understand how Ritzer's methodology informs the situation. Each historical document lends an understanding to the macroscopic, often underlying, conditions of society, language, culture and norms that enlighten us to the hidden values of meaning evidenced in individual perceptions, beliefs, and patterns of behaviors.

We can examine the actions of individual actors and review their written records that originally were not intended for use by a particular audience, including the investigative researcher. Additionally, we can review document from the various actors and note the changing tones of description. We find that prior to removal; the Choctaws were generally regarded as having peaceable relations with encroaching nation states. Prior to the 1803 Louisiana Purchase, Pierre-Joseph De Favrot (1749-1824) was a French and Spanish soldier assigned as commandant of the Spanish military fort in Baton Rouge Louisiana, land held by the French. In the spring of 1780, De Favrot accounted for a typical supplying of trade for "ammunition for the savages" and again in the summer of



1780, he reported muskets and gunpowder were “Given to a Choctaw who brought back a horse that had been stolen belonging to the King” (De Favrot 1780:3). It is unlikely DeFavrot ever imagined his accounting would be scrutinized more than two hundred years later. As it relates to the Choctaws, the accounting records what Ritzer defines as micro-subjective perceptions and beliefs. These perceptions and beliefs are revealed within the macro-objective contexts of language (savages) as well as the intersection between these conditions and the micro-objective example of patterns of behavior, action and interaction. It can be considered from the second accounting of whether Choctaws returning “stolen” horses for goods was a routine occurrence or an anomaly of the day’s activities. We do know that Indian interactions with whites were becoming more frequent and the supply trading posts built along the Red River increased the frequency of these interactions.

As white encroachment intensified over the decades, relations with American Indians deteriorated. George Catlin (1796-1872) was an ethnographer of the American Indians from the period of 1832-1839. Catlin wrote from his field notes and letters how the Indians were greatly abused in their contact with the white traders. The traders sold the Indians whiskey, exacted exorbitant prices from the Indians, and in exchange offered the Indians paltry prices for the fur trade of buffalo, buckskin and beaver pelts (Catlin 1995). This micro-objective description of a pattern in trade practice behavior infers this method of trade abuse has become quite common and has evolved into a macro-subjective form of trade culture and devaluing of Choctaw respect. This is a much

harsher description of relations from the 1830s when compared to the previous trade encounters reported from the 1780s.

In addition to examples of trade and commerce, we find point by point of interest when identifying the social analysis revealed from macro-objective military actions of bureaucracy, emerging law and language. This evidence is exposed from a series of letters between the U.S. government (War Department) and the Choctaws. The letters are written over the summer of 1830, prior to the September signing of the Treaty of Dancing Rabbit Creek. Eaton, serving as U.S. Secretary of War, and considered a primary Indian Agent for the Choctaw tribe, wrote to the Governor of Georgia on June 1, 1830. At the time, Georgia was urgently pressing for Choctaw removals from Georgia in order for white settlements to proceed without conflict with Indians. In the letter, Eaton asks in regards to removing the Choctaws to Oklahoma "Is this injustice and cruelty? Assuredly, it deserves a milder name" (Eaton 1835:2). And on the very same day of June 1, 1830, Eaton pens a letter to the Choctaws wherein Eaton describes the removal in far different terms. "Go beyond the Mississippi, where you can be under your own laws, and upon your own land, with none to interrupt you....Send word to your neighbors, the Chickasaws, that they may make a treaty and remove with you" (Eaton 1835:4). A few weeks later, Eaton is still writing letters. This time he writes to military comrades (Indian agents) in anticipation of the signing of the 1830 Treaty of Dancing Rabbit Creek. He directs the agents to carry the letter to the Choctaws. "Every Indian...must perceive that they cannot live happily within the States...subject to laws other than their own....The

President would gladly avert such a state of things, and see his red children placed in a situation where they could enjoy repose and be happy" (Eaton 1835:75).

The sociological implications of analyzing documents reveal patterns of power and inequality from a macro-objective and micro-subjective frames (Ritzer 1991; Yin 2014). For example, the language and writing in the *Treaty of Dancing Rabbit* reveals it was signed by the United States government, represented by Secretary of War, John H. Eaton (1790-1856) who served in his position as Secretary from 1829-1831. Also representing the United States was Colonel John Coffee (1772-1833) a troop commander. One hundred and seventy one "chiefs, captains, and head men of the Choctaw Nation" signed the treaty on their tribe's behalf (Kappler 1904). Of those 171 men, eleven were capable of signing their name in English. The remaining 160 Choctaws signed an "X" indicating they understood and agreed to the terms of giving up their homelands in Mississippi in exchange for lands in Indian Territory (Oklahoma). The micro-subjective social construction of reality for the tribal representatives was their perceptions of their positionality for negotiation. This perception was influenced by the events leading up to the Treaty. As westward expansion was encroaching from the eastern seaboard into the State of Mississippi, the Choctaw homeland, the Choctaws were experiencing micro-objective patterns of behaviors and interactions from the new settlers.

Indians collaborated with Europeans in economic and spiritual exchanges...it is not consistent with the dominant view of European motives.... We are still faced with the image that they possessed such a concentration of technological superiority and material wealth that they had to expand outward and conquer tribal peoples (Miller 1993:346).

These negative interactions were compounded by macro-objective and macro-subjective examples of campaigns by the government and mass media to cudgel the Choctaws to submit to vacating their fertile Mississippi lands and to accept offers of the new land, Indian Territory. President Andrew Jackson, who served the presidency from 1829-1837, spoke to the U.S. Senate espousing that forced removal of the Indians would “incalculably strengthen the southwestern frontier” and “enable those states [Mississippi] to advance rapidly in population, wealth, and power” (Jackson 1830). Far stronger than innuendo, Jackson iterates the government’s position is to “save” the Indians and relocation is their only recourse to prevent “utter annihilation.” Hence, “The General Government kindly offers him a new home, and proposes to pay the whole expense of his removal and settlement” (Jackson 1830).

Conversely, as Jackson and others harbored imperialistic attitudes towards American Indian tribes, there were individuals that recognized the systematic treatment of disadvantage enacted upon the tribes. As stated, *Problems of Indian Administration*, by Miriam, was a document that indicated American Indians had been dispossessed of their lands. The seminal work resulted in, among other broad policy changes, the termination of programs related to how American Indian lands were allocated as part of the 1934 Indian Reorganization Act (Singletary and Emm 2011).

Sociological implications of the way in which the American Indian tribes were forced to reconsider their traditional ways in order to survive within the new restrictions placed upon them are momentous. American Indians were forced to occupy lands that

had somewhat different flora and fauna from what they were accustomed to in their native homelands. The Anglo expansion west affected the ecosystem in profound ways “Emigrant parties, particularly their herds, consumed the grasses, seeds, and game that sustained ...Indians. Water sources also became jeopardized, not so much by outsiders’ consumption as by their animals’ defecation” (Blackhawk 2006:249). These events significantly impacted American Indian tribal ability to maintain normative macro-subjective elements of their culture (bison hunting) as well as micro-objective patterns of behavior for how they obtained clean drinking water. On another level, an interaction pattern of macro subjective and micro subjective evidence is portrayed in the recounting of the oral history interview of the elderly Mary McDaniel, of Hunkpapa and Oglala descent.

When I was a little girl at Cheyenne River...We used to have to go down to the creek every morning. My grandmother talked to the water. Before we washed, she would tell it how beautiful it was and thank it for cleansing her. She used to tell me to listen to the water, and then she would sing a song to it (Shorris 1971:192).

The story underlies the importance of claiming a qualitative sociological approach to the analysis which is afforded through case study. “Data tends to sanitize; real people become abstractions, and the true richness of water and its connection to life gets lost.... It is not possible to understand the settlement era [1978-current] without looking at the antecedent conditions and events” (McCool 2002: xii; McCool 1994). Her story is not sanitized when told in her own words that demonstrates how Indian culture, norms, and values regarding water are passed down to the next generation through patterns of behavior, action, and interaction.

Another example explaining the decline and rise of American Indian circumstances involves education of the youth. Oral history was not a favored educational tool of the American education system. During the late 1800s and early to mid 1900s, Indian children were often educated at boarding schools, funded and operated by the U.S. government. The education programs were examples of a macro-objective configuration relying on bureaucracy, language, and architecture promulgating acculturation to white society. As Indians became educated, these young leaders began to form national political organizations, such as the Society of Native Americans, founded around 1911. New generations of Indians began to see survival as dependent on their ability to reach self sufficiency within the white context of society.

Although not always successful, it has long been the United States federal government's objective to "care" for the American Indians in order to assist their expected assimilation into white culture. In this regard, the current case of *Tarrant v. Herrmann* (2013) was not the first time Oklahoma and Texas battled over the Red River. The following case highlights an example of the United States taking a positive position for Indian rights. The case demonstrates macro objective and micro objective integrations. In the late 1800s, prior to Oklahoma gaining statehood, the United States sued Texas in order to absolutely and finally resolve a dispute of land ownership that, in essence, arose from the erroneous mapping of the boundary river. The conflict arose from errors and omissions that are resultant from unintended consequences of actions by individuals. In 1852, under the leadership of Captain R.B. Marcy and Lieutenant George

B. McClellan, one hundred and twenty soldiers explored the headwaters to map the Red River. They mistakenly traversed the north fork, rather than the south fork, the south fork being the main channel. The disputed riparian land between the forks of the Red River included about two thousand acres of valuable land. White citizens, believing they were homesteading in Texas, began to settle the land between the forks. The dispute led to the United States Supreme Court case, *United States* [in representation for the “Indian Territory” land] *v. Texas*, 162 U.S. 1 (1896), for the argument of whether the disputed Red River riparian lands belonged to Texas or should remain reserved as Indian land. The Court sided with the United States and awarded what is now Jackson, Harmon and Greer counties in Oklahoma to the “Indian Territory” (Morrison 1928). In this analysis, improved technology and methods for surveying revealed the mapping errors and it prompted closer scrutiny of the boundary laws. Yet, through mistaken beliefs about land positionality, a pattern of behavior and actions led to encroachment onto Indian lands. Analyzing the data through Ritzer’s integrative theories illuminates the inescapable connections between infrastructures and agencies.

When discussing the event of Choctaw removal, Eaton questions it as “assuredly” not unjust and cruel when speaking to the President of the United States. And in almost the same breath, describes removal as an event of happy and joyful repose in his communication to the Choctaws. Furthermore, Eaton goes on to describe the conditions of which the Choctaws will receive the lands in Oklahoma.

Brothers, listen... [Oklahoma land is] in all respects equal, if not superior, to the one you have. Your great father [President of the U.S.] will give it to you forever,

that it may belong to you and your children...free from all interruption. Brothers; there is no unkindness in the offers made to you; no intention or wish is had to force you from your lands....The attachment you feel for the soil which encompasses the bones of your ancestors is well known; our forefathers had the same feeling" (Eaton 1835:245-246).

Eaton's language exudes the paternalistic and colonial attitude that emerges for relations with the American Indians. He repeatedly calls them brothers and refers to the President as their benevolent father who only wishes the best for their circumstances.

In response to the letter received on behalf of the President, the Choctaws respond in kind. Their letter informs us from an integrative analysis between their micro-subjective form of perceptions and beliefs as to the true intent of aforementioned correspondence and the macro-objective bureaucracy and architecture of the government. Additionally, we can frame the interactions of the parties involved from the micro-objective patterns of interaction. The Choctaw response begins

Friends and Brothers: our father, the President, has communicated to us...his earnest desire to make us prosperous and a happy people...he proposes to give us a country...in fee simple, or to use his own words, 'as long as the grass grows, and the water runs' Father: your red children view this state of things with feelings of deepest regret... Father: you call us your children...we know you are sincere....But we humbly beg...that we have now arrived at the age of maturity....justice to ourselves, compel us to say to you, that we cannot consent to exchange the country where we now live, for one that we have never seen (Eaton 1835:243-244).

Clearly, the Choctaws, from a micro-subjective point of view perceive the social construction of their reality in far different terms than as the misguided red children the President prefers. Undeterred by the Choctaw response, Eaton is now joined by his compatriot Indian Agent, Coffee; they both sign their names to the response and write back to the Choctaws on behalf of their great father, the President.



Brothers: we wish to give you a pleasant country, of good soil, good water and climate, and in extent sufficient for all your wants; and when you are gone, for the wants of your children. ...We are advising our red brothers for their own prosperity's sake to remove” (Eaton 1835:245).

At this juncture, we are now able to distinguish how social forces from the past shaped the present conditions for water conflict. This information allows for a more accurate framing of the particulars surrounding the Red River Compact. Most notably, the principle parties are the bureaucratic agencies (Tarrant and OWRB) associated with the individual states Texas and Oklahoma, respectively. As history repeats itself, the fair interests of the American Indians have not been fully considered. It was other complex issues that clouded the Red River Compact’s ability to mediate disputes of allocations and rights for the Red River Basin and its tributaries. For instance, rights to commerce, water quality, wildlife management issues, and pollution concerns that increased disputes related to water management within the Compact. However, the historical governing documents reveal jurisdiction and rights of the said waters were initially granted to the Choctaw tribe of American Indians by the U.S. government in the 1830 Treaty of Dancing Rabbit Creek.

Ritzer’s theory highlights how the events of long ago at Dancing Rabbit Creek came to be embedded in the current Red River conflict. The U.S. Supreme Court justices stated one of their judicial norms is to consider the friend of the court briefs as voices for the have nots. Marginalized groups are notably the minority voice. As previously noted, the nineteen “friends of the court” briefs that were submitted to the justices for review included the following representations. Seventeen bureaucracies categorized as

governmental agencies, organizations and associations (8); states and cities (7); and universities (2). The majority of the briefs represented the voices of dominant society and bureaucracies (SCOTUS 2013). These voices represented how the macro-objective elements of society influence conflict resolution.

Intersecting with Ritzer's macro-subjective element (judicial norms) are micro-subjective perceptions and beliefs for two groups. The intersection is revealed with the ability of these groups to have an interaction with the highest court (micro-objective). It had a positive impact regarding the outcome of the Red River water conflict. While the majority of the friend of the court briefs did represent the majority voices, one brief represented a grassroots organization of primarily individual citizens on behalf of Oklahoma's position that the waters of the Red River should be retained by Oklahomans. It illustrated that water conflict resolution must go beyond the considerations of buyer and seller. The resolution would have social considerations that should not be ignored. "Citizens and communities in Southeast Oklahoma depend upon water to support the growing tourism and recreation industries" (Derryberry and Aamodt 2013:4). Tourism is directly related to the non-consumptive use of the water, such as boating and fishing. Furthermore, the grassroots brief highlighted the fact that every county in Oklahoma is currently classified as experiencing drought conditions according to the U.S. Drought Monitor Report (Aamodt and Derryberry 2013). Although the citizens of Oklahoma were not direct parties to the Red River Compact dispute, the residents along the Red River Basin had strong opinions regarding how taking the water would affect their

communities. For one community alone, 52 percent of all families with children under the age of five years live below the poverty level. For female headed households, the number increases to seventy-six percent (U.S. Census 2010). The process of the amicus brief allowed the court to hear their voices.

