
EXPANDING THE BOUNDARIES OF ENVIRONMENTAL JUSTICE: NATIVE AMERICANS AND THE SOUTH LAWRENCE TRAFFICWAY⁽¹⁾

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Abstract

This paper presents a descriptive case study concerning the construction of a roadway through an area of land sacred to a Native American community in Lawrence, KS. The South Lawrence Trafficway is a unique environmental justice case, as the affected community is not a single Native American group, but an aggregate of Native Americans from across the country gathered together at Haskell Indian Nations University. Furthermore, the case is on the periphery of environmental justice issues as the struggles are mainly historical, cultural, and spiritual in nature rather than environmental- or health-related. However, I contend that the case is inherently an environmental justice issue, as many Native American peoples do not draw clear lines between environmental, cultural, historical, and spiritual aspects of the natural world; they view all such matters as connected and interrelated to one another. The case thus has implications for policymakers and environmental justice advocates alike. I encourage policymakers to expand their traditional governing structures by expanding their outreach to Native American groups, recognizing the myriad governing councils employed by Native American groups, their oral traditions, and their methods of “decision aiding.” I also stress the importance of local, place-based knowledge in environmental justice cases. Finally, I suggest that environmentalists and social justice advocates work in coalitions rather than separately to accomplish their goals.

Introduction

Lawrence, KS, is a growing university community in the northeast part of the state. Located in Douglas County and situated in the middle of the Topeka-Lawrence-Kansas City metropolitan corridor, Lawrence has seen a population boom, with Douglas County growing to nearly 100,000 residents in the year 2000 – a 22.2% population increase since 1990 (U.S. Census Bureau, 2002a). With such a surge in population Lawrence is fast becoming a bedroom community for the urban corridor, evidenced by an average travel time to work of over 19 minutes (U.S. Census Bureau, 2002b) – relatively high for such a small community. High commuter volume and relatively inefficient means of traveling through the city of Lawrence have led to increasing traffic congestion problems in the city. Thus, the South Lawrence Trafficway (SLT) project came into existence, partially as a response to this growing problem.

The SLT project has been a source of controversy in the community for years. Originally federally funded during the 1987 session of Congress, construction of the SLT ground to a halt in 1998 because of a lack of funding and environmental and social justice issues related to the Haskell-Baker Wetlands – after the western two-thirds of the trafficway had been built (Coan, 1998). In *Ross v. Federal Highway Administration* (162 F.3d 1046 (10th Cir. 1998)), the 10th Circuit Court of Appeals upheld an injunction against the completion of the SLT project until state and municipal agencies complied with requirements of the National Environmental Policy Act (NEPA) (Smith, 1999: p. 131). County, state, and federal officials complied with the court order, completing the required supplemental environmental impact statement (SEIS). The final SEIS, released to the public in 2000, recommended the “No Build” option as the preferred alternative for the SLT. Almost everyone – even proponents of the road – believed the project was finally dead (Lawrence Journal-World, 2001). Then in 2001 the Kansas Department of Transportation (KDOT) renewed its push to build the SLT, this time with the U.S. Army Corps of Engineers (USACE) as the lead federal agency. Controversy erupted once again, with environmentalists and Native Americans pitted against real estate developers, landowners, and government officials at all levels.

The proposed SLT has the potential for bringing many benefits to Lawrence and the greater Douglas County region, but it also

carries major environmental and cultural consequences. A major consequence that has received increasing attention is the impact of this road on the Native American community in Lawrence. This community, consisting primarily of Haskell Indian Nations University (HINU), has some of the strongest ties to the Haskell-Baker Wetlands through which the SLT may be built. A former owner of the land in the Haskell-Baker Wetlands, HINU currently uses the wetlands for educational fieldwork and research, as well as cultural and spiritual ceremonies. Consequently, the SLT project has the potential for imposing such disproportionate impacts on the HINU community that at least one environmental justice advocate has called the SLT “one of the most important environmental justice case in the United States in the past ten years” (Wildcat, 2001).

