Native American Rights Fund

Fifth Annual Report • 1976

NATIVE AMERICAN RIGHTS FUND

STEERING COMMITTEE

Executive Committee

David Risling, Jr. (Hoopa), Chairman
Coordinator, Native American Studies, University of California—Davis
California

Val Cordova (Taos Pueblo)
Educator, San Felipe Day School
New Mexico

Leo LaClair (Muckleshoot)
Deputy Director, Northwest Indian Fish Commission
Washington

John Stevens (Passamaquoddy)
Governor of the Passamaquoddy Tribe
Maine

Committee Members

Robert Bojorcas (Klamath)
Director of CETA Manpower Program
Oregon

LaNada Boyer (Shoshone-Bannock)
Tribal Council Member
Idaho

John Clifford[1] (Rosebud Sioux)
Educator
South Dakota

Chief Curtis L. Custalow, Sr. (Mattaponi)
Mattaponi Chief
Virginia

Lucille Dawson (Narragansett)
Coordinator of Native American Programs, Smithsonian Institute
Rhode Island

Martha Grass[2] (Ponca)
Director, American Indian Referral Center
Oklahoma

Renee Howell (Oglala Sioux)
Paralegal
South Dakota

Louis LaRose (Winnebago)
Chairman, Winnebago Tribe of Nebraska
Director, American Indian Satellite Community College
Nebraska

Rodney Lewis[2] (Pima-Maricopa)
Attorney
Arizona

Leroy Logan (Osage)
Rancher
Oklahoma

Janet McCloud (Tulalip)
Washington

Jerry Running Foxe (Coquille)
Chairman of Coquille Tribe
Oregon

Terms Expired: 1. April 1976, 2. October 1976.

CORPORATE OFFICERS

Executive Director	Thomas W. Fredericks (Mandan-Hidatsa)
Vice-Executive Director	John E. Echohawk (Pawnee)
Secretary	Lorraine P. Edmo (Shoshone-Bannock)
Treasurer	James A. Laurie

STAFF ATTORNEYS

Richard B. Collins
Raymond Cross (Mandan-Gros Ventre)
Sharon K. Eads (Cherokee)
John E. Echohawk (Pawnee)
Walter R. Echo-Hawk (Pawnee)
Thomas W. Fredericks (Mandan-Hidatsa)
Karl A. Funke (Chippewa-Keweenaw Bay)
David H. Getches
Bruce R. Greene
Daniel H. Israel
Yvonne T. Knight (Ponca-Creek)
Arlinda F. Locklear (Lumbee)
Charles H. Lohah (Osage)
Don B. Miller
Dennis M. Montgomery
Robert S. Pelcyger
Thomas N. Tureen
A. John Wabaunsee (Prairie Band Potawatomi)
Jeanne S. Whiteing (Blackfeet-Cahuilla)
Sally N. Willett (Cherokee)

DIRECTOR'S REPORT

The Native American Rights Fund, although in existence for just six years, has represented Indian tribes and individual Indians in the adjudication of many of the important legal issues in Indian law within the past decade. NARF has assisted the tribes in the Northwest in their efforts to establish treaty fishing rights, assisted tribes throughout Indian country in their attempts to adjudicate and secure their prior and paramount rights to the use of water, assisted tribes east of the Mississippi River in their efforts to reclaim their respective land bases lost through illegal cessions to the various states, and assisted energy resource owning tribes in their efforts to maximize the benefits of natural resource development, while at the same time minimizing the adverse effects of derogation of their environment and loss of their Indian way of life that natural resource development so often brings about.

Through the efforts of NARF, other legal service projects and the private attorneys representing Indian tribes, many of the unresolved issues surrounding Indian rights have been decided by the courts in favor of Indian tribes and individuals in recent years. The resolution of these issues has resulted in Indian tribes exercising more of their governmental powers, thereby providing greater governmental service directly to their tribal members and more active exercise of their regulatory authority.

The greater participation of tribal government in providing governmental services on Indian reservations can also be traced directly to the national policy of "Indian self-determination." Under the policy of Indian self-determination, Indian tribes have been given the opportunity to develop and provide governmental services thereby establishing tribal governments as viable governmental entities. This policy has further resulted in tribal governments exercising greater control over their people and their reservations. They have been able to improve their law and order systems, develop codes in areas such as zoning, building, land use planning, taxation, reclamation, etc.

Under this policy Indian tribes have demanded a greater role in the development of the human and natural resources within their reservation boundaries. Indian tribes as mineral owners and as sovereigns who have both the responsibility to protect the interests of their land and people while at the same time planning the development of their resources, recognize that they are in a superior position

to evaluate the advantages and disadvantages of reservation development. They are further cognizant of the fact that they must exercise greater control over natural resource developers so as to protect their land base, their environment, and their Indian way of life.

With the development of Indian tribal governments as viable units of self-government, there has arisen a backlash from the non-Indians living on or adjacent to Indian reservations. As Indian tribes attempt to exercise greater governmental authority, the non-Indians have constantly challenged these attempts in an effort to limit tribal authority to tribal members and the trust and restricted Indian lands within the reservation.

Consequently, our role as a major Indian law firm will be directly affected by this new non-Indian offensive. NARF will now have to turn its efforts to defending tribal authority over non-Indians and their lands within the exterior boundaries of the reservation. As NARF turns from its offensive efforts in the courts to defending the attacks of non-Indians on tribal authority in Congress, NARF will turn to the guidance of its all-Indian Steering Committee to map the strategies that must now be pursued in our efforts to protect tribal existence, Indian property and the concomitant rights associated with those resources.

To this end, I respectfully submit NARF's Fifth Annual Report.

Thomas W. Fredericks
Director

THE PROGRAM

Development

The Native American Rights Fund is a national, Indian interest law firm specializing in Indian law and the protection of American Indian rights and resources. NARF, as it is commonly referred to, has been in existence officially for six years. The concept of a national Indian law firm was developed under the auspices of California Indian Legal Services seven years ago. In its short history, NARF has developed into a highly respected law firm dedicated to the protection and enhancement of Indians' rights and to the orderly development of a body of law affecting Indian people.

The year 1976 was "a year of decision" in that there were several major Indian victories in the courts and in Congress. These decisions, however, have caused a rising tide of anti-Indian sentiment within the non-Indian segment on or near Indian reservations in the United States. The immediate effect that the year 1976 has had on Indian affairs is one of rethinking the overall strategy in the exercise of tribal powers inherent in the right of tribal self-government. With every key victory in the courts, there has been an ever-increasing backlash by non-Indians affected by the various court decisions.

The major victories that Indian tribes have won have resulted in the non-Indians organizing and actively opposing Indian rights. The non-Indians are further opposed to any tribal jurisdiction or control over non-Indians and their property within the exterior boundaries of Indian reservations. This organized opposition, together with the issues they are raising, have caused many tribes to rethink their strategy and their efforts to establish tribal governments as viable governmental entities.

NARF Administration and Directorship

Although during 1976 there were several changes in the administration of the Native American Rights Fund, the directorship remained in the hands of Thomas W. Fredericks. Tom is a member of the Three Affiliated Tribes of Fort Berthold, North Dakota, a Mandan-Hidatsa Indian. Tom received his law degree in 1972 from the University of Colorado at Boulder, and since that time, has worked on behalf of Indian people through the Native American Rights Fund. In addition to his duties as administrator of NARF, Tom has continued to have an active involvement in a number of critical legal issues during the past year. Among those were the task of serving as an advisor to the Native

American Natural Resource Development Federation. The Federation is attempting to quantify Indian resources in a seven-state Northern Great Plains area. During 1976, a central office was established for the Federation in Denver. In addition, Tom has also worked on a number of matters involving the protection of Indian water rights and investigation of tribal taxing authorities. Much of his time is spent in fund raising and traveling on behalf of NARF.

Tom is the third director of NARF. Reflective of the smooth successions in the directorship is the fact that NARF's two former directors have continued to work with the Fund through 1976. Mr. John E. Echohawk is a full-time staff attorney and Mr. David H. Getches continues to work part-time for the Fund.

During the summer of 1976, NARF lost one of its key administrative staff people, Ms. Joan C. Lieberman. Joan had served as Comptroller/Technical Writer for the Fund. In this capacity she had the responsibility for fund raising, as the editor of the NARF publication, Announcements, administering the Direct Mail Program and keeping on top of NARF's finances. Since Joan had been with NARF since its doors opened in Boulder in 1971, she had performed a variety of functions in addition to those already mentioned. She also served as Office Manager and Secretary to the Corporation. Because Joan's duties were so overwhelming, it is little wonder that she needed a hiatus from NARF. Joan resigned officially on July 31, 1976; however, she stayed on with NARF on a consulting basis through October in order to initiate new people into her previous job functions. Joan is now working as a Management Specialist with the Legal Services Corporation in Denver, and her lively approach to the work of the Fund is greatly missed by staff people at NARF. Joan dedicated many long hours to the development of the NARF program and her work efforts were very much appreciated.

An Atmosphere For Hard Work

Each year at NARF there is one case that requires more attorney hours than any other. During 1976, there were 28 cases which required over 300 hours of attorney commitment each. The big case in terms of attorney hour commitment during 1976 was Cheyenne-Arapaho Tribe of Oklahoma v. The State of Oklahoma, et al., United States District Court for the Western District of Oklahoma. A total of 1,442 hours was spent on the effort.

This particular case was filed in September, 1975, and seeks a declaration that members of the Cheyenne-Arapaho Tribe have the right to hunt and fish free from state regulation within the boundaries of their original reservation in Oklahoma. The suit alternatively seeks a declaration that the Tribe has

the exclusive authority to regulate hunting and fishing of its members on trust lands reserved for the use of the Tribe, by the federal government and an injunction against the enforcement of Oklahoma fish and game laws on those lands.

The majority of attorney time was spent by Yvonne T. Knight, one of the senior staff attorneys at NARF, a Ponca-Creek from Oklahoma and Jeanne S. Whiteing, a Blackfeet-Cahuilla Indian. Jeanne is one of three attorneys working under a grant from the Carnegie Corporation which was awarded to train beginning attorneys in the field of Indian law.

Most of the hours during 1976 were spent in researching complicated legal questions and statutes which apply to Oklahoma tribes and are not similar to those affecting Indians around the rest of the country. The State of Oklahoma tried unsuccessfully to avoid a trial in this matter during the summer months of 1976; however, trial was held in this case in November. Another senior staff attorney, Daniel H. Israel, assisted both Yvonne and Jeanne in trial preparation and in the actual court appearance. A decision is still pending in this case. If a decision is favorable to the Cheyenne-Arapaho Tribe, the state will no doubt appeal the ruling. Although much of the work has already been done in this important fishing and hunting rights case, there will be continued case involvement through 1977, particularly in working with private consultants retained by the Tribe to develop plans for hunting and fishing codes and other law and order codes.

Although a number of hours went into the Cheyenne-Arapaho case, there were many other cases and matters which required an overwhelming commitment of time and effort on the part of other NARF staff attorneys. Attorneys sometimes spend 70 to 80 hours a week in preparation for an important trial or brief. Staff Attorney Richard B. Collins, who came to NARF from the Navajo Legal Services Program known as DNA, spent many long hours in the Chinle School cases. These were seven separate lawsuits filed relating to the Chinle School District. These actions involve the financing of five public schools serving the Apache County, Arizona, portion of the Navajo Indian Reservation. Since the majority of the taxing base for these schools lies within the boundaries of the reservation, the land is tax exempt and the only taxpayers are mining and utility companies using Indian land. These particular taxpayers were being taxed at a very high rate and, consequently, in response to that rate, filed suit in Apache County Superior Court. There were many legal issues which had to be researched by NARF staff attorneys with the litigation effort being headed for NARF by Mr. Collins, since he had originally worked on these suits while with DNA. (See a more detailed discussion of the individual suits in the Human Rights Section.)

Another effort which required a considerable amount of

attorney commitment was NARF's work in cooperation with the American Indian Policy Review Commission -- a congressional body which had been created in 1975 to do a two-year study and analysis of the history of Indian policy in the United States. The Commission was directed to present its findings, conclusions and proposed recommendations to Congress during the early part of 1977. There were 11 task forces established by the American Indian Policy Review Commission; each appointed a specific area of Indian policy to research, and in most cases, recommend future courses of action for Congress to follow in the development of legislation pertaining to Indians. The 11 task forces dealt with such areas as tribal government (its strengths and weaknesses); the history and application of treaties and federal-Indian relationship; jurisdiction and the federal administration of Indian affairs. Two of NARF's staff attorneys, John E. Echohawk and Yvonne T. Knight, served as task force members -- a distinctive honor in Indian country, since there were only 33 task force members selected throughout the United States. Yvonne was a member of the task force on "Indian Law Revision, Consolidation and Codification". John was a member of the task force entitled "Trust Responsibility and Federal Indian Relationship (Including Treaty Review)". Both of these attorneys completed their commitments to the Commission's work in September, 1976. In addition to the commitment of these two individuals, other NARF attorneys were asked to submit individual position papers on issues relating to taxation of Indian lands, economic development, tribal sovereignty and treaty rights. The NARF Steering Committee also requested that staff attorneys be assigned particular task force reports for analysis and review. These analyses, with accompanying recommendations, were submitted to the American Indian Policy Review Commission in Washington, D.C. for inclusion in the final report. Two former staff attorneys, Mr. Douglas Nash, Nez Perce, and Mr. F. Browning Pipestem, Otoe-Osage, also served on these two task forces.

NARF Steering Committee members John Stevens, Passamaquoddy, and Robert Bojorcas, Klamath, served on the "Terminated and Non-Federally Recognized" task force as well.

Attorney commitment, in terms of hours and effort, is essential for the continued success of the NARF organization. Staff attorneys have found that it takes months and sometimes years for their work to produce measurable results. In 1975, much time was spent on the case known as U.S. v. Washington. This effort continued in 1976 in Phase II of the U.S. v. Washington litigation. In February of 1974, District Court Judge George Boldt rendered a landmark treaty rights decision which gave Western Washington tribes half of the annual harvestable fish catch in their "usual and accustomed" fishing sites. Since 1974, the ramifications of this lawsuit had to be thoroughly analyzed and implemented. During 1976, staff attorneys David H. Getches and

Bruce R. Greene assisted in the follow-up effort to this precedent-setting decision. Although NARF ceased playing a lead counsel role, it is aiding in a number of matters which arise in continuing the jurisdictional plan of the case and in advising local counsel on the best way to proceed in the case. When the original case was decided, certain issues were sorted out for trial at a later date. Those issues included: (1) whether the tribes' harvestable entitlement extended to fish which were artificially propagated in hatcheries; and (2) whether the state may authorize or allow action by its agencies and private citizens which results in environmental degradation to the fish habitat. Both of these issues have yet to be tried before the district court and are currently in the discovery stage.

This particular case has created much public controversy and outrage on the part of non-Indian fishermen in the States of Washington and Oregon during the past two-and-a-half years. The fishing rights controversy which has sprung up between non-Indian fishermen and Indian fishermen in the Northwest has done much to fuel the growth of anti-Indian groups who would favor the abolishment of Indian rights and resources. This controversy shows that people have been successful in the courts, such as in the U.S. v. Washington decision. There have been hardships in trying to reach an understanding and respect for Indian rights among the non-Indian public.

Significant Case Developments

1976 was indeed a year of decisions and major developments in cases with which NARF had varying degrees of involvement. Although the most attorney hours were spent, as previously mentioned, on the Cheyenne-Arapaho case last year, there were two cases reactivated in May, 1976, which have had a resounding impact across the nation, including the nation's courts, the Halls of Congress and, most resoundingly, in the State of Maine. These two cases are entitled, United States as Guardian of the Passamaquoddy Tribe v. The State of Maine, and United States as Guardian of the Penobscot Tribe v. The State of Maine. Both of these suits were reactivated because of a favorable decision in a previous case, Joint Tribal Councils of the Passamaquoddy Tribe v. Morton. In this previous suit filed in 1972, NARF represented the Passamaquoddy Tribe against the federal government claiming that the protections of a 1790 statute, known as the Non-Intercourse Act, applied to the Passamaquoddy Tribe, and the federal government owed a fiduciary duty to the Tribe. On June 16, 1975, Judge Edward Gignoux of the Federal District Court for the District of Maine issued an opinion upholding the Tribe's claims, and in December, 1975, the United States Court of Appeals for the First Circuit unanimously affirmed the United States District Court's decision in the Passamaquoddy case. This case firmly

established a fiduciary relationship between the federal government and the Passamaquoddy Tribe and set the stage for the potential return of millions of acres of land to the Passamaquoddy Tribe and other "non-recognized" Eastern tribes, whose claims would fall under the protection of the 1790 Non-Intercourse statute. The 1790 statute prohibited the taking of Indian lands without federal approval. Prior to the Passamaquoddy decision, the government had interpreted the statute as applying to only those tribes which had been "officially" recognized by the federal government.

Because the appeals court and the district court held that the government had a fiduciary responsibility to the Passamaquoddy Tribe, based on the Non-Intercourse Act, the federal government, as trustee for the Tribe, was obligated to file action against the state in order to protect the interests of the Tribe. As a result, the two United States v. Maine cases involving the Passamaquoddy and Penobscot Tribes are the most extensive in terms of land acreage and monetary damages in NARF's Eastern Indian Legal Support Project. The Tribes seek control of nearly 60% of the State of Maine and billions of dollars in damages for trespass actions. The Tribes claim that their lands were taken without Congressional ratification as required under the 1790 Act.

Throughout the summer of 1976, the federal government investigated the allegations made by the Tribes when they filed their suits, having been instructed to do so by the First Circuit Court of Appeals. Throughout the duration of these cases, the Maine Attorney General's Office has maintained that the Penobscot and Passamaquoddy claims are without merit, but since the cases were reactivated, the Department of the Interior has held firm in its support of the Tribal claims.

In October, 1976, the District Court for the State of Maine ordered the federal government to indicate by November 15, 1976, whether it intended to pursue the two actions against the state. The judge later amended this order to extend the time within which the government was to respond to January 15, 1977. The government requested more time in order to prepare its litigation reports and to consider the possibility of legislative intervention into the claims. The potential for a legislative solution seems a reality since the potential impact of these claims on the lives of Maine citizens, both Indian and non-Indian, is substantial.

During November, 1976, NARF attorneys attended a series of meetings at the White House, the Justice Department and the Interior Department to discuss the ramifications of these lawsuits. Subsequently, a number of developments occurred in January, 1977. The Interior Department issued a litigation report to the Justice Department urging it to seek return of the

land claimed by the Tribes. The Interior Department said in its report that the Tribes do have a valid claim to more than 10 million acres of land and trespass damages in the billions of dollars. By mid-January, the Justice Department lawyers filed a motion requesting that the district court judge for the federal court in Maine defer until March 1, 1977, an order requiring them to decide whether the Department would represent the two tribes in their claims. The Justice Department's request relied again on the fact that these cases can only be resolved through legislative action.

Although the Maine claims are the most substantial on the Eastern seaboard, there are other claims to land being asserted by neighboring tribes to the south. Those tribes include the Wampanoags of Gay Head and Mashpee, Massachusetts; the Narragansetts of Charlestown, Rhode Island, the Schaghticokes of Kent, Connecticut; the Western Pequots of Ladyard, Connecticut; the Oneidas of New York; and the Catawbas of South Carolina.