The second minority voice brief was submitted by the Chickasaw and Choctaw Nations of Oklahoma. It enumerated their rights as it related to the Red River water dispute. Although tribal rights are not central elements of the case, this omission of Indian rights was identified as important by Chapman as early as 1985. Additionally, Solicitor General Verrilli, Jr. cautioned those rights should not be ignored in his response to the Supreme Court justices in 2012 (Chapman 1985; Verrilli, Jr. 2013). These examples characterize the points of macro-objective bureaucracy and micro-objective patterns of behavior associated with the reasons for conflict that built up over time. With a stated objective of the Red River Compact to address disputes that would lessen litigious activity, the Compact failed in this regard. In 2013, the United States Supreme Court addressed the water conflicts in *Tarrant Regional Water District v. Herrmann* (2013), having risen from the Tenth Circuit Court of Appeals.

## **CONCLUSION**

The *Red River Compact* attempts to address the rights and needs of various constituents, yet does not adequately address the needs or rights of tribes. One of the limitations of this case study is that it does not fully investigate all party rights to the Red River waters. It focuses solely on whether the Compact grants favorability to the upper

basin party (Oklahoma), and in turn, how did the erosion of American Indian tribal power affect their water rights. Furthermore, this case study did not fully analyze associated parameters of water conflict. As was portrayed in the United States-Mexico conflict, we can understand the value of ensuring that all avenues for water conflict resolution are considered and their related abilities to help reach resolutions satisfactory to all parties in the dispute. The Red River Compact disagreements over apportionment were addressed. Transboundary issues, salinity, environmental degradation, wildlife habitats, and rights to navigation are water conflict issues that were not studied. Each of these areas are ripe for further study and would enhance a fuller understanding of how shared waters must be managed from a holistic perspective.

What this case study does highlight are the issues related to tribal water rights. Oklahoma, as does many other Western states, has unique laws governing Indians. “Congress has passed many special laws for Oklahoma tribes, especially for the Five Civilized Tribes” (Cohen 1945:425). The State of Oklahoma in efforts to regulate its water resources, has failed to adequately recognize sovereign nation rights of these tribes. These rights have generally been ignored and tribal efforts at dialogue have been rebuffed.

The Chickasaw Nation refers to the California and New Mexico states as positive examples for implementing tribal-state dialogues related to water planning (Greetham 2008). The general attitude of western states’ utter dismissal for tribal rights was popularized in Paul E. Lawson’s work in the 1990’s. His review resulted in the

publication of *When States' Attorneys General Write Books on Native American Law: A Case Study of Spaeth's American Indian Law Deskbook*. The Spaeth book was, as stated by Lawson (1995):

A self-serving collaborative effort by elected political officials to foster a symbolic gesture of concern and compassion for Native Americans....The conference simply produced a document that speaks in the defense of the American legal system ...and justification to the continued repression of Native Americans by the American legal system. (P. 229)

Assistant Secretary of Indian Affairs, Kevin K. Washburn has also lent his expertise to the annals of Indian Law. He is co-author and editor of Cohen's Handbook of Federal Indian Law, 12<sup>th</sup> edition.

In addition to tribal considerations, the ultimate analysis by the Supreme Court resulted in a final opinion on the Texas and Oklahoma case that was unanimous. With all nine justices in agreement, the Honorable Justice Sotomayor delivered the opinion which stated in part "Adopting Tarrant's reading would necessarily entail assuming that Oklahoma and three other States silently surrendered substantial control over their waters when they agreed to the Compact (Sotomayor 2013:3).

This case study illuminates the historical context of treaties and documents that reveal how and when American Indians were dispossessed of their lands and broad policies exhibited legal subjugation over American Indian tribes. The case study further reveals early twentieth century efforts by selected actors and agencies to revert trends of patriarchal control. Following these trends, efforts at pan-Indian movements gained in popularity, revitalizing Indian pride, new cultures and power. The effect of education for

American Indians was also a contributing factor to their ability to assert their position pertaining to Red River water rights through their contribution of knowledge in the lawsuit's amicus brief. Through analysis, this case study does not reveal that in review of the Red River dispute, historical American Indian water rights have been adequately addressed. For additional reading on the subject of tribal water litigation for waters in southeastern Oklahoma, follow the litigation filed by the tribes *Chickasaw Nation v. Fallin*, No. 5-11-cv-00927-W (2011) and the return volley filing *Oklahoma Water Resources Board v. United States*, No. 5:12-cv-00275-w (2012).

This case study explains the patterns of favorability generated through shifting powers and evolving constraints related to the interdependencies of water rights and water needs for the specified tribes, organizations, governmental agencies, and citizens residing on the northern and southern lands divided by the Red River. A macro and micro functional analysis through pattern matching exposes instances when favourable water rights are benefiting one group over another. Additionally, through a sociological approach, this case study demonstrates how Indian culture, norms, and values regarding water are passed down to the next generation through patterns of behavior, action, and interaction. And likewise, how European culture and values affected the policies and colonialism directed towards American Indians that have led us to the positions we see evidenced through water conflicts exhibited in the United States. The case study is an appropriate tool to supply the sociologist with that supports the investigator for the central task in making the connections between the micro world of events in everyday life

and wider social structures and long-term processes of change (Inglis 2010). Coupling the case study with Ritzer's integrative analysis, demonstrates the individualized elements of structure or practices cannot be wholly understood outside the practice of integrative analysis that considers the context of the larger forces when contemplating the issues of whether policies or practices favor one group over another.

It is the description of myriad examples that inform the causal principles of conflict and injustice for the case regarding the water of the Red River Compact. Similar comparisons can be made to other cases, which will enable sociologists to find a theoretical generalization for greater understanding of other cases of conflict. Ritzer's integrative analysis outlines the connections between the individual and society. Through the full analysis it is revealed how perceptions of events and the emotions attached to them are constituted for the study of the Red River Compact and the land in Oklahoma where the grass does grow and the water does still flow.

CHAPTER V  
SELLING SARDIS LAKE: COMMITMENT TO JUSTICE AND  
SOVEREIGN NATION WATER RIGHTS

He said *“It shall be yours forever...go beyond the Mississippi...there you may remain while the grass grows or the water runs.”*

Circa 1830 - Chief Speckled Snake, orating to his tribal members on the 1830 Indian Removal speech by President [Andrew Jackson](#).

## INTRODUCTION

Who owns the water where the grass does grow and the water still flows? Who has the authority to sell that water? Conflicts regarding water rights are often made more difficult because barriers to settlement are multi-faceted and can involve hidden, deep-seated concerns that are not readily evident. The following case study examined issues surrounding the authority to sell water from Sardis Lake. It is a reservoir built by the United States Corps of Army Engineers (Corps) by damming a tributary of the Kiamichi River that flows into the Red River.

Geographically, Sardis Lake is situated within the boundaries of the Choctaw Nation of Oklahoma. During the 1800s, the Choctaw tribe ceded a portion of their original Indian Territory to the Chickasaw Nation. Both tribes have repeatedly asked to be included in the negotiations related to waters in their territory. Their requests have not been addressed to their satisfaction. Since the State of Oklahoma has not adequately



acknowledged tribal water rights, the two American Indian tribes took judicial action. On August 18, 2011 they filed a federal lawsuit, *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin et al.* (*Chickasaw v. Fallin*). Both tribes assert treaty rights to southeastern Oklahoma, therefore the case were filed on behalf of both tribes as plaintiffs. Numerous organizational and administrative agencies are named as the defendants. They embody the State of Oklahoma, state and municipal agencies, and the City of Oklahoma City. They are identified as Oklahoma Governor, Mary Fallin; Oklahoma Water Resources Board (OWRB); City of Oklahoma City; and the Oklahoma City Water Utility Trust (OCWUT).

For this case study, I ask what are the powers and conflicts specifically related to the negotiations of water sales from Sardis Lake and how can these events be explained from a sociological perspective. In essence, the State of Oklahoma negotiated to sell Sardis Lake, water that is arguably not theirs to sell. Tribes claim sovereign nation rights as well as proprietary interests in the waters as vested to them by federal law (Canby, Jr. 1988; Greetham 2008; Henderson 2011; Miller 2012). Content and narrative analysis was conducted utilizing Ritzer's theoretical framework of integrative social analysis. I assessed how treaties with the tribes, oral histories, letters, field notes, legal rulings, and summation of events leading up to and including *Chickasaw v. Fallin* led to the water dispute for Sardis Lake being unresolved.

## **DATA, METHODS AND THEORY**

Data for this analysis consisted of documents that traced the important interactions relating to land and water in southeastern Oklahoma (See Table 1). Through a number of agencies and authorities, correspondence documents were easily obtainable through the Internet. These documents included correspondence between the Oklahoma Department of Wildlife Conservation (ODWC) and the OWRB (Lewis 1992; ODWC 1993; Duffy 1999; Greetham 2008). Correspondence was available from the Oklahoma State Treasurer and the City of Oklahoma City (Meacham 2009). Communications between tribal leaders and [then] Oklahoma Governor Brad Henry and current Governor Mary Fallin were available for analysis (Anoatubby 2008; Anoatubby and Pyle 2011). In addition to correspondence, the federal lawsuit, *Chickasaw v. Fallin* is included as a data source as it outlines the primary claims of the Indians to Sardis Lake water rights (Burrage, Rabon and Greetham 2011; Burrage, Rabon and Greetham 2012). Implications of the historic *Winters* decision is also considered. It is a 1908 U.S. Supreme Court ruling that is a cornerstone for legal precedence upholding Indian water rights (Cosens and Royster 2012; Echo-Hawk 2013; McCool 2002). It strongly reaffirms the prohibition of “any [river water] uses by non-Indians that interfered with the tribes’ use of their reserved waters” (Checchio and Colby 1993).

The case study data was organized in a descriptive and chronological framework. This was a particularly helpful approach that illuminated the “terms of multiplicity of decisions, by multiple officials, that had to occur in order for implementation to occur”

(Yin 2014:140). Additionally, this approach makes clear the objective and subjective elements of macro and micro functions that underlie the components identified as layers of Ritzer's theory of social analysis. Actions were evident, but the chronological presentation of events provided the salient patterns of abuse and embedded beliefs that influenced the prevailing social constructions of realities. Data revealed what constituted and who held particular powers of authority and power structures. Data was available that outlined the events that informed the impoundment history and the political actions that created the Sardis Lake reservoir and the subsequent lawsuits regarding rights to sell the water.

Data was coded in terms of document type; e.g. legal case, formal letter, informal communication, federal, state or localized government document, sovereign nation document (tribal) or other. Levels of power and authority of authors was categorized as high, medium or low and identified as formal or informal and charismatic. For instance, Ken Salazar, Secretary of the Interior, sent a letter and his position was coded as high formal authority. "States have been the world's largest and most powerful organizations..." (Tilly 2012:252). The strength of a nation-state is predicated on their ability to maintain adjudication, distribution, production and extraction. In other words, the successful state will aim to maintain authority for settling disputes; intervene in the allocation of goods amongst the members, control goods and services, and draw out resources of the subject population (Tilly 2012). The case study of Sardis Lake revealed the depths and degree of force in which government bureaucracies attempted to achieve

authority and control of Sardis Lake, to reallocate the natural resource to a preferred distribution, and take the water from the populace.

Data was also coded and analyzed for descriptive terms within the realms of negative force; e.g. exploitive, coercive, domineering or within a realm of positive negotiation; e.g. facilitate concern, solve, satisfy, recommend.

Several methodologies are utilized to conduct the research and convey the findings. Extensive content analysis and narrative analysis provide the rich and thick descriptions commonly expected in qualitative inquiries. Content analysis is particularly effective for qualitative inquiry regarding this conflict over water that has occurred over a long period. It permits for the study of processes over time and it is an unobtrusive method that has little effect on human subjects. Additionally, the concreteness of the documents strengthens reliability (Babbie 2011).

Ritzer's theory of integrative social analysis is a tool that provides a holistic and comprehensive template to evaluate circumstances. When applied to the case study of Sardis Lake water dispute, it gives equal consideration to macroscopic and microscopic elements of the conflict to be analyzed. Additionally, it gives equal consideration to the objective and subjective conditions that are being studied. Lastly, Ritzer's model demonstrates the intersectionality of all the complex components and their influences on each other. (See Figure 3) (Ritzer 1991; Ritzer 1995). Ritzer's theory of integrative social analysis is the best fit model to undertake this case study because it gives equal weight to macroscopic and microscopic conditions and recognizes both objective and subjective

elements. Additionally, the Ritzer model relies on the integrative influences that when combined create a multiplicity of reactions and effects that can be identified.

Furthermore, by illuminating all aspects of the conflict, it serves to mitigate the risks and increase the reliability for internal and ecological validity (Babbie 2011).

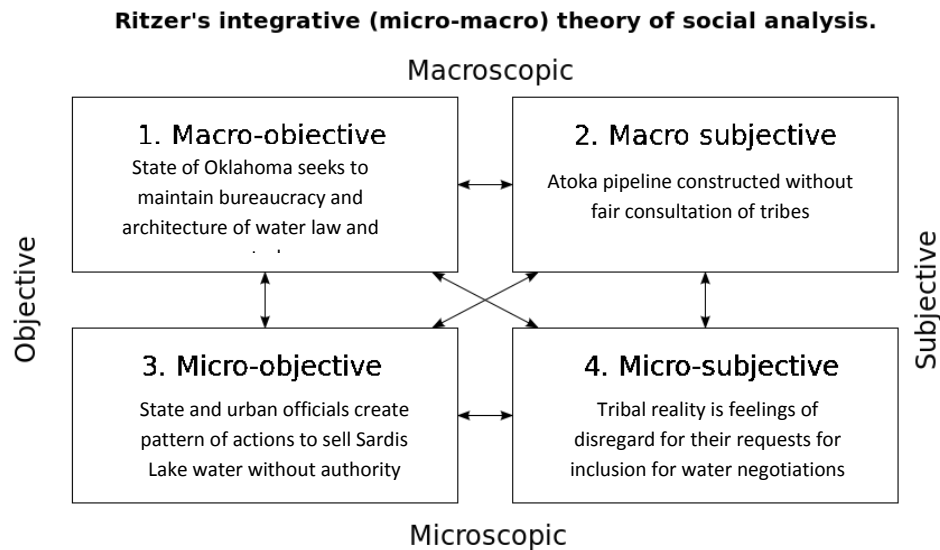


Figure 3 - Sardis Lake conditions for conflict

Thusly, for this case study, a broad review of historical context is presented. It may appear redundant to extensively revisit the past when the research question is centered upon issues related to the current conflict over Sardis Lake water. However, “The focused revisit takes ... on very different meanings because of changes in historical context and the interests and perspectives of the revisitor” (Burawoy 2003:650). The review of historical land based rights and the underlying water rights are insightful tools for comparisons when evaluating today’s dilemma of water rights and transactions. The contextual elements of the present case become clearer with the specificity for the past.