This paper examines environmental justice concerns the SLT brings to light regarding transportation and Native Americans. Its purpose is to examine the environmental justice issues that many people rarely consider when looking at the SLT and similar projects. It will explore the uniqueness of the current project, give a brief overview of Native American values, and analyze the SLT controversy. Furthermore, it will examine the impacts of the various alternatives under study and illuminate the potential benefits of environmentally just alternatives. Finally, the paper concludes with lessons for both policymakers and environmental justice advocates.

The Uniqueness of the SLT

Environmental justice issues facing Native Americans range from toxic waste dumping (Mitchell, 1993: p. 178; Cole and Foster, 2001: pp. 134-136), uranium mining, and nuclear waste storage on tribal lands (Sengupta, 1990: pp. 213-214; Mitchell, 1993: p. 178; Skull Valley Goshute Tribe Executive Office, 1995: pp. 65-69; Newton, 1996: pp. 7-9) to water pollution (Mitchell, 1993: p. 179; West et al., 1995: pp. 124-137; Cole and Foster, 2001: p. 137) and water development policies (Berry, 1998: pp. 104, 113-114). Few environmental justice studies have dealt explicitly with Native Americans and transportation issues, however. Published environmental justice transportation studies have tended to focus on air quality, mobility disparities, or noise levels, usually in African-American or Hispanic-American communities (Liu, 2001: pp. 287-313; Forkenbrock and Schweitzer, 1999: pp. 96-111; Environmental Defense Fund, 1999). These studies provide some useful insights for persons opposing the

SLT on environmental equity grounds, but there is little information that directly addresses the concerns of the Lawrence Native American community.

The SLT, like most other environmental justice issues, is an inherently local matter and must be treated as such. There are profound differences between this environmental justice case and others facing Native Americans. For example, nearly all of the studies on Native Americans and environmental justice explore issues on Native American reservations. In the present case, the affected community is within a city and does not actually “own” most of the property that is potentially impacted. Though the Haskell-Baker Wetlands was once property of Haskell Institute (as HINU was formerly known), the land was transferred to Baker University in 1968 (Coan, 1998). Therefore, the only tie that HINU and its affiliates have to the Haskell-Baker Wetlands is historical, cultural, and spiritual in nature (HINU, 1994: pp. 10, 38-41; Students and Alumni of HINU, 1996: pp. 5-8; Haines, 1997: pp. 147-153).

Similarly, most environmental justice cases involving Native Americans deal with issues affecting one specific Native American group: one tribe, one clan or band, one reservation, or the like. In the current situation, the affected Native American community, HINU, has representatives from a number of tribes. Politically, this makes the SLT issue quite interesting as it is thus necessary to take account of the several worldviews of the different tribes represented at HINU. That the affected community in this case is a group of university affiliates rather than a single tribe also makes the SLT project one of the most far-reaching Native American environmental justice cases to date. HINU has connections to over 160 sovereign nations; many of these nations are at least somewhat aware of the issues surrounding the SLT project. Rarely do environmental justice cases involving Native Americans have such a broad audience and a broad range of potentially affected parties.

Furthermore, none of the potential consequences of building the SLT are directly environmental in the sense that they will pose serious threats to the human or ecological health of the Native American community. There are indirect environmental threats: the potential for noise pollution, degraded water quality, and destruction of habitat (Students and Alumni of HINU, 1996: p. 9; USACE, 2002: pp. 4.19-4.20, 4.24-4.26, 4.29-4.34), as well as some increased air

pollution due to increases in traffic levels around the HINU campus (USACE, 2002: pp. 4.18-4.19). However, the most direct consequences threaten the mental and spiritual health of HINU affiliates. These consequences include noise threats to burial grounds, the Medicine Wheel, and sweat lodges (HINU, 1994: pp. 10, 38-41; Wildcat, 2001), the potential removal of Native American gravesites, and the destruction of lands used for traditional Native American ceremonies. Rarely are these issues of mental and spiritual health considered when looking at environmental justice cases.

