

***Oneida Tribe of Indians of Wisconsin:
Food Sovereignty, Safe Water, and Tribal Law***

By: Rachel M. Vesely

William Mitchell College of Law
Juris Doctor *Candidate* January 2014

“Food sovereignty, like “community food security,” is that state of being in which “all community residents obtain a safe, culturally acceptable, nutritionally adequate diet through a sustainable food system that maximizes community self-reliance and social justice.”

-Drs. Michael W. Hamm and Anne C. Bellows¹

I. What is food sovereignty?

Native Americans² were the first fishers, farmers, hunters, and gatherers in North America.³ Many tribes retain a rich knowledge of prosperous, healthy food systems that existed well before Europeans arrived.⁴ However, Native American communities have endured countless diet changes since European contact due to warfare, conquest, removal, and assimilation.⁵

Many Native communities also suffer from historical trauma and a loss of community connection.⁶ Government assimilation policies have impaired tribal cohesiveness and individual autonomy by restricting native religion, language and cultural practices.⁷ To add to these challenges, most Native American reservations are geographically isolated with a lack of public transportation.⁸

This isolation along with Native American's dependence on government food aid makes

¹ First Nations Development Institute, *Food Sovereignty Assessment Tool*, NATIVE AGRIC. & FOOD SYS. INITIATIVE 4 (2004).

² This article will use the terms “Native American(s)”, “Indian(s)”, “Nation(s)”, and “Tribe(s)” interchangeably to refer to the variety of indigenous people of North America.

³ *Supra*, Note 1, at 35.

⁴ *Id.* at 8; Harriet V. Kuhnlein & H.M. Chan, Environment and Contaminants in Traditional Food Systems of Northern Indigenous Peoples. *Annual Review of Nutrition* 20(1) 597 (2000).

⁵ *Reference Guide for Native American Family Preservation Programs*. ADMINISTRATION FOR CHILDREN AND FAMILIES/ADMINISTRATION FOR NATIVE AMERICANS, <http://www.acf.hhs.gov/programs/ana/relevant/Documents/ReferenceGuidePresAdditional.pdf>

⁶ FIRST NATIONS DEVELOPMENT INSTITUTE, EXPLORING THE VISION OF NATIVE FOOD SOVEREIGNTY: AN INSTITUTIONAL FRAMEWORK, Final Report Prepared by Susan Balbas, 7.

⁷ *Id.*

⁸ *Supra*, Note 1, at 7. This geographic isolation is often referred to as “checkerboard” reservation layout. Margaret Rose Stevens, Restoration Through Culture-Based Education and Community Outreach (Dec. 31, 2011) (M.A. dissertation, University of Kansas), http://kuscholarworks.ku.edu/dspace/bitstream/1808/9701/1/Stevens_ku_099M_11814_DATA_1.pdf. Checkerboard layout is a term that is often used to describe the blend of both tribal and non-tribal land within the reservation borders. *Id.* The Oneida Nation is a tribe that has a checkerboard reservation layout, and thus, has major regulatory issues because they can only implement and regulate activities within their jurisdiction. *Id.* Since water has the ability to run off the reservation, the Oneida people are limited as to how they regulate this water runoff. *Id.*

it challenging for Native Americans to have access to fresh produce.⁹ Low-fat, healthy foods are typically unavailable to Native populations or if they are available, they are expensive in reservation-based stores.¹⁰ Many Native Americans now obtain their food through the global food system.¹¹ As a result of placing food production and distribution power in the hands of others, many communities have been disrupted, especially within isolated and impoverished communities.¹² When communities are self-reliant with food sourcing, they are much more likely to return to native traditions; rebuild their local economies; and have healthier residents.¹³ In addition to Native Americans becoming more food self-reliant, they will likely better reconnect with their cultural identity.

A number of Native Americans understand food not only as a means of physical survival but also critical to their communities' psychological well-being.¹⁴ In many Native American communities, foods are "capable of symbolizing the manner in which people view themselves with respect to insiders and outsiders in society."¹⁵ Thus, the disruption in diet has cultural consequences. Food is an expression of cultural identity.¹⁶ Ceremonies, stories, songs, and language are some of the examples of traditional culture in which Indians have rooted in the system of food production.¹⁷ Most Native Americans' survival depends on maintaining their cultural identity:

Each culture has its own song, a song, which can be neither copied nor replicated. Preserving these different cultures is important to maintaining the balance of life. They are important for understanding who we are, where we came from, and what path we

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Supra*, Note 4, at 598.

¹² See Jack Kloppenburg, Jr., John Hendrickson & G.W. Stevenson, *Coming in to the Foodshed*, 13:3 AGRIC. & HUM. VALUES (Summer) 33-42, 33 (1996).

¹³ *Supra* Note 1, at 25.

¹⁴ *Supra*, Note 1, at 19.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 21.

want to choose for the future. If we allow any culture to die out, we create a sad void in the chorus of humanity.¹⁸

This article considers how tribal law can cultivate a tribe's connection to their land and food, while at the same time meeting a tribe's physical need for food.

a.) Defining Food Insecurity and its Consequences

The United States Department of Agriculture (USDA) defines food security as “when all people at all times have access to enough food for an active and healthy life. Hunger may accompany food insecurity but not necessarily and not consistently; food insecurity may be either temporary or chronic.”¹⁹ Food insecurity began for most Native Americans when reservations were established because the Native Americans had to adapt.²⁰ Most Native Americans were not well prepared for the geographic isolation of their reservations; they were used to seasonal movement when the food supply was low.²¹

Many Native Americans have become increasingly dependent on “the arrival of [welfare] checks and distribution of governmental commodities.”²² Yet, despite efforts to provide food to many Native Americans, the food aid is often insufficient, of low quality, and does not incorporate traditional native foods.²³ The highest cause of death in the United States is cardiovascular disease, which also holds true for tribal members.²⁴

The prevalence of cardiovascular disease among Native Americans is a “relatively new

¹⁸ Brian Patterson, *Preserving the Oneida Nation Culture*, 13 St. Thomas L. Rev. 121-126, 126 (2000).

¹⁹ *U.S. Action Plan on Food Security: Solutions to Hunger*, Interagency Working Group on Food Security and Food Security Advisory Committee, Washington D.C.: U.S. Department of Agriculture (Mar. 1999), <http://www.fas.usda.gov/icd/summit/usactplan.pdf>.

²⁰ *Supra*, Note 1, at 6.

²¹ *See generally Id.*

²² *See, e.g.,* Mary Allen Owen Bass and L.M. Wakefield, *Nutrient Intake and Food Patterns of Indians on Standing Rock Reservation*, JOURNAL OF AMERICAN DIETETIC ASSOCIATION, 1980 at 64, 36-41.

²³ *Supra*, Note 1, at 7.

²⁴ *Id.* at 15; Laurie Chan, et al, *Impacts of Mercury on Freshwater Fish-Eating Wildlife and Humans*. 9 HUM. & ECOL. RISK ASSESS., 11 (2003).

phenomenon.”²⁵ This is true partly because most Native Americans have become assimilated to the American lifestyle and adopted the dominant lifestyle of a high-fat, high-calorie diet with low levels of physical activity.²⁶ In addition, Native Americans are three times more likely to suffer from diabetes than the national American average.²⁷

Fish is a traditional Native American food source. Fish, especially freshwater fish, have many advantages. Eating local fish results in "better nutrient density, the availability of key essential nutrients, [more] physical activity during harvesting, lower food costs, the prevention of chronic diseases by consumption of more nutritious food, [as well as celebrating] multiple sociocultural values that contribute to mental health and cultural morale."²⁸ Traditional fish in many the Native American diets have a plethora of "energy, protein, minerals such as iron and zinc, and multiple vitamins such as niacin and pyridoxine."²⁹ One way for Native American tribes to restore their reservations' access to food is to consult a tool created by the First Nations Development Institute called the food sovereignty assessment tool (FSAT).³⁰

b.) Addressing Food Insecurity in Tribal Communities

Some Native American tribes use a food sovereignty assessment tool (FSAT), a “collaborative and participatory process that systematically examines a range of community food assets, so as to inform change actions and to make the community food secure,” which is a solution-oriented approach to balancing resources and problems.³¹ The FSAT begins by an

²⁵ See generally, Harriet V. Kuhlein & Oliver Receveur, 16 *Dietary Change & Traditional Food Systems of Indigenous Peoples*. ANN. REV. NUTRITION, 417, 435 (1996).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Supra*, Note 5, at 615.

²⁹ *Id.* at 617.

³⁰ *Id.* at 1.