“Whatever happened in the past that was painful has a great deal to do with what we are today” (Echo-Hawk 2013:102). This illumination is partly clarified from the fact that much of the earlier writings regarding land transactions were “conducted under the protective guardianship of colonialism—conditions that remained silent in the original studies” (Burawoy 2003:649). This position is reaffirmed in Vine deLoria’s analysis. As a Native American scholar, deLoria characterized studies by American anthropologists as “ethnocentric and implicitly colonialist” (Erickson 2011:49).

Lastly, a chronological survey is summarized for the recorded and known documents and events that grant or inform the water ownership, rights, and privileges pertaining to Sardis Lake (See Table 2). An interpretation of the contents was conducted from the approach of discovering patterns of power structures. The analysis described document contents that indicated conflicting rights for and between users of the said waters of Sardis Lake. Data was examined that revealed patterns of conduct that supported or refuted the theory of whether powers and conflicts specifically related to the case of Sardis Lake could be identified. The analysis began with the primary treaties related to Indian rights. Following the goal for templates of social justice inquiry from the International Congress of Qualitative Inquiry, the analysis placed “the voice of the oppressed at the center of inquiry” (Denzin 2010:103). The importance of this perspective is that the privileged versions of the perspective “relies upon a substructure that has already discredited and deprived of authority to speak the voices of those who

know the society differently” (Smith 2012: 404). By beginning with the historical overview, voices previously unheard are quite clear.

## **BEFORE SARDIS LAKE**

Underlying circumstances of the water conflict for Sardis Lake rest in historical rights afforded to the tribes. The United States government federally recognizes 566 tribes (NCSL 2014). Of those, the so-called Five Civilized Tribes of Oklahoma (Cherokee, Chickasaw, Choctaw, Muscogee-Creek, and Seminole) expressly have the benefit of additional rights in their claims to land and natural resources – including water rights. These rights are likely to be addressed through application of the Mechem Doctrine. It is a stream adjudication that holds an “Indian tribe has water rights superior to even those expressed in *Winters v. United States (Winters)* when it: (1) holds its lands in fee; (2) is protected under the jurisdiction of the federal government, as promised in Congress's enabling acts; and (3) holds rights to water which have never been diminished or abrogated by an act of Congress” (Henderson 2011:1). The Chickasaw and Choctaw Nations have met these standards and qualifications.

These rights date back to the recognition of tribal sovereign power that began as an early practice of relations during the time when European nations began exploration and the establishment of the United States. Early settlers recognized tribal dominance and their rights to the lands of North America. Relations were negotiated between various tribes in the same manner of other nation-to-nation relations. Tribal rights eroded as two events occurred. First, European and United States’ influences dominated tribal nations.

Secondly, tribal populations diminished (often through epidemics of illness and disease). These combinations of events eroded tribal powers, but they were not completely extinguished. “What remains is nevertheless protected and maintained by the federally recognized tribes against further encroachment by others sovereigns, such as the states. Tribal sovereignty ensures that any decisions about the tribes with regard to their property and citizens are made with their participation and consent” (U.S. Department of Interior 2013). Furthermore, it is articulated in the United State Constitution that Congress is empowered to ratify treaties and “regulate Commerce with foreign Nations...and with the Indian Tribes” (Article One, Section eight). These provisions demonstrate that tribes are to be considered equivalent to any other government-to-government activity. Because of the unique powers of Congress in relation to Indian affairs at the national level, tribes are relieved from a position of subordination to individual states rights. Generally, states engage in government-to-government negotiations with the tribes on state level issues such as environmental concerns, gaming (casinos), tobacco sales, and law enforcement practices. While these legal protections are in place, relationships between both federal and state governments and the tribal nations have been contentious.

Advocates for the Five Civilized Nations argue these particular Oklahoma tribes have even stronger reserved rights with significant treaty and jurisdiction over the water (Robertson 2011). These tribes, in exchange for their "civilized" negotiations with the United States received their lands in fee simple. “A lot of the water rights of Indian tribes



...haven't been adjudicated... both the enabling act and the Oklahoma Constitution disclaim any right, title or interest to Indian Country...the state's Native American tribes have a powerful legal argument over water rights in southeastern Oklahoma" (Carter 2010). Treaties expressly exempted tribal nations from state jurisdiction. Further strengthening Oklahoma Indian rights was the fact that Congress only allowed Oklahoma into statehood under the terms of the *1906 Oklahoma Enabling Act*. "As a matter of federal law, Oklahoma's very formation was conditioned on its agreement not to disturb tribal rights or interfere with superior federal authority. (Burrage, Rabon and Greetham 2012:17). This included the new state's agreement to not interfere with the Indian's property, land or other rights.

It was the actions of principal entities in the negotiations and proposed sale of Sardis Lake water by the defendants that disregarded these rights and excluded dialogue with the Chickasaw and Choctaw tribes. In essence, principals negotiated the sale of water that is arguably not theirs to sell. In order to answer the question of power and conflict related to negotiated water sales, this case study revealed how the actions and emotions of individual and group experiences came to be embedded in the discourse related to Sardis Lake water rights.

## **DISCUSSION OF SARDIS LAKE**

The metropolitan areas of Dallas-Fort Worth Texas recognizes the need to provide critical water for a growing urban population (OWRB 2010). The metropolis lies about 200 miles south of the Red River. Oklahoma City also recognized the need for

water as essential for the growing the capital city of their state. Oklahoma City lies about 200 miles north of the Red River. In between these two cities, lies the home of the Chickasaw and Choctaw Nations. In the late 1950's, both metropolitan areas saw the water of southeastern Oklahoma as the answer to their needs. Without consultation with the American Indian tribes residing in southeastern Oklahoma, Oklahoma City “developed a new water supply in Atoka County by construction of a water supply reservoir, pumping system, pipeline...” (Slaughter 2010:1). In the 1950s, the tribes did not possess the political influence to object or negotiate fair compensation for easements through the property.

In 1962, the Flood Control Act granted authorization for the U.S. Army Corps of Engineers to construct Sardis Lake. This legislation came on the heels of hearings held in the 1950s. Dallas, Fort Worth, and Oklahoma City officials had been meeting with high level southeastern Oklahoma politicians as early as 1956 to express their interest in obtaining water from southeastern Oklahoma. A public hearing on the issue of water was conducted in Hugo Oklahoma. The urban cities at that time testified to their interests in southeastern Oklahoma water (OWRB 2010). The reservoir was to be constructed along the Kiamichi River. “Oklahoma City first contemplated water from the Kiamichi River in the 1960's” (Couch 2007:1). What would be known as Sardis Lake was to be located about five miles northwest of Tuskahoma, in the heart of the Choctaw Nation territory.

Like Atoka Lake and the Atoka Lake pipeline, Sardis Lake was created without consult of the Chickasaws or Choctaws living in the area. The tribes have called

southeast Oklahoma home since they were moved onto the land during the Trail of Tears. The purpose of the reservoir construction was to maintain flood control, water supply, recreation, and fish and wildlife. Although authorized, construction did not begin in earnest until after February 16, 1974 when the State of Oklahoma contracted with the U.S. Army Corps of Engineers. The State of Oklahoma was to make regular annual payments for 30 years to pay for the project. There were no suggested payments to the tribes. The Indians watched as construction began through their territory, reminiscent of previous experiences. The reservoir began to fill in 1982 and was officially completed in 1983 (OWRB 1995; OWRB 2010). Fulfilling part of the design function, Sardis became a recreational destination for crappie fishing and trophy bass with over one hundred miles of shoreline and covering nearly fourteen thousand acres (ODWC 1992; U.S. Army 2012).

In the 1990s, area citizens began to become concerned the lake would be compromised. Oklahoma City “first participated in acquisition of Sardis Lake’s water supply in the 1990’s (Couch 2007). In 1992, the Oklahoma Water Resources Board (OWRB) entered into a contract to sell the water to the North Texas Municipal Water District. In 1992, the Oklahoma Department of Wildlife Conservation (ODWC) sent written comments to the OWRB outlining environmental concerns for fish and wildlife related to the proposed sale of water and associated fluctuation in water levels (ODWC 1992). Shortly thereafter, in 1993, the ODWC issued a position statement and recommended restricted water withdrawals during critical fish spawning and nursery

periods. The report also outlined the concern for increases in boating hazard issues should lake levels be depleted. It analyzed impacts to loss of wildlife habitat and bottomland hardwoods, waterfowl management units, and increased soil erosion.

Talks of selling water continued through the decade. In 1995, the Oklahoma Comprehensive Water Plan (OCWP) is updated to suggest formation of a permanent committee with Indian representation, develop a negotiation process to resolve current and future water right issues, and to identify water projects that warrant cooperative action [i.e. water sales to Texas] (OWRBb 1995:138).

By 1997, Oklahoma had defaulted on the Sardis payments they owed the U.S. Army Corps of Engineers. Yet, the state was able to announce "We've been able to deposit more money into the rainy day fund than ever before....Oklahoma's strong economic growth resulted in a \$245.9 million deposit to the rainy day fund this year (Oklahoma 1997). It is not clear why Oklahoma chose to go in default. Only in the future does it become clear that a plan would be laid for Oklahoma City to assume the debt – and the water. The battle of Sardis Lake has long exceeded the terms of the past three Governors for Oklahoma. In 1997, under Governor Frank Keating's administration, Oklahoma was notified by the U.S. Army Corps of Engineers that the State was in default of payments. "The governor has been steadfast in his desire...and made it very clear to me very early on that he wanted to acquire the lake if we could resolve the title problems associated with the Indian claims" (Yeager 1998). The Governor's office reported "Negotiations have been cordial with the corps, Gov. Bill Anoatubby of the Chickasaw

Nation and Chief Greg Pyle of the Choctaw Nation” (Yeager 1998). In 1999, the ODWC sent additional communication to the OWRB reaffirming their request to be included in development plans for water sales (Duffy 1999). Everybody is clamouring for a seat at the table in negotiating the potentially lucrative contract of selling water to Texas. Formal recommendations were made to include American Indian tribal interests in the planning process. Those recommendations were never implemented.

A new centennial arrived, and repeated recommendations are made. This time, in 2000, the OWRB submitted a Kiamichi River Basin report to the Oklahoma legislature and the recommendations were stridently familiar – develop a state and tribal water compact. Oppose any water sales that potentially jeopardize economic development in southeast Oklahoma. The report continued that the priority was to maintain water security for Oklahomans first and with “the highest priority afforded to those Oklahomans residing within the Kiamichi River Basin” (Farmer 2000).

In direct opposition to the OWRB stated recommendations with the “highest priority” being recognized for those within the Kiamichi River basin, Oklahoma City crafted their own master plan. “Acquiring water rights in Sardis Lake is an integral part of the 2003 Oklahoma City Master Plan (Couch 2007:1). Confident in their plan, the water pipeline was already receiving attention “The engineering process is underway to develop plans and specifications...” (Couch 2007:3). As these serious and formalized Sardis Lake water negotiations continue, the Chickasaw and Choctaw tribal leaders continued to hear the official reports and recommendations calling for state and tribal

collaboration. Genuine efforts toward collaboration and inclusion are missing. On March 27, 2007, Oklahoma City Manager, James D. Couch submits a memorandum to the Mayor and City Council and recommended the adoption of the formal resolution to apply to the OWRB for the Sardis water permit (Couch 2007).

On June 10, 2008, Chickasaw Nation Governor Bill Anoatubby pens a cordial, yet formal, letter to then Oklahoma Governor Brad Henry. Anoatubby outlines his concern that no progress on the recommendation for a state and tribal alliance regarding water rights has occurred, and more to the point; the current version of the Comprehensive Water Plan updating process decidedly excludes tribal input. In closing, the letter becomes more forceful and directs Henry's attention to the enclosure prepared by the tribal attorney with a prescribed outline of desired expectations for water dialogue (Anoatubby 2008). The time had come to "string the bow" and be prepared to fight. Anoatubby's attached document is from Stephen H. Greetham, a water and natural resources attorney. The letter effectively represents the Chickasaw Nation and outlines the expectation for the State of Oklahoma and the OWRB that the Chickasaw Nation strongly desires a collaborative relationship with the State and its agencies that "redounds to the benefit of all Oklahomans, Chickasaw and non-Chickasaw alike" (Greetham 2008).

Possibly pressured by the stern letter to the Governor, Oklahoma City appeared to acknowledge they would be unable to secure the water on their own volition. They recognized the increased legal position of the tribes' power and authority. Oklahoma City sought avenues to strengthen their own position. They joined forces with the surrounding

central Oklahoma cities of Moore, Norman, Midwest City, Shawnee, Chickasha, Del City, Edmond, Goldsby, Seminole, Calumet, El Reno, Mustang, Okarche, Piedmont, Union City, and Yukon. Their collaborative efforts funded the *Regional Raw Water Supply Study for Central Oklahoma* which was completed in March 2009. The report expressed the intent “With existing resources fully utilized, it will be necessary to receive water from a new resource....This resource is Lake Sardis.... This study investigates the best way to gain access to this resource and how best to deliver this water to the citizens of Central Oklahoma” (OCWUT 2010). By that fall, a document was hand delivered to Oklahoma’s State Treasurer, Scott Meacham. The document summarized the agreed upon terms of the agreement for Oklahoma City to buy the Sardis Lake water that the State of Oklahoma was offering them for sale. It also noted that Oklahoma City “wishes to suggest amended terms” (White and Couch 2009:1). The salient point was Oklahoma City wanted the agreement to preclude that in any negotiations the State of Oklahoma made with Native American nations regarding Sardis Lake that “Oklahoma will neither diminish the rights and interests conveyed to Oklahoma City hereunder nor obligate Oklahoma City to further compensation or consideration for such rights and interests” (White and Couch 2009:2).

While the centrally located municipalities were collaborating to develop their own future water plan studies, the State of Oklahoma ordered a \$14 million study for a “comprehensive” water analysis plan of their own. The study detailed the urgent needs of urban populations, farming, and oil and gas industry. The study failed to adequately

address non-consumptive use of the water. Non-consumptive water use includes such activities as recreation and water related tourism. Even the *Winters* decision allocated water value in non-economic terms “The Indians had command of the lands and the waters -- command of all their beneficial use, whether kept for hunting...or turned to agriculture and the arts of civilization” (Winters 1908:7). How the non-consumptive use of water is devalued through State ordered “research” resonates with the historical devaluing of sacred grounds and diminishing the true nature of agrarian efforts of the Chickasaws and Choctaws.