With so many unique elements to this case, links to environmental justice may seem tenuous. Scholars, policymakers, and activists acknowledge that environmental justice is an exceedingly broad field of study. However, some may question the validity of including a case with primarily cultural and historical threats to Native Americans with other environmental justice cases. I nevertheless contend that this case is inherently an environmental justice issue, for two main reasons. First, many Native Americans do not separate their relationships with the land, their history, their culture, and their spirituality. These are all intertwined with one another, thus making it nearly impossible to differentiate a threat to their land and culture from a threat to their spirituality and history. Secondly, this case has profound policymaking implications for the American political system and how it works for different cultures that do not necessarily conform to the traditional structures. As described in this paper, the decision-making process has systematically worked against affiliates of HINU. This is a problem that must be confronted if policy makers wish to respond effectively to issues of environmental justice involving distinct cultures.

Values and Worldviews of Native Americans

Native Americans have a different value system than most Westerners (2). While many Anglo-Americans follow the mantra of individualistic gain, Native American values are “holistic and community oriented” (Fixico, 1996: p. 30). Traditional Native American value systems question the Anglo system of policymaking and align themselves with a much more ecocentric view of culture (Robyn and Camacho, 1998: p. 197). There is a strong respect among Native Americans not only for other peoples, but for the earth and all its other living inhabitants as well (Robyn and Camacho, 1998: p. 207); it is a relationship “of reverence and respect” (Fixico, 1996: p. 36). As

environmental justice activist Tom Goldtooth says, it is “deeper than a brother-sister relationship” (Cole and Foster, 2001: p. 137).

This ecocentric view many Native Americans hold is often trivialized by the Eurocentric worldview of many Anglo-American policymakers (Manus, 1996: p. 263). The profound differences in worldviews between the two groups has led to miscommunication and misunderstanding (Fixico, 1996: p. 41). Conflicts have escalated to a point where many people in power do not consider Native Americans intelligent enough to make their own decisions (Skull Valley Goshute Tribe Executive Office, 1995: p. 67). Marginalization of Native Americans is even an issue close to home, as recent editorials and articles in the Lawrence Journal-World have ridiculed the HINU community for being corrupted by “radical” environmentalists in the community (Wildcat, 2001; Lawrence Journal-World, 1999) and some have even bordered on racism (Haines, 1997: p. 146).

Trivialization of Native American rights in this country is almost by design. Native American tribal governments generally and environmental programs specifically are terribly underfunded (Cole and Foster, 2001: p. 142), a fact that is exacerbated by the gross poverty many Native Americans experience (U.S. Census Bureau, 1995). Policymakers try to force “American-style” political institutions on Native Americans, while these groups’ historical traditions of social organization are generally oral ones (Striker, 1996: p. 148). The Bureau of Indian Affairs (BIA) – the liaison between Native American tribes and the U.S. Government – rarely reflects the interests of all Native American peoples, further pushing Native Americans toward the periphery (Small, 1995: p. 61). Thus, the SLT case is set in this larger context of considerable friction between cultures and practices.

HINU, the Haskell-Baker Wetlands, and the SLT

Historical background

Native Americans have inhabited the Wakarusa River Valley of Douglas County for over 10,000 years, and the valley is highly regarded by many area tribal elders for its historical and environmental significance (HINU, 1994: pp. 7-10). Currently one of the premier Native American institutions of higher education in the

country with over 900 students and ties to 160 Native American tribes across the country, HINU was officially established in 1882 (HINU, 1994: p. 25) as the United States Industrial Training School (Students and Alumni of HINU, 1996: p. 3). In the early years, most children were sent forcibly to the school to “assimilate” into Anglo-American culture. Students were taught agricultural skills in line with Thomas Jefferson’s dream of a nation of yeomen farmers. Thousands of Native American children were forced through this agricultural education from Haskell’s founding through the early 1930s (Haines, 1997: p. 149).

This period was extremely harsh for students at Haskell. Families were broken apart and children lost touch with their cultural traditions (Haines, 1997: p. 149). School officials prohibited students from speaking their native languages and forbade them from practicing their religious beliefs. Students were malnourished, beaten, and prevented from seeing their parents for periods ranging from three to seven years. In addition, many students were reported missing during this time period (Students and Alumni of HINU, 1996: p. 3). Children were overworked, ill, and forced to live in cramped quarters. Conditions were so inhospitable that even the United States Senate Subcommittee on Indian Affairs expressed concern over the living environment at Haskell (Haines, 1997: p. 150).