³¹ *Id.* at 6. FSAT was produced by the First Nations Development Institute with assistance from the W.K. Kellogg Foundation. See generally *Id.* One of the First Nations Development Institute's focuses is the intersection between food systems/food security and maintaining tribal sovereignty through economic development. See generally *Id.* First Nations undertakes a great deal of research projects to later suggest ideas to the Native communities about

individual evaluating the types of foods currently available in their community.³² Then, the Native American tribal members select individuals who determine which foods are available in the community.³³ In other words, community members need to understand not only current food system problems but also evaluate the positive aspects and potential for improvement of their food system, “in order to get where we want to be, we need to know where we are.”³⁴

An example of a Native American community working to achieve food sovereignty not only with physical nutrients but also with social elements is the Oneida Tribe of Indians of Wisconsin. This article analyzes the strengths of the Oneida Tribe's approach to preserving water quality and fishing habitats.

Tribal governments face a variety of challenges in developing programs to protect access to healthy food and clean water. However, the Oneida Tribe's struggles and successes will aid other tribes in creating their own culturally-relevant tribal scheme to improve their food security.

The Oneida people have used tribal ordinances to protect their food supply and drinking water. Tribal ordinances are a straightforward approach because they can be implemented by a tribe's authority and do not rely on federal or state approval. Other approaches such as creating a tribal regulatory agency are possible, but more complex to implement.

Section one will include an introduction. The second section will describe a short history of the Oneida Tribe. Section Three will explain how the Oneida people understand their water responsibilities. Section Four will outline the key steps tribes must take in order to protect their water as well as providing a checklist of factors to consider when drafting a tribal water

different food system techniques and strategies. *See generally Id.* Not only does First Nations research and inform, but the organization also participates in policy forums to assist in legislative and regulatory initiatives. *See generally Id.* The W.K. Kellogg Foundation has a Food and Society Initiative (FAS). *See generally Id.* FAS supports environmentally-sound and health-promoting locally owned community-based food systems. *See generally Id.*

³² *Id.*

³³ *Id.* at 5.

³⁴ *Id.* at 4.

ordinance. Section Five will providing a checklist for drafting a water resource ordinance.

Section Six will suggest practices for developing a tribal fishing ordinance. Section Seven will examine how water and fishing ordinances connect to tribal food sovereignty. Section Eight will discuss the Oneida Tribe's collaboration with the United States. Section Nine reviews at Oneida's wetland restoration program. Section Ten will briefly review other Oneida projects supporting food sustainability.

II. Oneida Tribe Short History & Introduction

The Wisconsin Oneida Reservation is located near Green Bay, Wisconsin.³⁵ This Reservation covers about 65,400 acres.³⁶ The Tribe or tribal members own about 11,500 of those acres.³⁷ Approximately 4,000 of the 12,000 tribal members live on the Reservation.³⁸ The Oneida Tribe exercises jurisdiction over four major bodies of water: Duck Creek, Dutchman Creek, Ashwaubenon Creek, and the South Branch of the Suamico River.³⁹ The Oneida Tribe's most prized body of water is Duck Creek, a body of water that divides the Reservation in half.⁴⁰ Duck Creek is actually a watershed, not just a creek, within the Lower Fox River Basin, which includes Green Bay.⁴¹ Duck Creek became valuable to the Oneida Tribe when the nation agree to move to northeastern Wisconsin after being forced to leave New York State in 1822.⁴² By 1838, more then 650 tribal members had moved to the Duck Creek Reservation in Wisconsin, "planting corn, potatoes, and turnips on about four hundred cleared acres."⁴³

³⁵ ENVIRONMENTAL PROTECTION AGENCY, TRIBAL WETLAND PROGRAM HIGHLIGHTS, 35. There is still an Oneida reservation in New York, but this article focuses on the Wisconsin tribe. *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ ONEIDA ENVIRONMENTAL HEALTH & SAFETY DIVISION, 2008-2011 WATER RESOURCES REPORT, 1-30, 4.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Jennifer Hill-Kelley, *Restoring the Reservation, Sustaining Oneida*, 21-WTR NAT. RESOURCES & EN'T 21, 21 (2007); Treaty with the New York Indians, Jan. 15, 1838, 7 Stat. 550.

⁴³ PATTY LOEW, INDIAN NATIONS OF WISCONSIN 107 (Wisconsin Historical Society Press, 2001).

Aside from the plentiful supply of clean water, the Oneida Tribe's new reservation in Wisconsin boasted a variety of berries (blackberries, blackcaps, blueberries, wild highbush cranberries, and raspberries), nuts (hazelnuts, butternuts, hickory nuts), birds (partridge, bobwhite, and pigeons), and several types of edible plants, (pigweed, dandelion, cowslip, and milkweed) that supplemented hunting, fishing, and corn diet.⁴⁴ The Oneida people used these berries, nuts, and plants for not only physical nourishment, but also for medicinal and spiritual purposes.⁴⁵ The Oneida people fished and ate northern pike, suckers, bass, sunfish, blue gills, and perch.⁴⁶ In a 1997 survey, the Oneida people report they most commonly today eat various sunfish species, yellow perch, white suckers, pike, bass, and walleye from their Reservation's waters.⁴⁷ In this same survey, an overwhelming majority of tribal members claimed that they remember more reservation fishing in the past than today.⁴⁸

The Oneida Tribe has exercised food sovereignty since time immemorial; it is not a new concept for the tribe. "Subsistence farming and gathering from the environment provided the Oneida Tribe with the means to sustain their community, and they thanked the Creator every day for all of these things."⁴⁹ Unfortunately, from 1860 to 1970, off-reservation farmers used heavy fertilizers/chemical pesticides, which polluted the Oneida Reservation's streams.⁵⁰ Overtime, these pesticides have significantly deteriorated of the natural environment.⁵¹ Chemicals found in

⁴⁴ Carol Cornelius & Loretta Metoxen, *A NATION WITHIN A NATION* 27-30, 27 (L. Gordon McLester III & Laurence M. Hauptman, eds., 2010).

⁴⁵ *Supra*, Note 8, at 29.

⁴⁶ *Id.* at 27.

⁴⁷ David A. Saad & Morgan A. Schmidt, *Water-Resource Related Information for the Oneida Reservation and Vicinity, Wisconsin*, Water-Resource Investigations Report 98-4266, U.S. Department of the Interior/U.S. Geological Survey at 17 (1999), <http://pubs.usgs.gov/wri/1998/4266/report.pdf>

⁴⁸ *Id.* at 18. (120 of the 131 respondents) *Id.*

⁴⁹ *Supra*, Note 44, at 28.

⁵⁰ *Id.*

⁵¹ *Id.* at 28-29. Because of freshwater fish's lipid (or fat) solubility, the most substantial contributor of polychlorinated biphenyl (PCB) to northern Native Americans are through freshwater fish. *Id.*

freshwater fish include polychlorinated biphenyl (PCB), mercury, arsenic, and toxaphene.⁵²

These chemicals have poisoned and/or killed fish in Oneida waters. The Oneida Tribe witnessed “a sharp decline of fish from the 1950s to the 1970s when the water was no longer clear and fertilizer would run-off into the ditch and drain into the creek.”⁵³

Beginning in 1999, The Oneida Nation has done substantial research on fertilizer run-off and pollution through a partnership with the U.S. Department of the Interior on a water resource report.⁵⁴ When the Oneida people were surveyed for the report, the majority stated that they did not utilize Duck Creek because of water pollution.⁵⁵ This water pollution is confirmed by the aquatic-biology studies and data reports that showed “fairly poor” water quality on the Oneida Reservation.⁵⁶ Tribal members were also asked in this same survey whether the Tribe should spend additional money to improve the water quality within their Reservation and the response was overwhelmingly affirmative.⁵⁷

In order to combat their burgeoning water pollution problem, the Oneida Tribe has enacted numerous ordinances to protect and maintain their waters.⁵⁸ In addition, the Oneida Tribal government includes “an environmental department that continually monitors and tests the waters of Duck Creek,” along with the other streams and wetlands.⁵⁹ The assertion of maximum authority over water and fishing has the potential to restore the Oneida Reservation to a cleaner, healthier environment along with healthier Oneida members. An elder Earl Jordan who has lived

⁵² *Id.* at 600 & 605.

⁵³ *Id.* at 29; The Wisconsin logging industry surrounding the Oneida people severely impacted the Oneida Tribe. *Supra*, Note 8, at 31. Not only were the forested cleared, but the “non-Indian use of chemicals, including pesticides and fertilizers, commercial farming and land use practices...The most severely impacted areas were our waterways.” *Id.*

⁵⁴ *Supra*, Note 47, at 1.

⁵⁵ *Id.* at 1.

⁵⁶ *Id.* at 14.