Tribal leaders were not the only injured parties in the plan. The report was released in April 2011 to strong criticism from other stakeholders as well. One legislator was disappointed to learn the expensive study did not even include basic quantified impacts of recreational and environmental uses of non-consumptive water. This was principally shameful since Oklahoma boasts a 7.1 billion dollar economic impact from tourism (Oklahoma 2013). Much of it focused in southeastern Oklahoma related to boating, fishing and other water related activities. Considering the importance of such a factor, legislators requested an Oklahoma Attorney General’s opinion into the matter to determine “whether the OWRB has fulfilled its legislative mandate to make a comprehensive report since recreational and environmental uses were not quantified” (Adcock 2011). The millions of dollars of tax-payer funds spent for a document that contained such glaring omissions was yet another example of macroscopic governmental bureaucracy. It directly countered to the micro-subjective perceptions and beliefs of



individuals that their values for recreational water, tourism and environmental respect were being ignored at best and omitted intentionally at worst. Furthermore, Jerry Ellis, the Oklahoma Senator that represented southeast Oklahoma, pointed out a direct conflict of interest for the private company involved with producing the study. “CDM engineering had contracts with the Comprehensive Water Plan and simultaneously worked for the Oklahoma City Water Trust authority in a contract to bring Sardis Lake water to Oklahoma City” (Ellis 2011:5). CDM Smith is a multinational corporation specializing in engineering for water and energy facilities. Their primary clients include governments, such as the Sardis water acquisition project for the State of Oklahoma and the City of Oklahoma City. CDM Smith’s involvement with Oklahoma City was evident (Lewis 2008).

The Oklahoma City water permit application for Sardis was looming on the immediate horizon. In April 2010, county commissioners for all the affected southeastern Oklahoma counties of the Kiamichi River basin stood unified in direct opposition to the permit application. The commissioners for each of the counties passed formal resolutions and presented these resolutions to the OWRB. They specifically protested Oklahoma City permits and further resolved that they supported water and economic development that would benefit the southeastern Oklahoma rural residents of the Kiamichi River Basin (Deela, Medders and Alford 2010). CDM Smith was being paid from both sides of the water battle. They were also working with Texas water agencies to procure Oklahoma water. “Texas doesn’t want the water for residential use, but, rather, for natural gas

development. It takes millions of gallons of water to hydraulically fracture, or frack, one natural gas well...there are more than 16,000 rigs in Fort Worth alone on the Barnett Shale” (Jacobs 2013).

On April 21, 2010 the leaders of both the Chickasaws and the Choctaws prepared their communication of protest. They sent another tough letter to Governor Henry. The tribes asserted they had been excluded from the closed negotiations related to Sardis Lake water. They introduced issues of actual State authority and jurisdiction. “Those are questions we would prefer to work out with you rather than resolve through formal conflict” (Carter 2010). The language of the letter, under analysis, reveals elements of severe dissatisfaction. The language was strong and it did not take a sociologist to extract its meaning. The letter was pointed enough to “put on ice” the \$100 million dollar deal with the OWRB and Oklahoma City (Carter 2010). The tribes were being rebuked at each attempt to assert their sovereign nation water rights. They were not the only entities frustrated at being left out of the negotiations. Legislators representing southeastern Oklahoma held a press conference on the marble steps leading to the Oklahoma capitol building decrying the secret agreement between the State of Oklahoma and Oklahoma City. The leaders renounced that the powerful people of Oklahoma City were exploiting the poverty of southeastern Oklahoma, one of the poorest areas of the state. The powerful state governments had their own structures of power. Legislators from southeastern Oklahoma had less power and lobbyists support than the urban representatives. Like the Chickasaw and Choctaw tribes, the Senators that represented the District requested to be

included in any negotiations for water sales that were coming from the district. He “received no response whatsoever” from that request (Ellis and Wilson 2010:1).

Following the press conference, the quiet deal in Oklahoma City was generating a lot of noise in the rural communities of southeastern Oklahoma. On Saturday, May 6, 2010, more than nine hundred concerned citizens attended a rally in Durant Oklahoma to further protest the water grab (Carter 2010). The rally prompted the formation of a grassroots organization, Oklahomans for Responsible Water Policy (ORWP). Within three years, membership grew from those at the rally to over fourteen thousand members. It swelled representation to all of the geographic areas of Oklahoma with concerned citizens for water “including at least one from every zip code in the state” (ORWP 2013). Strong grassroots organizations are sustained by "activities such as petitioning, letter-writing campaigns, litigation, testifying..." (Johnson, Agnone and McCarthy 2010:2271). Research indicated the ORWP grassroots organization had consistently participated in these activities as well as activities that identify a strong organization (Aamodt 2012; Embry 2011; Renegar 2011).

Senate press conferences at the capitol and citizen rallies failed to illicit cooperation. But it did generate media attention. “Reporters prefer stories with local and homegrown actors” and “journalists adhere to quintessentially American values...and share distaste for ideological excess and social disorder” (Andrews and Caren 2010:844). *The Journal Record* is an Oklahoma newspaper that focuses on state-wide business and legal trends. It provides extensive in-depth coverage of “Oklahoma Water Wars” and

highlights the issues of the local affected communities from the battle of Sardis Lake water (Journal 2014). Studies indicate an effective grassroots organization does not have to rely on protests and chaos to garner media attention. The relatively small Love Canal Homeowners Association received better media attention than official press releases and statements issued by government authorities. "Reporters confer standing when stories present a movement as having a legitimate moral voice" (Andrews and Caren 2010:843). The OWRB grassroots organization demonstrated this tactic. "[She] wants to take the politics out of water in Oklahoma. The president of the citizen advocacy group Oklahomans for Responsible Water Policy said she thinks science should guide the state's decisions on how to allocate water use" (Terry-Cobo 2013).

Also garnering media attention was the continued non-payment of the debt on Sardis Lake. With Oklahoma delinquent on the payments, interest continued to accrue. In September 2009, the federal government filed a civil action to prompt a repayment with *United States of America v. State of Oklahoma, et al.* (2009). Oklahoma was ordered to pay almost \$28 million dollars to cover indebtedness, interest, and the obligations of present operating and maintenance costs for water storage at Sardis Lake. They made one court ordered payment and then declared insufficient funds to make future payments. The State of Oklahoma sought a partner, "the only Oklahoma water supplier to put an offer on the table – Oklahoma City ..." (Lambert 2010:6). The OWRB also recognized that besides transferring rights to Oklahoma City, the arrangement did not necessarily preclude them from the "ability to continue discussions with southeast Oklahomans and

Tribes to protect their rights and interests, including recreation, fishing, future economic development in southeast Oklahoma” (Lambert 2010:6).

One negotiator throughout the discussions for transfer of water rights is Oklahoma’s State Treasurer, Scott Meacham. He calculated the costs, interests, penalties, future costs, and declared approval of the transfer and associated financial burden of Sardis Lake “equates to an over \$270 million debt off the backs of Oklahoma taxpayers, while at the same time providing a valuable future water supply option to central Oklahoma communities...” (Lambert 2010:7). All the while maintaining Oklahoma would still “further discuss and evaluate the concerns of Tribal Nations, southeast Oklahomans, and others...” (Lambert 2010:7).

Meanwhile, the City of Oklahoma City and its agency, the Oklahoma City Water Utilities Trust (OCWUT) continued negotiations for water sales in the \$100 million dollar range (Carter 2010). The math is easy; Oklahoma City readily agreed to assume \$28 million in debt. In October 2009, Oklahoma City courted the State of Oklahoma to accept their offer to assume the debt, pay the State of Oklahoma \$15 million dollars, and the water would “ultimately be used to benefit several central Oklahoma communities” (Meacham 2009:2). Others argued Oklahoma City would “resell the water to western Oklahoma” (Muskogee 2007). The water was not for the benefit of southeastern Oklahoma residents, nor for the Indian tribes that resided in the southeastern territory. Oklahoma City would benefit and arid western Oklahoma (Buchanan 2013).

Plans of the agreement to transfer water rights and debt obligation from the State of Oklahoma to Oklahoma City came to the attention of the federal government. On May 20, 2010, the U.S. Army Corps of Engineers sent a pointed letter to Governor Henry admonishing the actions between the State of Oklahoma and Oklahoma City, and advising the Governor “we find it prudent to remind you...” of the federal government’s role and authoritative rights for the management of Sardis Lake administration. Summarily, the State of Oklahoma and the City of Oklahoma City were not authorized to sell water that was not theirs to sell (Snyman 2010:1). This letter was followed shortly thereafter on June 7, 2010 when the Chickasaw and Choctaw tribes collaborated and officially communicated to Governor Henry that they would make all the payments (Lambert 12). It was patently clear the tribes offer was unlike Oklahoma City’s offer. The City was offering a buyout. The tribes’ offer was more generous. They were willing to make the payments in order to maintain status quo – to buy another year. It would allow time to formulate a more comprehensive and inclusive solution. The OWRB acknowledged they were in receipt of that offer, yet it was declined. Additionally, information was available to the OWRB that the State had over \$100 million remaining in the Rainy Day Fund, of which it was not out of reason that the \$5.2 million payment in immediate demand could be made from, further staving the need for an immediate vote to approve Oklahoma City’s water permit request. That option did not receive serious consideration. Lastly, the OWRB board could vote no, which in turn would replace the onus of responsibility for paying the debt back to State legislature.

Notwithstanding the alternative options available to pay the debt, and in direct opposition to the warning advised from the U.S. Army Corps of Engineers to the State of Oklahoma, a special meeting of OWRB was called for June 11, 2010 – in order to approve the transfer of water rights to Oklahoma City. The meeting drew a large crowd of interested parties that stood on both sides of the debate. State legislators from southeast Oklahoma, tribal nation representatives, lobbyists, county commissioners, and citizens attended the special meeting that seemed to be the culmination of Oklahoma City’s fifty year effort to acquire southeast Oklahoma water. Chairman Rudolf J. Herrmann invited comments before the vote. Thirty minutes would be allowed for each position. He asked for a brief recess and during the recess those in favor and those against should informally caucus to determine how to best use their allotted speaking time.

Jim Couch, City Manager of Oklahoma City, was the only designated speaker for the pro-sale contingency of supporters. The City of Oklahoma City, in their efforts to acquire water was in collaboration with their surrounding cities, including Edmond, Norman, Shawnee, Moore, and others. In all, the greater Oklahoma City metropolitan represented about one-third of the entire state’s population. They would need water for future growth. Couch referred to their similar water storage arrangements with Canton Lake, McGee Creek Reservoir, and Atoka Lake and claimed their potential relationship with Sardis would be a “very similar relationship” in nature. What we do know is when Oklahoma City drew down Atoka Lake “when the water is taken there is nothing left but a mud hole” stated Greg Pyle, Chief of the Choctaw Nation (Lambert 2010:8).

The taking of Sardis Lake water would discount the wants and needs of the oppressed population of residents in the basin of the Kiamichi Mountains. A series of newspaper advertisements from 1958 “hawked vacation lots along ‘the scenic shores of Lake Atoka.’ These ads implied hunting, fishing, boating, family fun and even inspiration would abound. Family fun was short-lived. By 1964, Oklahoma City had restricted access to the lake, and later fought to close the lake to fishing, boating and other recreational activities” (Embry 2012:5). In today’s reality, Atoka Lake remains drawn down, fish habitats protrude from the dried lake bed, picnic tables are in disrepair. The real estate market is weak for lakeshore cabins on what was to be Atoka Lake.

With Atoka Lake viability incapacitated, Oklahoma City turned to their Canton Lake option. During extreme draught conditions, they took what they wanted, leaving the rural population of Canton without viable water sources for their own economic survival. Oklahoma City had been drawing down Canton Lake in previous years, but the draught of 2013 was portrayed as “What I call the ‘kill shot’ release, because this is the one that took the lake level to the point where it made the lake unusable...” (Layden 2013). During his 2010 testimony during the special session, Couch stated “there is no need for this water [Sardis] for many decades and there will be a long time before...central Oklahoma has a need for the water...” (Lambert 2010:7). Oklahoma City’s assertion of water stewardship would become a deeply and bitterly tasting proposition for Atoka and Canton (Hennessy-Fiske 2011). The OWRB touts “The State of Oklahoma has had great success protecting and allocating its citizens’ water resources” (OWRB 2012b:4).



In closing, Couch presented testimony that assured the OWRB board and the audience that there would be no out of state water transfers “None of the water can go outside the State of Oklahoma...” (Lambert 2010:7). What also became clear was that the city Hugo, a downstream location on the southern border of Oklahoma, would be an in-state permit holder, Hugo had already negotiated with North Texas water organizations for permits. During the 2013 *Tarrant v. Herrmann* Supreme Court Case, the cities of Hugo and Irving Texas together submitted to the Supreme Court justices an *amici curiae* (friend of the court) brief outlining their relationship and why the Court should find in favor of Tarrant. The City of Irving “a growing Texas municipality with projected water needs that far exceed current supplies, entered into a contract...to purchase water from Hugo.... Hugo currently holds water rights from the State of Oklahoma...and has a pending application to appropriate significant additional supplies” (Cottingham, Caroom and Maxwell 2013:2). The City of Hugo’s pipeline to the metropolitan municipality of Irving Texas became stalled in *City of Hugo v. Nichols* (2011). Irving joined Hugo as plaintiffs in what would be another lawsuit against the OWRB (Nichols) and their management and control of Oklahoma water resources. The suit essentially asked for Hugo’s additional water permitting requests to be approved by the OWRB. “The Court’s opinion held Hugo...lacked standing to invoke a ... claim against the OWRB (i.e., Hugo’s parent state). The Court further held...Irving lacked standing ...because Irving’s standing was premised solely on its contract with Hugo” (U.S. Court of Appeals 2011). Hugo appealed to the U.S. Supreme Court in January of 2012 and in March 2012, their

appeal was denied. In essence, Couch stood before the committee claiming no out of state water permits would be allowed. He knew full well that permits to in state applicant, like that of Hugo, would be approved and Hugo would sell water to Texas.

With Couch's time before the OWRB board members completed, State Senator Jerry Ellis spoke and forcefully stated his counter opinions on the matter of whether the OWRB should approve the Oklahoma City permit request for Sardis Lake. Ellis represents the extreme southeastern Oklahoma district where Sardis Lake is located. He avowed the negotiations to approve Oklahoma City taking the water were "cloaked in secrecy and lacks transparency" (Lambert 2010:9). Furthermore, the citizens of Sardis were forced to submit their own applications for water use and have had their applications waiting far longer than Oklahoma City had been waiting. In fact, the very point of this special session was solely to approve Oklahoma City's application. Two applications were submitted in 1993 – and they remained languishing and unapproved by the Oklahoma Water Resources Board! "The OWRB loaded up the City of Hugo with water use permits to facilitate a Texas water deal" (Lambert 2010:9). Of all the OWRB members, not one lived in extreme southeast Oklahoma, where the water is located.