During this era of callous treatment, students found solace regularly in one place: the Haskell-Baker Wetlands. They secretly spoke their native languages and practiced their traditional beliefs (Students and Alumni of HINU, 1996: p. 4). They stole away during the night to meet their parents (Lawhorn, 2001a). They prayed (Students and Alumni of HINU, 1996: p. 4). The students’ use of the wetlands reflects the ecocentric worldview of many Native Americans, and emphasizes the significance of the ties to Mother Earth that so many Native Americans and HINU students have.

With so many Native American ties to HINU and the Haskell-Baker Wetlands, the SLT expanded from a local issue affecting a centralized community to a far-reaching struggle that includes actors from across the country. HINU and the Haskell-Baker Wetlands are critically important to Native Americans nationwide. However, this importance was not apparent to policymakers during the early stages of planning the SLT. HINU has a history of limited access to policymakers in Lawrence. There has been discrimination and social

inequity since the beginning of the SLT project (HINU, 1994: p. 66). Even though the Native American community of Lawrence is the largest minority population in the area, rarely are their views fully incorporated into Lawrence's policies; there exists a profound misunderstanding between the Native American community and the federal, state, and local policymakers (Students and Alumni of HINU, 1996: p. 10).

Misunderstanding of Native American views

The SLT controversy encapsulates the misunderstanding of Native American worldviews. Though the initial planning of the SLT started in 1987, HINU was not brought into the picture officially until 1993 when the project was presented to the HINU Board of Regents. State and federal agencies sent letters to HINU leadership, however leadership was very unstable at HINU during this period. Therefore, letters were likely shuffled from hand to hand and government officials received no response (Wildcat, 2001). When the students and faculty of HINU were informed of the proposed SLT, they sent notice to the Douglas County Commission, Federal Highway Administration (FHWA) officials, and other federal authorities. HINU expressed concern over the various cultural, spiritual, and environmental impacts the SLT would have on the institution and its affiliates, and the Wetlands Preservation Organization (WPO) was subsequently formed to reflect student and alumni interests on these issues. Though the original EIS specifically stated that the SLT would have no impact on HINU, the FHWA recognized HINU's concerns and decided to conduct a SEIS in 1994 (Haines, 1997: p. 147).

However, the SEIS failed to acknowledge many of the concerns important to HINU (Haines, 1997: p. 147). One problem was that the FHWA communicated primarily with the BIA, not HINU (HINU, 1994: p. 67). As explained above, the BIA rarely represents effectively the diverse interests of all 160 sovereign nations with students at HINU. Because of its troubled past, many Native American leaders remain suspicious of the BIA as an advocate for their interests.

Another major problem with the SEIS was the FHWA's failure to understand the interconnectedness of cultural, historical, spiritual, and environmental concerns that cannot be fragmented, according to the Native Americans involved in the struggle. The

Haskell-Baker Wetlands is linked to all of these areas of concern, and to one another. But there was no mechanism for the FHWA to recognize this interconnectedness (Haines, 1997: p. 147).

The SIES skipped over a number of other issues that one might expect to be readily apparent. As Haines (1997: pp.147-148) explains, the SEIS did not:

1. Recognize residential or commercial development as one of the purposes of the trafficway,
2. Address all possible alternatives as required under NEPA,
3. Consider environmental impacts on the floodplain,
4. Consider effects on natural resources, including water, wildlife, vegetation, air quality, and aesthetics, or
5. Account for cumulative environmental change, including reductions of agricultural land, increased infrastructure costs, increasing traffic intensity, changes in land zoning and property values, and the impact on the downtown business district.

By overlooking such issues, KDOT and FHWA appeared not only to be disregarding the explicit requirements under NEPA, but also overlooking the federal government's trust responsibility to Native American people (Students and Alumni of HINU, 1996: p. 10).