⁵⁷ *Id.* at 17. (172 of 181 respondents). *Id.*

⁵⁸ Such as the Water Resource Ordinance: Chapter 48; and Hunting, Fishing and Trapping Law: Chapter 45; which are both analyzed later in this article

⁵⁹ *Id.* at 30.

on the Oneida Reservation all of his life said:

[Around 1990] it got better. Today there's trout and salmon in the creek when there never used to be. People hunt rabbits now. There would be a lot of trout but the Pamperin Park dam stops the fish. Hunting is good. The coyote is coming back [indicating that small animals are plentiful]. The water is way better than it used to be. I can see the bottom now through the ice.⁶⁰

III. How the Oneida Understand Duck Creek & Water Responsibilities

The Oneida culture exhibits a deep respect for water; “Our society treats and cares for the waters as a sacred element so that water remains pristine.”⁶¹ In fact, the Oneida language does not conceive of “water rights” but rather “responsibilities with respect to water.”⁶² The root word for “rain” in Mohawk⁶³ (a language similar to Oneida) means “expensive, or precious, or holy.”⁶⁴ This reflects the sacredness and value of water. Responsibility in the Oneida culture combines moral behavior “towards other people and towards the natural world...it is left to responsible individuals acting on their own good judgment rather than on the basis of legal prerequisite to behave morally and responsibly.”⁶⁵ Essentially, it is the Oneida Tribe’s responsibility to care for their water and not the duty of the water to care for them.⁶⁶

The Oneida people in Wisconsin have consistently sustained their cultural affinity for water through their efforts to restore and cultivate the water in Duck Creek. These efforts date back to the earliest interactions with the water in their new, adopted homeland. “The Oneidas

⁶⁰ *Id.* at 27 & 30.

⁶¹ Joyce Tekahnawiiaks King, *The Value of Water and the Meaning of Water Law For the Native Americans Known As the Haudenosaunee*, CORNELL J.L. & PUB. POL’Y, 449-472, 452 (Summer 2007).

⁶² *Id.*

⁶³ The Haudenosaunee people that included the Oneida Tribe originally lived in the Lake Ontario/St. Lawrence River basin. The French colonists referred to the Haudenosaunee people as Iroquois. The Haudenosaunee people began as five individual nations: Mohawk, Oneida, Onodaga, Cayuga, and Seneca. *Id.* at 450-451. The Mohawk language is similar to the Oneida language.

⁶⁴ *Id.* It is “rainy” in Oneida is: **yok<no=l&** . WEATHER, http://www.oneidanation.org/uploadedFiles/Departments/Language/Sub_Pages/Language_Lessons/Unit09/Vocabulary/PDF/weather.pdf (last visited Aug. 31, 2012).

⁶⁵ *Id.*

⁶⁶ *Id.* at 470.

understood the interaction and reciprocity of all things with the main waterway of Duck Creek.”⁶⁷ Not only was Duck Creek a means of food sustenance and economic goods for the Oneida Tribe, it was also “a community meeting place.”⁶⁸ The Oneida people have always seen food as a way to physically sustain the people but also as a means for emotional and cultural stability; “No activity on the reservation has more potential for significantly affecting the economic and political integrity and the health and welfare of all reservation citizens than water use, quality, and regulation.”⁶⁹

Ohneka'shon:'a

Onen ehnon:we ientsitewakie:ra'te ne ohneka'shon:'a tsi rawe:ren tsi enkahnekonionke ne tsiionhontsia:te. Ne ehnon:we nitewehtha ne aionkwaha'tana:wen non:nen enionkwania'tathen. Nia'teka' satstenhsara:ke tewaienete:ri-tsi ieiohneken:shon, tsi iokenno:res, tsi iaonhawi:nes tanon' tsi kaniatarahron:nion. Khenska tsi entewahwe' non:ni ne onkwa'nikon:ra ne iorihwa:ke tsi entewatka'we ne kanonhwaratonhtshera.

Ehtho niihtonha'k ne onkwa'nikon:ra.

The Waters

We give thanks to all the Waters of the world for quenching our thirst and providing us with strength. Water is life. We know its power in many forms- waterfalls and rain, mists and streams, rivers and oceans. With one mind, we send greetings and thanks to the spirit of Water.

*Now our minds are one.*⁷⁰

One of the cultural practices of the Oneida people is refraining from taking all of the available “catch” and instead leaving enough for others.⁷¹ The Oneida people believe in taking only what you need to sustain yourself and your family.⁷² There is also a moral component to this practice of leaving some “catch” “for the future, ensuring the future of seven generations for

⁶⁷ *Id.* at 28.

⁶⁸ *Supra*, Note 42, at 21.

⁶⁹ Marren Sanders, *Indian Law: Clean Water in Indian Country: The Risks (and Rewards) of Being Treated in the Same Manner as a State*, 36 WM. MITCHELL L. REV. 533-563, 553 (2010).

⁷⁰ *Id.* at 449-450. This quote is from an article that describes the value of water and the meaning of water law for these Native Americans. *Id.* The writer is a member of the Mohawk Nation and the director of the Haudenosaunee Environmental Task Force. *Id.*

⁷¹ *Id.* at 457.

⁷² *Id.*

your family and the species' survival.”⁷³ These practices embrace the concept of food sovereignty and sustainability. The Oneida Tribe strives for food independence.

IV. Keys Steps Tribes Must Take In Order to Protect Their Waters & Key Aspects of a Tribal Water Ordinance

Tribal governments can and do protect water as a community to create goals and later follow specific steps to reach those goals and draft protective tribal laws.⁷⁴

a.) Historical Context

The significance of water has been historically recognized in treaties.⁷⁵ One of the first agreements between the Europeans and the Native Americans included, “[a]s long as the grass is green, as long as the water flows downhill, and as long as the sun rises in the east and sets in the west.”⁷⁶ However, these agreements conflated two concepts for the Oneida Tribe, who saw water responsibilities as different from water rights. In the Oneida Tribe’s view, they “never gave away [their] collective right to access, use, and enjoy the waterways, nor to hunt, fish, trap, or gather...rights to land and water have always followed from responsibilities...”⁷⁷ In order for tribes to protect the future of water quality for future generations, they must protect themselves by taking specific actions and by drafting tribal laws.

Before analyzing suggestions for drafting tribal laws, this article will briefly explore notable federal water cases involving tribes. As previously mentioned, tribe are encouraged to find ways to bolster their sovereignty. Using federal case law along with Native American tribal law can encourage tribal self-sufficiency.

⁷³ *Id.*

⁷⁴ Thomas W. Clayton, *The Policy Choices Tribes Face When Deciding Whether to Enact a Water Code*, 17 AM. INDIAN L. REV. 523, 565 (1992).

⁷⁵ *Id.* at 459.

⁷⁶ *Supra*, Note 69, at 463; *Two Row Wampum Renewal Campaign -- Two Row History* (Aug. 15, 2012, 4:00 PM), http://http://honorthetworow.org/?page_id=9

⁷⁷ *Id.* at 463.

The seminal case on Indian water law is *Winters v. United States*, where the Supreme Court analyzed reserved water rights.⁷⁸ Under *Winters*, tribal reservation water rights are typically favored over other water right claimants such as a state, the federal government, or non-tribal members.⁷⁹ Unfortunately, the broad, general doctrine articulated in *Winters* did not give much direction to the courts.⁸⁰ In *Winters*, the Court determined that when Congress set tribal land aside, it also “impliedly” reserved tribal water.⁸¹ In other words, the Court did not interpret these tribal rights as arising from the Constitution or explicit statutory language, but rather by inferring Congress's intent as evidenced by treaty.⁸² Even if the tribe does not actively use the water, the tribe still maintains the reserved tribal water right.⁸³

The Department of the Interior (DOI) acts as trustee for tribal water rights, but also maintains legal obligations to greater national interests, sometimes resulting in a conflict of interest.⁸⁴ This conflict of interest within the DOI is one of the many reasons why tribal governments have chosen to adopt and enforce their own tribal laws to protect reservation waters.⁸⁵

Since *Winters*, the courts have concentrated on a tribal reservation's perceived purpose and then determined how much water is needed to fulfill that purpose.⁸⁶ For many years, courts determined that the purpose of most reservations was agricultural, keeping in line with official federal policy to encourage Native people to become farmers and ranchers.⁸⁷ Under the agricultural framework, the Supreme Court held the calculation of tribal water needs determined

⁷⁸ *Winters v. United States*, 207 U.S. 564 (1908).

⁷⁹ Nathan Brooks, *Rights, Laws & Legislative Developments* 51 (Charles P. Townsend, ed., 2008).

⁸⁰ *Id.* at 52.

⁸¹ *Supra*, Note 79, at 53.

⁸² *Id.*

⁸³ *Hackford v. Babbitt*, 14 F.3d 1457, 1461 (10th Cir. 1994).