If the facts were true as stated by Couch, that Oklahoma City would not actually need to the water for decades, why the rush for a special meeting to approve the water storage transfer to Oklahoma City? Another southeastern legislator reminded the board that Oklahoma statutes required appraisals for items being sold. Items valued at over \$1 million could not be sold for less than 90 percent of the value. He ascertained the true

value of the water had not been satisfactorily identified and a thorough study of water valuation was called for. Further opposition to the vote was voiced citing the Texas A&M research that indicated when transferring water from a basin “so goes with it the economic development, tourism, recreation, and the donor basin is left with environmental degradation” (Lambert 2010:11).

Following remarks by Senator Ellis, another state legislator recalled when he was a young intern in 1984, working in the congressional office of Wes Watkins’ office who represented southeast Oklahoma. During a staff meeting, the discussion turned to what would happen to Sardis Lake. The state legislator, upon reflection of that time of being a young intern, inferred the situation of non-payment was “by design”. That inference was further substantiated by the next speaker at the special session. State Representative Brian Renegar affirmed that during the 2008 legislative session, \$66 million in bond issues were being approved. Several legislators asked that funds for Sardis be included and they were told “that has already been worked out” (Lambert 2010:11).

The pressure to restrain the State of Oklahoma and the City of Oklahoma City from taking the water was relentless. On the same day of the special meeting, June 11, 2010, the U.S. Department of Interior joined the conflict. Larry Echo Hawk, Assistant Secretary of Indian Affairs weighed in with a terse letter to the OWRB. “I request that the Board defer any final action of the proposed transfer pending consultations with the Chickasaw and Choctaw Nations and with appropriate Federal officials” (Echo Hawk

2010). The request was based on the consideration that particular federal approvals would be needed for such action and rights and interests of the tribes were at stake.

The special meeting of the Oklahoma Water Resources Board was drawing to a conclusion. Chairman Herrmann ruled adequate opportunity for comment had occurred and no further comments would be allowed. He called for a vote for the board to approve the agreement between the Oklahoma City Water Utilities Trust and the Oklahoma Water Resources Board relating to the transfer of rights to use the conservation storage capacity in Sardis Reservoir. The motion was approved five for approval and two against. The meeting adjourned at 11:30 a.m. It was a long four drive home for the citizens of southeast Oklahoma who had travelled to Oklahoma City in hopes their voices might be heard. However, there were a number of entities listening to the volleys being hurled back and forth, and not everyone approved of what they were hearing.

The tense special meeting ended and the OWRB wasted no time in executing the contract. On June 15<sup>th</sup>, the agreement was signed. And, on June 30<sup>th</sup> the OWRB sent a copy of the agreement to the U.S. Army Corps of Engineers requesting their approval – as was requested in their communication of May 20<sup>th</sup> to the OWRB. “I am sure you have been kept apprised of the informal discussions *over the past several months* (emphasis mine) between our respective staffs regarding what we understand is a fairly perfunctory approval process” (Strong 2010). The letter intones the public comments entertained at the June 10<sup>th</sup> special meeting were not to be sincerely considered. The deal had been sealed months beforehand.

With pressure building, the U.S. Army Corps of Engineers did not “fairly perfunctorily” approve the transfer agreement presented to them. Instead, they referred the request to their District Counsel. Their response to the OWRB reaffirmed the Corps position of power. “A decision on an approval of a transfer and assignment will be made by the Assistant Secretary of the Army (Civil Works)...The decision-making process will take into account all available information to determine whether approval of a transfer is in the best interests of the United States” (Roselle, Jr. 2010:1). The communication goes on to recognize the unique circumstances involved with this particular request which is a result of the court order mandating Oklahoma make the required payments. “Pursuant to that Order, certain extra-contractual obligations exist between the parties and the Court continues to retain jurisdiction” (Roselle, Jr. 2010:1). For these reasons, the U.S. Army Corps of Engineers did not perfunctorily approve the request. An additional hurdle presented to the OWRB was that before the transfer could occur, the entity (Oklahoma City and the OCWUT) to which the contract is to be transferred to must have already obtained a valid water rights permit. And the Corps was “aware of other entities’ claims to water rights at Sardis Lake that have been well-publicized in the local media...the Corps of Engineers does not make determination of water rights and does not become a party to disputes regarding water rights” (Roselle, Jr. 2010:2). Clearly, the Corps had been informed exactly how long some water permit applications had been languishing at the OWRB far ahead of Oklahoma City’s permit requests.

Two additional reasons for avoiding public discourse and transparency were identified. The effort to avoid scrutiny of the transaction, even from residents of Oklahoma City and the surrounding towns, was because they would bear the financial risks for hundreds of millions of dollars of construction bonds for the project. Secondly, state-wide controversy existed on the possibility of Texas receiving the water. It was possible the central Oklahoma residents would pay for construction to bring the water from southeast Oklahoma to central Oklahoma for what they believed would be for their benefit, only to learn the water could then be transported away to Texas. This possibility was ever at the forefront of discussion and all eyes were upon Texas as *Tarrant v. Herrmann* was consistently in the media as it headed closer and closer to the U.S. Supreme Court.

Dissatisfied with stalled efforts for inclusion, on August 18, 2011, the Chickasaw and Choctaw tribes wrote another letter to another Governor. This time they addressed their continued concerns to Oklahoma Governor Mary Fallin, who had taken office after Henry. This communication reminded the Governor “State law *does not* control this subject [of water]... We expect that our continued forbearance would simply mean the deepening of our present challenges.... History and the law demonstrates that we must act...” (Anoatubby and Pyle 2011). The letter reproved Oklahoma’s handling of the water issue by their recitations of state laws – which the tribes iterated are in direct conflict and in an inferior position to federal law – where the water conflict must be ruled from. Their 36-page lawsuit, *Chickasaw v. Fallin* was filed on August 18, 2011 in the

U.S. District Court for the Western District of Oklahoma. As subsequently amended (November 10, 2011 and January 26, 2012), the lawsuit names as defendants Governor Mary Fallin, the members and Executive Director of the OWRB, and the City of Oklahoma City and the Oklahoma City Water Utility Trust (OCWUT). The lawsuit alleges the Indian Nations have federally-protected rights to the water within a 22-county territory in southeastern Oklahoma that are "prior and paramount" to any rights granted by the State to Oklahoma's citizens. Among other things, the lawsuit primarily sought to halt any permit application action by the OWRB for Oklahoma City to use Sardis water or from exporting any water from southeastern Oklahoma until general stream adjudication has been satisfied through what is known as the McCarran Amendment (Chickasaw 2011). The McCarran Amendment provides the means to adjudicate water rights that arise under federal law (Finkelman and Garrison 2009).

With fewer options remaining, in February 2012, Oklahoma quickly assumed the position to oversee the stream adjudication process that was going to be required. "The State, through the OWRB is authorized to commence a general stream adjudication...to confirm and determine rights" (OWRB 2012b:2). In response to the *Chickasaw v. Fallin* action, the OWRB, acting under the authority of the State of Oklahoma, subsequently retaliated in order to assume original jurisdiction. In early 2012, they filed a lawsuit in state court, *Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation of Oklahoma, a federally recognized Indian Tribe; the United States on behalf of the Chickasaw Nation, etc., et al. (OWRB v. United States)*. This action was designed to

force a state stream adjudication process. For a state, such as Oklahoma, to instigate the water rights adjudication process, the McCarran Amendment was intended to allow the United States to be enjoined as a defendant for no other reason than "Unless all the parties owning...water rights ...can be joined as parties any subsequent decree would be of little value" (McCallister 1976:305).

Before the Oklahoma water rights adjudication could take place, the federal government removed the lawsuit for adjudication from the Oklahoma state court to federal court (Coats et al. 2012). This action prevented the adjudication process from going forward. Oklahoma claimed it was a premature effort to usurp Oklahoma's management of waters. Oklahoma advertised to its citizens "Adjudication will provide certainty to your claim to water ... [adjudication] will provide for a final determination of all water rights, as well as the State's ability to administer and protect these invaluable water rights and resources" (OWRB 2013:3). The State also put forth they had "expertly" and "responsibly managed and protected its water resources for all citizens..." (OWRB 2013:3). Clearly, concern for who wielded the most power was becoming evident. The bureaucracy, language, and patterns of actions by the State and its agencies were strong.

The State of Oklahoma and the OWRB might have been disappointed to learn they would not be retaining control for determining who had water rights. By prompting the McCarran adjudications, Oklahoma impelled the federal government, at the highest levels, to become involved. The Secretary of the Interior, Ken Salazar, explained the immediate concern and process that would be implemented regarding the adjudication.



The determination of water rights would not be expeditiously decided by Oklahoma. “If, in the end, comprehensive water rights adjudication must take place, we would... discuss the proper forum for conducting the adjudication” (Salazar 2012:1).

The speed of actions from both sides of the water controversy increased. In March of 2012, federal court mediator Frances McGovern issued an order to stay formal proceedings (put the case on hold) for 60 days in *Chickasaw v. Fallen* to allow more time for mediation among the parties. Oklahoma and the OWRB were particularly attuned to their other lawsuit against them, *Tarrant v. Herrmann*. Oklahoma had beat Texas on every level of the jurisdictional process and through every appeal. Texas, undeterred, and spending millions of dollars in legal fees, requested a U.S. Supreme Court hearing. In a given session, 2009-10, a total of 8,159 cases were received by the U.S. Supreme Court. Of those, the court accepted 82 of the cases (Black and Boyd 2013). Although the chances of Tarrant’s case being accepted were slim, it was granted a hearing. After agreeing to hear the case, the Supreme Court justices invited U.S. Solicitor General (SG), Donald B. Verrilli, Jr. to submit his opinion on the matter. Often referred to as the tenth justice because of the weight afforded by the justices to the SG’s opinion, Verrilli, Jr. submitted “Water rights of the Tribes [Chickasaw and Choctaw] may be relevant to the amount of excess water available” (Verrilli, Jr. 2012:20). With the SG’s respected opinion on the record, the tribes had good reason to be hopeful for the outcome of this case and their own case against Oklahoma. Although the tribes were not directly a party to *Tarrant v. Herrmann*, they watched the case closely. The tribes even provided their

own friend of the court brief in support of Oklahoma. Previously, Tarrant had attempted to buy water from the Choctaws and Chickasaws. This attempt was unsuccessful (Sotomayor 2013). When negotiations for purchase failed, the tactic was amended. In 2009, Tarrant attempted to buy Red River water from the Apache Tribe of Oklahoma and this too was unsuccessful (Chalepah and Oliver 2009).

The day arrived. *Tarrant v. Herrmann* was heard on April 23, 2013 by the United States Supreme Court. If Oklahoma prevailed, it could be considered a strength to Oklahoma and/or Indian water rights. Representing Herrmann (Oklahoma) for the oral arguments was Lisa Blatt. She “has argued 33 times before the U.S. Supreme Court. She’s won 32 of those times” (Cater 2013). Her oral arguments were persuasive but would they be enough to win? While the justices deliberated, the parties to *Chickasaw v. Fallin* waited to hear how *Tarrant v. Herrmann* would be adjudicated. And they waited. The court had not rendered an opinion by May 2012 when the *Chickasaw v. Fallin* case received an extended stay for another 60 days. The parties agreed they were “making progress” in negotiations and both parties affirmed it was in the best interest for judicial proceedings to be “stayed” or continued to be held off so discussions could continue.

During the stay, news arrived that the U.S. Supreme Court had rendered a decision for *Tarrant v. Herrmann*. In June 2012, the Supreme Court announced their verdict on *Tarrant*. The court ruling was unequivocal and the message from the Justices was clear. In a unanimous opinion, all nine U.S. Supreme Court justices ruled in favor of Oklahoma. Texas could not take their water. Blatt won. It was a victory for southeastern

Oklahoma. The opinion rested on the element that “Adopting Tarrant’s reading would necessarily entail assuming that Oklahoma...silently surrendered substantial control over their waters...” (Sotomayor 2013:3). For their case, *Chickasaw v. Fallin*, the tribes were also arguing they had never surrendered their waters. The *Tarrant* ruling appeared to favor the tribes position. Power was shifting. It can be supposed that the ongoing negotiations granted through the stays for *Chickasaw v. Fallin* now would reflect that new knowledge available from the Tarrant opinion. The State of Oklahoma was more likely to respect the process of negotiation over litigation with tribes for *Chickasaw v. Fallin*.

Scrambling to secure additional power and influence, in August 2013, Oklahoma Governor Fallin solidified the state’s liaison with the powerful and well funded U.S. Army Corps of Engineers agency. Immediately following his retirement from the Corps, Michael Teague joined Fallin’s organization as Secretary of Energy and Environment, a newly created cabinet level position. “His years of experience dealing with ...water management will serve him well as Oklahoma’s first secretary of energy and environment” (Fallin 2013). Adding this player to the roster for Oklahoma has been the final known act in this battle for power and control over Sardis Lake water. Federal Judge Lee West issued a gag order restricting the parties from disclosing further details of the ongoing negotiations. West, overseeing the negotiations is “likely to keep issuing stays if the state and tribes keep requesting them” (Wertz 2013).

## **THEORETICAL FINDINGS**

In order to understand the sociological implications of the Sardis Lake water conflict, Ritzer's theory of integrative social analysis is used. It demonstrates examples from objective bureaucratic actions and patterns of behaviors as well as revealing how subjective influences of culture and values were embedded in perceptions and how the social construction of realities affected the positions proffered amongst the actors. This theory allowed for the identification of the macro-objective implications of the judiciary and bureaucratic influences present in the case. Macro-subjective influences of culture and values are evidenced in the microscopic actions of individuals detailed in the narrative description and data analysis of the case study. Identification of the interrelationships between the macro and micro processes aided in understanding how conflicts and resolutions of water policies and agendas were shaped by the accompanying levels of power associated to each of the competing groups. This process allowed for a keener understanding of how macroscopic events sharply influenced the perceptions and the social construction of reality experienced by those involved in the conflict for Sardis Lake water.

The sociological impacts are evident. On a macro-objective scale, government architecture and bureaucracy for colonialism were in place that allowed history to repeat itself for tribal exploitation. These elements intersect with the micro-subjective beliefs and social construction of reality for the tribes that they were not in a position to effectively object. Elements of the water dispute are then further impacted with the

macro-subjective norms and the micro-objective patterns of behaviors and actions that history had set forth.

The State of Oklahoma and its bureaucratic agencies, including the Oklahoma Water Resources Board (OWRB) have asserted authority for the Sardis Lake water. They have negotiated to sell the water out of the basin of origin to the city of Oklahoma City. The water would be transported via pipeline to benefit Oklahoma City and the surrounding urban populations of central Oklahoma. Opinions have been voiced that the State of Oklahoma and the city of Oklahoma City further intend to construct pipelines to transport the water to western Oklahoma and to sell the water to urban populations in the Dallas-Fort Worth Texas region (Buchanan 2013).