The additional land claimed by these other Eastern Indian tribes represents approximately 460,000 acres. All of these land claims are in various stages of litigation and are a part of NARF's Eastern Indian Legal Support Project. Because many of these land claims are located in areas which have dense populations, the economic impact on the inhabitants of those areas is great. Attorneys for the Indian clients are contending that since the federal government was lax in its federal certification of lands taken, it in turn holds the responsibility for seeing that just compensation is made for the existing landholders. There have been many proposed settlements set forth in these claims, and admittedly, the final settlement either through negotiation or litigation will come about through some very crucial and carefully considered options. NARF attorneys anticipate that these claims and other issues faced by our Eastern attorney staff will take large commitments in terms of attorney hours, both on the side of our client tribes and on the side of the defending parties. It will take months before anyone can speculate as to the outcome of these claims; hopefully, the needs and arguments of all parties will be honored so that a just arrangement can be made.

A month following the reactivation of the Maine cases, Indian tribes throughout the country were pleased to hear of an important taxation decision rendered by the United States Supreme Court, the case known as Bryan v. Itasca County. NARF was co-counsel in this case with Leech Lake Legal Services Project in Minnesota. In a sweeping decision, the court ruled that Public Law 83-280 did not confer any taxing or regulatory roles on the states. Public Law 83-280 was passed by Congress in August, 1953, and gave several states, including Minnesota, civil and criminal jurisdiction over Indians. It excluded several reservations and

did not give states the power to tax, regulate or decide the ownership of federally-protected Indian property. The Supreme Court held that the 280 law was designed simply to provide a state court forum for resolving disputes between Indians on reservations. In the Bryan case, the State of Minnesota was attempting to assess a property tax on a mobile home located on trust land on the reservation. The trailer home was owned by a member of the Leech Lake Tribe. The Bryan case represents a major victory for Indians who have tried for over 20 years to resolve their understanding of the act as only a limited conferral of state jurisdiction which was not designed to affect tribal affairs and tribal sovereignty.

Another aspect of the Public Law 280 question was decided earlier, in March, 1976, by the United States Supreme Court. It invovled an Indian adoption proceeding in the case known as Fisher v. State of Montana. NARF filed an amicus brief in this case in which the Supreme Court overturned the decision of the Montana Supreme Court and held that the jurisdiction over adoption proceedings, in which all parties are tribal members and residents of a reservation, rests exclusively in the tribal court. This action involved members of the Northern Cheyenne Tribe. The Supreme Court upheld the exclusive authority of the Tribe in this instance and said, "the right of the Tribe to govern itself independently of state law had been consistently protected by federal statute..."

Although these case victories and accomplishments do not represent all of the successful cases in which NARF has had involvement, they do represent the most significant rulings in 1976; they represent those cases which have generated much public outcry from the non-Indian public. During the nation's Bicentennial year, it became very evident to Indian people and their advocates that anti-Indian sentiment against the future survival of Indian rights was running high. Unfortunately, in opposition to these types of favorable Indian decisions, non-Indian groups continued to join forces with an organization known as the Interstate Congress for Equal Rights and Responsibilities. This organization was formed early in 1975 in direct opposition to the type of advocacy which NARF has been able to bring about for Indian tribes in the past six year. During the past year, NARF was successful in winning favorable decisions in at least 84% of its cases on file. This percentage rate includes successes in varying degrees of NARF involvement including amicus briefs filed, lead counsel or co-counsel roles and/or action on a negotiated settlement. The Native American Rights Fund recognizes that there will be continued threats to the perpetuation of Indian rights with the formulation of groups such as the Interstate Congress of Equal Rights and Responsibilities who advocate the assimilation of Indian tribes and their members into the "mainstream" of American society.

NARF Successes In Protracted Cases

Shortly after NARF's doors opened in Boulder, Colorado, in 1971, two tribal chairmen from different areas of the country, heard of the services which NARF could provide for tribes like theirs who had no means for providing legal defense of their tribes.

These two tribal chairmen were Mr. Mel Thom, Chairman of the Walker River Paiutes of Nevada and Mr. Louis LaRose, Chairman of the Winnebago Tribe of Nebraska. Both men had legal problems facing them which could affect the future of those tribes.

At Walker River, the Tribe contended that the Southern Pacific Railroad, which for the past 90 years had crossed the reservation, had not obtained a valid right-of-way to operate over the reservations. Thus, the railroad was trespassing on Indian land and could be evicted and ordered to pay past damages. On September 10, 1976, the Ninth Circuit Court of Appeals handed down its decision in Walker River Paiute Tribe of Nevada v. Southern Pacific Transportation Company. The Ninth Circuit found that the railroad had indeed been trespassing for 90 years on lands which have been continuously reserved for the Tribe. This decision is now final since the railroad chose not to appeal further. This means that the Tribe has the authority to receive damages and either to evict the railroad or to explore the possibility of negotiating a new agreement for the railroad's future use of the right-of-way. The railroad was successful, however, in its argument that it had a valid right-of-way on ceded lands. The Circuit Court found that the railroad did acquire right-of-way in 1906 over those lands which the Tribe ceded to the United States and over those lands which became public lands by a 1906 Presidential Proclamation. Although the Walker River Paiutes did not win all of their arguments, they indeed won a victory which will be of future benefit for the Tribe and its members. NARF is now assessing the monetary damages owed to the Tribe for past trespass by the railroad and also developing alternatives for a possible right-of-way agreement with the railroad for future use. At the close of 1976, the Tribal Council was considering the various approaches to settlement of this case. There will likely be a continued NARF involvement through 1977.

NARF's involvement with the Winnebago Tribe also concerned a land action; however, in a somewhat different nature. This issue was the condemnation of Indian land. This was somewhat a ironic case in that the trustee for Indian lands and resources, the United States government, filed suit to condemn certain Winnebago reservation lands in addition to non-Indian lands along the Missouri River for the building of an Army Corps of Engineers project. Approximately 57 acres of Indian land are located on

Iowa side of the river and some 88 acres on the Nebraska side. Since this land falls in two different states, two different actions had to be filed. Questions of land title and valuation were determined in the Iowa case and NARF filed an appeal on the Tribe's behalf to the Eighth Circuit Court of Appeals. In the appeal, the Tribe asserted error in the lower court's decision which rejected the Tribe's claim that the clear Congressional intent required to abrogate the Tribe's 1865 treaty was not present. Therefore, the Corps lacked authority to condemn the land. On September 28, 1976, Staff Attorney John E. Echohawk, received word that the Eighth Circuit had ruled on the Iowa case. The Circuit Court ruled that the Corps had no specific authority from Congress to initiate condemnation proceedings against the Tribe since the Corps could not abrogate the Tribe's treaty which had guaranteed the Tribe the ownership of the land forever. This news was clearly a victory for the Winnebagos and Chairman LaRose, who had waited nearly six years for a break in the case. As far as the Nebraska action is concerned, the Tribe will be moving for a dismissal soon since a higher court has already ruled on the issues at hand. The Army Corps of Engineers has been taking this decision under advisement; if they should try to proceed with the project, the authority for such a proceeding will have to come from Congress. In order to grant such authority, Congress would have to abrogate the Tribe's 1865 treaty!

One can sense, from reading about these two cases, the time required to research and analyze the complicated legal issues which face Indian tribes everyday throughout the country. These cases were initiated nearly six years ago. Some of the staff attorneys who originally worked on these cases are gone, but will share the happiness of learning about these important decisions.

About NARF's Governing Board

The staff of the Native American Rights Fund is governed by a 13-member Steering Committee which is made up of Indian leaders, both traditional and non-traditional, from around the United States. The Committee members have always attempted to keep NARF as non-political as possible and to concentrate on deciding policy which will lead to an orderly development of law which will be relevant now and in the future for Native American people.

The Steering Committee meets twice a year in Boulder usually in the spring and fall. They hear attorney case reports; decide on major administrative issues and mold the general policy for NARF to follow.

Steering Committee members are nominated from within the Committee organization. The terms for the members last two years and usually there are three or four Committee members whose terms expire at the spring and fall meetings. The Steering Committee has established, from within its membership, an Executive Committee which meets at least four times a year formally and many times informally by means of a conference call. This Executive Committee meets to consider and recommend policy changes and action on finances; to review fund raising efforts; and to consider whether or not to take on a particularly controversial case. The Executive Committee is sometimes called the "finance committee" for NARF; however, their actions are later ratified by the Steering Committee.

During 1976, there were seven terms which expired on the Steering Committee. Individuals re-elected for two-year terms were Janet McCloud, a Tulalip Indian from Yelm, Washington (whose term will expire in the spring of 1978); Leo LaClair, a Muckleshoot Indian and Deputy Director of the Northwest Indian Fish Commission (whose term will expire in the fall of 1978); and Lucille Dawson, Narragansett and Coordinator of Native American Programs for the Smithsonian Institute; Lucille's term will expire in the fall of 1978.

NARF staff and Steering Committee members welcomed two new members at their fall meeting in November -- Mr. Louis LaRose, Chairman of the Winnebago Tribe of Nebraska and Director of the American Indian Satellite Community College and Mr. Robert Bojorcas, a member of the Klamath Tribe of Oregon and Director of the Indian Manpower Program for the Eugene Indian Center. Both of these men have been very active in the formulation of Indian policy for a number of years.

At its spring meeting in 1977, the Steering Committee will be welcoming two additional members. Mr. Jerry Running Foxe, a Coquille Indian who is chairman of his Tribe, was elected to serve a term on the Committee which will expire in the fall of 1978. Ms. Renee Howell, an Oglala Sioux who lives in Rapid City, South Dakota, was also elected in November to serve until the fall of 1978.

There were several "original" Steering Committee members who continued to serve in 1976 and contributed their valuable time and efforts to the NARF program. Among those were Chairman David Risling, Jr., Executive Committee members John Stevens and Val Cordova, Chief Curtis Custalow, Sr., Ms. LaNada Boyer and Mr. Leroy Logan. All of these individuals have served on the NARF Steering Committee for several years and have helped to guide the newer Committee members through difficult decisions.

We would like to express our great appreciation for the services of those members who were not re-elected last year to the Steering Committee, including Mr. Jacob Adams, Mr. John Clifford and Mrs. Martha Grass.

Those Who Make NARF's Work a Reality

The task of carrying out a successful legal effort on behalf of our clients could not be done without a sound financial background. Costs for litigation, client services and the many other program areas associated with NARF's program run high. The Native American Rights Fund has been fortunate in securing the friendship and support of a number of foundation program officers and individuals in the federal bureaucracy. We would like to pay tribute to their continued efforts during 1976 and relate some comments on their specific area of support.

The Ford Foundation continued to be a major contributor to NARF. This foundation provides general support dollars to NARF. During 1976, Mr. R. Harcourt Dodds, Program Officer for the Division of National Affairs, continued his loyal support of the NARF program and was able to attend at least one of the regular Steering Committee meetings. In June, he was able to lead the effort in securing a two-year refunding cycle for NARF.

The Lilly Endowment and its NARF Program Officer, Mr. Will H. Hays, Jr., deserve special thanks for their much-needed support of the Eastern Indian Legal Support Project. During 1976, the Endowment raised its funding level from two-and-one-half attorneys to four attorneys and committed its financial support through the fall of 1978.

Mr. Leslie Dunbar of the Field Foundation deserves thanks for his attention paid to the continued protection of one of the American Indians' most valuable resources -- water. Last year, the Field Foundation contributed to the support of the Indian water rights litigation.

The Legal Services Corporation expanded its support to the Native American Rights Fund and provided funding for the Indian Law Support Center. As a Support Center function, NARF provides a variety of legal advice and assistance to legal service programs across the country who are assisting Native American people. Special thanks also goes to Mr. Dave Gilbert and Mr. Jay Fletcher who assisted us in the refunding effort. Last year, NARF responded to 672 requests from legal service projects.

NARF appreciates the support and commitment of the Carnegie Corporation and Executive Associate Mr. Eli Evans.

The Corporation has been committed to NARF's work since 1972, when it funded the National Indian Law Library. In 1975, when the NILL grant expired, the Carnegie Corporation made a favorable committment to fund the Indian Lawyer Intern Program. This program is a valuable service to Native American people since new attorneys are allowed the opportunity to secure a variety of legal experiences while at NARF.

The William H. Donner Foundation continued to support NARF's work with the Native American Natural Resource Development Federation. In December, NARF presented a request to them for the support of a "Tribal Sovereignty and Resource Protection" project.

The Office of Native American Programs in the Department of Health, Education and Welfare provided support for an Indian Technical Assistance Project in addition to the support of the National Indian Law Library. ONAP's support has allowed us to assist thousands of Indian people across the country. With the help of Mr. Jerry Bathke, NARF was able to secure another annual grant from ONAP for the operation of the Library and for "A Project to Strengthen and Facilitate Tribal Governments".

The Native American Rights Fund's work and services could not be possible without friends and donors such as those mentioned herein.

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NARF Priorities

Tribal Existence

NARF works to enable Tribes to continue to practice their religions and Indian ways, to protect their original treaty rights, as well as to insure their independence on reservations.

Tribal Resources

NARF's efforts concentrate on protecting Indian lands, water, minerals and other resources from being taken illegally or being developed for the profit of non-Indians.

Human Rights

NARF is concerned with securing for Indians their right to an education which complements the culture rather than suppresses it. NARF is committed to securing adequate health care and equitable treatment of Native American prisoners.

Accountability

Indians are controlled by more laws than other groups of American citizens. NARF works to make certain that all levels of government behave responsibly.

Indian Law Development

NARF is joining with others working in the field of Indian law to insure the orderly development of this complex body of law, and has established the National Indian Law Library to coordinate these efforts.

TRIBAL EXISTENCE

Summaries of Major Cases and Activities

Alabama Creek Recognition

NARF attorneys have been assisting the Creek Community of Poarch, Alabama, in trying to secure federal recognition. The Tribe has not been recognized, primarily, because it has no federal trust lands or restricted land. NARF has negotiated on behalf of the Alabama Creek Nation and arranged for the transfer to the Department of the Interior of land formerly used for an Indian school. The land was transferred from the County School Board to the state and Governor Wallace has offered the land to the Secretary of the Interior. NARF attorneys filed a lengthy petition with the Department of the Interior demonstrating that the Creek Nation held federal trust land in its community until the land was illegally patented by the federal land office in 1921. Progress on the petition has been slow. Despite early favorable indications from the Under Secretary, Kent Frizzell, that the Department of the Interior would accept the parcel, the Department has since dragged its feet in the matter. The Interior Department is now considering whether it has the power under the Indian Reorganization Act to organize a group of Indians which was not "recognized" as of 1934. Given this situation, NARF attorneys have decided to wait to pursue this matter until President Carter is settled in office.

Alaska Native Allotment - Dillingham, People of South Naknek v. Bristol Bay Borough, United States District Court for the District of Alaska (filed October 4, 1976)

Until 1971, Alaska Natives were eligible to apply for 160 acre allotments from the public domain. The Alaska Native Claims Settlement Act terminated the right of Natives to make these applications but preserved the rights of pending applications. In order to gain title a Native must show five years of continuous use or occupancy of the land and upon proof of the use and occupancy, the Native received a restricted patent to the land which prevents alienation of the land without the consent of the Secretary of the Interior and prevents the state or any of its subdivisions from taxing the lands.

Because of the large number of applications filed, it will be almost ten years before all restrictive patents will be issued. The municipalities in Alaska have taken the position

that until such time as the restricted patent is issued, the value of the improvements on the lands is subject to taxation. Bristol Bay recognizes that once the restricted patent is issued they no longer have the right to tax the land.

The Alaska Legal Services office in Dillingham has challenged the taxing activity in state and federal court on the grounds that once the Native begins his use and occupancy of the land, the restrictions found within the Alaska Native Allotment Act apply and the value of the improvement is non-taxable.

Blackfeet Tribe - Hunting and Fishing Rights/ Oil and Gas Tax Matter

For the last three years, NARF has assisted the Blackfeet Tribe in clarifying the scope and nature of its off-reservation hunting, fishing and timber gathering rights. In 1895, when the Blackfeet Reservation was reduced in size, the Tribe reserved the right on over one million acres of ceded land to hunt, fish and gather timber. Subsequently, that area has been developed as Glacier National Park and Lewis and Clark National Forest. The Tribe is seeking both administrative relief to have its right recognized in Glacier National Park and a Congressional solution whereby the Tribe would relinquish its hunting, fishing and gathering rights over one million acres of land in exchange for exclusive jurisdiction over a small part of that area which would be added on to the western boundary of the Blackfeet Reservation.

In this matter, the Blackfeet Tribe, in cooperation with the United States government, is undertaking a broad and comprehensive scheme of governmental responsibility over its own reservation. In addition, the Tribe is realizing that it has not exercised its full sovereign powers as far as internal Tribal taxation is concerned. There is valuable oil and gas production on the Blackfeet Reservation which is currently subject to state taxation, but not to Tribal taxation.

This imposition of state taxation could be proven to interfere with effective exercise of Tribal self-government. An important principle has evolved out of recent Indian cases, namely that state laws, including state tax laws, may not apply to non-Indians on a reservation if the application of such state laws would significantly interfere with the right of the reservation Indians to govern themselves. As a result, NARF has drafted and submitted for consideration by the Blackfeet Council, a comprehensive oil and gas tax scheme which adopts three of the four state taxes imposed against oil and gas production on the reservation. These state taxes are now providing significant revenues to the State of Montana. This taxing ordinance, by the terms of the Blackfeet Constitution, will require the Secretary of the

Interior's approval. The taxing ordinance has been passed by the Blackfeet Tribal Council and NARF is in the process of securing Secretarial approval.

Brooks (Graham) v. Nez Perce County, United States Court of Appeals for the Ninth Circuit

This was an action referred by NARF to Idaho Legal Aid Services in Lewiston, Idaho, several years ago. The Idaho Legal Aid Services filed an action which was dismissed by the district court and is now on appeal to the Ninth Circuit. At their request, NARF has agreed to do the oral argument before the Ninth Circuit. The plaintiffs are two Indian women who lost their allotted lands after the lands were wrongfully placed on the tax rolls and then sold at a tax sale. The particular legal issue on appeal is whether the Federal District Court has jurisdiction pursuant to 25 U.S.C. § 345 to decide whether the women can recover their land. Unfortunately, one of the women became discouraged and dropped out of the appeal. Briefing was completed in December, 1975, and oral argument is anticipated soon.

Bryan v. Itasca County, United States Supreme Court

The United States Supreme Court issued an opinion in this important tax case in June of 1976. In a sweeping decision, they ruled that Public Law 280 did not confer any taxing or regulatory authority on the states. The Supreme Court ruled that Public Law 280 was designed simply to provide a state court forum for resolving disputes between Indians on reservations. The Bryan case involved the attempted state property taxation of a trailer located on the Leech Lake Indian Reservation and owned by a member of the Leech Lake Tribe. The Bryan decision represents a significant victory for Indians who have sought for over 20 years since the passage of Public Law 280 to resolve their understanding of the act as a limited conferral of state jurisdiction not designed to affect tribal relations and tribal sovereignty.

Confederated Tribes of Siletz Restoration

The trust relationship between the Confederated Tribes of Siletz in Oregon and the Secretary of the Interior was terminated in 1954 pursuant to an act of Congress. That termination, which was an ill-conceived and poorly administered policy, is witnessed by the tremendous social and psychological disorientation which has befallen the Siletz Tribes since termination. The Tribes, represented by NARF, have drafted restoration legislation which was introduced in both houses of Congress by the Oregon

Congressional delegation. Senate hearings on the proposed bill were held in Washington, D.C. on March 30 and 31, 1976. If enacted, the Siletz Restoration Bill would restore the trust relationship between the Confederated Tribes of Siletz and the United States. The 94th Congress took no action on the Siletz Restoration Act but the bill's sponsor, Senator Mark Hatfield, has pledged early action on the bill in the next Congress.