⁸⁴ *Supra*, Note 79, at 53.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 56.

on the physical capacity of the reservation land using a standard of "practicably irrigable acreage" (PIA), not calculated based on the number of Native Americans living on the reservation.⁸⁸ Later, the courts augmented the general rule that the "purpose" of a reservation is to encourage agriculture, and subsequently changed to create a "permanent home and abiding place."⁸⁹ While the Court has established a record for Native American reservations for agricultural purposes, it has left open the purpose of a reservation for nonagricultural purposes.⁹⁰ Furthermore, even though the court found the purpose of the reservation to be agricultural, this does not mean the reservation needs an agricultural purpose in order for the tribe to have rights to water access, especially if the tribe is more focused on fishing.⁹¹

In *Colville v. Confederated Tribes*, the Ninth Circuit recognized tribes, not states, should regulate their own waterways, because of how critical water is to the tribes.⁹² Often states will "emphasize consumptive uses and ignore conservation-type uses," whereas tribes have the exact opposite goals when determining priorities for water ordinances.⁹³ However, before a tribe drafts its own water code, the tribe should weigh the cost of effective enforcement against the need for a tribal water code.⁹⁴ A tribal water code may not be advantageous in the following situations:

(1) where water is not being extensively used by members or non-members, (2) the tribe does not foresee development of its water resources in the near future by members or non-tribal members, and (3) the tribe's sovereignty will not be eroded if it does not enact and enforce a water code.⁹⁵

This article focuses on successful tribal statutory schemes for protecting water by analyzing

⁸⁸ *Arizona v. California*, 373 U.S. 546, 601 (1963).

⁸⁹ *In re General Adjudication of All Rights to Use of Water in the Gila River System and Source*, 35 P.3d 68, 74 (Ariz. 2002) (quoting *Winters*, 207 U.S. at 565).

⁹⁰ *Supra*, Note 79, at 58.

⁹¹ *Id.* at 59.

⁹² *Colville v. Confederated Tribes v. Walton*, 647 F.2d 42, 52 (9th Cir. 1981).

⁹³ *Supra*, Note 74, at 566.

⁹⁴ *Id.*

⁹⁵ *Id.*

specific goals and suggested guidelines.

b.) Tribal Statutory Suggested Guidelines

First, a tribe ideally should establish clear goals regarding what they want to accomplish by preserving their reservation's waters.⁹⁶ A tribe may protect its reservation's water for fishing purposes or to maintain healthy drinking water. Second, with this goal in mind, the tribe ideally should brainstorm steps to reach that goal.⁹⁷ As a starting point, the tribe should consider testing water quality on the reservation to pinpoint what particular threats exist.⁹⁸ Also, the tribe should inventory all the reservation water types, such as oceans, lakes, rivers, streams, creeks, canals, dams, swamps, and/or ponds. All bodies of water within a single watershed interact. Thus, tribes should pay attention to whether they have one watershed or multiple watersheds to address.

While there are several approaches to enforcement, one approach is for the tribe to identify tribal officials who will be responsible for fulfilling the tribe's goals.⁹⁹ Then, the tribe ideally should decide how to empower these officials and how to hold these officials responsible if they do not carry out their duties. All of this should be addressed in the course of drafting a tribal water law. The tribe should identify any experts they can draw upon (such as universities, non-profits, federal or state agencies) and materials they may need in order to fulfill these goals (such as water thermometers, water quality test strips, and even a lab willing to help test these water samples, if the tribe does not have access to their own lab).¹⁰⁰ Third, the tribe should inform the community about their efforts to maintain the reservation water by holding meetings

⁹⁶ See generally *Id.* at 564.

⁹⁷ See generally *Id.*

⁹⁸ See generally *Id.* at 565

⁹⁹ *Id.*

¹⁰⁰ *Id.* Often tribes will develop water departments to monitor water users within the reservation and the quality and quantity of the reservation's waterways. *Id.* A hydro-geologist or firm may help a tribe better learn how the water moves through the reservation along with precipitation gauging and stream gauging. *Id.*

and by issuing a yearly water resources report.¹⁰¹ When tribal members are informed, they can better support their tribe's goal to preserve tribal waters.¹⁰² After these preliminary steps have been accomplished, the tribe can move on to other important aspects of drafting a tribal water law.

c.) Practices for Customized Tribal Water Laws

In order to provide a clear statute, a tribe may include their reasons and intentions for a water ordinance.¹⁰³ In addition, the ordinance should establish tribal leaders responsible for carrying out the water ordinance.¹⁰⁴ Third, the law should include rules regarding how changes and/or corrections may be made to the water resource ordinance. Fourth, the law should flesh out terminology for a reader to understand the law. Fifth, the law should establish the tribal leaders specific responsibilities for carrying out this ordinance.¹⁰⁵ Sixth, the law should outline a plan to handle water emergencies. Seventh, the law should include an appeals process.¹⁰⁶ Eighth, the law should require all tribal members to disclose to water regulation officials if any person is discharging substances in the reservation's waters.¹⁰⁷ Ninth, the law should include information on sanctions and penalties for individuals that violate this water resource law.¹⁰⁸ Tenth, the law would include information on how non-tribal members will be treated when he or she violates a tribal water ordinance.¹⁰⁹

¹⁰¹ *Supra*, Note 8, at 43, "...creating such a cooperative network is to build relationships and share information at the local level, which empowers community members and allows them to realize they can generate input, which can lead to decisions and policies based upon census." *Id.*

¹⁰² *Id.*

¹⁰³ *Supra*, Note 74, at 564.

¹⁰⁴ *Id.* at 565.

¹⁰⁵ *See generally Id.* at 565.

¹⁰⁶ *Id.* at 572.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 579.

¹⁰⁹ *Id.*

V. Oneida's Water Resource Ordinance Analysis

Kaʔnekalunyuhsé Olihwaʔke

the matters of the different kinds of waters

The Oneida's water ordinance meets all of the standards established above. First, the tribe clearly establishes the purpose and policy in section one (48.1).¹¹⁰ The second section is authority (48.2).¹¹¹ This is where the Oneida Tribe addresses other controlling legal sources relevant to this ordinance as well as the tribe's policies on adoption, amendment, and repeal.¹¹² The third section includes definitions (48.3).¹¹³ The fourth section covers powers and duties (48.4).¹¹⁴ powers and duties refer to the responsibilities of the Oneida Environmental Department ("Department").

The ordinance then describes the water quality standards incorporating references to the United States Code, which make these federal statutes binding on the Oneida Tribe, as well as special/emergency orders.¹¹⁵ The fifth section provides for judicial review (48.5), in which "any person can request a review of the necessity for and reasonableness of any order of the Department under this Ordinance" by following the established guidelines.¹¹⁶ The sixth section is the permitting and reporting section (48.6), which "requires all persons discharging any substance to the waters of the Reservation requiring a permit under the Federal Water Pollution Control Act."¹¹⁷ Finally, the reporting section includes procedures for public hearings dealing with environmental pollution as well as the enforcement mechanisms and penalties associated

¹¹⁰ ONEIDA TRIBE OF INDIANS OF WISCONSIN, Water Resources Ordinance Chapter 48.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

with environmental violations.¹¹⁸

This article will examine each section of the code and explain its strengths. Most of these strengths compare the water resource ordinance outlined earlier.

a.) Purpose & Policy

The purpose section of the Oneida water law (48.1-1) conveys power to a tribal water department to protect and enhance the quality of all waters of the Reservation, ground and surface, public and private.¹¹⁹ This purpose section lists a variety of water source pollution including but not limited to “residential, farm, recreational, municipal, industrial or commercial that is needed to protect human life and health, fish, and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.”¹²⁰ The tribal law also encourages a liberal interpretation of all rules and orders, “in favor of the policy objectives set forth in the Ordinance.”¹²¹ The Oneida law ties all sections of the water ordinance back to the policy objectives, which encourage any additions, adaptations, or revisions to this ordinance to be focused and centered on the Oneida's policy goals.

The first section of the ordinance introduces and describes the relevant agencies that enforce its purpose and policy.¹²² It identifies two entities: the Department and the Board.¹²³ The Oneida Environmental Department “serve(s) as the central unit of the tribal government to protect, maintain and improve the quality and management of the waters of the Oneida Reservation, ground and surface, public and private.”¹²⁴ Then, the ordinance describes the

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* The Department generally has judicial duties of enforcing ordinances as well as legislative duties. *Id.*

Oneida Environment Resource Board (“Board”) (48.1-3) as the group that serves the Department in an advisory capacity develop and administer programs related to this ordinance.¹²⁵

b.) Authority

The water resource ordinance has a delegation of authority section (48.2-1), which references the Oneida Tribal Constitution.¹²⁶ The Constitution provisions that directly relate to this ordinance include Article IV, Section 1(f), which focuses on enumerated powers to promulgate ordinances and Article IV Section 2, which deal with future powers.¹²⁷ The water resource ordinance also lists the federal laws applicable to water resources that apply to this Tribe.¹²⁸ This reflects the value of water to the Oneida Tribe.¹²⁹

c.) Definitions

The third section of this ordinance includes definitions (48.3-1) and there are several interesting aspects to the definitions section.¹³⁰ First, several definitions directly compare terms used in the ordinance so the reader can understand the difference between the two terms.¹³¹ Second, other definitions reference United States laws and regulations.¹³² Third, one definition references the Oneida Tribal Constitution.¹³³