At an annual Oklahoma Governor's water conference, a presentation by the City Manager of Norman Oklahoma, Steve Lewis, identified the "collective needs" for water users. Oklahoma City, Norman and surrounding metropolitan communities were identified as "stakeholders" at the very center of the circle (See Figure 4). Native American interests and southeast Oklahoma parties are identified as "affected parties" and are relegated to the outermost periphery of the circle. The tag line of the presentation is "We're all in this together" (Lewis 2008:5). The visual is a clear representation of how the micro-objective behavior by the urban stakeholder and government official, was an example of why the micro-subjective perceptions and beliefs by the tribes are held as they are. They were in fact being labelled "affected party" rather than integral stakeholders to the ownership and process of selling water from Sardis Lake.

“Propagandists reveal themselves through their use of ... ‘plain folks’ identifications...” (Krippendorff 2013:15). The identification is often revealed in political speeches and lectures as was made evident in Lewis’ speech. The subliminal messages, when identified, raise suspicion when individuals attempt to “influence others through devious means” (Krippendorff 2013:15).

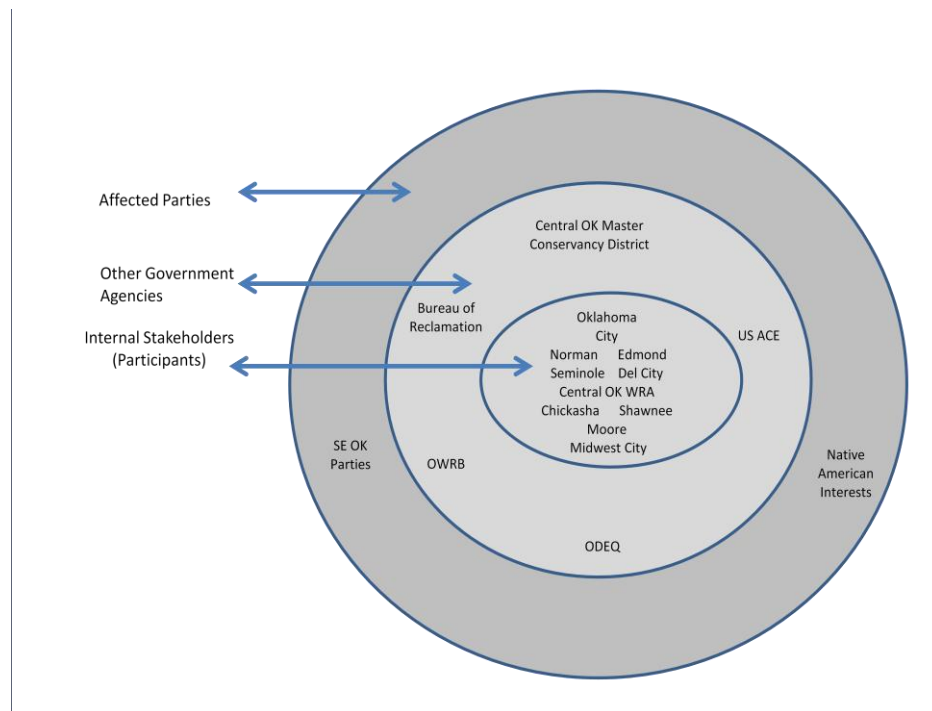


Figure 4. Oklahoma Regional Water Supply Infrastructure Study presentation, Oklahoma Governor’s Water Conference, 2008.

The powerful leaders of Oklahoma may recognize “We’re all in this together” but have clearly articulated which parties are “real” stakeholders and others as “affected” parties. This attitude is further insulted from the State of Oklahoma’s implication that it is the fault of the tribes that there is a water controversy. The State of Oklahoma maintains a citizen fact sheet on their official website. It states “The Tribes are conducting an

unprecedented and extravagant media campaign to malign and discredit the State's efforts to address the Tribes' federal court lawsuit. The Tribes' litigation threatens water rights and uses..." (OWRBb 2012:1). The State touts their superior stewardship of the water and abilities for policy planning. They further state that the \$15 million dollar Comprehensive Water Plan "was bolstered by an unprecedented level of public input" (OWRB 2012c). However, in February of 2011, well before the final plan was completed, the OWRB received a supplemental report that indicated severe flaws in the public input process. Input for the water plan was constructed from community meetings.

This methodology is not compatible with tribal practices and norms. The meetings, in a valiant attempt at buy in "culminated with a vote on the group's work product. Tribes, as governments, could not give such consent without legislative process. Tribes were also concerned that formal participation in the process would be construed as support for the end product..." (Robertson 2011:5). Not having control over the end product left tribal members of communities with a feeling that "Information would be used against them in a future quantification proceeding (i.e., a judicial proceeding to determine the quantity of water to which a tribe was entitled)" (Robertson 2011:4-5). The report, issued in 2011, clearly identifies flaws with the structure of the \$15 million "comprehensive" water plan for the State of Oklahoma, yet Oklahoma continued with the plan without addressing these identified issues regarding the process of "including" public opinion.

Tribes were joined in their disappointment in the lack of comprehensiveness for the water plan. A joint statement was presented by The State Chamber of Oklahoma, Oklahoma Farm Bureau, Oklahoma Municipal League, Oklahoma Independent Petroleum Association, Oklahoma Aggregates Association, Environmental Federation of Oklahoma and the Mid-Continent Oil & Gas Association of Oklahoma. The group's members "feared that many of the plan's recommendations would increase the size of government, increase costs, adversely affect existing water rights, encroach on private property rights and create artificial water shortages" (Carter 2012). Another criticism was that portions of the water plan were not representative of all situations and conditions. The plan was in development simultaneously as a number of water lawsuits and conflicts were in progress. With that knowledge at hand, the \$15 million study was "developed outside the public input process and without the consideration of outside legal views or opinions" (Carter 2012). This critique is not surprising considering a lack of diversity and representation on the board that oversaw the plan.

The OWRB board members are political appointees of the Governor. The board consists of nine people that are selected to "represent all geographic areas of the state and diverse groups of water users" (OWRB 2013). A scrutiny of the board representation revealed the member for "rural water users" in fact resides in a community that is encompassed within the central Oklahoma consortium advocating for sourcing their water from Sardis Lake (CDM 2012:ES3). Further analysis of board membership reveals the following related to geographic diversity. Four members are from the north-eastern



quadrant of the state; two from Tulsa and one each from Bartlesville and Tahlequah. Three members are from the western half of the state; one each from Guymon, Chickasha, and Altus. One member is from Davis Oklahoma, technically considered in the southeastern quadrant of the state, yet less than one hundred miles to the central epicenter and political capital, Oklahoma City. No member of the OWRB board represents extreme southeastern Oklahoma where the lakes of discussion and controversy (i.e. Sardis, Atoka, Hugo, Texoma) are located.

Besides lacking geographic diversity, analysis of the “diverse groups of water users” from the board revealed two each represented industrial and municipal interests. Irrigation and agricultural interests are considered separately, yet are highly correlated. “Water for irrigation and food production constitutes one of the greatest pressures on freshwater resources. Agriculture accounts for around 70 percent of global freshwater withdrawals...” (United Nations 2014). One member each represents rural residential water interests, recreation, and soil conservation interests. Considering the large tribal presence throughout Oklahoma, it would be beneficial for one member to represent tribal interests. With the larger proportion of lakes being located in southeastern Oklahoma, it would increase board diversity if one representative was appointed from the lakes region of southeastern Oklahoma. Opinions on Sardis Water are unequivocally aligned with the position of those affected.

One aspect to understanding the positions of those affected in the negotiation regarding Sardis Lake is to understand the micro-subjective perceptions for each

negotiating party. Ritzer's model for the social construction of reality and the macro-subjective base of law and bureaucracy explain it. The government thought the selling of Sardis Lake would be business as usual. They took the land. They would take the water.

The actions for taking Sardis Lake waters were a familiar scenario for the tribes. It was redolent as the "negotiations" for leaving their Mississippi homelands. The next generation experienced the railroad right of way constructions through their Oklahoma lands in the 1880s. These actions had far reaching economic, environmental, social, and cultural impacts. The history of fair negotiation between the government and the tribes was not positive. The more recent exploitation regarding the Atoka Lake pipelines being built through their lands without fair compensation was a poor meter for imagining how the Sardis Lake conflict would be managed.

The government actors failed to identify the improved powers of the tribes when it came time to take Sardis Lake. The State of Oklahoma and the City of Oklahoma City underestimated the will and the power of the tribes. The tribes have been steadily improving their levels of education, business acumen, and legal understandings of their rights. They have armed themselves with expert advisors. They chose to defend their water rights to Sardis Lake. This case study revealed how the turn of events from historical and current power structures and conflicts affected the attempted sale of water from Sardis Lake.

## CONCLUSION

Primary elements of the conflict are the opposing perceptions of how valuations are considered, and from what perspective of power and authority the parties enter into the discussion. This study provided insights into the intersectionality between macroscopic and microscopic processes that should not be ignored when attempting to understand the dynamics of how conflicts and resolutions of water policies and agendas are negotiated. A sociological approach of integrative analysis identified various intersections of power and conflict associated to each of the competing groups and actors.

The narrative description and data analysis revealed that the principal entities in the negotiations and proposed sale of Sardis Lake water intentionally excluded dialogue with the tribes and residents of southeast Oklahoma. Rising levels of power and political influence by the tribes had increased their ability to effectively defend and negotiate their rights; rights that had historically been negated for them (Banner 2005; Blackhawk 2006; Echo Hawk 2010; McCool 2002).

We can rely on the historical analysis to better understand the impact realized by the silenced voices regarding water. Reports from others have a different perspective of the forced migration regarding efforts to acquire Indian lands from the past. It is more difficult to elicit the opinions and stories of the less powerful; yet, those stories of disparate opinion exist. They are equally worthy of full consideration. The opinions of a French aristocrat and little Choctaw boys are not anomalies. These stories of bleak conditions continue to be substantiated. A white witness reported “Many were naked, and

thousands shoeless, while walking across the frozen ground of Mississippi in the winter..." (Banner 2005:225). Official government reports may lack the human detail of the misery. A white witness account did not foretell the pain. A genealogical Choctaw family history records an account of freezing cold, inadequate clothing and shoes, and the delays suffered by those less able for reaching camp each night of their Trail of Tears.

A great many...had very little clothing and no shoes on their feet...it got awfully cold and the ground was covered with sleet and snow.... About seventy of our company died principally old people, very young children, and the people that were in bad health.... It was a very sad thing to see...loved ones buried and left on the roadside.... A few sick people, some very young children and some very old people rode on the wagons, and the rest of the company walked.... The government wagons ahead would select each nights stopping place...the others came as they could some was way into the night getting there, having been delayed by ...burying the dead'" (Garner N.d.).

Returning to transcriptions of Choctaw oral history, the author, Tingle, reminds us of the value oral history has in rendering a version of events long ago that without the tool of oral history, may well be lost forever. "I have been honored to enter the homes of older Choctaws who knew they were near death and who probably considered the interview as something of a summation of their life story" (Tingle 2003:3). One little Choctaw boy's memory of walking barefoot on cold, hard, frozen ground remains long after he has lived to be an old man.

The soldiers were riding horses and wagons and the people [Indians] were walking....One morning I stood too long in one place on the icy road. The soles of my feet froze and stuck to the earth. When I lifted them to walk, the skin tore and my feet began to bleed. I tried walking on the sides of my feet, then my heels, but I was falling farther and farther behind. ... I looked behind me and saw that I was leaving dark

red footprints in the snow. My father waited for me to catch up to him. He crouched down to me. “Son, you cannot keep your eyes on the bloody footprints you have left behind you,” he said. “You must keep your eyes on where you are going.” I looked at the hills and woods in front of me after that. I could walk easier....We were once again okla nowa, people walking together (Tingle 2003:43-44).

Then, it was oppression to take the land; today it is oppression to take the water. Tomorrow, the conflicts will ask who owns the wind in the sky. As power shifted in the battle of the Sardis Lake water sale, efforts toward mediation, rather than legal recourse, were improved. This case study presented a sociological approach to the intersectionalities of the macro and micro processes associated with the social analysis for understanding how conflicts and resolutions of water policies and agendas are negotiated. Furthermore, it identified intersections of power associated to each of the competing groups and actors regarding the conflict over the sale of water in the reservoir of Sardis Lake.

Reviewing how land rights evolved presented a platform for better understanding how water rights can be negotiated and the context from which the parties entered into the debates. For Sardis Lake water rights, it can be asserted that the Chickasaw and Choctaw tribes have the benefits of sovereign rights and ownership rights. It is also clear federal law, not state, will govern the direction of water authority (Greetham 2012). As it stands, the McCarran Amendment is the sole provision, as authorized by Congress, for adjudication of Chickasaw and Choctaw water rights (Robertson 2011). This process will not be usurped by state or other authorities and agencies and remains on hold for the State of Oklahoma.

Negotiate or litigate? When conflicts over Sardis water escalated, it was discovered that when powers shifted, efforts toward mediation rather than legal recourse were improved. Hence, both sides of *Chickasaw v. Fallin* currently acknowledge they are making progress towards negotiation, staying off expensive and time consuming litigation. Indians were divested of their lands through a combination of threats, thievery and trickery. Stealing the waters will be a tougher battle. Many water claimants are recognizing friendlier and fairer negotiations may well be the avenue of choice. “The Big Horn stream adjudication in Wyoming took over thirty years and cost over \$30 million dollars” (Miller 2012). The *State of New Mexico v. Aamodt* case began in 1966 and has been considered one of the longest running cases in federal judicial history. With four American Indian tribes involved and thousands of non-Indian water users, the case mired more than forty years of federal court resources. The case was settled in 2010 and in 2013 the settlement documents were actually signed (Kershaw and Darling 2013). An estimated 200 million dollar price tag has been associated with the suit and fulfilling the conditions of the settlement, are expected to be completed by 2017, a full 51 years after the suit was filed (Mathews 2013). The Wyoming and New Mexico cases are but two examples of complex water litigations. This process of adjudication can be an expensive, protracted, and emotional event for all parties involved.

The federal government’s involvement in Indian water rights cases emanates from many treaty doctrines. As part of the agreement to move westward, the United States promised to wholly and fully protect the tribes from white settlement invasion and

encroachments. Historically, it has been demonstrated that the executive branch has repeatedly failed that promise. The Reagan administration, in 1982, began the current policy of making an effort to avoid adversarial litigations and attempt amicable negotiations of tribal water rights. The U.S. Department of Interior and Army Corps of Engineers involvement in the Sardis case reflects this current federal position.

Wealthy metropolitan areas and state governments realize, this time, they have underestimated the will and the resources of their opponents. As Tingle alludes, the tribes are a people who look forward and not at the bloody footpaths behind them. The Chickasaws and Choctaws eagerly embrace the opportunity they have sought – to sit justly at the table of dialogue for “protecting and preserving the sustainability of water...that is fair, meaningful, and serves the best interest of all Oklahomans” (Choctaw 2011).