Another issue that came to light during the SEIS process was the segmentation of the trafficway. After announcing its plans to conduct the SEIS, FHWA also approved KDOT's plan to segment the SLT into an eastern leg and three segments of the western leg. Then in 1997, the FHWA allowed KDOT and Douglas County to defederalize the project and build the eastern leg without federal funds.

Subsequently, FHWA withdrew its notice to continue with the SEIS (Smith, 1999: p. 131). The WPO and various other local environmental organizations quickly sought an injunction against building the eastern leg until the SEIS was completed, perceiving this as an attempt to skirt the requirements of NEPA. These organizations sought administrative review of FHWA's policy to withdraw from the project without securing another lead federal agency. The district court granted the review and issued a preliminary injunction, stating that the "after-the-fact" rationalization utilized by FHWA and KDOT was illegal under the auspices of NEPA. A permanent injunction against the SLT would soon follow, concluding that KDOT, FHWA, and other officials did in fact act arbitrarily and capriciously when segmenting the project

(Smith, 1999: pp. 131-132). Government agencies subsequently undertook the environmental impact study

The end of the battle?

In March 2000, the final SEIS released to the public recommended the “No Build” alternative. Almost everyone conceded that the project was finally dead. However, in 2001, KDOT attorney Mike Rees renewed the push to build the trafficway through the wetlands (Lawrence Journal-World, 2001). HINU once again responded, saying that the SLT should be built south of the Wakarusa River (Ranney, 2001). The National Congress of American Indians, with members from over 500 federally-recognized Native American tribes, similarly passed a resolution opposing any route of the SLT north of the Wakarusa River (Fagan, 2002). Not surprisingly, a coalition of environmental organizations sided with HINU affiliates and opposed any route of the SLT north of the Wakarusa River or any building of a road at all. Groups such as the Environmental Studies Student Association (ESSA), the Wakarusa Chapter of the Sierra Club, and the Jayhawk Audubon Society (JAS) have all published resolutions opposing the SLT (ESSA, 2001; Campbell, 2002; JAS, 2001). Similarly, most other area environmental organizations (i.e., HINU’s WPO, Baker University’s Earth We Are, the Kaw Valley Greens, KU Greens, KU Environs) all oppose the destruction of the Haskell-Baker Wetlands. The university student body of Douglas County also opposes the construction of the SLT through or proximate to the Haskell-Baker Wetlands as all three area universities’ (Baker University, HINU, and the University of Kansas) student senates passed resolutions opposing the construction of the SLT.

A majority of members on the Lawrence City Commission favors building the SLT south of the Wakarusa River, but they declared that they could not officially endorse any route on such a contentious issue (Mathis and Lawhorn, 2001). The Commission also voted to support the designation of the Haskell-Baker Wetlands on the National Register of Historic Places as a joined district with HINU (Mathis, 2002). If approved, a designation as a historical site would restrict development within the designated area and significantly alter improvements made close to the area. The Kansas State Historical Society also supports the eligibility of the HINU campus and the Haskell-Baker Wetlands as a historical district

(Powers, 2001), as does a recommendation produced for KDOT (Brockington et al., 2001).

However, not all area support has been on HINU's side. The Lawrence-Douglas County Planning Commission and the Douglas County Commission also responded to the new SLT, voting to back a plan locating the SLT within the Haskell-Baker Wetlands (Lawhorn, 2001b; Lawhorn, 2001c). Though neither of these governmental bodies has any authority over the final alignment of the SLT, their support of a route through the Haskell-Baker Wetlands undoubtedly influences KDOT's ultimate decision. The Lawrence area Chamber of Commerce similarly supports building the SLT along a route through the Haskell-Baker Wetlands.

The current situation

Currently, KDOT and USACE are in the process of finalizing the EIS for the newly proposed SLT. However, the SLT project is currently on "the back burner" with the state in a fiscal crisis and with a change in the governorship from a Republican to a Democratic administration (Fagan, 2003). Furthermore, the SLT lost its chief advocate with the administration change as former chief counsel Mike Rees was not retained in his position at KDOT (Mathis, 2003).