¹²⁵ *Id.* The Board has more generally legislative duties to serve as an advisor to the Department as well as conduct public hearings regarding alleged or potential environmental pollution. *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ In addition, the ordinance addresses adoption, amendments and repeals (48.2-2). *Id.* This section is specific and references protocols for a constitutional amendment. *Id.* For example, in order for the water resource ordinance to be amended, one must follow the instructions set forth in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council. *Id.* This section of the ordinance also addresses that when a provision becomes invalid, the remainder of the ordinance remains valid with the exclusion of that invalid provision. *Id.* In addition, this ordinance states that any other laws, policies, regulations, resolutions, or ordinances the conflict with this ordinance are repealed unless they were explicitly reenacted after this ordinance. *Id.* Furthermore, it claims that the more stringent law shall control when related laws purport to regulate the same activity. *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

For instance, section 48.3-7 "non-point source" compares "point source" in this same section. "Non-point source" is distinguished from "point source" in the definition of "non-point source," "a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of Reservation and which is not a point source as defined in Section 3-10 (emphasis added)."¹³⁴ This underlined distinction is helpful for readers to understand the difference between non-point source and point source. Section 3-10, specified as 48.3-10, "Point Source," is defined as:

[A] discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged into waters of the Reservation.¹³⁵ 'Point Source' specifically includes any discernable, confined and discrete conveyance of storm water.¹³⁶

Other definitions that incorporate references of the two definitions include Section 48.3-12 "Pollution" which references Section 1-1, which is not a definition section but the purpose and policy of the ordinance.¹³⁷ Another definition that distinguishes terminology is Section 48.3-20 "Water of the Reservation," which references Section 3-21, "Wetlands" at Section 48.3-21.¹³⁸

Second, the definition section makes note of United States laws and regulations such as with 48.3-11, "Pollutant," when it includes the Atomic Energy Act of 1954, codified at 42 U.S.C. § 7412.¹³⁹ In addition, the Oneida Tribe coordinates with the Wisconsin Department of Natural Resources (DNR) to preserve the Oneida Reservation and its natural resources.¹⁴⁰ By

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* See *infra*: The Oneida Tribe has a close working relationship with the United States government as seen through references such as this, as well as through explicit agreements such as the United States Environmental Protection Agency (EPA) approving the Oneida Tribe as "treatment of a state" (TAS) for regulatory purposes under the Clean Water Act. *Id.*

¹⁴⁰ *Id.*

mentioning federal laws in their tribal codes, the Oneida people are utilizing their maximum authority. Other definitions that reference United States laws and regulations include section 48.3-15, “Solid Waste,” which refers to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.¹⁴¹

Third, the definition section mentions the Oneida Treaty of 1838 in section 48.3-14 under “Reservation” with a citation to the Statutes At Large, 7 Stat. 566 (1838).¹⁴²

d.) Powers & Duties

The fourth part of the Oneida Water Resource Ordinance describes its powers and duties (48.4-1).¹⁴³ This section begins with explaining the Departments’ duties:

The Department shall have general supervisory authority over the waters of the Reservation. It should carry out and coordinate the planning, management and regulatory programs necessary for implementing the policy and purpose of the chapter. The Department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.¹⁴⁴

As noted earlier, the Department has “legislative” type duties such as planning, managing regulatory programs, and formulating plans and programs for prevention.¹⁴⁵ The Department also has “judicial” type duties in that the Department has the general supervisory authority over the Reservation waters.¹⁴⁶

It is essential the Department accommodate to the different Oneida Reservation waters and their functions while also addressing water degradation caused by forces outside the Reservation's boundaries.

The powers and duties section is divided into a general section of the duties and

¹⁴¹ *Supra*, Note 110.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

responsibilities of the Department (48.4-1), then by a more specific section on water quality standards (48.4-2), and finally a section dealing with special circumstances and emergency orders (48.4-3).¹⁴⁷

First, the water quality standards are set by the Department, “recognize that different standards may be required for the different waters or portions thereof.”¹⁴⁸

Second, the powers and duties section covers the purposes of the water quality standards (48.4-2).¹⁴⁹ These purposes in many ways reflect the purposes and policies indicated at the beginning of this ordinance.¹⁵⁰ The purpose of the water quality standards:

..shall protect the public interest, which includes the protection of (i) the public health and welfare, (ii) the present and prospective future use of such waters for public and private water supplies, (iii) the propagation of fish, aquatic life, and wildlife, (iv) domestic and recreational purposes, and (v) agricultural, culture, religious, commercial, industrial, and other legitimate uses.¹⁵¹

Compare this to the purposes at the beginning of the ordinance, which is broad to incorporate many potential sources of water pollution such as, “residential, farm, recreational, municipal, industrial or commercial that is needed to protect human life and health, fish, and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.”¹⁵² Most of these present and potential sources of water pollution are the same, which indicates the ordinance is strong because this synchronization shows the drafters had an eye for the future.

In addition, the powers and duties section explains the process for adopting or revising water quality criteria.¹⁵³ The Department is responsible for reviewing water quality standards at

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

least every three years.¹⁵⁴ Tribal members use public notices to access these water quality standards. The powers and duties section stresses statistical techniques, further elaborated in its own “subsection,” which references 40 C.F.R. 132, Water Quality Guidance for the Great Lakes System.¹⁵⁵ In addition, according to 48.4-4, the Department is permitted to issue “general orders” to prevent and reduce water pollution.¹⁵⁶ These orders are authorized after the interested parties have had the opportunity to be heard. This safeguard promotes fairness and prevents the Department from making arbitrary decisions because all affected persons are given opportunity to establish reasons for their actions. The Department adds a further “safeguard” by permitting the Department to consult other tribal departments and entities for needed information.¹⁵⁷

Finally, the powers and duties section covers special/emergency orders (48.4-5).¹⁵⁸ First, the Department may direct other persons to control tribal water pollution.¹⁵⁹ Should the person not be able to fulfill his or her responsibilities as provided by the Department, he or she may request a time modification.¹⁶⁰ This flexibility, again, prevents the Department from making arbitrary decisions and also gives people accommodations when they request them. In addition, the Department may give temporary emergency orders without a prior hearing when the Department decides immediate action is necessary.¹⁶¹ The Department also has the right to investigate and/or inspect to ensure compliance with general or special orders (48.4-6).¹⁶²

1. Collaboration with the Board & Oneida Business Committee

This section discusses the Department’s collaboration with the Board and the Oneida

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

Business Committee (48.4-7).¹⁶³ This agreement prompts other groups to control water pollution on the Reservation. The powers and duties section also addresses the authority the Department has to: address nuisances (48.4-8), address noncompliance orders (48.4-9), establish the safe water drinking program (48.4-10), give priority to certain bodies of water such as the Duck-Apple-Ashwaubenon Creeks—the Tribe’s priority watershed (48.4-11).¹⁶⁴

e.) Review

The next section of the Oneida Water Resources Ordinance is review (48.5-1), which establishes that “any person in interest may secure a review of the necessity for and reasonableness of any order of the Department under this ordinance.”¹⁶⁵ The review section establishes procedures petitioners must follow for an order to be modified or changed.¹⁶⁶ These procedures are detailed and precise.¹⁶⁷

The final section is reporting (48.6-1).¹⁶⁸ This section addresses both tribal and non-tribal members under the term “persons,” which are defined under the definitions section as 48.3-9 as “...an individual, owner, operator, corporation chartered under federal, state or Tribal law, limited liability company, partnership, association, municipality, township, interstate agency, tribal agency, county agency, state agency, or federal agency.”¹⁶⁹

1.) Authority over non-tribal members

The Oneida Tribe is unclear on how much authority they have over non-tribal members. Perhaps the Oneida Tribe could reference another ordinance or law to show that non-tribal members are affected if they discharged harmful substances into Oneida Reservation's waters.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

In *Montana v. United States*, the Supreme Court held that a tribe may manage the on-reservation activities of nonmembers on non-Indian lands within the reservation in two specific circumstances.¹⁷⁰ First, the tribe may regulate the activity if the nonmembers had a consensual agreement with the tribe.¹⁷¹ Second, the tribe may regulate the activities of a nonmember if he or she "threatens or has some direct effect on the political integrity economic security, or health or welfare of the tribe."¹⁷² In other words, a tribal government can exercise authority over non-tribal members if their actions would poison or contaminate the tribe's waters.

VI. Oneida's Fishing Ordinance Analysis

Lutol@ha>, Latsyw@ha> O>kh@e Atlist@< Tsi> Kayanl^hsla

Our laws concerning hunting, fishing and trapping

A tribe would have a water resource ordinance to maintain healthy waters for fishing. Again, the Oneida people are a role model to other tribes because their fishing ordinance incorporates the Tribe's culture with a creative approach starting with the purpose and policy.