## CHAPTER VI

### CONCLUSION

*"Civilization began with water, the need of which was felt before that of fire."*

Giambattista Vico (1668-

1744)

This dissertation explored contexts of power and politics associated with water policy development issues through case study investigations. The case study is a favored research tool when “how” and “why” questions are to be explained and the subject is often a focus of contemporary events. The questions allowed us to understand the operational links that can be “traced over time” (Yin 2014:10). Each of the three cases had significant components that related to how time affected the negotiations. Sociologists, as well as other scholars will be interested in these results if they are concerned with how the increasing number and severity of water disputes over time affect power and politics; public policy and administration; disadvantaged populations; rural and urban populations; population trends; environmental concerns; farming and food supplies; tourism and recreation; and religious, spiritual and cultural beliefs regarding water. Indeed, “Power and inequality are two of the most central topics in sociology” (Calhoun et. al. 2012). That power and inequality in relation to the resource of water is demonstrated throughout the literature regarding citizen activism, tribal activism,



non-market based valuation, and backlash towards regulatory and corporate domination in regards to water issues (Bandyopadhyay 2009; Barlow and Clarke 2002; Cosens and Royster 2012; Iyer 2007; Mithen 2012).

Providing a sociological approach to identifying and valuing the diverse perspectives, such as environmental concerns, with regard to water stewardship is best accomplished when alternative voices are provided equal opportunities to be recognized. The analyses of the three case studies augmented voices that have previously been silenced regarding water conflicts.

This research began with an analysis of an international transboundary water dispute between the United States and Mexico. While only one case was used to introduce the issues related to international transboundary water disputes, the case provided a level of information that indicates how important the role of sociological context is in understanding the negotiation process. Ample opportunities exist for including sociological principles in international negotiations related to water discourse. There are 276 transboundary river basins throughout the world that involve 146 countries. “At the United Nations Conference on Sustainable Development in 2012 (Rio+20), governments recognized that water is ‘at the core of sustainable development as it is closely linked to a number of key global challenges’” (UN Water 2013:4). The formation of a United Nations was a pressing goal towards the end of World War II. Identifying this key issue as the most influential non-water related aspect for the successful negotiation of the United States-Mexico transboundary water dispute for the

Rio Grande River is an important revelation when considering the analysis of water negotiations. As was found in the United States-Mexico case, water conflicts are often negotiated with ancillary, non-water related issues. By signing the provisions of the treaty, the United States promised Mexico specific quantities of water from the Colorado River. But it had not promised them *usable* water (Kibel and Schutz 2007). When agreements fail to address pertinent issues it can lead to further disputes which give rise to opportunities to renegotiate contracts and agreements. It also contributes to the lengthening of negotiations as emerging issues (such as quality) become more imperative as time goes on. As these issues became apparent in the case studies, the changed environments created an alteration in the political atmospheres and the associated power structures.

Mexico's negotiating position improved motivations from the United States towards a more conciliatory agreement when Mexico agreed to support the United States in the United Nations endeavor. This was particularly beneficial for the Mexican government since the United Nations venture was scheduled to convene within a short timeframe. As the date loomed closer, the United States was pressured to acquiesce to Mexico's demands in order to find a resolution for the water dispute. At the time of the negotiations, securing Mexico's support for the United Nations endeavor was of the highest political priority for the United States. In order to secure Mexico's support, acquiescing on selected positions regarding the water negotiations expedited the conclusion of the negotiations to the satisfaction of both countries. As was discovered in

the Rio Grande water conflict, power and control can prevail slowly and in an evolutionary manner, or they can occur quickly.

A similar comparison of how sociological elements affected by time are woven into the negotiation process can be found in the third case study regarding the Chickasaw Nation and Choctaw Nation of Oklahoma and the State of Oklahoma's battle for control and sale of Sardis Lake. While the United States enjoyed a stronger financial position and the powerful position of international leadership over the conditions of Mexico, Mexico was more generously rewarded in the water negotiation in return for not publicly opposing the United States at the San Francisco convention of the United Nations that was about to be convened. For the Sardis Case, the State of Oklahoma realized its claims and power to control the Sardis Lake waters was being eroded. Like Mexico, the sovereign tribes found themselves negotiating from a stronger position than they had previously enjoyed. In contrast to the United States – Mexico case, the time factor had a reverse effect. Since the United Nations convention date was looming, it was more quickly becoming imperative that the transboundary water dispute would be resolved between the two nations. In the Sardis Lake case study, time had two elements. First, it acted as a delaying tactic that worked to the advantage of both parties. As long as all parties acknowledged they were making progress in their negotiations, it staved off litigation. The judge appeared willing to allow all parties as much time as needed as long as progress was reported. Secondly, events over time created an indelible impression concerning culture and patterns of behaviors for both parties. In the beginning, the State

of Oklahoma, the city of Oklahoma City and their associated bureaucratic agencies acted with an historical pattern of superiority in their attitudes towards water practice and policy in southeastern Oklahoma. At the same time, the tribal nations negotiated with their own established images of the patterns of exploitation they had been enduring for centuries. As time went on, both sides of the dispute seemed to recognize how events of time influenced each of their positions and made genuine efforts at acknowledging the past and assuming a more conciliatory position for the current discourse on the Sardis Lake waters.

Studying the historical time contexts of these water conflicts provides a basis for understanding contemporary water conflicts. A recent demographic report from the U.S. Census regarding the urban population expansion of Dallas-Fort Worth states ‘You are seeing a state that continues to have phenomenal growth’ (Campbell 2013). This population expansion and subsequent need for water fueled the conflict between the desire for the urban serving Tarrant County Water District to seek water from rural Oklahoma portions of the Red River (DuMars and Curtice 2012; Maule 2009; Sotomayor 2013). In the second case study related to the water dispute between the Dallas Fort-Worth region (Tarrant) and Oklahoma, the element of time appeared to have the opposite effect as compared to how it affected negotiations in 1944 between the United States and Mexico and again the effect in the Sardis Lake negotiations. As the Texas metropolitan population continued to increase at a rapid pace and repeated drought conditions prevailed. Instead of reaching a conciliatory position, Tarrant, possibly feeling pressure to

secure water sources for the population, spent millions of dollars pursuing a legal course of action in a desperate attempt to obtain more water from the terms of the Red River Compact.

As was stated, strong evidence of outside interest in a case signals the Court that the case is important. “Presence of interest group support is especially useful in leveling the playing field between litigants with a resource advantage (i.e., the “haves”) and those that are resource poor (i.e. the “have nots)...weak litigants’ briefs are likely to be less well argued... the presence of *amici* [friend of the court] can help make up this difference” (Black and Boyd 2013:1128-1129). In the Red River conflict, two of the nineteen *amicus briefs* were presented to the United States Supreme Court from parties that are beginning to be recognized. A grassroots organization and a coalition of Indian tribes submitted their opinions to the justices for consideration. The tool of an *amicus brief* is one that was recently utilized by the American Sociological Association. “We will continue to correct the record when ... opponents misinterpret or misrepresent social science research to support their position” (ASA 2014:3). It can be argued the most basic conditions of the social contract for a civil society can be summed as “the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others” (Rousseau 1967:17). Honoring the equality of positions for all is a basic tenet of justice. *Amicus briefs* are but one conduit that gave power to the less powerful in their efforts to defend their water rights when it came to the case of *Tarrant v. Herrmann* in Texas’

quest to appropriate additional waters from an interpretation of the governing document for appropriating the water, the Red River Compact.

Governing documents, such as the Red River Compact, often are negotiated to cover far more than only water rights. For instance, they are usually required to address the environmental conditions anticipated in a change of use. These concerns were evident in the data analysis for the Sardis Lake case (Duffy 1999). The Environmental Protection Agency (EPA) anticipates allocating 44 percent of their 2015 annual budget towards the service of protecting water (EPA 2014). Throughout the analyses of the three case studies it becomes evident that environmental elements as well as social conditions cannot be ignored in water discourse.

A society of fairness and justice is one that will benefit all and promote conditions of peace. For this to occur, certain rights must be afforded to all. These include such things as the right to govern one's own body, enjoy air, water, and the ability to move about and travel freely (Hobbes 2006). Members of society that support the laws of nature that allow these rights to all members of the society "are those we call Modest, and the breakers Arrogant Men. ...The Greeks call the violation of this law pleonexia; that is, a desire of more than their share" (Hobbes 2006:86).

Giants before us have provided the way for sociologists to continue the important work of applying an integrative sociological analysis to society's water conflicts. "Virtue is part of statesmanship and true politics is ethics in action" (Kaplan 1963:239). When Plato offered these ideals in *The Republic*, he argued that quarrels shall not beget war and

should be reconciled in a manner that will not enslave the opponent nor destroy the land (Kaplan 1963). These words are closely replicated in the reasoning presented in the Sardis case that Chickasaw Nation seeks a collaborative relationship with the State that “redounds to the benefit of all Oklahomans, Chickasaw and non-Chickasaw alike” (Greetham 2008).

Early social thinkers, such as Karl Marx (1818-1883), considered the conditions of early near-Eastern societies. This led to the theory of the Asiatic mode of production that argued society was built upon the superstructures (macro objective) of despotic laws, bureaucracy, and architecture. State control of large scale irrigation projects was the basis of population developments, and hence, the advancement of social structures related to power and control. The extended discussion related to the Sardis Lake case study is the most persuasive evidence of the way in which state rule and large water works projects are central to the power and control of state authority. We can also tie this into the United States – Mexico case study wherein the United States argues strongly for the *Harmon Doctrine* rule that confers upper basin power in their negotiations with Mexico. Yet, when negotiating water conflict with Canada from the lower basin position, the United States preferred to assume the “principle of absolute territorial integrity, which means that a country cannot utilize the waters of an international river in a manner which might cause *any* detrimental effects on co-riparian territory” (Vukovic 2008).

Within the confines of this dissertation project, it was impossible to address all the complicated, and often protracted, issues related to the power and politics of water

discourse. The issues not covered are no less important and will need to be addressed. The quest for the political power to rule the water works from ancient times to modern times is evident in the indisputable efforts towards the privatization and commercialization of global water authority (Ballabh 2008; Barlow and Clarke 2002; Prud'Homme 2011; Robinson 2013; Shiva 2002). The increasingly evident pattern towards the privatization of water “Provides challenging options and new topics for interdisciplinary research on economics of water systems” (Bandyopadhyay 2009:31).

### **THE FUTURE OF SOCIOLOGY OF WATER**

In the spring of 2005, a group of concerned scholars met for a roundtable discussion at the Center for Development Research in Bonn Germany. Their concern was “Water, Politics and Development.” In 2006, participants from Wageningen University in the Netherlands joined the group and expanded the roundtable discussion initiative into a broader project to include a publication design. As a result, in 2008, the journal, *Water Alternatives*, published these early efforts at conceptualizing the sociology of water (Mollinga 2008). This collection of papers became the genesis documents for the emerging discipline, Sociology of Water. The journal remains an agent that fosters multidisciplinary knowledge exchange focusing on water issues.

This early work in Europe coincided with equally determined efforts in Asia to explore the emerging conditions of politics and economy in the quest for clean and adequate water for expanding populations. India was identifying the lack of well-defined property rights as it related to water resources and irrational pricing. In practice “The



right to use water from the rivers is often politically contested. The influential groups manage to get political patronage to build small dams for cornering water from rivers for irrigation and other purposes in their localities” (Singh and Shishodia 2007:238). A new paradigm for water management was beginning to emerge. Bandyopadhyay (2009) explains the economists perspective favor the institutional management of water, a methodology that reflects the nature of high initial costs for water infrastructure development and an expected decrease in transactional costs over time.

In truth, poorer countries and rural areas are less likely to have the resources to accommodate this structure of institutional management. Private companies step in to accomplish the task, and in return, gain control of water distribution. The institutional model includes interpretations of property rights and the legal structure in the formulation of water statutes. However, as the three case studies reveal, for poor, rural, or marginalized populations “People can only advance so far under an unjust legal regime” (Echo-Hawk 2013:252).

Patterns for future water negotiations are likely to be founded on a basis of the political economy. “The dominant development model of our time is economic globalization, a system fueled by the belief that a single global economy with universal rules set by corporations and financial markets is inevitable” (Barlow and Clarke 2002:81). When analyzing the political economy of water access, the economic valuation of water must give attention to the non-use value as well. This includes the cultural values of water for spiritual and recreational purposes. Additionally, the bequest value, or

the potential for future generations, must be considered (Hanemann 2006). These examples of non-consumptive use cannot be as easily measured. “Economists sometimes ...characterize economic value in terms that are inadequate or misleading” (Hanemann 2006:61). Future sociological researchers may find investigation into this undertaking a fruitful path to follow.

The statistical predictions for water strife within societies are unnerving. Now is the time to develop our research efforts in terms of a nascent field of Sociology of Water. By 2025, it is estimated more than half of all people in the world will experience water shortage; and by 2050 that percentage will increase to a full 75 percent of the world’s population (Barlow and Clarke 2002; Mithen 2012). The global economy demands more water. However, “the world is on an economic path that is environmentally unsustainable” (Singh and Shishodia 2007:52). Future researchers for the sociology of water can examine this important area of the increasing commodification of water and the premise that water should remain a human right and a public good (Wagner 2012).

John Locke (1632-1704) subscribed to the principle that access to water was a human right and should not be a commodity. “Though the water running in the fountain be every one's, yet who can doubt, but that in the pitcher is his only who drew it out...and hath thereby appropriated it to himself” (Locke [1690] 2014). Somewhere between the pitcher and a pipeline, lies the argument for what constitutes the power, politics, and privatization to control the water.