The draft EIS identified two main routes under study: one route south of the Wakarusa River and one route through the Haskell-Baker Wetlands along a 32nd Street alignment. The 32nd Street alternative was identified as the preferred alternative in the final EIS, though no action on this alternative has emerged to date (USACE, 2002). Other alignments still under study include a "No Build" alternative, a 31st Street alternative, and various other routes through the wetlands.

Among the alternatives currently being studied by KDOT, the only ones that would prevent environmental injustices from being imposed on HINU are the "South of the River" and "No Build" options. The "No Build" option is perhaps most appealing as it does not affect the most significant HINU cultural sites in any way. It also alleviates the potential NIMBY (not in my backyard) response, as the SLT would not have to be built in anyone's backyard; no more property would be condemned, no historically significant places

would be affected, and no environmentally sensitive areas would be destroyed.

The 31st Street alternative affects HINU most directly by being located on its property. Though it would not destroy much additional acreage of the Haskell-Baker Wetlands, this alternative would locate the SLT closest to HINU, generating increased noise levels affecting sacred sites (i.e., the Medicine Wheel, various sweat lodges) on the HINU campus (Students and Alumni of HINU, 1996: pp. 6-8, 13-17; Blackwood, 1999). The alignments running through the Haskell-Baker Wetlands all significantly affect HINU and the Lawrence Native American community, as well as other area environmentalists who have strong ties to the Haskell-Baker Wetlands. These alignments all destroy sizeable portions – anywhere from 10 to 40+ acres – of the wetlands that potentially cannot be replaced (SLT Advisory Group, 2001: p. 5). Other environmental and health effects would be increased air pollution (which would disparately affect the HINU community) and encouragement of urban sprawl. Building a road through the wetlands also poses cultural threats to the HINU community as many unmarked Native American burial sites are located in the wetlands (Meagher, 2000; Janovy, 2001), with some estimates ranging as high as 500 graves in the area (Curry, 1999). Aside from disturbing gravesites, the HINU community has strong spiritual and cultural ties to the wetlands, described above, which cannot simply be mitigated by creating new wetlands (Ranney, 1999).

KDOT counters that building the SLT through the Haskell-Baker Wetlands will bring multiple benefits to the Lawrence community and surrounding region. A larger area of wetlands would be built to replace the affected portions of the Haskell-Baker Wetlands, and a new education center would be built (though area environmentalists and educators have expressed reservations about the benefits any educational center would provide) (Ludwig, 2001a). Any existing graves that would be disturbed by the SLT would be “relocated with the utmost care and concern” (Ranney, 1999). Furthermore, building the SLT would undoubtedly bring more traffic and commerce to the area, which would allow the city to grow and bring about more economic development opportunities.

The “No Build” option is perhaps the most appealing to area environmentalists and HINU. This option skirts all environmental impacts and does not encourage sprawl. It preserves the ecological

integrity of the Haskell-Baker Wetlands and does not affect Native American ties to the wetlands and the earth in general. However, this option can potentially curb some development and economic growth in Lawrence. The “No Build” option also could subject city, county, and state officials to charges of poor land-use planning, as this issue has been debated for well over a decade and a considerable share of public funds has been expended. It also does not fully preclude the issue from reappearing on the policy agenda at some point in the future.

Nevertheless, choosing the “No Build” alternative brings some positives benefits, such as the opportunity to expand the public transportation system in Lawrence. These systems are one way of achieving more efficient and environmentally sensitive transportation policies. Inexpensive public transportation systems promote social equality as they are proportionally more beneficial to poorer citizens (Wenz, 2000: p. 184). They can also lower tax burdens as fewer subsidies go toward construction of the SLT (Gordon, 1991: p. 11). One of the main imperatives for building the SLT is the growing number of people who commute between Lawrence and Johnson County, KS (a Kansas City suburban area). If a light rail system operated between these two communities – and even extended to Topeka – it would satisfy a key component of an efficient transportation system (Wenz, 2000: p. 180). Light rail also limits urban sprawl and “encourages compact, higher-value land use” (Gordon, 1991: p. 7). Moreover, with Lawrence’s recently developed citywide bus system, a light rail could be relatively easily integrated to meet this community’s transportation needs. Furthermore, even though Kansas ranks low in terms of the use of mass transportation, many Lawrence residents still see public transportation as one way of alleviating the city’s traffic problems (Ludwig, 2001b).