The relevant sections of the Oneida's Hunting, Fishing, and Trapping Law, Chapter 45 include: purpose and policy, (45.1) adoption, amendment, and repeal, (45.2) definitions, (45.3) administration and supervision, (45.4) conservation wardens, (45.5) licenses and permits, (45.6) hunting, fishing, and trapping restrictions, (45.7) fishing, (45.14) conservation code violations and (45.15) sanctions (45.16).¹⁷³

a.) Purpose & Policy

First, as seen in the Water Resource Ordinance Chapter 48, the purpose and policy

¹⁷⁰ *Supra*, Note 79, at 61; *United States v. Montana*, 450 U.S. 544, 565 (1981).

¹⁷¹ *Supra*, Note 79, at 61; *See generally*, Judith V. Royster, *Symposium: Indian Law at A Crossroads: Montana at the Crossroad*, 38 CONN. L. REV. 631, 633 (2006).

¹⁷² *Supra*, Note 79, at 61; *See generally*, Sarah Krakoff, *Bench Book: Tribal Civil Judicial Jurisdiction Over Nonmembers: A Practical Guide for Judges*, 81 U. COLO. L. REV. 1187, 1205-1209 (2020).

¹⁷³ ONEIDA TRIBE OF INDIANS OF WISCONSIN, *Hunting, Fishing, and Trapping Law Chapter 45*.

section is clearly established by the Oneida Tribe in the Hunting, Fishing, and Trapping Law Chapter 45.¹⁷⁴ The Tribe's goal is to "conserve and preserve wildlife on the Oneida Indian Reservation, to respect each other as sportsmen, and to continually improve the law."¹⁷⁵ This section further fleshes out their policy goals (45.1-2).¹⁷⁶ This section is again similar to the Water Resource Ordinance policy section because both are broad enough to include protection for wildlife and natural resources.¹⁷⁷ Likewise, the policy is specific not to be construed as arbitrary.¹⁷⁸ For example, the policy is to provide "(a) an adequate and flexible system for the protection and conservation of all wildlife and natural resources on the Reservation."¹⁷⁹ Thus, this policy includes wildlife needing protection as well as the adaptability to add more wildlife.¹⁸⁰ Moreover, section (a) includes both wildlife and natural resources, which go hand-in-hand because wildlife are dependent on natural resources and natural resources are dependent on wildlife.¹⁸¹

Another strength relates to "(b) for the establishment of rules and regulations relating to the harvest of wildlife and the use of recreational areas on the Reservation."¹⁸² This language preserves both practical uses of water such as food sustainability as well as for enjoyment or recreational reasons. Then, "(c) for the general management and supervision of all wildlife on the Reservation," is essential because it specifies on the Reservation.¹⁸³ Finally, (d) "for the establishment of enforcement systems, license requirements, and prohibited acts and penalties relating to hunting, fishing, and trapping on the Reservation" is critical because maintaining

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *See generally Supra*, Note 173; *Supra*, Note 110.

¹⁷⁸ *Supra*, Note 173.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

natural resources and wildlife involve enforcement, which is a majority of this statute.¹⁸⁴

The Oneida Tribe addresses sovereignty rights and self-governance under (45.1-3).¹⁸⁵ This section exists to further their purpose of promulgating unique rules and regulations within the Oneida Reservation boundaries.¹⁸⁶ This ordinance indicates in section 45.1-4 that it applies to all persons, including tribal members and non-tribal members.¹⁸⁷ In addition, under section 45.1-5, the ordinance indicates that specific changes such start and end fishing season days as well as limits on specific fish per season will be made each year in order to maintain healthy natural resources and wildlife.¹⁸⁸ The Oneida Tribe has made it explicit that these laws should be “considered civil in nature, rather than criminal.”¹⁸⁹

There may be a number of factors for why the Oneidas chose to punish civilly rather than criminally. One reason may be that the Tribe has few resources in the area of criminal law for law enforcement, police officers, jails, and prisons.¹⁹⁰ Thus, the Tribe opted for civil enforcement of the law.

Finally, section (45.1-7) permits the Oneida Police Department to enforce this ordinance.¹⁹¹ Unlike the Water Resource Ordinance, this ordinance did not include an authority section with information about the Oneida Environmental Department and the Oneida Environmental Resource Board.¹⁹² The Tribe did not include a fishing ordinance authority section because all the ordinances are intended to be read together under the canons of statutory

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* It is interesting that this self-governance section was included in the Hunting, Fishing, and Trapping Law Chapter 45 and not included in the Water Resource Ordinance Chapter 48 because tribal sovereignty issues are always a forefront issue for tribes.

¹⁸⁷ *Supra*, Note 173.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ The United Supreme Court claimed it is much more difficult to assert criminal jurisdiction over non-Indians. *See* *Oliphant v. Suquamish*, 431 U.S. 964 (1977)

¹⁹¹ *Id.*

¹⁹² *See generally Supra*, Note 173; *Supra*, Note 110.

construction. Thus, there would be no reason to incorporate the water ordinance authority section in the fishing ordinance.¹⁹³

b.) Definitions

Section 45.3 contains definitions and is helpful when referencing various ordinance sections.¹⁹⁴ This ordinance is different from the Water Resource Ordinance in that it includes language to broaden its scope and gives the introduction, “This section shall govern the definitions of words and phrases used within the law.”¹⁹⁵ All words not defined herein shall be used in their ordinary and everyday sense.”¹⁹⁶ This provisions dictates that if a word is not included in the ordinance’s definition section, one may reference to the ordinary, everyday definition. This definition section, unlike the definition section in the Water Resource Ordinance, does not directly compare with other definitions.¹⁹⁷ In addition, this ordinance references other tribal legal documents as well as United States laws under the section (g)

¹⁹³ The second section, adoption, amendment, repeal (45.2) is similar to the Water Resource Ordinance Chapter 48, but different in a few respects. *Id.* Both ordinances include that the Oneida Business Committee adopted the law under section (45.2-1). *Id.* However, the Hunting, Fishing, and Trapping Law Chapter 45 include the respective resolution numbers as well as their amended resolutions. *Supra*, Note ___ (Hunting, Fishing, Trapping Law). Second, the two ordinances establish that laws may be amended in the same manner under (45.2-2). *Supra*, Note ___ (Hunting, Fishing, Trapping & Water Ordinance). The next two pieces of this section (45.2-4 & 45.2-5) include similar language. *Id.* First, under section (45.2-4), the ordinance addresses that when a provision of this ordinance becomes invalid, the remainder of the ordinance remains valid with the exclusion of that invalid provision. *Id.* The other similar language is section (45.2-5), which states any other laws, policies, regulations, resolutions, ordinance the conflict with this ordinance are repealed unless they were explicitly reenacted after this Ordinance. *Id.* In addition, both ordinances note the more stringent law shall control when related laws purport to the same activity. *Id.*

Finally, this ordinance includes a statement about sovereignty, namely “(45.2-6) “The sovereignty of the Oneida Tribe of Indians of Wisconsin is not waived by these laws. Where state law is referred to it is solely for the express purpose of providing minimal guidelines.” *Supra*, Note ___ (Fishing Ordinance). This ordinance would likely be stronger had it included the relevant sections of the Constitution that apply to Hunting, Fishing, and Trapping Law Chapter 45 like the Water Resource Ordinance Chapter 48 noted. This ordinance would be made stronger by including sections from the Constitution because the Tribal Constitution is the Oneida Tribe’s foundational document. The directly relevant Constitution sections of the Oneida Tribe include Article I-Territory/Jurisdiction of the Tribe, Article IV-Powers of the General Tribal Council, Section 1(f), which deals with promulgating ordinances, and Article IV, Section 2, which deals with future powers. *Supra*, Note ___ (Constitute and By-Laws).

¹⁹⁴ *Supra*, Note 173.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *See generally Supra*, Note 173; *Supra*, Note 110.