Cowlitz Fishing Suit and Cowlitz Tribal Recognition

The Cowlitz Tribe requested NARF's assistance with respect to the foregoing matters. After a complete and throrough investigation of the legal issues presented, our legal conclusions were presented to the Tribe in the form of an attorney's opinion letter. The conclusion was that the Cowlitz Tribe did not have a strong claim for recognition of treaty fishing rights nor did the Tribe have a strong claim for recognition of aboriginal fishing rights. NARF advised the Tribe, with respect to the latter claim, to await a pending decision in an aboriginal hunting rights case to be decided by the Idaho Supreme Court.

Fort Belknap Indian Community v. District Court of the Twelfth Judicial District of the State of Montana

In this case, the Fort Belknap Indian Community is in the process of filing a petition for a writ of certiorari to have the United States Supreme Court review the decision of the Twelfth Judicial District and Montana Supreme Court. These courts have ruled that the Fort Belknap Indian Community waived its sovereign immunity to be sued in state court by reason of language in its corporate charter adopted under the Indian Reorganization Act.

The Tribe is involved in a suit arising from a shooting incident between a prisoner and Tribal policeman. Because the alleged incident occurred while the Tribal officer was taking the prisoner from the reservation to a county jail for detainment, the Indian community concedes that the state court may have subject matter jurisdiction. The Tribe, however, resists the efforts of the defendants to sue the Fort Belknap Tribe for over $100,000 in alleged damages caused by the shooting incident.

The Montana Supreme Court and the District Court both ruled that the inclusion of language "to sue and to be sued" in the corporate charter of the Tribe is sufficient to find a waiver of sovereign immunity for purposes of this action arising out of the governmental actions of the Tribe. It is anticipated that the United States will file an amicus brief in support of the Tribe's petition.

Kiowa Jurisdiction

In this matter, the Tribe requested assistance in trying to establish a tribal law and order department as well as a tribal court system. NARF acknowledged this request and is trying to determine the legal basis for the Tribe in exercising jurisdiction. The Tribe has also requested help in trying to locate funding in order to implement jurisdiction.

Maynor v. Morton, United States Court of Appeals, District of Columbia (filed February, 1973)

In April, 1975, NARF attorneys won a decision in the District of Columbia Appellate Court which established the eligibility of a group of North Carolina Indians for federal recognition and services under the Indian Reorganization Act of 1934. The North Carolina Indians had been recognized as persons of half or more Indian blood in 1938 and had not been terminated by the Lumbee Act of 1956. Following this decision, the Bureau of Indian Affairs agreed to build new homes for the surviving members of the original group of 22. The Bureau now intends to start construction during the early part of 1977.

NARF attorneys have assisted the Eastern Carolina Indian Organization in its efforts to raise $4,000 to repay the remaining indebtedness on a parcel of land which they presently own and which they would like to offer as their trust land base. NARF attorneys are assisting the organization in drafting a petition offering the lands to the United States.

Menominee Constitution and By-Laws

This matter is a result of the passage of the Menominee Restoration Act. Since passage of that Act, NARF has devoted much research and effort in providing the Restoration Committee with information which will permit them to make informed decisions as to the kind of government they wish to establish by their constitution and by-laws. NARF has supplied materials and information to the Tribe which has been compiled into a handbook which has been used as a resource by other tribes in revising their constitutions as well. NARF has also been providing assistance to the Committee in educating Menominees as to the kinds of government which may be established with passage of a new governing document. The election for the adoption of the proposed constitution and by-laws was held in mid-November, 1976. Once this document is adopted, the last major step pursuant to the Act will have been completed and NARF will have assisted the Menominee Tribe in carrying out all the major steps under the Menominee Restoration Act.

Nacotee v. Montour, United States Court of Appeals, Seventh Circuit

This case was the initial involvement in the issue of whether Public Law 280 applied to the Menominee Tribe in Wisconsin. NARF had originally filed an amicus curiae brief on behalf of the Tribe. The suit challenged Wisconsin criminal jurisdiction over the Tribe. NARF asserted that the Menominee Restoration Act authorized the transfer of jurisdiction back to the Tribe and the federal government by the state. Negotiations with the State of Wisconsin resulted in the state changing its position in Nacotee and supporting the Tribe's position that Public Law 280 was not applicable. An adverse lower court decision in Nacotee was vacated by the Seventh Circuit at the state's request. Negotiations with the federal government, Tribal attorneys and the state finally resulted in a complete transfer of jurisdiction to the Tribe. By Governor's proclamation, issued in early March, 1976, civil and criminal jurisdiction was transferred from the state to the Tribe and the United States government.

The Tribe has been operating a tribal court system and law and order department since March. The court is being operated under a CFR code pending draft of a new law and order code.

Omaha Tribe v. Peters

The United States Supreme Court, following its decision in Bryan v. Itasca, granted certiorari in this case and reversed a lower court ruling in view of the decision in the Bryan case. The Supreme Court also reviewed this case in June, 1976. Omaha Tribe v. Peters involved the attempted state income taxation of income earned by members of the Omaha, Winnebago and Santee Sioux Tribes in Nebraska. The same principles which prohibited the State of Minnesota from imposing its property taxes in Bryan v. Itasca County also applied to prohibit the State of Nebraska from imposing income taxes in this case.

Oneida Indian Nation v. County of Oneida, United States District Court for the Northern District of New York

NARF has assisted the Oneida Indian Nation and its local counsel in prosecuting this case over the last five years. This case involves the claim of the Oneida Indian Nation that its 300,000 acre reservation, preserved by federal treaty, was unlawfully extinguished by state conveyance which failed to comply with the Non-Intercourse Act. The Oneida Nation does not seek the return of land in this case, but does seek rental damages, for a specified period of time. NARF has assisted local counsel

in the jurisdictional aspects of the case which went to the Supreme Court for a decision favorable to the Oneida Indian Nation in 1974. The case is now on remand and NARF has assisted in the trial which was held in November of 1975 and has also assisted in the preparation of a post-trial brief. NARF is optimistic that the judge will rule in the Tribe's favor and expects that the case will be appealed to the United States Court of Appeals for the First Circuit.

Oneida Indian Nation v. Williams, United States District Court for the Northern District of New York

NARF represents the Oneida Indian Nation in a companion suit to Oneida Indian Nation v. County of Oneida, filed in the United States District Court for the Northern District of New York. In this case, the Oneida Indian Nation seeks to recover approximately 700 acres of the old Oneida Indian Nation established in 1842. Since many of the issues here are indistinguishable from the issues in the other Oneida Indian Nation case, the proceedings in this case have been stayed pending a decision by the District Court.

Osage Legislative Drafting Committee

The Osage Legislative Drafting Committee was created under the auspices of the Bureau of Indian Affairs to consider all forms of government for the future of the Osage Indian Nation. The Committee grew out of a compromise settlement of a lawsuit which had challenged the authority of the existing Tribal Council to exercise governmental responsibilities in any area other than the management of a mineral estate reserved to the Tribe in 1906. Two members of the Committee were representatives of the plaintiffs in the litigation; two members were representatives of the Tribal Council; and three members were representatives of the Bureau of Indian Affairs. NARF assisted the Committee in its process of considering forms of government for the Osage Nation by attending meetings, drafting position papers and assisting with the drafting of the proposed legislation.

The Committee met twice during the third quarter of 1976 and NARF attorneys were present at both meetings. At the conclusion of the second meeting, the Committee was disbanded when it became clear that an impasse had been reached. The impasse resulted because the Tribal Council, whose representatives had promised to bring forth a legislative proposal by the second meeting, had failed to do so and refused to consider any form of Tribal government which included a minimum blood quantum for voter eligibility.

Ottawas and Chippewas of Michigan - Grand Rapids Inter-Tribal Council

This matter involves a discontinuance of federal services to nearly all Ottawas and Chippewas of Michigan. The problem arose when the Commissioner of Indian Affairs notified the Tribal members in March, 1976, that their 1910 enrollment roll (the Durant Roll) could no longer be used as an eligibility roll for services. The Commissioner said this action was justified because there was no blood quantum listed beside each name on the roll. Except for a few small bands which had organized under the IRA, this action effectively terminated services to all Ottawas and Chippewas of Michigan.

NARF assisted the Grand Rapids Inter-Tribal Council and the Grand River Band of Ottawas in negotiations with the BIA, the Senate and House Committees on Interior and Insular Affairs and Senators Hart and Abourezk's offices. These discussions led to a continuance of services to the Tribes for the time being. The Ottawas and Chippewas now have some time to take action to amend their judgment fund distribution bill and to authorize the Durant Roll and the official Tribal roll. If an amendment to the bill cannot be worked out, then the BIA has stated that they will reconsider an extension of services to the Tribes.

Pascua Yaqui Association, Inc. - Request for Assistance

NARF has agreed to assist the Pascua Yaquis with reference to two legal problems: (1) Pima County, Arizona's attempt to impose its building code on the Yaquis' land and (2) the Tribe's efforts to obtain federal recognition. The first legal issue delves into the status of the Yaqui's land. The two hundred acre site for their village was provided to the Yaquis by the federal government in 1964. The purpose of the conveyance was to enable the Yaquis to better their living conditions. However, after the Yaquis managed to obtain funds to build houses for their people, the County of Pima issued a stop-work order asserting that the houses built on that land failed to comply with the county building codes. NARF has sent a lengthy opinion letter to the civil counsel for the County of Pima stating that the land is a federal reservation and is, therefore, immune from application of the county's building code, and in addition, federal law had expressly preempted the county's building code. If no informal resolution can be reached in this matter, NARF will file a complaint for declaratory and injunctive relief in federal court. A preliminary injunction against enforcement of the county code will be sought so that construction on the land can resume. The second legal issue concerning federal recognition is still under investigation.

People of South Naknek v. Bristol Bay Borough, United States District Court for the District of Alaska (filed October, 1976)

Under the Alaska Native Allotment Act, Alaska Natives have the right to select 160-acre allotments on public lands within the State of Alaska. If the Native applicant can show five years of continuous use and occupancy, a restricted patent is issued which prevents the land from being sold without the consent of the Secretary of the Interior and makes the land non-taxable. The right of the Alaska Natives to make allotment selections was terminated by the Alaska Native Claims Settlement Act but any claims filed prior to December 18, 1971, were preserved. Because of the large number of applications filed and because no action can be taken on application until after five years, there is a large backload of applications. The Bristol Bay Borough, a local political subdivision of the State of Alaska, claims it has the right to tax any improvements, including houses, erected on lands under Alaska Native Allotment applications. The Borough admits that once the restricted patent has been issued, it lacks the power to tax these lands and their improvements. However, the Borough contends that during the period the land is under application, it does have the power to tax the value of improvements on the land under application. The Alaska Legal Services Office in Dillingham, Alaska, filed an action on behalf of the Village of South Naknek seeking declaratory and injunctive relief concerning the powers of Bristol Bay Borough to tax the improvements. NARF is providing Support Center assistance to local attorneys.

People v. LeBlanc, Supreme Court of Michigan

In this criminal case, NARF attorneys represent a Chippewa Indian who was arrested in 1971 for fishing contrary to Michigan law which proscribes the use of gill nets and requires fishing licenses in waters which the Tribe's treaty protects from state regulation. The defendant was convicted in a lower court in his first appellate effort, but on appeal to a higher court in Michigan, his conviction was reversed. A decision from the Michigan Supreme Court was rendered in December, 1976.

The State Supreme Court held that Michigan members of the Chippewa Tribe could not be required to buy state licenses for fishing in Great Lakes waters adjacent to land they ceded under an 1836 treaty. The Supreme Court also affirmed the decision of the appellate court which ordered that a new trial be held to decide if Indian gill net fishing can be regulated by the state for conservation reasons. Furthermore, the court said that Michigan officials have a limited authority to regulate off-reservation Indian fishing. The LeBlanc case is a companion case to another important treaty fishing rights suit, known as United States v. Michigan.

Quileute Tribe v. Washington, United States District Court for the Western District of Washington

This case involves a number of tribes in the State of Washington which are trying to resolve their longstanding differences with the state regarding the scope of the state's taxing power over Public Law 280 and non-Public Law 280 reservations. The implications of Public Law 280 will probably be different in light of the important decisions in Bryan v. Itasca County and Moe v. Salish and Kootenai Tribes. The State of Washington and the tribes located there are involved in discussions to determine the scope of the state's taxing authority. It is hoped, as a result of these discussions, that the state will issue an administrative ruling covering all aspects of state taxation which is in conformity with the rulings of the United States Supreme Court. Failing such an agreed upon resolution, the Washington tribes will pursue this litigation to trial in the U.S. District Court for the Western District of Washington.

Rappahannock - Land Claims

This matter involved a request from a person who is a member of the Rappahannock Tribe and wanted assistance in trying to identify possible land claims of the Tribe. The Rappahannock Tribe is not recognized by the Department of the Interior and any possible claims would have to be based on a 1677 treaty with the British Crown. The Rappahannocks no longer have a language or viable cultural heritage. They also have no definable location for residence. The tribal member, who initiated the request, was advised that NARF would not be able to help him in this matter. He was given a list of possible funding sources which are available to non-recognized tribes.

Rosebud Sioux Tribe v. Kneip, United States Supreme Court

In this litigation, the Rosebud Sioux Tribe maintains that an area of land is within the exterior boundaries and jurisdictional authority of the Tribe. This suit is a very important "diminishment" action which could potentially affect over 20 Indian reservations in the country. This case was lost in the Eighth Circuit Court of Appeals and the Tribe was successful in having the case reviewed by the United States Supreme Court. NARF filed an amicus curiae on behalf of the National Congress of American Indians and several tribes. A decision is anticipated soon.

Skagit River Fishery

Three tribal groups in Western Washington have treaty-protected fishing rights to the Skagit River and its system; the three are the Swinomish Tribal Community, the Sauk-Suiattle Tribe and the Upper Skagit Tribe. The Skagit River once provided a magnificent fishery but, like virtually every river system in the area or in the country, it has been substantially degraded. The three Tribal groups with interest in the Skagit River joined together and obtained funding for a fisheries enhancement study. NARF contracted with the Tribes to provide the necessary legal research and analysis required as part of that study.

Major factors contributing to the degradation of the fishery, which have been identified so far, are several hydro-electric dams licensed by the Federal Power Commission and logging operations in the watershed. In addition, there is a proposal for a nuclear power plant to be built on the Skagit River System which also poses severe dangers.

With one exception, this matter has not yet generated any litigation. Thus far, NARF has been working with the Tribes in an effort to see what can be accomplished without litigation. The Tribes plan to convene a meeting of interested organizations including the logging companies, the power companies and the state, to determine whether they can embark together upon a common program aimed at restoration and enhancement of the fishery resources of the Skagit River System.

State of Mississippi v. Tubby, Supreme Court of Mississippi

A Mississippi Choctaw Indian allegedly committed arson on a restricted Indian allotment in the town of Philadelphia, Mississippi. He was convicted in state court over the objections that: (1) the grand jury was improperly convened; (2) the county systematically excluded Indians from the grand and petit juries; and (3) the state court was without jurisdiction over Indians on Indian land. On appeal to the Mississippi Supreme Court, his conviction was reversed on the narrow grounds that the grand jury was improperly convened. However, the court also held that the State of Mississippi had jurisdiction over the matter.

Stillaguamish Tribe of Indians v. Kleppe, et al., United States District Court, District of Columbia (filed October 17, 1975)

In 1974, NARF prepared and submitted a petition to the Secretary of the Interior on behalf of the Stillaguamish Tribe, a small western Washington tribe, in which we requested the Secretary to acknowledge the Tribe's status as a federally recognized tribe based upon its treaty relations with the federal government, subsequent acts of Congress and continuing contacts with the Bureau of Indian Affairs. Because no action was taken on the petition, this suit was filed in 1975 seeking a declaration that the Stillaguamish Tribe was a federally recognized tribe and that the Secretary's failure to acknowledge their status was arbitrary and capricious.

A motion for summary judgment was filed in May, 1976. In a memorandum opinion issued August 24, 1976, the District Court ordered the Secretary to act upon the Tribe's petition for recognition within thirty days and retained jurisdiction in the case. By letter from the Secretary of the Interior dated October 27, 1976, NARF was informed that the Department of the Interior had determined that the federal government has a trust responsibility to the Stillaguamish Tribe for treaty fishing purposes and that the Stillaguamish Tribe is eligible for various federal services. The Secretary, however, refused to take land willed to the Tribe in trust for them. NARF is now in the process of formulating a response to the court concerning the Secretary's letter.

Stray Calf v. Scott Land and Livestock, Ninth Circuit Court of Appeals (appeal filed, April, 1975)

This case involves the legality of leases covering over one million acres of land which were entered into by competent Crow Indians on the Crow Reservation. Oral arguments were given before the Ninth Circuit Court of Appeals in January, 1976. The United States filed an amicus brief in support of the Crow Indian parties. The issue is whether the procedures used by non-Indians on the Crow Reservation for acquiring overlapping grazing leases comply with federal law and the provisions of the Crow Allotment Act. The Crow Indians appealed an unfavorable decision from the United States District Court for the District of Montana which held that, although the leasing practices may not be in the best interest of the Indians, they are not unlawful under federal law.

Unfortunately, NARF received word on December 27, 1976, that the Ninth Circuit Court of Appeals affirmed the decision of the lower Montana court. After hearing of the decision, NARF filed a petition for rehearing.

Taos Pueblo Lands

An apparent error in and old government survey covering the northeast boundary of Taos Pueblo was recently discovered. NARF, in conjunction with the Taos Pueblo's Tribal attorney, investigated the survey error and secured an Interior Department order setting aside the old survey and ordering a new one. The proposed boundary correction would return to the Pueblo several hundred acres of mountainous land including a lake which has religious significance to the Taos Indians.

Three Tribes' (Fort Berthold, North Dakota) Jurisdictional Case

While no litigation is planned in this case as of yet, substantial research has been completed for the purpose of making a recommendation to the Office of the Solicitor, Bureau of Indian Affairs, regarding the feasibility of a suit against the State of North Dakota. This suit would seek a declaration that the land which was taken by the United States for a huge reservoir, known as the Garrison Dam, did not diminish the Fort Berthold Reservation to that extent. The State of North Dakota contends that it has jurisdiction to regulate hunting and fishing in that area.

The likely outcome is that a memorandum to the Solicitor's Office, Bureau of Indian Affairs, will be issued from our office recommending litigation of the jurisdictional issue.

Topash v. Commissioner of Revenue, Minnesota Tax Court Docket No. 2054

Taxpayer Topash is an enrolled Tulalip Indian, who, in the years in question, lived and worked within the boundaries of the Red Lake Indian Reservation in Minnesota. He sought a refund of and exemption from Minnesota state income tax on the basis of McClanahan v. Arizona Tax Commission, but the Minnesota Bureau of Revenue denied his claim on the grounds that he is not a member of the Red Lake Tribe. On his own, without an attorney, he pursued an administrative claim which was denied and then filed his action with the Minnesota Tax Court. NARF entered the action on his behalf at the reply brief stage; the brief was filed in February, at which time the matter was submitted. Note: This case is not actually related to the case of Bryan v. Itasca County, because the Red Lake Reservation is not subject to Public Law 280. The applicability of Public Law 280 was interpreted in the Bryan case.