However, realistically the “No Build” option is perhaps the least likely of the alternatives to be selected given the current governments in power. This alternative has little support among local and state officials; therefore the only way to push this option is through increased public pressure. Many agencies stress the importance of public participation in environmental justice cases (see DOT, 2000: p. 3; EPA, 1998; HUD, 1995), however it is unclear that increasing public pressure at the local and state levels would help regarding the SLT. Public participation has already been extensive, with little notable influence on local policymakers. Hence, unless HINU and its affiliates can find a way to exert influence on USACE,

their best chance may be in advocating for the 42nd Street option as the only alternative capable of alleviating environmental justice concerns.

The 42nd Street alternative (the so-called “South of the River” option) studied by KDOT alleviates most of the environmental injustices that could potentially be imposed on HINU and its affiliates. This option does not affect HINU’s historical, spiritual, and cultural ties to the Haskell-Baker Wetlands by keeping the land undisturbed. However, this alignment has the potential of disturbing other historical sites south of the Wakarusa River and will destroy some prime agricultural and riparian areas. Furthermore, many area residents perceive a need for the SLT, thus this option may be the only compromise that keeps the road out of the Haskell-Baker Wetlands; it may be the “middle place” promoted by some environmental justice advocates (Adamson 2001, pp. 51-88). This option is at least partially satisfying to HINU affiliates, area environmentalists, and the Lawrence business community. In fact, there still is a chance that lobbying for this alternative at the local level may be beneficial, as area business interests seem more concerned with getting the SLT built than where it is built (3).

Another possible way of keeping the SLT out of the wetlands is to use zoning ordinances. Little attention has been given to the role land use law can play regarding environmental justice (see Collin, 1992: pp. 537-538; Arnold, 1998: pp. 1-153). Land use regulation can serve to protect natural resources such as the Haskell-Baker Wetlands while at the same time safeguarding minority rights. Zoning, the key to land use regulation, has the potential to allow for full public participation in the process and “offer[s] several advantages for achieving environmental justice goals.” It eliminates uncertainty about what land uses will be allowed in specific sections of communities and extends a community’s planning horizon (Arnold, 2000: pp. 10406-10408).

A zoning strategy may be of particular relevance, as city officials recently formed the ECO² Committee (a citywide committee working to preserve both economic development and ecological protection) with the duty of identifying environmentally sensitive areas in the county in need of conservation. The Haskell-Baker Wetlands may be one such area. The use of zoning regulations does have some limits, however, as zoning specific parcels of land is

subject to quasi-judicial (rather than simply administrative) scrutiny in the state of Kansas (Arnold, 2000: p. 10413). Nevertheless, the courts have been quite sympathetic to HINU and its affiliates in the past.

Lessons for Policymakers and Environmental Justice Advocates

With such a long and contentious history behind the SLT project, there are several lessons policymakers and activists might consider. For policymakers, it is crucial to recognize and take account of the diverse forms of governance used by Native American tribes. An initial step policymakers might consider to recognize these differing decision-making arrangements is to accept that many Native American governing councils do not meet on set schedules as many mainstream governing bodies do; some meet monthly, some bi-monthly, some quarterly, and some annually. Allowing for these differences by not adhering to strict deadlines in comment periods is an initial step to avert this problem. KDOT and the USACE could benefit strongly from this recommendation if they employed more flexible deadlines rather than 45- or 60-day comment periods on the various drafts of the EISs. Policymakers could also extend efforts to incorporate the diversity of Native American viewpoints into their decision-making. More outreach and visits to HINU would be one way of incorporating these viewpoints. Finding ways to integrate many Native American groups' oral traditions (i.e., by using videotapes rather than written documents) is another initial step to consider.