“Endangered or threatened” definition.¹⁹⁸ The ordinance also included the definition (ii) “Take or Taking,” which is important because the word may be construed very broadly, “pursuing, shooting, shooting at, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any fish, wildlife or plant or attempting any of the foregoing.”¹⁹⁹ Perhaps this definition would be stronger with the language “including but not limited to” in order for the Tribe to best protect their wildlife and natural resources, especially if a person attempts to cause harm in some non-codified way. The definition section also distinguished between “member” in section (q) and “Non-Indian” in section (s).²⁰⁰ The Water Resource Ordinance did not have these definitions. “Member” is defined as “any person who is an enrolled member of the Oneida Tribe.”²⁰¹ “Non-Indian” is defined as “a person who is not a member of any federally recognized Indian, tribe, band or community and is not the spouse or the dependent of an enrolled Oneida Tribal member.”²⁰²

c.) Administration & Supervision

The fourth section, administration and supervision (45.4), is similar to the authority section of the Water Resource Ordinance Chapter 48.²⁰³ The Board and the Department collaborate to manage and protect the fish and wildlife species within the Tribe’s Reservation.²⁰⁴ This distinction, described under section (45.4-1) is that the Board is “primarily responsible for the establishment of the regulations required under this law” while the Department “shall have the responsibility for the enforcement of this law.”²⁰⁵ Similar to the Water Resource Ordinance, this ordinance includes language under section (45.4-2) about collaboration between the Board,

¹⁹⁸ *Supra*, Note 173.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

Department, and the Oneida Business Committee or General Tribal Council.²⁰⁶ The remainder of section (45.4-2) describes the authority of the Board after consulting with the Department about opening and closing fishing season, opening and closing lakes, establishing and/or changing the maximum amount of fish that may be caught, describing the approved methods for taking the fish, establishing fees, license and permit costs, and establishing boat rules and regulations.²⁰⁷

d.) Conservation Wardens

The fifth section, conservation wardens (45.5), helps improve and maintain Oneida Tribal sovereignty, which adds to Tribal food sovereignty.²⁰⁸ A Tribal conservation warden must have an associate degree and a minimum number of political science credits or a degree in a closely related field.²⁰⁹ The Tribe does not require a ‘hard’ science background, since this is closely related to the conservation warden’s duties of observing persons engaged in hunting, fishing and/or trapping, as well as investigating wildlife and environmental law violations. A conservation warden must also pass a background investigation, a physical examination, and a psychological evaluation.²¹⁰ The Oneida Tribe’s collaboration with the State of Wisconsin is apparent because a conservation warden is required to “obtain a State of Wisconsin Law Enforcement Certification within six (6) months of employment and maintain certification during employment.”²¹¹ Finally, the Oneida Tribe requires the conservation warden “(f) reside within a twenty (20) mile radius of the Reservation within three (3) months of employment.”²¹² Requiring conservation wardens to live within the reservation helps the wardens perform their

²⁰⁶ See generally *Supra*, Note 173; *Supra*, Note 110.

²⁰⁷ *Supra*, Note 173.

²⁰⁸ *Id.*

²⁰⁹ *Id.* The ordinance does not describe why political science is a relevant background for a conservation warden.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

job because they can develop an understanding of the land, its resources, and the people.

e.) Licenses & Permits

This ordinance also lays out provisions for receiving licenses and authorized methods to take fish.²¹³ Section 45.6 governs licenses and permits. This section distinguishes between non-members and Non-Indians.²¹⁴ The ordinance requires all persons, non-member spouses and dependents of members and Non-Indians to have a valid sportsman license issued by the Department.²¹⁵ The current cost for a Non-Indian sportsman license is \$500, as compared to the Members Sportsman License, which costs \$10.²¹⁶ The Non-Indian elder-sportsman license costs \$250.²¹⁷ These sportsman licenses expire August 31st of each year.²¹⁸ Clearly, the Oneida Tribe intends for tribal members to have easier access to licenses than outsiders.

f.) Hunting, Fishing & Trapping Restrictions

The seventh section is section 45.7, which governs hunting, fishing, and trapping restrictions. This section discusses general restrictions and prohibitions with licenses.²¹⁹ This ordinance explicitly establishes fish handling.²²⁰ For example, fish should not be wasted as set out in section 45.7-1(b).²²¹ Individuals are not permitted to sell, purchase, or trade the fish they catch without meeting one of the exceptions according to section 45.7-1(d).²²² This shows the Oneida people do not want commercial incentives to drive the Tribe's fishing. Also, it can be inferred that the Oneida Tribe does not want anyone selling Reservation fish. This supports food sovereignty because the Oneida Tribe is able to maintain control of their fish as a food source

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

when individuals are not allowed to sell, purchase or trade the fish, meaning more fish will stay within the Reservation for Tribal consumption. Other provisions within this section promote Oneida fish control. Particularly, to promote food sovereignty, it includes a prohibition of exceeding the possession limit as set by the annual regulations, possessing any wildlife without permission from the Department, and taking wildlife during closed seasons.²²³ Furthermore, this ordinance section, specifically, (45.7-1(e)) prohibits an individual taking another person's wildlife without that person's consent.²²⁴

g.) Fishing

Section 45.14 governs fishing. Generally, persons are not allowed to injure fish, and/or disturb fish eggs except for "normal recreational or fisheries research practices" authorized by the Board and the Department.²²⁵ The fishing season is year-round unless one of the regulatory divisions set restrictions.²²⁶ Curiously, no individual is to discharge firearms into the Reservation's waters pursuant to section 45.14-6.²²⁷ Also, the Tribe allows fish trading only "between members on the lands and waters of the Tribe" per section 45.14-8.²²⁸

Because a healthy and robust stock of fish in the Reservation's waters increases the food security of Tribal members, the code discourages commercial trade in fish. Another important piece of this section governs fishing on Duck Creek in section 45.14-9.²²⁹ This is important because Duck Creek is the Oneida Tribe's most valuable water source both spiritually and economically to the Tribe.²³⁰ While the Tribe permits ice fishing and night fishing pursuant to sections 45.14-10 and 45.14-11, respectively, the Tribe does not permit motorized boats on

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Supra*, Note 43 at 21.

Tribal waters.²³¹ More specifically, individuals are restricted to electric motors or human-powered watercraft.²³² This restriction on internal combustion engines preserves and maintains the fish and water quality. The fishing section also includes information about transportation.²³³ Section 45.14-17 functions as a health advisory. This section includes this warning in a bolded font: **“Warning: Fish Caught in Duck Creek, ducks, geese, and other wildlife may contain PCB’s. Women and children are most at risk for health defects. Detailed information is available from the Oneida Conservation Department.”**²³⁴ This warning demonstrates the collaboration between various tribal organizations, specifically, the Oneida Conservation Department.

h.) Conservation Code Violations

The next section governs conservation code violations and details charges that can be levied against individuals who violating the ordinance.²³⁵ The Board serves as a court, hearing the individual charges.²³⁶ This section empowers the conservation warden to issue citations for violations of this ordinance.²³⁷ Examples of violations include: fishing without a license or permit, unlawfully possessing a special permit, possession of fish without a license or permit, and waste of wildlife.

i.) Sanctions

The final relevant section is section 45.16, Sanctions that lists all of the possible violations and their ramifications.²³⁸ In addition, all persons, not just the conservation wardens, are

²³¹ *Supra*, Note 110.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

encouraged to report violations.²³⁹ The ordinance provides that “all fines and/or forfeitures shall be paid to the Conservation Department.”²⁴⁰ The ordinance does allow sanctioned individuals to complete community service by discretion of the Board at a rate of one (1) hour per ten dollars (\$10.00) of the fine.²⁴¹ This provision seeks to maximize community self-reliance and social justice. Examples of violations include: fishing without a license or permit, unlawfully possessing a special permit, possession of fish without a license/permit, waste of wildlife.

1. Culturally Specific Elements of the Oneida Water Code

One of the unique violations includes “ Fail[ure] to deliver harvested wildlife to designated elder, disabled person or person in need of nourishment.”²⁴² The penalty for violating this provision is high compared to other penalties. The first violation of the ordinance is penalized at three hundred dollars (\$300) and the second violation is penalized at six hundred dollars (\$600).²⁴³ This penalty section enshrines the Oneida Tribe’s traditional value of providing for elders and disabled persons. This is another instance of the Oneida Tribe enhancing its food sovereignty, by encouraging catching tribal members to catch fish for Tribal consumption rather than re-sale. In this way, the Oneida Tribe crafted their fishing policy in order to sustain the Tribe, bolstering their food sovereignty.

VII. How Water and Fishing Codes Connect to Tribal Food Sovereignty

For the Oneida Nation, water is an indispensable part of their cultural identity and spiritual life.²⁴⁴ Since the Oneida people arrived in Wisconsin, Duck Creek has provided not

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ See generally, Jessica Owley Lippmann, *Tribal Sovereignty Over Water Quality*, 20 J. LAND USE & ENVTL. L. 61, 67 (2004).

only a means of food sustenance and economic goods but also "a community meeting place."²⁴⁵

Duck Creek brought and held the Tribe together. For nearly all tribal nations, waterways provide means for drinking water, fishing, and religious ceremonies.²⁴⁶ Each tribe ideally should incorporate their culture values and possibly even parts of their own language to these tribal ordinances. The Oneida Nation and other tribes with similar tribal ordinances are able to become food independent while also assuring their water and fishing ordinances will be appropriate not only for physical nutrients, but also to satisfy their religious and cultural needs. Tribal water and fishing ordinances form the foundation of food sovereignty, allowing tribal nations to protect a multitude of interests such as sovereignty, nutrition, cultural vitality, and religious autonomy.