United States as Guardian of the Passamaquoddy Tribe v. the State of Maine and United States as Guardian of the Penobscot Tribe v. the State of Maine (filed June, 1972)

These two cases are the most extensive in terms of land acreage and monetary damages in the Eastern Indian Legal Support Project. The Tribes involved seek control of nearly 60% of the State of Maine and billions of dollars in damages for illegal trespass and occupation. The suits are based on the Non-Intercourse Act of 1790 which required Congressional ratification of all treaties involving Indians. The Tribes say their land was taken without Congressional approval.

The two Maine cases were reactivated in May, 1976, following a favorable decision in the case known as Joint Tribal Councils of the Passamaquoddy Tribe v. Morton. They had been held in abeyance pending the decision of the Passamaquoddy case which also tested the applicability of the Non-Intercourse Act.

A decision in favor of the Passamaquoddy Tribe was rendered in February, 1975, and was unanimously upheld by the United States Court of Appeals for the First Circuit in December, 1975. The Appellate Court ruled that the Non-Intercourse Act did apply and also said that the Act created a trust relationship between the United States government and the two Maine Tribes.

Since May, the federal government has been doing as it was directed to do by the Court of Appeals and has been investigating the allegations made by the Passamaquoddy and Penobscot Tribes when they filed their suits. Throughout the duration of these cases, the Maine Attorney General's Office has maintained that the Penobscot and Passamaquoddy claims were without merit, but the Interior Department has held firm in its support of the Tribal claims.

During the first week in October, 1976, the Federal District Court judge for the State of Maine ordered the federal government to indicate by November 15, 1976, whether it intended to pursue the two actions against the state. The judge later amended this order to extend the time within which the government was to respond to January 15, 1977. The government requested more time to prepare its litigation report and to consider the possibility of legislative solution to the claims. During the early part of November, NARF attorneys attended a series of meetings at the White House, the Justice Department and the Interior Department to discuss the ramifications of the lawsuits. On January 14, 1977, the Interior Department issued a legal advisory urging the Justice Department to seek the return of the land claimed by the Tribe. The Interior Department said, in its advisory to the Justice Department, that the Tribes have a valid

claim to more than 10 million acres of land and trespass damages in the billions of dollars. The Justice Department also issued a memorandum on this same day requesting a Congressional solution to the Maine land claims. Justice Department lawyers filed a motion in the Federal District Court in Maine requesting that Judge Edward T. Gignoux defer until March 1, 1977, an order requiring the Justice Department to decide whether it will represent the two Indian tribes in their claims. The Justice Department memorandum also requested that further action on the claims be deferred until President Carter takes office.

United States v. Michigan, United States District Court for the Western District of Michigan

In this important treaty fishing rights litigation, Support Center attorneys are acting as lead counsel representing a tribe of Chippewa Indians known as the Bay Mills Indian Community. The lawsuit was originally brought by the United States on behalf of Bay Mills and is on file in the United States District Court for the Western District of Michigan. Subsequent to the filing of this suit, Support Center attorneys intervened on behalf of Bay Mills and, thereafter, another tribe of Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, also intervened and is represented by their own counsel as well as the United States of America.

Last fall, several important motions were submitted and briefed by Support Center attorneys. The most important motion pertained to the issue of whether there would be a separate trial on certain threshold matters. The plaintiffs' motion for separate trial was granted by the court; this represents the most important procedural motion heard by the court to date.

In addition, Support Center attorneys were successful in keeping a sportmen's group, known as Michigan United Conservation Clubs, out of the litigation. If MUCC's petition to intervene had been granted, the litigation process would have been substantially slowed. The denial of MUCC's intervention motion was appealed to the United States Court of Appeals for the Sixth Circuit and Support Center attorneys were expected to brief that intervention denial during December, 1976.

During the fall, a substantial amount of discovery took place in the case. A massive set of documents was submitted by the plaintiffs in the early part of August, compiled with the assistance of expert anthropological witnesses for the Indian Tribes. Trial in this case was anticipated to take place during the early part of 1977.

United States v. State Tax Commission of The State of Mississippi, United States Court of Appeals, Fifth Circuit

In this suit, NARF and the Mississippi Choctaw Tribal Housing Authority succeeded in gaining the assistance of the United States to test the validity of the Mississippi taxes assessed against its on-reservation housing corporation. The United States District Court for the District of Mississippi dismissed the case on the grounds that the Tribe had been illegally constituted, did not legally exist and thus could not be represented by the federal government. The United States Court of Appeals for the Fifth Circuit affirmed the lower court ruling. Government attorneys filed a petition for rehearing before the Fifth Circuit Court of Appeals and the Appellate Court, once again, affirmed the United States District Court decision.

United States v. Winnebago Tribe of Nebraska, United States Court of Appeals, Eighth Circuit; United States v. 687.30 Acres of Land, United States Court, District of Nebraska

The United States filed these suits to condemn certain Winnebago reservation lands and non-Indian lands along the Missouri River for an Army Corps of Engineers project. Indian land was located on both the Iowa and Nebraska sides of the Missouri River. Questions of land title and valuation were determined in the Iowa case and an appeal was filed by the Tribe. The Tribe asserted error in the lower court's decision rejecting the Tribe's claim that the clear Congressional intent required to abrogate the Tribe's 1865 Treaty (which guarantees the Tribe the land "forever") was not present. Therefore, the Corps lacked authority to condemn the land. The Eighth Circuit Court of Appeals agreed with the Tribe on appeal, holding that Congress had not specifically abrogated the Winnebago Treaty and that the Corps could not take the Tribe's land without specific Congressional consent.

Youngbear v. Brewer, United States District Court, Northern District of Iowa (filed January, 1976)

A Tribal member of the Sac and Fox Tribe was accused of a murder committed within the boundaries of the Sac and Fox Reservation in Iowa. The State of Iowa purported to exercise jurisdiction over the matter under grant of authority of a 1948 act of Congress. After his conviction was affirmed in the Iowa Supreme Court, a writ of habeas corpus was filed in federal court in Iowa alleging that the 1948 jurisdictional act did not confer major crimes jurisdiction in the State of Iowa. NARF filed an amicus brief on behalf of the Tribe supporting the petitioner's

position and arguing that the state lacked jurisdiction in the offense. On June 25, 1976, the United States District Court for the Northern District of Iowa held that the State of Iowa appealed the decision to the United States Court of Appeals for the Eighth Circuit.

Zaste v. North Dakota, et al. United States District Court, District of North Dakota (filed November, 1974)

In this case, NARF is representing an individual member of the Turtle Mountain Band of Chippewa Indians in seeking to establish that state liquor licenses are not required within the Turtle Mountain Reservation. The reservation Indian in this case holds a valid tribal liquor license; but wholesalers have refused to sell to him because he does not have state and county licenses as required by the State of North Dakota. The complaint has recently been amended. It is expected that the outcome of this case will be influenced by a similar case involving the Mescalero Apache Tribe of New Mexico. The Federal District Court in New Mexico has recently ruled in favor of the Mescalero Apache Tribe.

Summaries of Major Cases and Activities

Arkansas River Trust Authority

There are seven Oklahoma tribes involved in this matter who formed the Arkansas River Trust Authority in order to protect their water rights, particularly their claims to the riverbed of the Arkansas River. The member tribes include the Kaw, Ponca, Tonkawa, Pawnee, Otoe, Osage and Creek.

All member tribes have attorneys retained to research each tribe's claim to the riverbed. Meetings of the tribal attorneys are on-going with the Solicitor's Office of the Department of Interior to map out a litigation plan whereby the tribal claims to the riverbed may be best asserted. NARF has met with representative attorneys from all tribes and discussed the basic principles which would go into a potential lawsuit. NARF has also begun the process of preparing the first draft of a proposed complaint so that it may be reviewed by tribal attorneys.

Cappaert v. United States, United States Supreme Court (No. 74-1107)

NARF submitted an amicus curiae brief in this case on behalf of the Salt River Pima-Maricopa Indian Community and the Papago Tribe supporting the position of the United States that the reserved water rights of the United States include ground water as well as surface water. This suit was instituted by the United States to enjoin the harmful pumping of ground water by cattle ranchers from certain wells located near Devil's Hole in Death Valley National Monument near Las Vegas, Nevada. Devil's Hole is the exclusive habitat of the pub fish, an endangered species threatened by the pumping activities. At both the trial and appellate court levels; Cappaert and the State of Nevada claimed that the Winters Doctrine did not apply to ground water. The District Court found that the reserved water rights applied equally to ground water as well as surface water and the Ninth Circuit affirmed that decision.

Due to the critical importance of ground water to tribes and the similarities between Indian reserved water rights and federal reserved water rights, NARF filed an amicus curiae brief in order to inform the Supreme Court of the wide ranging and negative consequences to an adverse decision to the Indian tribes in the arid and semi-arid states.

In June, 1976, the Supreme Court upheld the lower court decisions unanimously. It held that the Winters Doctribe included ground water as well as surface water and generally resoundingly reaffirmed the Winters Doctrine rights of Indians as well as federal reservations.

Carson-Truckee Water Conservancy District v. Kleppe, United States District Court for the District of Nevada

This is yet another case that involved the Pyramid Lake water rights controversy. The plaintiffs in this case do not like the way in which the Secretary of the Interior operates the Stampede Reservoir which is located in the upper reaches of the Truckee River so as to benefit and release water for the Pyramid Lake fishery. They brought suit in October of 1976 against the Secretary of the Interior claiming that the Secretary's use of the waters stored in Stampede Reservoir violated the rights of the Carson-Truckee water conservancy district, the Sierra Pacific Power Company and the State of Nevada.

No action has yet been taken in this matter. The Pyramid Lake Tribe is now considering whether to intervene.

Catawba Tribe of Indians

NARF has completed its investigation of the legality of the Treaty of Nation Ford in 1840 between the Catawbas and the State of South Carolina. During the Revolutionary War, the Catawbas fought on the side of the colonists. The Catawbas had been guaranteed possession of a 144,000-acre tract of land through the 1763 Treaty of Augusta with the British Crown but were later divested of those lands by the 1840 Treaty of Nation Ford. The United States was not involved in the taking of those lands as required by federal law. The State of South Carolina failed to provide a new reservation for the Catawbas as was provided for in the 1840 Treaty and the Tribe ended up on a small reservation within the boundaries of their former reservation.

In 1961, the Tribe was terminated by Congress and still lives on a small tract of land set aside by the state after the 1840 Treaty. A litigation request on behalf of the Tribe has been submitted to the Secretary of the Interior asking that the United States file suit to recover over 19,000 acres of land currently in possession by non-Indians. The Tribe is also seeking a Secretarial declaration that Indian title to a remainder of the land remains in the Catawba Tribe and damages for loss of possession and use of the reservation for the past 136 years.

Chase v. McMasters, et al., United States District Court, District of North Dakota

This is an action in the Federal District Court of North Dakota seeking a declaration of the rights of an Indian owner of trust land to receive water and sewer service from the municipality of New Town, which is within the exterior boundaries of the Fort Berthold Reservation. The City Council refused to deliver water and service to an enrolled member of the Three Affiliated Tribes. The Tribal member sued City Council alleging the refusal to deliver needed services to her violated her constitutional rights to equal protection and due process, in addition to other arguments such as federal preemption.

Currently, the case has been submitted on the briefs. NARF is co-counsel in this matter and has assisted in the preparation of the briefs. A decision is expected soon.

Cheyenne-Arapaho Tribes of Oklahoma v. The State of Oklahoma, et al., United States District Court, Western District of Oklahoma (filed September, 1975)

This action seeks a declaration that members of the Tribes have the right to hunt and fish free from state regulation within the boundaries of their original reservation on tribal and allotted lands, state and federal public lands and private lands where the consent of the owner has been obtained. The suit also seeks a declaration that the Cheyenne-Arapaho Tribes have the exclusive authority to regulate hunting and fishing of its members on the above specified types of land and an injunction against the enforcement of Oklahoma fish and game laws on those lands.

The state had been attempting to avoid a trial in this case but last summer NARF was successful in getting the United States District Court to deny a motion to dismiss which the state had made. The case has been expanded to include the issue of whether a reservation still remains. Trial was held during November, 1976, and staff attorneys are still waiting for a decision to be rendered.

City of Seattle, Washington - Project No. 533, before the Federal Power Commission

This litigation has resulted from NARF's involvements with the Skagit River fishery problems. The city of Seattle had pending for some time a proposed amendment to its Federal Power Commission license that would authorize it to greatly enlarge one of the hydro-electric dams on the Skagit River. After

extensive hearings and briefing to the administrative law judge, who recommended that the license be amended, the matter is now awaiting decision by the Federal Power Commission.

On October 1, 1976, NARF filed a Petition to Intervene or, in the alternative, Motion to File a Brief amicus curiae on behalf of the Swinomish Tribal Community, the Upper Skagit Tribe and the Sauk-Suiattle Tribe. The brief argued that the Commission should not amend the license because the Federal Power Commission had not investigated the impact of the amendment on the treaty-protected fishing rights of the three tribes. NARF also argued that, since the license was due to expire in the near future, the amendment should be properly considered as part of the relicensing proceedings.

Confederated Salish and Kootenai Tribes v. Namen, now pending on a Petition for Certiorari in the United States Supreme Court

This case involves the rights of certain landowners adjacent to Flathead Lake within the Flathead Indian Reservation to use the land below the high water mark for certain private facilities such as docks, piers and wharfs. The District Court and the Ninth Circuit Court of Appeals held that even though the lakebed below the high water mark belongs to the Tribe, nevertheless, the adjacent Indian and non-Indian landowners obtained a riparian right or right of access to the lake when the lands were allotted to them or their predecessors in interest.

Council of Energy Resource Tribes

Originally, NARF provided technical and organizational assistance to a coalition of 22 tribes which own substantial reserves in fossil and nuclear fuels or have known geothermal areas on their reservations. NARF has coordinated several meetings of the full membership to review federal energy policies as they affect Indian tribes. CERT has requested that funds be made available from the Federal Energy Administration to study what information is needed for energy rich tribes to make development decisions on their natural resources. The study will attempt to analyze the concerns of energy development expressed by the CERT tribes and to develop a handbook of specification for each tribe to make better decisions on the financial, technical and socio-economic aspects of energy resource development. NARF has also lent assistance to CERT in the development of a proposal for funding of its central operations and has submitted its request to five governmental organizations which have shown an interest in the organization.

Crow - Section II

In January, 1974, the Crow Tribe requested NARF's assistance in trying to enforce acreage limitations imposed in the 1920 Crow Allotment Act. The acreage limitations were designed to encourage competent Crows to retain some of their allotments and sell some of them, but, restrictions were put on the sales so that no non-Indians could acquire acreage in excess of 1,900 acres. The Act was designed by Congress to encourage small non-Indian farmers to live side-by-side with members of the Crow Tribe. Although the Act was passed over 50 years ago, there has been no enforcement of the provisions. There are approximately seven large ranching companies which have accumulated holdings of nearly one-half million acres. The U.S. Department of Justice has been working with NARF during the past year-and-a-half to prepare a test case challenging the title to those half million acres of land on the Crow Reservation. The test case would allege that land is held in violation of the prohibitions contained in Section II of the Crow Allotment Act. It is anticipated that the test case will be initiated soon by the United States and the Crow Tribe in the U.S. District Court of the District of Montana.

Eastern Cherokee Band of Indians v. State of North Carolina

An opinion was issued in this case in August, 1976, from the United States District Court for the Western District of North Carolina. The court found that the State of North Carolina could not impose its license fees on fishermen, be they non-Indian or Indian, who were fishing under the supervision of the Eastern Band of Indians on Eastern Cherokee waters. The United States filed an amicus curiae on behalf of the Eastern Band. The court accepted the Tribe's arguments that the activity of fishing on the reservation had been preempted by Congress and by the actions of the United States in assisting the Eastern Band in the development of a fish management program. Moreover, the United States District Court ruled that since the Tribe was imposing a tax on the exercise of these fishing rights by non-Indians, a second tax imposed by the State of North Carolina significantly interferred with the right of the Eastern Cherokee Band to govern itself. The State of North Carolina has appealed this case to the United States Court of Appeals for the Fourth Circuit. Oral argument on this case will be heard sometime after the first of the year.

Fort Berthold Coal Lease Dispute

The Three Affiliated Tribes of the Fort Berthold Reservation, through the BIA, entered into a prospecting agreement granted with Consolidated Coal Company. The agreement granted

Consolidated Coal Company the exclusive option to lease the lands provided these lands had coal-bearing rock in sufficient quantities to economically mine. Prior to the expiration of the prospecting agreement, Consolidated notified the BIA Superintendent of its intention to lease a substantial portion of the permitted area pursuant to its exclusive option contained in the prospecting agreement. The Tribes have since decided against developing their coal reserves and opposed the coal company's efforts to lease reservation land. NARF has continued to advise the Tribes in their efforts to prevent Consolidated Coal Company from obtaining a lease. NARF submitted extensive research as to why Consolidated's request for lease should be denied. The BIA Superintendent of the Fort Berthold Agency agreed and denied Consolidated's lease request. Consolidated Coal Company has appealed the Superintendent's decision and the area director at the Aberdeen area office has it under advisement at the present time.

NARF also assisted the Tribes in obtaining BIA monies to hire a coal consultant to evaluate all of the information available from the Consolidated Coal Company's prospecting. The Tribes how have sufficient information to determine the profitability of coal development with the concomitant derogation of the environment which such development would bring.

Fort Berthold Natural Resources Development

NARF has also assisted the Three Affiliated Tribes of the Fort Berthold Reservation in developing a management plan for the development of oil and gas. NARF, the Bureau of Indian Affairs, the Tribal Council and a private oil and gas consultant have worked hand-in-hand in developing a management plan which they all feel will benefit the Tribes at Fort Berthold. At the present time, the Tribes have advertised three areas of the reservation which have been determined to have a high potential for oil and gas. Because this is the initial advertisement in the development plan, all of these efforts were to cause the operator to explore these areas by drilling test holes. Therefore, the Tribes, with NARF's assistance, were successful in having the BIA approve a rate of 12-1/2% overriding royalty to the landowners and 2-1/2% overriding royalty to the Tribes for a fund to develop its natural resources. The BIA also approved a drilling requirement whereby the operator must commence drilling within six months and test down to the lowest known producing formation in the Antelope Field in the Williston Basin in North Dakota.

NARF continues to advise the Tribes in evaluating a joint venture proposal submitted by Rainbow Resources to develop oil and gas on a portion of their reservation. Coquina Oil Company has also submitted a joint venture proposal based on the terms as outlined above to explore and develop oil and gas potentials in another portion of the reservation.

Fort McDowell - Central Arizona Project

NARF represents the Fort McDowell Mohave-Apache Indian Tribe in its efforts to obtain a firm source of water supply. The Fort McDowell Tribe, together with the other four central Arizona tribes, joined forces in an effort to convince the Secretary of the Interior that the five central Arizona tribes are entitled to sufficient water to irrigate the irrigable acreage on each of the five reservations from the waters of the Central Arizona Project.

The Secretary has now issued a final order which basically mirrors a proposed order with the exception of Fort McDowell. NARF was able to convince the Secretary that Fort McDowell should be given CAP water for irrigation purposes and the Secretary has allocated 4,300 acre feet of water for Fort McDowell.