Second, stronger federal mandates on environmental justice may not be the best way to incorporate environmental justice issues into policymaking, given the local nature of many environmental justice cases. It is of great import, especially in the Midwest and Mountain West where people of all political hues have a bit of a libertarian streak in them, to know fully the local situation, its place, and its people. A place-based knowledge of the parties involved – HINU, WPO, ESSA, KU Environs, Jayhawk Audubon Society, the Wakarusa Chapter of the Sierra Club – is critical for state and federal agencies to be effective in reaching out and embracing people in controversial environmental justice issues. Each group has a different motive and a different agenda in controversies like the SLT project, thus it is critical to understand each of these. Therefore,

local and state policymakers could benefit from environmental justice goals and guidelines that allow flexibility in dealing with various stakeholders. Federal requirements that allow local and state policymakers to tailor environmental justice mandates to specific cases in their regions would be an initial step that could prove beneficial to the SLT and similar cases. For example, Lt. General Robert Flowers of USACE recently remarked that it is USACE's goal to "respect the views of individuals and groups interested in Corps activities, listen to them actively, and learn from their perspective in the search to find innovative win-win solutions to the nation's problems that also protect and enhance the environment" (Flowers, 2002). Also, general federal help is available to state and local policymakers in the wake of the creation of an environmental justice office located at each of the U.S. Environmental Protection Agency's ten regional offices. This assistance can help expand the effectiveness of flexible guidelines and approaches.

Yet stronger federal mandates may be necessary if and when methods of dispute resolution fail. Stakeholder groups have been formed to come to a consensus on the SLT issue, but there has been little progress in bringing the affected parties together toward a common outcome. Gregory et al. (2001: pp. 415-432) document the inferiorities of dispute resolution. Alternatively, they advocate a multiple-level "decision aiding" process. Using such a process at all levels of government involved in the current project may be a way to find an ultimate solution to the SLT struggle, and it may be necessary to put such a process in place through federal requirements.

For environmental justice advocates, perhaps the strongest lesson to learn from the SLT case is that coalition building is central to advancing their interests and concerns. A number of environmental and social justice groups worked on the SLT individually for quite some time, usually with little response from elected and appointed officials. However, in the spring of 2002 many of these groups joined together in a coalition to collectively work on the SLT issue. There has been significantly more headway made since the coalition has formed, as evidenced by the amount of public attention the SLT and other environmental issues gathered during Lawrence's Earth Day 2002 festivities (Merkel-Hess, 2002).

Conclusion

Currently, policymakers and advocates are in the “waiting” stage of the SLT process. The record of decision has yet to be released, and little action in the way of dissemination of public information has occurred since the draft and final EISs were distributed in August 2002 and January 2003, respectively. This is in stark contrast to prior months, when well over 100 articles were written in the local newspaper regarding the SLT issue. It thus remains to be seen which option under study will be chosen as the final preferred alternative, and whether Native Americans and other environmental and social justice advocates will once again have to prepare to clash heads with local, state, and federal policymakers in federal court.

It is the hope of this author – and many environmental justice advocates – that issues like the SLT can be resolved in a manner in which no sector of the population bears a disproportionate burden of environmental harms. Through the assessment offered here, policymakers and advocates alike may gain a better understanding of the complex issue of environmental justice regarding the SLT and similar projects. No issue has been more contentious and has caused more controversy in the Lawrence community over the past two decades than this one; thus similar struggles may be avoided in the future if others can learn from the SLT example.

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Notes

1. A previous version of this paper was presented at the University of Kansas Undergraduate Research Symposium in Lawrence, KS, March 2002.
2. The author recognizes that considering Native Americans a homogenous group is as misleading as considering Americans in

general a homogenous group. There are obviously great differences among the worldviews of Native Americans generally and HINU affiliates specifically (see Striker, 1996: p. 147). However, because of the overwhelming consensus that has developed at HINU regarding the SLT, Native Americans will be considered as a single community in the current paper. The author accepts all consequences for the over-simplification.

3. At one point, the Lawrence Chamber of Commerce and the Lawrence-Douglas County Planning Commission offered to align with JAS in promoting a “South of the River” option. JAS declined to take part in this alliance and the Chamber and Planning Commission subsequently voted to encourage an alternative through the wetlands.

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