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APPENDIX A

TABLE 1: DATA SOURCES FOR RED RIVER WATER DISPUTE, 2013



<b>Year</b>	<b>Name</b>	<b>Access</b>	<b>Notes</b>
1830	Treaty of Dancing Rabbit	<a href="http://digital.library.okstate.edu/kappler/vol2/treaties/cho0310.htm">digital.library.okstate.edu/kappler/vol2/treaties/cho0310.htm</a>	9 pp.
1934	Indian Reorganization Act	<a href="http://cslkt.org/gov/docs/reorganizationact.pdf">cslkt.org/gov/docs/reorganizationact.pdf</a>	6 pp.
1955	Public Law # 346.	<a href="http://gpo.gov/fdsys/pkg/STATUTE-69/pdf/STATUTE-69-Pg654.pdf">gpo.gov/fdsys/pkg/STATUTE-69/pdf/STATUTE-69-Pg654.pdf</a>	1 p.
1978	Red River Compact	<a href="http://statutes.legis.state.tx.us/Docs/WA/htm/WA.46.htm#46.001">statutes.legis.state.tx.us/Docs/WA/htm/WA.46.htm#46.001</a>	24 pp.
2008	Tarrant Regional Water District v. Rudolff John Hermann et al., original complaint, U.S. District Court for the Western District of Oklahoma	<a href="http://lrl.state.tx.us/scanned/archive/2007/9808.pdf">lrl.state.tx.us/scanned/archive/2007/9808.pdf</a>	36 pp.
2011	Tarrant Regional Water District v. Rudolff John Hermann et al., 10-6184, 10 <sup>th</sup> Circuit Court of Appeals	<a href="http://gpo.gov/fdsys/pkg/USCOURTS-ca10-10-06184/pdf/USCOURTS-ca10-10-06184-0.pdf">gpo.gov/fdsys/pkg/USCOURTS-ca10-10-06184/pdf/USCOURTS-ca10-10-06184-0.pdf</a>	53 pp.
2012	Tarrant Regional Water District v. Rudolff John Hermann et al., 11-899, United States Supreme Court	<a href="http://www.americanbar.org/publications/preview_home/11-889.html">http://www.americanbar.org/publications/preview_home/11-889.html</a>	200 pp.
2012	U.S. Supreme Court Certiorari	<a href="http://supremecourt.gov/opinions/12pdf/11-889_5ie6.pdf">supremecourt.gov/opinions/12pdf/11-889_5ie6.pdf</a>	26 pp.
2013	Amicus Briefs	<a href="http://americanbar.org/publications/preview_home/11-889.html">americanbar.org/publications/preview_home/11-889.html</a>	615 pp.
2013	U.S. Supreme Court oral arguments transcript	<a href="http://supremecourt.gov/oral_arguments/argument_transcripts/11-889-0ieh.pdf">supremecourt.gov/oral_arguments/argument_transcripts/11-889-0ieh.pdf</a>	72 pp.
2013	U.S. Supreme Court opinion delivered by Justice Sotomayor transcript	<a href="http://supremecourt.gov/opinions/12pdf/11-889_5ie6.pdf">supremecourt.gov/opinions/12pdf/11-889_5ie6.pdf</a>	30 pp.

APPENDIX B

TABLE 2: DATA SOURCES FOR SARDIS LAKE WATER SALE, 2013

<b>Year</b>	<b>Name</b>	<b>Access</b>	<b>Notes</b>
1908	<i>Winters vs. United States</i> establishes reserved water rights for Indians	<a href="http://supreme.justia.com/cases/federal/us/207/564/">http://supreme.justia.com/cases/federal/us/207/564/</a>	1 pp.
1962	Flood Control Act (Rivers and Harbors), October 23, 1962	<a href="http://planning.usace.army.mil/toolbox/library/PL/RHA1962.pdf">http://planning.usace.army.mil/toolbox/library/PL/RHA1962.pdf</a>	26 pp.
1978	HR14010 initiates Sardis Lake construction	<a href="http://beta.congress.gov/bill/95th-congress/house-bill/14010">http://beta.congress.gov/bill/95th-congress/house-bill/14010</a>	1 pp.
1983	Impoundment begins	<a href="http://swt.usace.army.mil/Locations/TulsaDistrictLakes/Oklahoma/SardisLake/PertinentData.aspx">swt.usace.army.mil/Locations/TulsaDistrictLakes/Oklahoma/SardisLake/PertinentData.aspx</a>	1 pp.
1992	ODWC letter to OWRB	<a href="http://s3.amazonaws.com/choctawmsldigital/assets/1246/odwcsardis_original.pdf">http://s3.amazonaws.com/choctawmsldigital/assets/1246/odwcsardis_original.pdf</a>	2 pp.
1993	ODWC impact statement	<a href="http://s3.amazonaws.com/choctawmsldigital/assets/1246/odwcsardis_original.pdf">http://s3.amazonaws.com/choctawmsldigital/assets/1246/odwcsardis_original.pdf</a>	4 pp.
1999	ODWC letter to OWRB	<a href="http://s3.amazonaws.com/choctawmsldigital/assets/1246/odwcsardis_original.pdf">http://s3.amazonaws.com/choctawmsldigital/assets/1246/odwcsardis_original.pdf</a>	2 pp.
2007	City of Oklahoma City memo to Mayor and City Council	<a href="http://www.okc.gov/council/council_library/packet/070327/VI%20CC.pdf">http://www.okc.gov/council/council_library/packet/070327/VI%20CC.pdf</a>	4 pp.
2008	Chickasaw letter to OK Governor Henry and OWRB	<a href="http://s3.amazonaws.com/choctawmsldigital/assets/1248/anoatubbyletter_original.pdf">http://s3.amazonaws.com/choctawmsldigital/assets/1248/anoatubbyletter_original.pdf</a>	6 pp.
2009	OK State Treasurer letter to City of Oklahoma City	<a href="http://www.okc.gov/council/council_library/packet/070327/VI%20CC.pdf">http://www.okc.gov/council/council_library/packet/070327/VI%20CC.pdf</a>	3 pp.
2010	Oklahoma City Water Utilities Trust counselor letter to Trustees	<a href="http://www.okc.gov/agendapub/cache/2/h24nzc3o1mfegn55ngnwdlel/86592904062014125120199.PDF">http://www.okc.gov/agendapub/cache/2/h24nzc3o1mfegn55ngnwdlel/86592904062014125120199.PDF</a>	2 pp.
2011	Chickasaw and Choctaw Nation claim rights to Sardis Lake	<a href="http://www.acoel.org/file.axd?file=2011%2F12%2FChickasaw+v++Mary+Fallin+et+al++Complaint.pdf">http://www.acoel.org/file.axd?file=2011%2F12%2FChickasaw+v++Mary+Fallin+et+al++Complaint.pdf</a>	36 pp.
2013	Oklahoma City Counselor letter to Mayor and City Council	<a href="http://okc.gov/agendapub/cache/2/ywxcft553fjrsbuxwkwanomy/191825310032013032624709.PDF">okc.gov/agendapub/cache/2/ywxcft553fjrsbuxwkwanomy/191825310032013032624709.PDF</a>	1 pp.

APPENDIX C

TABLE 3: CHRONOLOGY OF SARDIS LAKE WATER SALE, 2014

<b>Date</b>	<b>Event</b>	<b>Significance</b>
1830	<i>Treaty of Dancing Rabbit Creek</i>	Choctaws receive land in southeastern Oklahoma in exchange for their homelands in Mississippi. Treaty language provides for “present and future use water rights, regulatory authority over water resources, and right to be immune from state law and jurisdiction.”
1837	<i>Treaty of Doaksville</i>	Secures a Chickasaw District within the Choctaw Nation and guarantees land ownership and Chickasaw rights to dispose of land to be held in common with the Choctaws.
1855	<i>Treaty of Washington</i>	Affirms joint title for Choctaws at 75% and Chickasaws 25% interest of the sovereign lands of southeast Oklahoma
1887	<i>Dawes Act (Allotment Act)</i>	Divides Indian lands into individual allotments, rather than tribal community held property.
1906	<i>Oklahoma Enabling Act</i>	Paves the way for Oklahoma statehood by compelling the new state “to disclaim all right and title to Indian lands...and the federal government expressly retained its exclusive authority over Indian matter.”
1907	Oklahoma statehood	Formalizes the loss of “Indian Territory” and Oklahoma is admitted to the Union per the conditions of the Enabling Act.
1908	<i>Winters v. United States</i>	Establishes reserved water rights for American Indians
1930	U. S. Senate Subcommittee hearings held in southeast Oklahoma.	Five days of testimony is recorded from hearings held in the small towns on the “true state of Indian affairs” one hundred years after forced removal. Abuses are so great towards Indians they “merit the careful consideration of Congress”
1934	<i>Indian Reorganization Act (Wheeler-Howard Act)</i>	Recognizes land and resources belonging to American Indians should be better conserved for tribal benefits.
1950s	Atoka Lake pipeline constructed.	Oklahoma City constructs water pipeline through Indian territory to bring water from southeast Oklahoma to central Oklahoma.

Date	Event	Significance
		Tribes did not possess the political influence to object or negotiate fair compensation for land easements.
1956	High-ranking government officials and urban leaders from Dallas and Oklahoma City meet in Hugo Oklahoma.	Dallas Texas expresses interest in purchasing water located in southeastern Oklahoma.
1962	<i>Flood Control Act</i>	Authorizes Sardis Lake and increases political power for U.S. Corps of Engineers.
1974	State of Oklahoma contracts with U.S. Corps of Engineers.	U.S. Corps of Engineers begins construction plans for the Sardis Lake reservoir.
1983	Sardis Lake impoundment begins and the lake is filled.	Local community and environment are significantly impacted, both positively and negatively. Flood control, water supply, boating, fishing and recreation opportunities are increased. At the same time, traditional cultural life along the river is no longer viable. Cemeteries, private property and homes are flooded as the reservoir takes over approximately 14,000 acres.
1992	Oklahoma contracts to sell water to Texas.	Urban entities use their formal power to take control of southeast Oklahoma water.
1992	Oklahoma Wildlife Dept. issues comments regarding sale conditions.	Outlines the potential magnitude of impact to endangered species, diverse and unique fauna and the negative economic impact water draw downs will have for the premier fishing existing at Sardis Lake.
1993	Oklahoma Wildlife Dept. issues environmental impact statement.	Environmental and wildlife issues are revised to include environmental degradation to not only Sardis Lake but subsequent impacts downstream at Hugo Lake. In 1999, they affirm their position is essentially unchanged from the 1993 statement.
2000	Oklahoma Water Resources Board (OWRB) provides water management plan to Oklahoma legislature.	Formally submits water resource management to entail: <ul style="list-style-type: none"> <li>• “Highest priority afforded to those Oklahomans residing within the</li> </ul>

Date	Event	Significance
		Kiamichi River Basin;” <ul style="list-style-type: none"> <li>• “Work with the Choctaw/Chickasaw Nations on mutually acceptable goals for water development;”</li> <li>• “Oppose ...any plan that could limit or jeopardize prospects for future growth and economic advancement in southeast Oklahoma...” (Farmer 2000).</li> </ul>
2003	Oklahoma City Water Master Plan outlined.	Oklahoma City formally outlines: <ul style="list-style-type: none"> <li>• Acquiring water rights to Sardis Lake as an integral part of their Master Plan for water whilst acknowledging water to be used also for the western half of Oklahoma;</li> <li>• Start the engineering process for constructing another water pipeline from Atoka Lake to Oklahoma City.</li> </ul>
2007	Oklahoma City Manager’s memorandum to Mayor and City Council	Recommends resolution to adopt Application for a Permit to Use Surface or Stream Water to the OWRB for Sardis Lake.
2007	<i>Tarrant v. Herrmann</i>	Tarrant Regional Water District (in Texas) attempts to gain Red River water from Oklahoma by filing a water permit and filing a federal lawsuit that eventually is settled by the U.S. Supreme Court.
2008	Chickasaw Nation sends letter to Governor Henry	Communicates the Chickasaw’s formal desire for: <ul style="list-style-type: none"> <li>• Tribal-State water dialogue;</li> <li>• Limiting lobbyists’ participation, namely the Oklahoma Farm Bureau and oil &amp; gas industry and the “privileged position” they have been afforded in the State’s water planning process.</li> </ul>
2009	State of Oklahoma formalizes conditions of sale of Sardis water to Oklahoma City	A series of formal letters are exchanged between the State of Oklahoma and the city of Oklahoma City regarding the sale conditions. Tribal rights are not addressed.
2009	<i>Tarrant v. Herrmann</i> court ruling	U.S. District Court rules in favor of OK, denies Tarrant claims to Red River water.

<b>Date</b>	<b>Event</b>	<b>Significance</b>
2010	Tribes offer to pay past due storage fees with no transfer of rights.	State of Oklahoma declines tribal offer to pay the note due.
2010	OWRB and Oklahoma City sign contract for sale agreement of Sardis Lake water.	Oklahoma City's offer to pay the past due storage fees is accepted <i>and</i> in essence, agrees to sell the water to Oklahoma City as part of the payment conditions. The pending sale agreement initiates immediate outcries and letters of cease and desist and opposition from Bureau of Indian Affairs, Chickasaw and Choctaw tribes, Corps of Engineers, southeastern Oklahoma legislators and local residents.
2010	OWRB orders special session to approve the water sale contract.	Undaunted from the protests, a special meeting is quickly called to formally sign the sales contract. Despite impassioned protests recorded at the meeting, the sales contract is signed.
2010	U.S. Corps of Engineers halts Sardis agreement	Decisions will be made to determine federal interests in the proposed water sale by U.S. Department of Justice. OWRB is ordered to correspond directly with the Corps of Engineers legal counsel on future Sardis correspondence or communication.
2011	<i>Chickasaw v. Fallin</i> lawsuit filed in federal court.	Informal negotiations completely deteriorate and the tribes seek federal court relief to assert rights to Sardis Lake
2011	<i>Tarrant v. Herrmann</i> appeal	U.S. Court of Appeals upholds Oklahoma claim to Red River water.
2012	<i>OWRB v. United States</i> lawsuit filed in Oklahoma Supreme Court	OWRB asserts the State of Oklahoma's right to determine who has water rights in southeastern Oklahoma through initiation of the McCarran. Two weeks later, Oklahoma Supreme court justices unanimously concur to hear the case.
2012	<i>OWRB v. United States</i> removed from Oklahoma court to federal court by U.S. Department of Justice	Action removes water adjudication suit from Oklahoma Supreme Court to U.S. federal court. Action prevents Oklahoma from ruling on who owns water rights for the state.
2012	U.S. Department of Interior	Iterates federal position favoring negotiation



<b>Date</b>	<b>Event</b>	<b>Significance</b>
	(Ken Salazar) sends letter to Governor Fallin	rather than litigation for resolution of water rights.
2012	Tarrant v. Herrmann is agreed to be heard by the U.S. Supreme Court	U.S. Solicitor General informs the justices that tribal water rights may be relevant to the case and cannot be ignored.
2013	U.S. Supreme court rules on Tarrant v. Herrmann	The tipping point of positional power shifts noticeably to the tribes. Both the tribes and the State of Oklahoma consider the implications of the ruling as they negotiate <i>Chickasaw v. Fallin</i> . With a 9-0 ruling against Tarrant, the U.S. Supreme Court fully affirms water rights interests. Sotomayor delivers the unanimous opinion that Oklahoma did not silently surrender their water rights to Texas. A position can now be argued, tribes have not silently surrendered their water rights to Oklahoma.
2013	Tom Buchanan, OWRB board member addresses Altus City Council and Municipal Trust Authority	Solicits western Oklahoma support to sell southeastern Oklahoma water to Texas and use sale funds to build water supplies to central and western Oklahoma.
2013	Teague leaves U.S. Corps of Engineers to serve on Governor's cabinet	Fallin creates new cabinet position, Secretary of Energy and Environment and appoints Teague to the position.
2014	<i>Chickasaw v. Fallin</i>	All parties remain under federal gag order while both sides agree to continue negotiations outside the courtroom.
2014	<i>OWRB v. United States</i>	All parties remain under federal gag order while both sides agree to continue negotiations outside the courtroom.