VIII. Oneida Tribe's collaboration with the Wisconsin and the United States

By drafting a tribal water and fishing ordinance, the Oneida Tribe is asserting their maximum sovereignty, while at the same time collaborating with the State of Wisconsin and the United States Federal Government in ways that enhance their sovereignty. The Oneida Tribe is involved in cooperative policy-making with the United States both on and off the Reservation. This Tribe was one of the first Native American Nations to be approved for "treatment as a state" (TAS) for regulatory purposes under the Clean Water Act.²⁴⁷ The Oneida Tribe has a lot of water, "There are approximately 233 miles of rivers, creeks, and streams; 78 lakes and ponds covering approximately 112 acres; and about 100 wetlands covering approximately 1,450 acres."²⁴⁸ The United States Environmental Protection Agency (EPA) approved the Oneida Tribe's Water Quality Standards (WQS) and thus, the Tribe assumed authority for activities on

²⁴⁵ *Supra*, Note 42, at 21.

²⁴⁶ *Supra*, Note 244, at 67.

²⁴⁷ *Supra*, Note 68, at 21.

²⁴⁸ *Id.*

the Reservation relating to the water quality.²⁴⁹ However, a lawsuit commenced shortly after the Oneida Tribe was approved for TAS, and the Oneida Tribe subsequently lost their TAS status.²⁵⁰ The EPA has worked to revise their strategy for TAS approvals by “improv[ing] legal defensibility of [their] decisions regarding tribal programs.”²⁵¹

The Oneida Tribe has also worked with the Wisconsin Department of Natural Resources (DNR) in order to help regulate their natural resources.²⁵² On May 8, 1998, the Oneida Tribe signed a Memorandum Agreement with the Wisconsin DNR.²⁵³ This agreement, however, does not mean that the Tribe or the EPA,

acknowledges state environmental regulatory jurisdiction the Reservation for federal environmental programs. For example, the EPA issues and certifies Clean Water Act permits of the Reservation. Nontribal permittees generally apply for and receive both federal and state permits on the Reservation to ensure that they are in compliance. Environmental regulatory jurisdiction on the Reservation is an increasingly complex issue; meanwhile, the environment continues to suffer adverse impacts.²⁵⁴

While this collaboration with the United States is helpful in some respects, “it became painfully clear that federal policy was not going to help Oneida reach [their] environmental goals.”²⁵⁵ The Environmental Health & Safety Division began to look inward to pursue [their] goals,”²⁵⁶ and the Oneida Tribe continues to take control of their own interests at stake.

One of the ways the Oneida Tribe has taken more control of their natural resources is by providing their own funding for clean water restoration from their gaming revenue.²⁵⁷ The

²⁴⁹ *Id.*

²⁵⁰ *Supra*, Note 69, at 545. EPA officials altered documents to boost Oneida's TAS approval. *Id.* at 546. This information was revealed during the *Wisconsin v. EPA* trial. *Id.* Currently, the Oneida Tribe does not have a TAS status. See APPLICATIONS & APPROVALS FOR TRIBAL WATER QUALITY STANDARDS (WQS) PROGRAM AUTHORIZATION, <http://www.epa.gov/r5water/wqs5/wqstribses.htm> (last visited Aug. 31, 2011).

²⁵¹ *Id.* at 546.

²⁵² *Supra*, Note 42, at 21.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Supra*, Note 44, at 562.

Oneida Tribe's Reservation waters require a great deal of maintenance in order for this resource to be preserved.²⁵⁸

Numbers demonstrate how the Tribe has aggressively worked to rebuild and maintain their waters and fish, 'In the past decade, 288 acres of wetland have been restored, 29 miles of waterways have been buffered, 488 feet of stream have been re-created, 2,100 feet of trout stream habitat have been enhanced, and 670 acres of hardwoods have been planted.'²⁵⁹

IX. Oneida Wetland Restoration

The Oneida Tribe has focused on wetland restoration especially because conversion to cropland destroyed 90 percent of the original Reservation wetlands.²⁶⁰ The Tribe strives to maximize wetland mitigation by having a “policy of a 2:1 replacement ratio (two wetland acres are restored for each wetland acre impacted)” for existing and upcoming developments.²⁶¹ The Tribe has developed National Water Quality Standards (WQS) to “protect, preserve, restore, and enhance water quality” and aquatic habitats of the Oneida Reservation.²⁶² The wetland and watershed section exists to maintain the wetland plants and aquatic wildlife by “protecting food supplies, reproductive and nursery areas, and preventing the establishment of nuisance species.”²⁶³ By monitoring the Oneida Reservation waters, the Oneida Tribe collects water quality information for analysis and research as well as to modify the Oneida Water Resource Ordinance when needed.²⁶⁴

The four major streams the Oneida monitor for drainage include: Duck Creek and its tributaries (nearly 70 percent of the Reservation), Dutchman Creek (20 percent of the Reservation), and finally, the headwaters Ashwaubenon Creek and the South Branch of the

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Supra*, Note 4, at 43.

²⁶¹ *Id.* at 37

²⁶² *Id.* at 36.

²⁶³ *Id.*

²⁶⁴ *Id.* at 37.

Suamico River (the remainder of the Reservation).²⁶⁵ The Oneida Tribe is working on the Duck Creek Fish Passage program, which involves two dam Duck Creek removals as well as improving the third dam fish passage barrier.²⁶⁶ The goal of this project is to improve the Green Bay fishes' access, “approximately 1-mile of spawning habitat upstream of two dams have prevented fish passage.”²⁶⁷ The second major stream, Dutchman Creek, has been one of the most impacted watersheds from agricultural pollution.²⁶⁸ Accordingly, the Oneida Tribe developed Agricultural Best Management Practices (BMPs) to protect the Dutchman Creek.²⁶⁹ Finally, the Oneida Tribe has worked to restore and protect the South Branch of Suamico Watershed by enhancing the northern pike spawning habitat.²⁷⁰ To enhance the pike-spawning habitat, the Oneida Tribe is planting native vegetation along the stream channels.²⁷¹

Other components of the Oneida Water Resource Program include: monitoring stream health, regulatory actions, community education, wetland and stream restoration, and finally, invasive species monitoring consistent with the ordinance.²⁷² The Oneida Tribe conducts routine fishery surveys, as part of monitoring stream health, from the late spring through early autumn.²⁷³ By using traps, the Oneida Tribe monitors the young Northern Pike.

The Resource Program engages with young people, understanding that the responsibilities to water must be passed to new generations. As part of the community education, the Oneida Tribe organizes outreach to various Oneida Tribe Elementary School

²⁶⁵ *Supra*, Note 110, at 4.

²⁶⁶ *Id.* at 8.

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 12.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.* at 5.

²⁷³ *Id.*

classes to learn more about the watersheds on the Reservation.²⁷⁴ In addition, the Oneida Water Resource Program seeks to integrate Oneida language and culture into their events and outreach materials.²⁷⁵

X. Other Oneida Projects Towards Food Sustainability

Finger Lake (*osnusha kanyatalay*^), a five-acre lake, was restored with the help of the United States Fish & Wildlife Service. The restoration goal was to provide an outlet for the Oneida to teach their children to fish and eat the fish they catch.²⁷⁶ Additionally, the seventh annual Youth and Elder Fishing Days were held in 2006, with nearly 200 participants.²⁷⁷ To maintain sustainable natural resources, the Oneida environmental staff works with teachers to increase Oneida students' awareness of their Reservation's environment by working in the "field."

Not only is the Oneida Nation engaging their youth, but they also have been creating reservation committees. The Oneida Community Integrated Food Systems (OCIFS) is one of the committees working to help the Oneida Tribe become more food sovereign. "We find this vision of people living well and responsibly with each other and with the land on which they are *placed* to be deeply appealing."²⁷⁸ While not all of the achievements relate directly to water and fishing rights, they relate directly to food sovereignty.²⁷⁹ Some of the achievements from the OCIFS include the falling Leaves 4-H Club, Oneida Farmers Market, Tower Foods Coop Grocery Store, Cannery, and the Oneida Farm and Apple Orchard.²⁸⁰

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Supra*, Note 44 at 21.

²⁷⁷ *Id.*

²⁷⁸ *Supra*, Note 1 at 32.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

XI. Conclusion

The Oneida Tribe has worked tirelessly to implement its own environmental programs by incorporating unique perspectives from their cultural community identity.²⁸¹ It is clear that that neither policy nor science alone is sufficient to become food sovereign.²⁸² Tribal governments have suffered through relocation and destruction of water and land resources.²⁸³ Part of restoring cultural and food sovereignty requires a revitalization of traditional values that work in concert with tribal statutory law. The Oneida Tribe's laws are an example of a tribal statutory scheme that has resulted in improved water quality and improved quality of life.²⁸⁴

²⁸¹ *Supra*, Note 44 at 21.

²⁸² *Id.*

²⁸³ *Supra*, Note 12 at 34.

²⁸⁴ *Supra*, Note 46, at 3-4.