Fort McDowell - Orme Dam

The Fort McDowell Mohave-Apache Indian Community is being asked to give up two-thirds of its 25,000 acres of reservation land for Orme Dam and Reservoir to be utlized by the Bureau of Reclamation as a storage reservoir for waters imported via the Central Arizona Project and for flood control purposes for metropolitan Phoenix. The Fort McDowell Mohave-Apache Indian Community voted 57 for and 144 against the proposed dam in an opinion poll conducted by the Tribal Council on September 25, 1976. The Tribal Council, on October 11, 1976, officially went on record opposing Orme Dam and Reservoir at its present location. NARF will assist the community in its efforts to keep Orme Dam and Reservoir from being constructed at the confluence of the Salt and Verde Rivers.

Hawaiian Coalition of Native Claims

NARF has assisted the Hawaiian Coalition of Native Claims (HCNC) for the past two and one-half years in developing claims of Native American Hawaiians to land and other natural resources and in developing an institutional legal capibility similar to that of NARF in order to research and assert such claims and rights. Native Hawaiians are the last Native American group to be dealt with by the federal government and NARF took the initiative to assist them in defining their rights in a credible legal fashion. The organization has grown in stature and recognition and has received two grants from the Donner Foundation, totalling approximately $100,000. NARF has assisted with fund raising efforts and, in addition, HCNC has raised a

few thousand dollars locally. Assistance has been rendered in the past year as it has been previously in focusing and refining research and in organizational development. Assistance with several grant proposals was given and the grant from the Ford Foundation in the very near future seems likely. NARF's role is primarily in furnishing technical and research assistance and in advising in program development, including fund raising.

Kimball v. Callahan, United States District Court for the District of Oregon

Judge Solomon of the United States District Court for the District of Oregon, issued an opinion in this case in September, 1976. The case is on remand from the Ninth Circuit Court of Appeals decision of Feburary, 1974. In his decision, Judge Solomon ruled that since the Klamath Termination Act did not abrogate the treaty rights of the Klamath Indian Tribe, current members of the Klamath Indian Tribe and their descendants are entitled to fish, hunt and trap free of state regulations on the Klamath Indian Reservation. The State of Oregon has appealed that decision and the "descendents" issue in this case will be heard by the United States Court of Appeals for the Ninth Circuit. It is hoped that the Ninth Circuit will follow its original decision issued in 1974, which initially found that the Klamath Termination Act did not extinguish Klamath Treaty rights and will conclude that those treaty rights continue on indefinitely to be enjoyed by future generations of Klamath Indians.

Klamath Tribe - Amendment to Termination Act

The terminated Klamath Indian Tribe of Oregon, represented by NARF, is seeking an amendment to its termination act which would preserve the Tribe's Indian water rights for an additional three years. The termination act extended the Tribe's water rights for an additional sixteen years beyond the effective date of the act so that the Tribe would have an opportunity to establish its water needs before the state law became applicable. However, because of the unforeseen disruption created by the termination process and the recent federal court decision in Kimball v. Callahan, which confirmed continuing existence of the Klamath treaty right to fish free of state regulation, the Tribe has still not had an opportunity to establish its water needs. NARF assisted the Tribe in drafting the proposed legislation and it is hoped that a bill will be introduced early in the next Congress.

Lac Courte Oreilles Band of Lake Superior Chippewa Indians - Federal Power Commission Project No. 108

The Lac Courte Oreilles Band, represented by NARF as co-counsel with a private attorney, has intervened in the FPC relicensing proceedings for the Northern States Power Company's operation of the Chippewa Flowage, a non-power producing reservoir and dam located partially on tribal lands. In addition to opposing relicensing, the Band, joined by the Secretaries of Agriculture and Interior, is seeking recapture of the project by Congress in order that they may operate the project. Alternatively, it is asserted that any new license issued must include protections of the Band's treaty rights to grow and gather wild rice. In February, 1974, the FPC reopened the record for the purpose of receiving into evidence a comprehensive joint management plan to be prepared by the Band, Interior and Agriculture. The plan was submitted in October, 1975, and the Administrative Law Judge then ordered the preparation of a supplemental environmental impact statement on the proposed management plan to be completed by August, 1976. The prehearing conference on the proposed management plan and supplemental EIS which was scheduled for mid-August, 1976, with hearings commencing September, 1976, was postponed to November 30, 1976, with hearings on both the plan and EIS which were scheduled to begin December 1, 1976.

Mashpee Tribe v. Town of Mashpee, (filed September, 1976)

Research on this claim was completed during last summer and the suit was brought as a defendant class action. The complaint seeks a declaration that the Tribe owns 16,000 of the 17,000 acres in the Town of Mashpee. This is the largest land claims suit in Southern New England. (Otis Air Force Base, which is owned by the federal government, is excluded from the suit.) Named as representatives of the defendant class are the Town of Mashpee and 146 of the largest landowners in town. Although the complaint seeks a declaration that the Tribe owns the entire town, it seeks possession only of those parts of the town which do not constitute the principal place of resident of any individual.

The Town of Mashpee has hired attorney, James St. Clair, of Watergate fame, and the Boston firm of Hale and Dore to defend it. Following the town's hiring of Mr. St. Clair, he immediately raised the possibility of a negotiated settlement. NARF attorneys have been discussing a proposal which would provide for extinguishment of the Indians' titles to all the occupied parts of the town, conveyance of all the town's property to the Tribe (approximately 10% of the land at issue), plus conveyance to the Tribe of a large portion of the 10,000 or so acres of undeveloped

privately held land in town. Under NARF's proposal, the private landowners would be compensated for land which they surrender to the Tribe by Congress and the town would be compensated for its loss of tax base through impact aid and similar federal programs. The Tribe is asking for this compensation since it was the federal government's law which created the claim and the failure of the government to enforce the law has led to the conflict of enforcement today.

Attorneys for the defendants have filed a motion to dismiss, however, NARF attorneys are confident that the action will not be disposed of in this motion. It is the Tribe's primary objective to halt further development of the town and to regain a land base for its future survival. The Tribe maintains that both of these objectives will be met by the proposed settlement.

Mole Lake Chippewa Tribe

In September, 1976, the Mole Lake Chippewa Tribe of Wisconsin requested NARF's assistance in planning and developing valuable copper and zinc resources located beneath the Mole Lake Reservation. Last Spring, Exxon Corporation announced the discovery of what it termed as one of the five major copper and zinc deposits in the world in the northern Wisconsin range. At the very heart of this discovery lies the small Mole Lake Reservation which was acquired pursuant to provisions of the Indian Reorganization Act. The Tribe has turned down the initial lease offering by Exxon Corporation and has been working with NARF and other consultants to develop a planning strategy to allow the Tribe to determine whether it wants to involve itself in large scale mining.

Muckleshoot Indian Tribe - Federal Power Commission Licensed Project No. 2494

Support Center attorneys are assisting lawyers with Seattle Legal Services in their representation of the Muckleshoot Indian Tribe. The Tribe's reservation is located on the White River at a point below a substantial diversion of water out of the river into a large storage reservoir. At the outlet of that reservoir, power is generated by Puget Sound Power and Light Company and water is returned to the White River below the reservation. Puget's operations leave the Muckleshoot Tribe with almost no water running through its reservation, resulting in the destruction of the Tribe's on-reservation fishery resource. In an effort to restore water to the White River, Support Center attorneys have represented the Tribe before the Federal Power Commission. We have taken the position that the project works

of Puget Sound Power and Light Company are jurisdictional and, therefore, must be licensed by the FPC.

The first segment of the case deals with the threshold issue of Federal Power Commission jurisdiction to license the facilities. In March, 1976, an FPC administrative law judge ruled that the facilities were not jurisdictional because the river was not navigable, because Puget Sound was not using surplus water from the upstream Army Corps of Engineers flood control dam and because the facilities did not physically touch the Muckleshoot Indian Reservation. Support Center attorneys took exception to the administrative law judge's decision and filed a lengthy brief before the full five-member Federal Power Commission. Last fall, a reply brief was prepared by Support Center attorneys and was submitted to the FPC. Support Center attorneys have also asked the Commission for oral argument.

Narragansett Tribe v. Southern Rhode Island Land Development Corporation and Narragansett Tribe of Indians v. Murphy (filed January, 1975)

In these two lawsuits, the Narragansett Tribe of Rhode Island is seeking the return of nearly 3,000 acres of land from the State of Rhode Island and 35 individual and corporate landowners. The land in question was originally part of the Narragansett Reservation which was terminated in 1880 by the state. The Tribe is claiming that the state's action was void as a violation of the Non-Intercourse Act. The case has yielded a number of interesting decisions during the past six months. In December, 1976, the Federal District Court for Rhode Island ruled that the state's claim of sovereign immunity did not prevent the Tribe from taking possession of land which the Tribe claimed had been taken illegally under the Non-Intercourse Act.

During the past summer, the defendants in the Narragansett case raised several issues of law. As in the other Southern New England land claims cases, NARF elected to file the Narragansett claim without seeking the participation of the federal government. Earlier, the Supreme Court had made it clear in its Oneida decision, in 1974, that while the federal courts have jurisdiction to hear Non-Intercourse Act cases brought by the Indian tribes, it was not clear whether the federal government was an indispensable party in such actions or whether the tribes were immune from defenses based on passage of time.

The defendants did raise the indispensability issue in a variety of ways as well as the antiquety of the claim. The defendants also claim that the determination as to whether the Narragansetts constitute a tribe for purposes of the Non-Intercourse Act constitutes a non-justiciable political question.

NARF moved to strike all of these affirmative defenses and in three opinions handed down in June and July, 1976, obtained favorable rulings on all issues. During the past six months, the exceedingly complex discovery process in this case has moved ahead with NARF attorneys serving an 800-page request for admissions from opposing counsel. The case should be ready for trial soon.

Native American Natural Resources Development Federation

This federation is an organization of 26 Northern Great Plains Indian Tribes which have substantial reserves of energy resources such as coal, uranium and copper but only limited water resources. Tribes who own these resources saw a need to develop a firm national policy regarding the development of Indian strategic resources.

In December, 1973, the 26 tribes of NANRDF gathered together as a federation and issued a "Declaration of Indian Rights to Natural Resources in the Northern Great Plains States."

Since there was no clear directive from the Indians' trustee, the Department of the Interior, the federation set out to do a number of critically needed tasks for the tribes -- including inventorying, planning and developing policies for the development of their natural resources, etc.

NARF has been involved with the organization from the beginning and Director, Tom Fredericks, has served in all organizational activities as coordinator of the Federation. NARF was successful in gaining a general organizational grant for the Federation from the Donner Foundation. A request for independent funding for NANRDF was submitted to the Donner Foundation early last spring. The Federation has just received an IRS advance ruling allowing it to operate for a two-year period as a publicly-supported organization. NARF prepared the application for IRS status under Section 501(c) of the Internal Revenue Code. At the end of the two-year period, upon IRS' receipt of proper operating records, a final exempt status ruling will be made. NANRDF has also received funding from the Office of Native American Programs and an office has been opened in Denver.

Northern Cheyenne Tribe v. Adsit, United States District Court, District of Montana

This is an action filed by the Northern Cheyenne Tribe to adjudicate its water rights in the Tongue River and Rosebud

Creek, which border on or flow through the reservation. Defendants in the case are some 1,000 non-Indian water users in these two drainages. The Tribe seeks sufficient water for present and future uses with a priority date of at least 1851, when the first treaty was made with the Cheyennes. NARF undertook representation after the suit had been filed. The suit is consolidated with a similar case filed by the United States as trustee on behalf of the Tribe. The defendants have moved to dismiss the case in federal court and to force the Cheyennes into state court proceedings.

Olympic Pipeline Company v. Swinomish Tribal Community, Federal District Court for Western Washington

Two oil pipeline companies, Olympic and Transmountain, own, operate and maintain oil pipelines that traverse the Swinomish Indian Reservation. One of the pipelines carries crude oil to two nearby refineries and the other carries refined oil to various parts of the Northwest. One of the pipelines has been in existence for approximately twenty years, the other for approximately ten. Both cross tribally-owned tidelands and neither has obtained a valid right-of-way from the Tribe or the Bureau of Indian Affairs.

NARF represents the Swinomish Tribal Community and attempted through negotiations to reach an agreement with the two oil pipeline companies for more than a year. Finally, in July of 1976, negotiations reached an impasse. At that point, the Swinomish Tribal Community gave the pipeline companies a 24-hour notice that the Tribal police would close the two valves and shut down the pipelines.

In August, 1976, the two pipeline companies went to Federal District Court and obtained a temporary restraining order preventing the Tribe from closing the pipplines. After briefing an argument, the Federal District Court in Washington granted the pipeline companies' request for a preliminary injunction holding that under the Indian Civil Rights Act of 1968, the pipeline companies were entitled to "due process of law" before it was deprived of the use of its pipeline. The Tribal community has now filed a cross-complaint asking for the court to evict the two pipeline companies and has moved for summary judgment.

Oneida Indian Nation v. Oneida and Madison Counties, United States District Court, Northern District of New York

NARF has assisted the Oneida Indian Nation and its local

counsel in prosecuting this trespass case. The Oneida Nation claims that its 300,000 acre reservation, which was preserved by federal treaty, was unlawfully extinguished by state conveyance. The state conveyance failed to comply with the Non-Intercourse Act of 1790.

The Oneida Nation has recently amended its complaint and is suing for land claimed by the counties of Oneida and Madison as well as trespass damages for illegal occupation of the land. NARF assisted in the jurisdictional aspects of the case which went to the Supreme Court in 1974. The court's decision was favorable to the Oneida Nation and the case was remanded to the appellate court for trial. Since that trial, NARF has been assisting in preparation of the post-trial brief. NARF is optimistic that the judge will rule in favor of the Tribe and expects that the case will probably be appealed to the United States Court of Appeals for the First Circuit.

Oneida Indian Nation v. Williams, United States District Court, Northern District of New York (filed April, 1974)

This is a companion suit to Oneida Indian Nation v. County of Oneida. The Oneida Indian Nation is seeking to recover approximately 700 acres of the old Oneida Nation established in 1842. Since many of the issues here are indistinguishable from the issues in the other Oneida case, the proceedings in this case have been stayed pending a decision of the District Court.

Pamunkey Railroad Right-Of-Way Matter

NARF has undertaken efforts at the request of the Pamunkey Tribe to secure compensation for lands taken as a result of an 1885 railroad right-of-way across Pamunkey reservation lands.

The Tribe has begun informal negotiations with the Southern Railroad to obtain compensation for past and future uses of the lands involved in the right-of-way grant. The negotiations also allow for an express reverter in favor of the Tribe's abandonment of the right-of-way agreement with the railroad.

A tentative agreement between the railroad and the Tribe has been reached. The agreement will not be formally concluded until such a time as a legal description of the Pamunkey Reservation can be provided and the Secretary of the Interior gives formal approval of the right-of-way. Difficulties continue to exist in gaining a legal description of the lands secured to the Tribe by the British Crown pursuant to the Treaty of 1677.

Because of the lack of state and federal domestic records, a request has been forwarded to the Keeper of Public Records in England to supply a legal description of the Pamunkey Reservation established under the 1677 Treaty.

Papago Indian Tribe v. Pima Mining Company, United States District Court, District of Arizona (filed March 6, 1975)

This suit is a consolidated action brought by the Papago Tribe and the United States seeking a declaration of Papago water rights in the Upper Santa Cruz River Basin in Arizona and to prohibit off-reservation interference with those rights. Originally named as defendants in the action with the State of Arizona, the city of Tucson and several major mining and agricultural water users. Upon defendants' motion, the federal district court, on October 16, 1975, ordered the joinder of all water surface and groundwater users in the Upper Santa Cruz Basin. The court rejected the Tribe's attempt to proceed against the State of Arizona as guardians of the basin water users interests. In an effort to keep the proceedings manageable, the Papagos tried to proceed by way of a defendants' class action for purposes of declaratory relief only. The Tribe took this course of action because of the extreme difficulty in identifying water users' claiming rights under Arizona law and the vast number of users estimated to be involved. The court denied the Papagos' motion. The Tribe, with the assistance of the Phoenix area office of the BIA, is now in the process of identifying water users so that the complaint can be amended in accordance with the court's October, 1975, order. It was anticipated that service of the amended complaint would take place by December, 1976. Presently, plaintiffs have contracted for expert studies and investigations to be followed by reports of all technical, historical and anthropological bases of the Papago water claims.

Piscataway - Land Claims

The Piscataway Indians were interested in a tract of land in Charles County, Maryland, which had been given to the National Education Association by a trust deed under which the Piscataways could possibly lay claim. The present use, the purported future use and the present state of title were researched. The Piscataways were advised that there was no violation of the trust deed.

Puyallup Tribe Right-Of-Way Matter

NARF has been assisting in location of materials and documents for the Puyallup Tribe of Western Washington. The

Tribe is already in litigation regarding a right-of-way matter. Suit was brought to invalidate a railroad right-of-way across Puyallup land which was granted in 1901.

Pyramid Lake - Peigh Ranch Matter

NARF was asked by the Pyramid Lake Tribe to investigate the possibility of filing a land patent annulment suit to secure the return of about 565 acres of land on the reservation. The land was patented to non-Indians under the purported authority of the act of July 7, 1924, which allowed applicants who had, in good faith, occupied reservation lands for 21 years to obtain patents for lands held.

It was determined upon investigation that the 565 acre parcel whose location is critical to the Tribe's fishing operations, was illegally obtained by the patent applicant. A litigation report was prepared and submitted to the Field Solicitor of the Department of the Interior in Phoenix to secure the participation of the government. The government's participation is being asked because of a decision in other patent annulment actions involving Indian lands which have held that the U.S. is an indispensable party to such proceedings. The Solicitor's Office in Washington has reviewed the litigation report and is having certain field work done by the BIA regarding the boundaries and location of individual tracts which constitute the singly-owned 565 acre parcel.

Pyramid Lake Piaute Tribe v. Sierra Pacific, Before the Federal Power Commission (filed July, 1975)

In July, 1975, NARF filed a complaint and petition for declaratory order with the Federal Power Commission on behalf of the Pyramid Lake Paiute Tribe in which the Tribe complained that Sierra Pacific Power Company is illegally operating four hydro-electric power plants on the Truckee River. The basis of the Tribe's complaint is that the Truckee River is a navigable stream and that Sierra Pacific's hydro-electric power plants are therefore required to obtain a license from the Federal Power Commission in order to operate the plants on the Truckee River. The Tribe has filed this complaint because the current method of the power plants has a detrimental effect on the Pyramid Lake and Truckee River fisheries. Several motions are currently before the FPC.

Rincon - Federal Power Commission Project No. 176

The Rincon, La Jolla, San Pasqual, Pala and Pauma Bands of Mission Indians, represented by NARF, California Indian Legal

Services and a private attorney are opposing a water company's renewal of its Federal Power Commission license for facilities which divert the flow of the San Luis Rey River from their reservations in Southern California. The Bands assert that the old water contracts entered into by the government are invalid and that the original Federal Power Commission license has been violated by the water company. The Bands, supported by the Secretary of the Interior, are also seeking a non-power license to take over the facilities that had previously been licensed to the water company. If they are successful, the Bands would regain control of their water rights. The trial of this matter commenced on September of 1973. Following preparation of an environmental impact statement, the hearings were finally completed in January of 1976. All of the parties have now submitted opening and reply briefs and the matter is now awaiting a decision by the administrative law judge assigned to the case.

The case involves the application of a number of provisions of the Federal Power Act that it designed to insure the protection of Indian reservations. It is also the first contested relicensing case in the history of the Federal Power Commission and so it involves a number of issues of first impression relating to that subject.

Rosebud Sioux Tribe v. Kneip, 521 F.2d 87 (8th Cir. 1975), cert. granted, review pending as Supreme Court No. 75-562

This is an extremely important reservation diminishment case raising the question of whether the Rosebud Sioux Reservation in South Dakota was reduced in size by acts of Congress passed in 1904, 1907 and 1910. Very similar statutes affect approximately 20 other reservations across the north central United States. The Eighth Circuit Court of Appeals ruled in favor of diminishment and the Tribe persuaded the Supreme Court to hear the case. NARF filed an amicus curiae brief on behalf of the National Congress of American Indians; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Shoshone Tribe of the Wind River Reservation, Wyoming; the Sisseton and Wahpeton Sioux Tribe of the Devils Lake Reservation, North Dakota; and the Standing Rock Sioux Tribe of North Dakota and South Dakota. We also worked closely with the Justice Department attorneys, who have filed a brief on behalf of the United States. Some of our suggestions influenced the government's brief. Oral argument is expected sometime in 1977. The consequences of the case to the Rosebud Sioux Tribe are very great, as about three-quarters of their original reservation is under challenge. The consequences for the tribes we represent as friends of the court are even greater. Four of

the five tribes would have their entire reservation terminated under the theory of the Eighth Circuit Court of Appeals. The fifth (Wind River) would lose jurisdiction of over two-thirds of its lands. For these reasons, the case will be closely watched.

Sac and Fox Tribe v. Licklider, United States District Court, Northern District of Iowa (filed June 4, 1974)

The Sac and Fox Tribe of Iowa has a 3,500 acre reservation which was purchased with its own funds. The State of Iowa claims it has the right to enforce its hunting and fishing laws on the reservation. NARF represents the Tribe and has filed an action seeking to prohibit the State of Iowa from enforcing any of its hunting and fishing laws within the boundaries of the reservation. Trial was held in November 1976. A decision has not been rendered.

Schaghticoke v. Kent School (filed April, 1975)

This suit seeks return of approximately 1,300 acres of land for the Schaghticoke Tribe. NARF's complaint filed on behalf of the Schaghticoke Tribe alleged that the aboriginal and reservation lands of the Tribe had been taken from it without the consent of the federal government in violation of the Non-Intercourse Act. The defendants in this action originally filed an answer which raised only the defense of abandonment. In May, 1976, however, the defendants moved to amend their answer by adding a defense based on passage of time. NARF opposed this move on the grounds that the proposed amended defenses were insufficient as a matter of law and that granting the motion would only delay the action.

The suit was filed in the Federal District Court for the District of Connecticut. Oral argument was heard by Judge Blumenfeld on June 28, 1976, and a decision has not yet been rendered in this case.

Shoalwater Bay Tidelands Petition

In 1866, President Andrew Johnson signed an Executive Order creating a small reservation for the Shoalwater Bay Indian Tribe. The order itself did not mention the tidelands in front of the reservation but the Indians at Shoalwater Bay always considered the tidelands to be their property. In 1962, the Portland area solicitor for the Department of the Interior ruled that the tidelands were not a part of the reservation, although he confessed that his judgment was based upon "meager information". NARF submitted a petition on behalf of the Shoalwater Bay Indian

Tribe to the Office of the Solicitor in Washington, D.C., asking that the 1962 ruling be set aside and the tidelands held to be a part of the reservation. The petition contained extensive documentation, showing the history of the Executive Order and the dependence of the Tribe upon marine animals at the time the reservation was created. The Tribe claims that the President intended to include the tidelands in the reservation although he did not say so, in so many words. NARF has submitted two supplemental memoranda in response to questions raised by the Solicitor's Office. We are now awaiting a decision on the petition.

Skokomish Tribe v. General Services Administration
United States District Court, Western District of Washington

In this lawsuit, on file in the State of Washington, the Skokomish Tribe has challenged the GSA's decision refusing to make certain surplus government land available to the Tribe. Last fall, NARF attorneys, in Washington, D.C., deposed certain officials employed by the General Services Administration. In addition, briefs prepared by attorneys with Seattle Legal Services in support of a motion for summary judgment were reviewed and commented upon by NARF attorneys. Depositions taken by NARF's Support Center attorneys resulted in a substantial savings to the Seattle Legal Services program since it would have otherwise had to bear the transportation costs associated with those depositions.

State of Idaho v. Coffee, Idaho Supreme Court

This case was on appeal to the Idaho State Supreme Court pending a conviction, in the District Court of Idaho, for alleged hunting of deer out of season. The defendant, Diana Coffee, a member of the Kootenai Tribe, claimed an aboriginal right to hunt deer free from state jurisdiction.

In its decision, issued on November 23, 1976, the State Supreme Court affirmed the conviction of Ms. Coffee on the grounds that the Tribe does not have an aboriginal right to hunt on private land of the state.

It did, however, confirm that the Tribe possesses an aboriginal right to hunt on "open and unclaimed land" of the aboriginal area. It is assumed that the term "open and unclaimed land" includes national forest land. The Kootenai River Basin includes about 10% private land; therefore, this case can, in most respects, be termed a victory for the Tribe since this is the first time the aboriginal rights to hunt have been upheld for

the Tribe. NARF does not anticipate an appeal in this case pending further consultation with the Tribe.

Swinomish Tidelands

The Swinomish Tribal Community of Western Washington has been experiencing numerous problems involving trespasses on tribally-owned tidelands. NARF has been assisting the Community in negotiating rights-of-way for several of the trespasses and in establishing the Tribe's legal ownership to the tidelands. During the past year, negotiations with two oil pipeline companies broke down and resulted in litigation. Negotiations are continuing with the Burlington Northern Railroad Company.

Truckee-Carson Irrigation District v. Kleppe, United States District Court for the District of Nevada

In 1973, as a result of a court order obtained by NARF in Pyramid Lake Paiute Tribe of Indians v. Morton, the Secretary of the Interior issued new regulations limiting the amount of Truckee River water which could be diverted to the Newlands Reclamation Project, thereby increasing the flow of the Truckee River water into Pyramid Lake Indian Reservation. That year, when the operators of the Newlands Reclamation Project, the Truckee-Carson Irrigation District, refused to comply with the new regulations, the Secretary of the Interior terminated his contract with TCID under which TCID sued the Secretary to set aside his regulations and to enjoin him from terminating the contract, the Pyramid Lake Paiute Tribe, represented by NARF and its local tribal attorney, intervened on the side of the Secretary of the Interior.

This case does not present any issue of Indian law, but it is important for the Pyramid Lake Tribe in securing the water decreed to it in the prior case of Pyramid Lake Paiute Tribe of Indians v. Morton.

The Tribe and the Secretary of the Interior moved for summary judgment. The matter was briefed and argued to the court in December, 1974. After a delay of a year and a half, the District Court finally issued an opinion in June of 1976 denying the motion for summary judgment essentially on the grounds that TCID was entitled to a trial on the merits of its complaint. This case will now proceed through discovery and trial.

All of the parties are now awaiting preparation of the transcripts which is proceeding slowly. After the transcript is complete, briefs will be prepared by all parties and will be

submitted to the district judge for a decision on the affirmative defenses of res judicata and collateral estoppel.

The broad issue in this case is whether the Pyramid Lake Tribe enjoys a right, with an 1859 priority, to sufficient water from the Truckee River to maintain and preserve the fisheries in Pyramid Lake and the Truckee River. The narrower issue in the res judicata and collateral estoppel phase of the case is whether the United States and the Tribe are barred from asserting the right to water to maintain Pyramid Lake and Truckee River fisheries by virtue of the prior case that adjudicated the water rights on the Truckee River, United States v. Orr Water Ditch Company. In the Orr Water Ditch Company case, the United States represented both the Pyramid Lake Tribe of Indians as well as the Tribe's major adversary, the Newlands Reclamation Project. Not surprisingly, the government totally neglected to assert any rights of the Pyramid Lake Indian fishery. The principal claim of the Tribe and the United States in the res judicata-collateral estoppel phase of the current case is that the government's conflict of interest in the Orr Water Ditch case deprived the Tribe of a full and fair opportunity to be heard and that the application of res judicata and collateral estoppel in these circumstances would deny the Tribe due process of law. NARF, the Tribe's local counsel and the attorneys for the Justice Department cooperated very closely in the trial of this case.

United States v. Washington

This case was originally filed in August of 1971. The favorable decision is reported at 84 F.Supp. 312 (W.D. Wash. 1974), aff'd 520 F.2d 676 (9th Cir. 1975), cert. denied, 44 U.S.L.W. 3428 (Jan. 27, 1976). NARF represents the Muckleshoot, the Skokomish, Stillaguamish, Sauk-Suiattle, Nisqually and Squaxin Island Tribes. The case has become a landmark in the field of Indian treaty rights by means of its through-going analysis of treaty purpose and intent in arriving at a decision that Indians are entitled to one-half of the fish destined for the usual and accustomed off-reservation fishing places, that they are entitled to regulate the exercise of their members' rights at those locations and that they are exempt from state regulation of fishing laws, except to the extent their practices have been proven to be inconsistent with the goal of preserving and maintaining the fishery. Since affirmance of the case in 1975, NARF has ceased playing a lead counsel role, but is aiding with the numerous matters which arise in continuing the jurisdiction phase of the case, with defending the case in related state court actions which seek to attack it collaterally and generally in advising local counsel with the Small Tribes Organization of Western Washington and Seattle Legal Services on the best way to proceed. NARF's back-up role should be expected to continue

into the future as the problems connected with the continuing jurisdiction phase of the case and several appeals to the United States Court of Appeals on specific issues are moving apace and have not abated in volume or importance.

United States v. Washington (Phase II)

When United States v. Washington, reported in the previous paragraph, was originally filed, certain issues were severed out for trial at a later date. Those issues pertain to the following matters; First, whether the Tribe's harvestable entitlement extended to fish which were artifically propagated in hatcheries. This important issue has also been the subject of state litigation decided adversely to the Indians. NARF is endeavoring to have that issue determined again in federal court since the state court ruling only pertained to one river, one tribe and one species of fish. Second, is the issue of whether the state may authorize or allow action by its agencies and private citizens which results in environmental degradation to the fish habitat. It is the Tribes' position that if they have a treaty right to fish, that right cannot be rendered worthless by state destruction of the resource. Both of these issues have yet to be tried before the district court and are currently in the discovery stage. It is anticipated that Support Center attorneys will continue with their assistance to Seattle Legal Services lawyers and that the Phase II issues of United States v. Washington will be tried in January, 1977.

United States v. Washington - Fees

After a favorable judgment in United States v. Washington (see above), NARF sought over $100,000 in attorneys' fees for its work in the case. Without determining the amount due, the district court determined that NARF and the other tribal attorneys were entitled to fees under the private attorney general theory but that an award was barred as a result of the Eleventh Amendment to the United States Constitution. United States v. Washington, 66 F.R.D. 477 (W.D. Wash. 1974). The district court's denial of fees on Eleventh Amendment grounds was appealed in the Ninth Circuit Court of Appeals. Before the case was briefed, the case of Alyeska Pipeline Service v. Wilderness Society was decided by the United States Supreme Court rejecting the private attorney general theory for granting attorneys' fees. Since this was the only basis on which the court found NARF and other tribal attorneys were entitled to fees, we moved to have the case remanded to the district court to see if we qualified for fees under any of the remaining non-statutory bases for attorneys' fees. Oral argument was held during the past year on that question and Proposed Findings of Fact and Conclusions of Law

were submitted and await the court's decision. NARF is lead counsel on the attorneys' fees issue.

Ute Mountain Tribe v. Sherman, et al.

NARF has been negotiating, on behalf of the Ute Mountain Ute Tribe, with the Division of Wildlife, Colorado State Department of Natural Resources with regard to the Brunot Cession Agreement, 18 Stat. 36. By that agreement, the Confederated Utes ceded a vast area of some 4 million acres to the United States but reserved the right to hunt in that area. Our office has sent a proposed consent decree to the Division of Wildlife. Such a consent decree would form the basis of a working relationship between the Division of Wildlife and our clients so that each could assume the burdens as well as the benefits in the administration of the area.

During a meeting held in early December, 1976, the State of Colorado proposed to open 4 million acres in the Durango area for year-around hunting by Mountain Ute Indians. The proposal was the result of five months of negotiations between state officials and NARF. The Tribe was still considering the proposal at the end of December. If an acceptable consent decree can be reached, then litigation of the Utes' rights in that area may be unnecessary.

Ute Water Cases - U.S. v. Akin, United States Supreme Court; New Mexico v. U.S., District Court of San Juan County, New Mexico

These refer to the water rights cases involving the two Ute tribes in southwestern Colorado. The Ute Mountain Utes are involved in water rights litigation in both New Mexico and Colorado; the Southern Ute Tribe is involved in water rights litigation in Colorado only. United States v. Akin was a case brought by the United States to determine Indian and other federal water rights in southwestern Colorado. In 1975, NARF filed a brief as friend of the court on behalf of the Ute tribes and in support of the position of the United States. However, the court rejected that position, Colorado River Water Conservation District v. United States, 47 L.Ed.2d 483 (1976). The issue before the Supreme Court was whether Indian water rights should be adjudicated in federal court or state court. The Supreme Court interpreted an Act of Congress known as the McCarran Amendment, 43 U.S.C. §666, as giving preference to state courts in these matters. The Colorado state court's successor to United States v. Akin is known as: In the Matter of The Application For Water Rights of the United States of America, District Court for Water Division 7, State of Colorado. NARF has now been retained by the two Ute tribes to represent their water rights in this litigation.

In New Mexico, the State of New Mexico filed a water rights action to adjudicate all water rights in the San Juan Basin, including those of the Navajo, Jicarilla Apache and Ute Mountain Ute Indian Tribes. The lawsuit is entitled State of New Mexico v. United States, District Court of San Juan County, New Mexico No. 75-184. The United States has sought twice to have the case removed to federal court without success. There is presently pending a motion to dimiss the action on the grounds that the three tribes have not been joined as parties and that they are indispensable parties because their water rights conflict, making it improper for the United States to represent all three of them. That motion was heard in November, 1976. NARF would represent the Ute Mountain Ute Tribe if it were to become a party to that action. Some of the questions that will likely be determined as part of the Ute water rights cases are: the method of measuring Indian water rights; whether Indian water rights may be used for other than agricultural purposes; whether the water rights of the Ute Tribes trace to the Ute Treaty of 1868 or are later in time; and the relationship of Indian water right claims to federal reclamation projects.

Walker River Paiute Tribe of Nevada, et al., v. Southern Pacific Transportation Company, et al., Ninth Circuit Court of Appeals

This case involves the issue of whether the Southern Pacific Railroad ever obtained a valid right-of-way for its railroad to cross the Walker River Indian Reservation, or if, by failing to obtain a right-of-way, it nevertheless obtained an implied license from the Tribe. On September 10, 1976, the Ninth Circuit Court of Appeals handed down a decision in this case which can be termed a victory for the Walker River Paiute Tribe. The case was initially filed in June, 1972, after NARF was contacted by the Walker River Tribal Chairman.

In its decision, the Ninth Circuit found that the railroad in question has been trespassing for 90 years on those lands which have been continuously reserved for the Tribe. However, the court found that the railroad acquired right-of-way in 1906 over those lands which the Tribe ceded to the United States and which became public lands by a 1906 Presidential Proclamation. The Tribe now has the authority to stop the railroad from operating on the reservation.

The railroad company also has an option for further appeal to the United States Supreme Court. If they choose to do so, then the Tribe and NARF must still resolve the questions of the amount of damages the railroad owes to the Tribe for past trespass as well as exploring the possibility of negotiating a new agreement for the railroad's future use of the right-of-way.

Wampanoag Tribe of Gay Head v. Town of Gayhead, United States District Court, District of Massachusetts (filed November, 1974)

This action is brought on behalf of the Wampanoag Tribe of Gay Head and seeks the return of 250 acres of town-owned land. The land in question includes the Gay Head cliffs and a portion of the scenic attraction of Martha's Vineyard. NARF successfully defeated several motions to dismiss this action and was in the process of preparing for trial when the town, at its annual meeting in May, 1976, directed its attorney to seek a negotiative settlement to the case. The first negotiating session was not held until November 9, 1976, and a month later, on December 9, the town voted to give nearly 240 acres of "common land" to the Wampanoag Tribe.

The state legislature must still approve the transfer. NARF attorneys claim that once the Tribe receives title to the land, the federal suit will be dropped.

Washoe Tribe v. Griffith, United States District Court, District of Nevada (filed November, 1975)

Members of the Washoe Tribe in western Nevada were given allotments covering almost 60,000 acres of land in the Pine Nut Hills outside the boundaries of the Washoe Reservation. These allotments are checkerboarded with areas of federally and privately owned land. The Tribe has filed an action against the State of Nevada from enforcing its hunting and fishing laws within the allotments. NARF is providing assistance to Nevada Indian Legal Services and the Tribe's attorney in this matter.

Western Pequot Tribe v. Holdridge Enterprises (filed May, 1976)

This action seeks the return of 800 acres of land for the Western Pequot Tribe of Connecticut. In this case, the defendants have answered the claim with all of the standard affirmative defenses and have also claimed that the State of Connecticut is a necessary party to the action and that the Indians have failed to exhaust their administrative remedies by not bringing an action in the Federal Indian Claims Commission. Several of the defendants have brought a third party complaint against the State of Connecticut arguing that the state has warranted the validity of their titles and that if they lose to the Tribe, the state should compensate them.

Wildhorse Reservoir

Wildhorse Reservoir is located 35 miles off the Duck Valley Indian Reservation in northeastern Nevada. The reservoir's primary purpose is to provide irrigation water for the Duck Valley Irrigation Project on the reservation. The Tribe is attempting to have the Bureau of Indian Affairs transfer the lands surrounding the reservoir to the Tribe so they may control the recreational uses of the reservoir. In addition, the Tribe is seeking additional funds from Congress to expand the size of the Duck Valley Indian Irrigation Project. Non-Indian residents of northeastern Nevada have opposed the Tribe's attempt to control the recreational uses and expansion of irrigation facilities on the reservation because they fear that the non-Indians' recreational uses of the reservoir will be limited or destroyed. In addition, the Tribe is faced with the problem of upstream diversion by non-Indian ranchers of another creek flowing through the Idaho portion of the reservation. The Tribe has requested NARF's assistance in order to try to resolve many of the legal issues pertaining to the reacquisition of lands surrounding the reservoir.

Wisconsin v. Baker and Citizens League v. Baker, (companion cases filed in the United States District Court for the Western District of Wisconsin)

Both cases arise from license fees imposed on non-members by the Lac Courte Oreilles Chippewa Tribe who fish in navigable lakes adjacent to the Lac Courte Oreilles Reservation. Wisconsin asserts ownership to those lakebeds and the applicability of the public trust doctrine. The Citizens League, a corporation comprised of local non-Indian landowners and sportsmen, claim denial of due process and equal protection rights under the Indian Civil Rights Act in that they are regulated by a government in which they have no voice. The named defendant is the Tribal Chairman and NARF is lead attorney for the defense in both cases. Tribal jurisdiction over the lakes adjacent to the reservation is based on either Tribal ownership or governmental control over activities within reservation boundaries. A motion to dismiss has been filed and fully briefed on behalf of the defendant in both cases claiming primarily sovereign immunity from suit by the state and lack of a claim by the Citizens League. We anticipate filing a motion for summary judgment before the judge rules on the motion to dismiss.

Yankton Sioux Tribe v. Nelson, Southern Division of the Federal District Court, South Dakota

NARF is co-counsel in this case representing the Yankton Sioux Tribe. The suit is a trespass action in which the main

issue is ownership of the lakebed of Lake Andes, a navigable lake within the boundaries of the Yankton Sioux Reservation. Although the Tribe sued individuals, the State of South Dakota has intervened claiming title to the lake in the state. All pleadings have been filed and it is expected that the case will be decided on summary judgment in the very near future.

HUMAN RIGHTS

Summaries of Major Cases and Activities

Alaska Federation of Natives

The Alaska Federation of Natives is comprised of the twelve regional corporations created under the Alaska Native Claims Settlement Act and through its human resource division is concerned with the education and social problems of the Alaska Natives. NARF staff attorneys have provided technical assistance to the Alaska Federation of Natives on issues such as contracting, Johnson-O'Malley and bilingual education. In addition, Alaska Legal Services has been in the process of settling the case, Hootch v. State Operated School Systems, which sought to establish the right of Alaska Natives to have schools in their own communities. Last year, particularly in response to Hootch, the Alaska Legislature passed a bill providing for the reorganization of state-operated school systems and for the providing of additional educational services to bush communities. NARF staff attorneys have assisted the staff of the Alaska Federation of Natives in implementing the new state law.

Bizindun School

Bizindun Alternative Learning Center is an all-Indian school in Duluth, Minnesota which serves the urban Indian population. In the past, the school has operated on Title IV funds distributed through the Office of Indian Education. This year, the Bizindun Center submitted a similar proposal for funding as it has in the past, but it was rejected on the grounds of ineligibility. NARF is assisting the Center in determining the legal basis for rejection. NARF is also assessing the types of procedural changes which may need to be made so that Bizindun will again become eligible for funding and in trying to secure operating funds to keep the school open.

Blackbird v. Matthews, Civ. No. 76-3-H6 (D. Mont.) and Matovich v. Matthews, Civ. No. 76-12-H6 (D. Mont.)

These are companion cases that have been consolidated for the purpose of all legal proceedings. These suits seek a declaration that the Indian Health Service (IHS) Division of the Public Health Service has a duty to serve all non-terminated enrolled Indians. Currently, the plaintiffs plan to file a motion for partial summary judgment based on the decision in

Lewis v. Weinberger, 415 F.Supp. 652 (D.N.M. 1976) holding that Indians residing near a reservation are eligible for services. Further, the IHS has proposed revised contract care regulations and now proposes to serve all non-terminated Indians who reside on or near their home reservations. However, plaintiffs have also filed a motion for preliminary injunction based on the decision in Weeks v. Kleppe, 406 F.Supp. 1309 (1975) probable jurisdiction noted, 44 U.S.L.W. 3719 (1975). That motion requests that court to retain jurisdiction until such time as the Supreme Court decides the constitutional issues in that case; more precisely, whether the Constitution limits the United States in its dealings with tribes. A decision in these cases should be forthcoming soon.

Broken Arrow, Oklahoma - Title IV Program

NARF has been assisting the Broken Arrow Title IV parent committee with several problems involving control of the Title IV program at Broken Arrow. NARF was contacted in 1975 because the committee had difficulties in securing an agreement with the superintendent and board of education regarding a Title IV program which would be amenable to all concerned and would allow some participation by the Indian parent committee. The board of education voted in December, 1975, not to accept the Title IV program for the school years 1975-76 and 1976-77. Since that tine, NARF has assisted in various problems regarding the dismantling of the program. The parent committee has been advised to investigate the possibility of forming an alternative school.

Chinle School Cases.

These are a series of sevel lawsuits and related legal matters concerning the financing of five public school districts serving the Apache County, Arizona portion of the Navajo Indian Reservation. In August, 1975, the Apache County Board of Supervisors set a very high tax rate for the Chinle School District in Chinle, Arizona. This school district is the largest in Arizona, and virtually all of the land is tax-exempt Indian land. The only taxpayers are mining and utility companies using Indian land. In response to the high rate, the district's largest taxpayer, Kerr-McGee Corporation, filed a suit in Apache County Superior Court. A second suit was filed by Kerr-McGee Pipeline Corporation, a subsidiary company. Six other taxpayers filed similar suits in the Federal District Court for the District of Arizona. Two other taxpayers paid the taxes under protest; and the remaining two companies on the tax rolls are defunct. In both major lawsuits, the courts issued preliminary orders stopping the collection of any taxes from the companies.

These lawsuits were filed at the end of October, 1975. The statutory attorney for the Chinle School District is the Apache County attorney, but Apache County took an antagonistic position to the school district and could not represent it. Subsequently, NARF was requested to undertake representation of the school district. Apache County was a defendant in all of the suits previously mentioned, since it is the tax levying entity; however, it filed answers admitting the claims of the plaintiff taxpayers and also filed a cross-complaint against Chinle and four other school districts on the Navajo Reservation. Apache County is seeking to enjoin a county levy used for school purposes on the reservation. NARF attorneys entered these cases in November, 1975 on behalf of all five public school districts operating in Apache County, Arizona. All of the school tax cases raised the contention that it is unconstitutional for Arizona to tax or spend for public school education of reservation Indians, since they are an exclusive federal responsibility.

One devastating effect of the injunctions on Chinle was that the Phoenix Bank, which had normally advanced cash to the District in anticipation of tardy federal funds, cut off all credit and the district was threatened with having to shut down. Emergency advances of federal funds were required to avoid closing.

There followed numerous other court hearings, including five appeals, two of which were heard immediately. Essentially, the courts were ruling against us on the size of the Chinle tax rate but for us on all other issues. Then after lengthy and difficult negotiations, a settlement was reached in the taxpayer lawsuits in June, 1976. Chinle agreed to accept a lower tax rate for 1975-76 and to budget for a tax rate with the same ceiling for 1976-77. The taxpayers agreed to pay these new rates and to dismiss the suits. Also, the three taxpayers who had already paid the first half of their 1975-76 taxes agreed to allow this payment to stand, although this half payment amounted to considerably more than the agreed rate of settlement. The net result was that Chinle collected a fairly sizeable tax, notwithstanding its difficulties. The Apache County officials were persuaded to agree to the settlement, although their attorney was against it. (This was one of the most difficult parts of the case.) One price of this agreement was that the appeal of Apache County's cross-complaint on the question of whether it is constitutional for Arizona to tax and spend for Indian education would go forward. It is still pending.

The particular lawsuits were:

a. Navajo Communications Company v. Apache County, U.S.D.C. Ariz. Civ. No. 75-740 Pct-WEC; appeal, 9th Cir. No. 76-1204. This is the original federal suit by six Chinle District taxpayers against the Chinle District, Apache County and

its officials. Apache County cross-claimed against Chinle District and the State of Arizona. The federal judge granted a preliminary injunction based on the claim that the Chinle tax rate was confiscatory, but he ruled that he would abstain on the claims that expenditure of federal funds for Indian education was unconstitutional. After a settlement was reached, a consent decree was entered in favor of the taxpayers on the claim that the Chinle tax rate was confiscatory and the other claims were dismissed.

b. Kerr-McGee Corp. v. Chinle School District No. 24, Ariz. Superior Ct. Apache County No. 5171, transferred to Maricopa County No. C 324239; appeal, Ariz. Ct. App. No. 1-CA- Civ. 3592. This is the original state suit by the largest taxpayer in Chinle District. Again, Apache County cross-claimed against Chinle District and the State of Arizona and brought in the four other Indian reservation districts. This suit was transferred from Apache County to Maricopa County at our urging. The state judge ruled in favor of the taxpayer on the claim that the Chinle tax rate was confiscatory; he also ruled in favor of the taxpayer on a claim peculiar to this case that the type of property that Kerr-McGee owns in the district is not taxable at all under Arizona law, and he ruled in our favor on the claim that state taxing and spending for Indian education is unconstitutional. The second of these claims was taken directly to the Supreme Court of Arizona, which reversed. The first of these claims was made permanent by a consent decree upon the reaching of a settlement. Apache County alone is appealing the third claim, the basis of its cross-complaint, to the Arizona Court of Appeals, and that appeal is still pending.

c. Kerr-McGee Pipeline Corp. v. Chinle School District No. 24, Ariz. Superior Ct. Apache County No. 5170. This was also one of the original three suits, although it was never the vehicle of any particular activity. No preliminary orders were sought or obtained in this case. As part of the settlement, a consent decree was entered relieving the taxpayer of paying the second half of its 1975-76 taxes, but the prior payment of its first half taxes was confirmed.

d. Chinle School District No. 24 v. Kerr-McGee Corp., Ariz. Supreme Ct. No. 12389. This was our first attempt to get direct relief from the Arizona Supreme Court, filed at the end of November, 1975. The court heard our request in early December and declined to take the case.

e. State of Arizona v. Superior Court, Ariz. Supreme Ct. No. 12617. This was our second attempt to get direct relief from the Supreme Court, this time from the ruling that Kerr-McGee's property in the Chinle School District was not taxable under Arizona law. The Supreme Court agreed to take

this case and unanimously reversed the trial court's ruling in favor of the taxpayer. This was a key ruling in achieving a settlement. The case in now reported at 550 P.2d 626 (Ariz. 1976).

f. Arizona Public Service Co. v. Chinle School District No. 24, Ariz. Superior Ct. Maricopa County No. C 331922. Arizona Public Service Company was one of the Chinle District taxpayers which did not file suit in the fall of 1975. After the success of the other taxpayers in the preliminary rulings, it filed this suit in late April, 1976. The settlement reached provided for a permanent consent decree against the collection of the second half of this company's 1975-76 Chinle taxes, but confirmed the collection by Chinle of the first half of these taxes.

g. Another issue in the Chinle School cases was whether Indian districts are eligible for special education assistance under Public Law 83-874. This is a portion of the Impacted Areas law; it entitles a district providing special education services to handicapped children to claim 150% of their basic grant on behalf of such children. HEW took the position that this provision in the law is limited to military children only and refused to pay the aid to Indian districts. We took this question to court in the case entitled, Chinle Common School District v. Matthews, U.S.D.C. Dist. Col. Civ. No. 76-1273. The case was handled mainly by the Lawyers' Committee for Civil Rights Under Law at our request. The district court ruled in favor of our clients on October 19, 1976. The government filed an appeal but the trial judge refused to stay his ruling in the meantime.

There are still several matters in the Chinle cases which remain unsolved. In addition to the pending appeals, the most important issue is to continue to monitor the administrative effort to obtain more basic Impacted Areas aid. Efforts will probably be needed to advance federal aid payments again this year to make sure the district stays solvent. Finally, the entire Chinle controversy disclosed that the most fundamental need of the Navajo Reservation School Districts is for construction funds. In the case of Chinle, less than 40% of the children are in permanent buildings.

Colorado State Reformatory Matter

NARF was retained by an Indian inmate of the State Reformatory to represent him and other Indian inmates in negotiations with the prison administration. The inmate was a traditional Oglala Sioux who had restrictions imposed on him because of his refusal to cut his hair. After negotiations, the Colorado State Reformatory agreed to withdraw all hair regulations pertaining to Indian inmates and left the sanctions against the Indian inmates who were wearing their hair in traditional style.

Crowe, et al. v. Erickson, et al., United States District Court of South Dakota (filed December, 1972)

This suit challenges the conditions at the South Dakota State Penitentiary on constitutional grounds. At issue are the mail and censorship procedures, discipline procedures, religious practices, medical and dental services and the like, at the state penitentiary in South Dakota. Many of the issues have been the subject of consent decrees obtained during previous quarters. During the past quarter, all of those issues not yet resolved have been the subject of extensive settlement negotiations. ILSC attorneys assisting lawyers from South Dakota Legal Services have been successful in obtaining almost everything complained of in the lawsuit by way of voluntary settlement. Extensive meetings were held during the last quarter with prison officials and lawyers for the Attorney General's Office of the State of South Dakota in order to accomplish this settlement. During the next quarter, it is anticipated that the settlement will be formally and officially signed by all parties to this litigation and the lawsuit will be dismissed.

Federal Parole Matter

Based on a prior statistical analysis of the United States Parole Board practices, it is believed that Indians incarcerated in federal prisons receive disparate treatment in the granting of paroles. NARF is updating this statistical report and investigating this problem in conjunction with an attorney in Washington state with a view towards possible legal action.

Fort Berthold White Shield School

NARF, in conjunction with the Office of Civil Rights, has been doing research regarding the ineligibility of this school district for ESEA funding. The school is an on-reservation cooperative agreement public school district. The school's ineligibility for ESEA funding is the result of the annexation of portions of the White Shield District to adjacent off-reservation public school districts creating a segregated school district on the reservation. NARF has undertaken preliminary activities with respect to this matter at the request of the Office of Civil Rights. NARF and OCR have been investigating the potential effects that a challenge to the annexation would have on other on-reservation all-Indian schools. In particular, were those schools which have established school districts in conformance with reservation boundaries.

Idaho State Correctional Institute Matter

This matter involved a dispute between prison officials and Indian inmates who were required to cut their hair in compliance with the prison's hair rule. At least one of the Indian inmates refused to cut his hair since he was a follower of the traditional Sioux religion. The inmate contacted NARF for legal representation. NARF met with the Idaho State Penitentiary Warden and an Assistant Attorney General for the State of Idaho in October, 1976, and took the position that the rule was an unconstitutional infringement of freedom of religion. Since the October meeting, the warden has decided to adopt the federal hair rule and abolish the old rule.

Indian Preference Policy

NARF has continued to monitor the implementation of Indian employment preference in the Bureau of Indian Affairs and the Indian Health Service. NARF supported a change in the definition "Indian" from one-fourth degree Indian blood in a member of a federally-recognized tribe to the definition contained in the 1934 Indian Reorganization Act. The IRA defines three categories of Indians eligible for preference. The first is any member of a federally recognized tribe; the second is any person who is a descendant of a member of a federally recognized tribe who was living on a reservation on June 1, 1934; and third, any Indian of one-half degree Indian blood regardless of tribal affiliation or federal recognition. On January 2, 1977, NARF filed a lawsuit against the Indian Health Service representing an Indian who had applied for a position with IHS and the position was later cancelled and subsequently filled with a non-Indian without readvertisement or consideration of any of the Indian applicants. NARF asserts that there can be no exceptions to Indian preference as the Indian Health Service contends.

Indian Inmates of the Nebraska Penal and Correctional Complex v. Vitek, Civ. No. 72-L-156 (D. Neb. 1972)

In 1972, Indian inmates of the Nebraska State Penitentiary filed a pro se complaint in the Federal District Court charging state prison officials with widespread discrimination. In 1975, NARF undertook representation of the inmates and obtained a consent decree. As a result of the decree, Indian inmates are now entitled to wear their hair in long traditional style, have routine access to Indian religious leaders at state expense and to maintain an Indian cultural club. An affirmative action hiring plan for Indian employees and the implementation of Indian studies courses were also obtained. In May of 1976, NARF obtained a supplemental decree in this case which provided for the establishment of Indian sweat lodges throughout the prison system to be utilized as places for Indian religious worship.

Inmates of the Nebraska Penal and Correctional Complex v. Greenholtz, et al., Civ. No. 72-L-335 (D. Neb. filed November, 1972)

Indian and Mexican-American inmates in the Nebraska State Penitentiary filed pro se petitions with the federal court against the state parole board charging parole discrimination. In 1975, NARF entered the case for the plaintiffs and trial was held throughout 1975 and 1976. On July 14, 1976, the district court found that the statistical evidence was "inconclusive" and ruled against the plaintiffs. A ruling on a motion for a new trial is pending and an appeal will be taken by NARF, if necessary.

Joliet, Illinois - Child Custody Matter

An Indian couple was driving from Cleveland back to their reservation in South Dakota when their car broke down in Joliet, Illinois. The couple checked into a motel but did not have sufficient money to repair the car. Both the husband and wife went out into the community looking for work and left their 3 and 5-year-old children in the motel alone. When the child welfare authorities in Joliet became aware of the situation, they instituted neglect proceedings against the parents and took the children into protective custody. Subsequently, the authorities began proceedings to permanently terminate the parental rights of the Indian couple. Local counsel was appointed for the father and mother who, in turn, contacted NARF in an effort to get the parents' tribe to intervene in the matter, claiming that since they were members of the tribe and resided on the reservation, only the tribal court had the power to terminate the parental rights. The tribe ultimately decided not to participate in the matter and parental rights were terminated in Illinois.

Johnson-O'Malley Regulations

For the past three years, NARF attorneys have been involved in the drafting of regulations for the Bureau of Indian Affairs' Johnson-O'Malley program. JOM funds, as they are commonly referred to, are earmarked for the specific education of Indian children. During 1976, NARF provided specific assistance on the problems of contracting educational services to a variety of Indian tribes, tribal organizations, Indian-controlled schools and parent committees.

Lumberton, North Carolina - Title IV Program

This matter involved a request brought by a group of concerned Indian parents in Robeson County, North Carolina. The parents complained of an alleged misapplication and misappropriation of Part A, Title IV Indian Education monies which had been received by the Local Education Association (LEA). The LEA, in this instance, is the Robeson County School District, which is made up of 25 individual elementary and secondary schools. The Robeson County School District had received in excess of one-half million dollars a year since the inception of Title IV, Part A grants. The local parent committee is composed of 40 members, with each school's representation on the committee, pro-rated according to Indian enrollment in each school.

Following the initial request, extensive negotiations were held with the parent committee, the county school district and the Robeson County school board. The groups are now in the process of developing a set of by-laws and procedures incorporating internal checks and safeguards to insure proper expenditure of approved Title IV funds. Working with the Office of Indian Education in the Department of HEW, NARF has been able to secure the first complete audit by HEW in this school district. The audit was scheduled to begin in October.

National Indian Education Association

The National Indian Education Association is the only national organization devoted to the educational needs of Indian children. At each of its annual conventions, NARF staff attorneys have assisted the NIEA staff in conducting the Association business meetings and elections. NIEA usually holds its annual fall meeting in October and rotates the location of the meetings each year.

Nevada Prison Hair Case

In 1976, the Nevada Indian Legal Services requested NARF's assistance in negotiating the Nevada State Penitentiary with regard to obtaining a change in the prison's hair rule to permit the Indian inmates to wear traditional hair styles for cultural and religious reasons. Negotiations have been initiated and we are expecting a response from the state in the near future.

Oregon State Penitentiary and Oregon State Correctional Institution

NARF is representing the Indian inmates in these two correctional facilities in the State of Oregon. Litigation against the state's penal administrators was contemplated until the State Attorney General agreed to across-the-board negotiations on all issues including: (1) a minimum of three hours of religious time per week; (2) a revision of regulations at OSCI to allow Indian inmates to wear their hair in the traditional manner; and (3) a revision of regulations at both institutions to allow inmates to wear traditional religious medals.

Reservation School Finance

Senator James Abourezk, a South Dakota Democrat and Chairman of the American Indian Policy Review Commission, contacted NARF last year for assistance in drafting a bill which would address financial problems faced by schools located on Indian reservations.

NARF has been working with various staff members of Senator Abourezk in order to compile data on problems of financing Indian education Through this joint effort, a number of background documents were prepared on the issue.

Rocky Boy School District

The Chippewa Cree Tribe of the Rocky Boy Indian Reservation in Montana was the first Indian community to split its reservation from a larger non-Indian-controlled school district. and create its own Indian-controlled school district within the boundaries of the reservation. However, when the Rocky Boy School District was split in 1970, it was only authorized to operate a system for grades K-8. The Tribe and the Indian-controlled public school district now wants to make the public school district boundaries coterminous with the boundaries of the reservation and to split away its high school district from the non-Indian-controlled high school district. NARF represents the district in the legal problems of consolidating the district and creating its own high school district. In addition, NARF is working with the Tribal Council in drafting an education case.

Santee School District, State of Nebraska ex rel. Max W. Goetz and James F. Goetz v. Edward Lundak

Santee School District,Nebraska, is located within the Santee Sioux Reservation and contains, predominantly, non-taxable

land. The district has only a grammar school and the taxable landowners must pay a high tax levy to pay high school tuition for the Santee children to attend a neighboring district's high school. These landowners have asked the State District Court to issue a mandamus writ compelling the county school superintendent to dissolve the Santee School District pursuant to a particular state law and annex it to surrounding districts. NARF is lead counsel for the Santee School District. We, along with surrounding districts, intervened in the mandamus suit and opposed it at the hearing on October 22, 1976, in Center, Nebraska. In December the court ruled against the school districts, and all have appealed to the Nebraska Supreme Court.

Sinajini v. Board of Education, United States District Court of Utah (filed November 4, 1974)

This action was brought on behalf of Navajo children, their parents and two chapters of the Navajo Tribe of Utah to challenge discriminatory practices in the San Juan School in Utah. A consent decree was signed on August 15, 1975, in which the school district agreed to build two new high schools in areas of Indian population in the district, reallocate instructional and operational expenditures in the district and revise the district's bilingual education plan. The consent decree provided that the district must report at periodic intervals in their compliance with the plan. Most of the work in this matter in the past year has been involved in monitoring and evaluating the progress of the districts in complying with the consent decree, including evaluating the district's bilingual education plan.

Sisseton Public School Support

The Sisseton Public School System receives over $350,000 of Johnson-O'Malley funds for basic support. Under the recent amendment to the Johnson-O'Malley law, the district must obtain the consent of the Indian parents before they can receive the money. Indian parents have taken a position that before the public school district can receive the money, it must agree to provide in-service training to teachers on Indian history and culture; allow Indian and non-Indian community use of the school facilities after school hours; and develop grievance procedures to hear the complaints of the Indian students. Initially, the district refused to negotiate with the parents, but because the $350,000 was 25% of the district's operating budget, the district was forced to negotiate. After extensive negotiations, the school district and parent committee were able to agree on the conditions under which the basic support funds will be made available to the district.

South Dakota Alternatives to Incarceration Project

Because of the highly disproportionate number of Indians in prisons and the lack of rehabilitative programs geared to the special needs of Indians, NARF has been exploring alternatives to incarceration of Indians in prisons for at least the last three years. In 1975, at NARF's request, the Cheyenne River Sioux Tribal Council in South Dakota agreed to operate such a program and to provide the facilities for operation. The Tribe has plans to use an abandoned Job Corps center for such a project.

The Cheyenne River Sioux Tribe worked with NARF and an independent consulting firm during 1976 in order to develop a comprehensive feasibility study on an alternative method of incarceration. The feasibility study was completed in December, 1976, and circulated to the Tribe, the Law Enforcement Assistance Administration (LEAA), which is the funding agency for the study, and to corrections personnel in the five-state area to be served initially by the Project.

A majority of NARF's corrections efforts in 1977 will revolve around the development of an operational manual for the South Dakota Alternatives to Incarceration Project. NARF will continue to serve as legal counsel to the Tribe on this project.

Todd County School District

The Education Committee of the Rosebud Sioux Tribe and Indian parents on the reservation contacted NARF concerning education problems Indian children have with the Todd County School District. Those problems include: the lack of a bilingual program; unfair and unequal treatment of Indian students; the lack of due process in disciplinary proceedings; tracking; and discrimination in teacher and paraprofessional hiring and firing. In addition, the district is concerned about problems with the control of Johnson-O'Malley funds from the previous year. NARF assisted in filing a complaint with the Office of Civil Rights of the Department of Health, Education and Welfare pointing out the alleged violations of Indian students' civil rights by the district. Once the Office of Civil Rights finishes the investigation, the Indian parents and Education Committee will be in a position to take further courses of action.

Union School - Tulsa, Oklahoma

NARF was called upon to advise the Title IV parent committee concerning several violations of the Title IV regulations on the part of the school district. Many of the problems have

been resolved through negotiations between the parent committee and the school district administrators. NARF has continued to be involved in monitoring the operation of the Title IV program.

United Scholarship Service

The United Scholarship Service is a private Indian education organization providing assistance for students in higher education programs. The Native American Rights Fund had assisted the United Scholarship Service on problems including corporate reorganization and amendments to its charter and bylaws.

Yankton Sioux Tribe

The Yankton Sioux Tribe requested NARF to provide legal assistance and advice to parent committees now being formed under various federal laws concerning education of Indian children. In the past, the committees were unable to obtain the necessary budgets and other documents from the school superintendent and have generally been obstructed in the performance of their duties by the school officials. NARF was asked to obtain budgets from the school superintendent, investigate suspected abuses of these federal funds and advise the parent committes of their powers under federal law.

ACCOUNTABILITY

Summary of Major Cases and Activities

Alaska Native Association of Oregon v. Morton, (ANAO) United States District Court for the District of Columbia (filed December 3, 1973).

In this litigation NARF represents an organization of non-resident Alaska Natives in Oregon, In 1973 ANAO challenged the decision of the Secretary of Interior that the election conducted among non-resident Alaska Natives resulted in a vote not to establish the 13th Regional Corporation pursuant to the Alaska Native Claims Settlement Act. In December 1974, the District Court agreed with our arguments that the Secretary of Interior had acted illegally in making its decision but did not order a new election as our clients requested. Rather, the court ordered the Secretary of Interior to create the 13th Regional Corporation. In 1975, the dispute was over how the incorporators, who would become the interim board of directors, were to be selected and the restrictions that would be placed on this interim board of directors. The court agreed with our clients that the only fair way to select the incorporators would be by polling the non-resident shareholders. In December 1975, five interim directors were elected and the 13th Regional Corporation decided to hold the first shareholders' meeting in Salt Lake City at the end of January 1976. Our clients challenged the results of the first shareholders' meeting on the grounds that the interim directors were not able to obtain a quorum of shareholders. In March 1976, the court agreed with ANAO and voided the first shareholders' meeting and instructed all counsel to develop procedures for the conducting of the second shareholders' meeting. The second shareholders' meeting was successfully conducted in Seattle, Washington in July 1976, and the 13th Regional Corporation is now operating.

Cachil Dehe Band of Wintun Indians v. Bill, Civ. No. S74-639.

The case is an action in the Federal District Court for the Eastern District of California for a declaration as to an Indian tribe's right to revoke a tribal member's membership in the tribe. Plaintiff is the Colusa Indian Community Council, Defendant is a member of the Wintun Tribe.

The defendant counterclaimed for damages suffered by him when the Tribe sought to deny him federally protected civil rights in violation of the Indian Civil Rights Act, 26 U.S.C. § 1308. Cross motions for partial summary judgment on various grounds, including various constitutional claims were filed. The court denied both parties' motions for partial summary judgment. However, both parties have filed renewed motions for partial summary judgment, defendant relying on the theory of equitable estoppel as the basis for summary judgment in his favor. Basically, the claim is that the Tribe had previously recognized, and does now, recognize defendant's right to vote in Tribal elections, and therefore, the plaintiff Tribe is now prohibited from denying membership to defendant.

The new cross motions for summary judgment are to be heard by the court soon. If the motion filed by defendant is granted there will likely be a dismissal of the damages complaint against the Tribe.

Goodluck v. Apache County, 417 F. Supp. 13 (D. Ariz. 1975), U.S. Supreme Court.

This action was a three-judge court case to reapportion the Apache County Board of Supervisors of Apache County, Arizona. The case was originally brought by DNA, a legal services program. Plaintiffs prevailed in the case. Apache County then appealed the decision to the United States Supreme Court, and NARF handled the appeal as an Indian Law Support Center matter.

In July, 1976, NARF filed a printed motion to dismiss or affirm the lower court's decision. Prior to this action being filed, the Apache County Board of Supervisors was extremely malapportioned to assure that Indians' votes were greatly diluted. About 75 percent of the county population is Indian; after reapportionment, two of the three districts are located entirely on the Navajo Reservation. The election in November resulted in a Navajo-elected majority of the Board of Supervisors. In its defense, the county raised questions of the participation in state government of reservation Indians exempt from many state laws. It claimed that reservation Indians cannot, constitutionally, be permitted to vote, hold state offices or be counted for apportionment of state legislative offices and that the Indians would abuse their tax exempt status by overtaxing non-Indian citizens of the county. The trial court rejected these claims. The United States Supreme Court affirmed the decision in October 1976.

Susenkewa v. Kleppe, United States Supreme Court (filed May 1971).

Hopi traditional and religious leaders filed suit against the Secretary of Interior and a coal company seeking to set aside the Secretary's approval of a coal strip mining lease by the Hopi Tribal Council. The suit is based on violations of the Tribal constitution, including the lack of leasing authority and the lack of a duly constituted Tribal Council. The Federal District Court in Arizona and the Ninth Circuit Court of Appeals dismissed the suit for failure to join indispensable parties, particularly the Hopi Tribal Council, which it held, was not subject to suit. The case was appealed to the United States Supreme Court, but in March 1976, the Court declined to review the case.

Trenton Indian Service Area.

Some 1,600 members of the Turtle Mountain Chippewa Band of North Dakota received allotments years ago in public domain land several miles west of the reservation because of a shortage of reservation land. Although they were guaranteed all rights and privileges as Tribal members, they have been receiving only limited services from the Bureau of Indian Affairs. NARF assisted the allottees, organized as the Fort Buford Development Corporation, in having the geographic location of these allotments declared a service area eligible for BIA services. NARF is presently assisting the Trenton Indian Service Area in securing HUD housing for its members. HUD is concerned about who has jurisdiction over the trust lands: The Turtle Mountain Chippewa Band or the state and county officials. As a result of HUD's concern, the Trenton Indian people have been denied housing.

Wopsock v. Kleppe (United States District Court, Utah) August 8, 1975.

Individual members of the Ute Tribe, including three of the six members of the Business Committee of the Ute Tribe of the Uintah and Ouray Reservation challenged the validity of the Ute Indian Deferral Agreement which attempts to defer the Ute Tribe's right to irrigate 15,242 acres of land to the year 2005 so that the deferral of water can be diverted into the Salt Lake City area as part of the Central Utah Project. On November 17, 1975, the Court denied the plaintiff's Motion for Preliminary Injunction to halt construction of the Central Utah Project. On August 17, 1976, the Court dismissed the plaintiff's complaint on the grounds that they

do not have standing to bring the action and the United States and the Ute Tribe were indispensable parties which could not be joined. An appeal is now being prepared to the United States Court of Appeals for the Tenth Circuit.

INDIAN LAW DEVELOPMENT

Summary of Major Activities

National Indian Law Library

The National Indian Law Library (NILL) is a repository and clearinghouse for Indian legal materials and resources. NILL serves any organization or individual who has an interest in legal matters relating to Native Americans. During 1976, NILL has done extensive work in developing and publishing the cumulative NILL Catalogue. The 1976 edition serves as a comprehensive index to Indian legal materials and resources. There were a total of 558 Catalogues distributed during 1976. In addition to the Catalogue, NILL has also published two supplements which brought the total number of holdings to 2,100.

NILL has a variety of other duties in addition to inventorying and distributing the Catalogue; since 1972, NILL has published and circulated the Decisions of the Indian Claims Commission. These decisions contain information on the development of Indian law and the history of federal-Indian relations. The decisions are also of immense interest to those tribes with claims still pending before the ICC. Although the ICC has been adjudicating Indian claims since it was established in 1946, their decisions have never been widely available or indexed for public use.

During the past year, NILL prepared a 1976 cumulative supplement to the Index of the Indian Claims Commission Decisions. The materials from Volumes 37 and 38 was indexed, and cumulated into the 1975 supplement and distributed. The cumulative supplement now includes material in Volumes 30 through 38 and covers the period from March 14, 1973 through August 6, 1976.

NILL staff has also been distributing sets of a volume entitled, "Justice and The American Indian"; these were prepared by the National American Indian Court Judges' Association. The Association has asked NILL to revise the volume dealing with Public Law 280 and to do another reprinting of the earlier volumes. In addition, the Judges' Association has approached NILL about reprinting and distributing, at cost, a case book that they published last year for use by Indian tribal judges.

During the past year, NILL answered nearly 1,800 requests for information and materials. The number of user requests was down considerably from 1975 due to the publication of the Catalogue which is self-contained. Persons who usually would write or call for information can now refer to the Catalogue and request case opinions, briefs and other legal materials

directly from the nearest law library. If the material is not a legal document, then users can refer to the nearest city or university library for information.

NILL staff initiated an active campaign last year to upgrade the law library for NARF's Washington, D.C. office. This project was necessary in order to replace law books which were removed by a law firm which vacated the office. Over 100 letters were sent to law libraries across the country asking for donations or books which could be purchased at a reduced rate. There were six libraries which responded with useful donations; most of the libraries contacted gave no response.

Indian Law Support Center

NARF serves as a central support center for legal services organizations around the country which have cases involving Indian clients. NARF receives a grant from the federal government, the same source of funding for legal services programs. NARF provides a variety of services to these field programs, including: 1) letter and telephone advice when requested; 2) furnishing legal materials; 3) legal research; 4) field consultation; 5) preparation of draft pleadings; 6) analysis of pleadings; and 7) analysis of legislation. This type of general assistance is provided in addition to NARF's role as co-counsel or lead counsel with legal services groups on a number of cases. The Indian Law Support Center receives an average of 50 requests per month and last year responded to 672 requests from legal services programs.

American Indian Policy Review Commission

Two NARF attorneys served as task force members with the American Indian Policy Review Commission during 1976. This Commission was a Congressionally-created body which was obligated to do an extensive survey of the status of Indian affairs and the laws and documents which have governed the lives of American Indians for decades. The two attorneys who served as task force members ended their work with the Commission in September, 1976. Another staff attorney, who joined the NARF staff in late 1976, served as a task force specialist with the Commission. In May of 1976, the Task Force on Jurisdiction requested a consultant's report on the status of Indian taxes from NARF. A report was prepared by NARF attorneys summarizing the law on tribal, state and federal taxation and recommending that no legislative action be proposed except in the area of establishing the right of tribes to pre-empt the state taxes over resource development. Task Force No. 9 of the American Indian Policy Review Commission also asked NARF to prepare a

report dealing with the issue of attorneys' fees for Indians and Indian tribes involved in various types of litigation. That report was prepared. It included recommendations and suggestions for legislation. The report was included in the File Report for Task Force No. 9. The final, comprehensive report of the Commission is expected to go to Congress in the spring of 1977.

Cohen Revision

This matter involves an effort to put together a competent editorial staff to revise Felix Cohen's Handbook of Federal Indian Law. NARF staff attorneys have assisted in this effort which is being pursued by the American Indian Law Center at the University of New Mexico. The Law Center has recruited a tentative editorial board and has been trying to obtain funds to pay for the textbook revision. A meeting was held in Albuquerque in September, 1976, at which time the basic structure of the revision was agreed upon and tentative chapter assignments were made.

Conferences and Organizational Assistance

NARF staff attorneys were asked to participate in numerous conferences and strategy sessions conducted by Indian organizations throughout the United States. Among those organizations assisted during 1976 were: the National Indian Education Association, the National Tribal Chairmen's Association, the American Indian Law Students Association, the National Congress of American Indians and the American Indian Lawyer Training Program.

Staff attorneys also made presentations at meetings of: the Federal Bar Association, the National Association of State Legislators, the National Council on Philanthropy, the Nebraska Civil Liberties Union, the Seven-States Association of Community Health Representatives and numerous other groups.

Several papers were also presented at colleges and universities including; Chadron State College, the University of Colorado, as well as the Rocky Mountain Mineral Law Institute.

NARF Documentary

A documentary film project was begun on NARF activities during the spring of 1975. The film is being funded by the Ford Foundation and will be used for educational and fund raising purposes when completed. It is anticipated that the documentary

will be finished by the spring of 1977. Two copies of the film will be given to NARF for use and the Ford Foundation will handle commercial promotion and make the film available on a rental basis to various outlets. The Foundation may also try to promote a television showing.

National American Indian Cattlemen's Association

NARF has continued to assist the National American Indian Cattlemen's Association on a variety of occassions. NARF has sponsored meetings of the group and has advised them on legal issues. The Association is organized to conduct, engage in and carry on activities and programs necessary for the betterment of the Indian cattle industry in the United States. NARF also assisted the Association in securing a grant from the National Bicentennial Commission to sponsor an All-Indian National Finals Rodeo and Festival at the Salt Palace in Salt Lake City, Utah during the first week in November, 1976.

D-Q University Matter

During the early part of 1976, NARF drafted a bill for D-Q University in California for the purpose of securing unqualified fee simple title to the lands now held by the University under conditional grant from the United States. Because of certain provisions in the conditional grant, the grant was, in effect, self-defeating; making it impossible for the University to comply with all conditions by the October deadline it required. D-Q was notified by the federal government that it intended to exercise its right of re-entry subsequent to the October deadline as to all or part of the lands, if all conditions were not met. The bill, as drafted by NARF, was introduced in June, 1976. Expedited hearings on the bill have been requested, but no date has been set at this time.

Tribal Codes and Constitutions

NARF's work in helping to develop the Menominee Constitution and By-Laws nearly drew to an end in 1976 with the adoption of a new Tribal constitution by the Tribe in November, 1976. The Constitution must still be approved by the Secretary of the Interior and some follow-up work is anticipated during the early part of 1977. In addition to the work of the Menominees, NARF also provided assistance to the Lac Courte Oreilles Band of Chippewa Indians of Wisconsin in the development of a Tribal Court Code and reviewed and commented on a Tribal Fishing and Hunting Code for them. NARF also continued to assist the Lower

Sioux Community in the development of their constitution and by-laws and has recently been called upon to assist the Northern Cheyenne Tribe in the development of a Tribal police commission.

Other Activities

NARF has also been asked to participate in several energy, water and resource conferences held in the Western states during this past year. Staff attorneys have ususally prepared papers and presented comments at these meetings.

TREASURER'S REPORT

The Native American Rights Fund, Inc. had an operating budget of slightly more than $1.2 million in fiscal year 1976. This amounted to a 12.7% increase from the previous year.

The source of these funds included private foundations, governmental agencies, religious institutions, corporations and private individuals. The size of their gifts ranged from one dollar to grants for several thousand dollars. This combination provided the necessary support to effectively operate a successful national Indian law firm. NARF and its clients are grateful to its many benefactors.

For the year, private foundations provided 58% of NARF's operational support, government and public institutions 30.8% and the general public 11.2%. During the previous fiscal year these same categories of support were 75%, 21% and 5%. This change in funding sources is very sharp for just one year and may indicate a new direction in revenue sources.

A list of all 1976 supporting foundations, public grant sources, corporate contributions and individual donors who gave gifts of $100 or more in included at the end of this report.

A review of expenditures for the year shows how these funds were allocated.

Litigation and Client-Related Services	70.2%
National Indian Law Library	6.2%
Management and General	15.2%
Fund Raising	8.4%

This breakdown is well within the normally accepted guidelines with more than 76% of each dollar going directly to client or library services.

However, compared to the past year, the Fund Raising, Management and General functions increased by 5%. This percentage rise can be attributed to some definite factors that occurred during the year.

First, the current economic conditions had caused many foundations, corporations and other supporters to reduce the size of, or to eliminate, their gifts. This necessitated seeking other funding sources to supplement the cutbacks. As a result, NARF personnel must spend more time and energy raising money. The result is lower return for effort and a higher rate for fund raising costs.

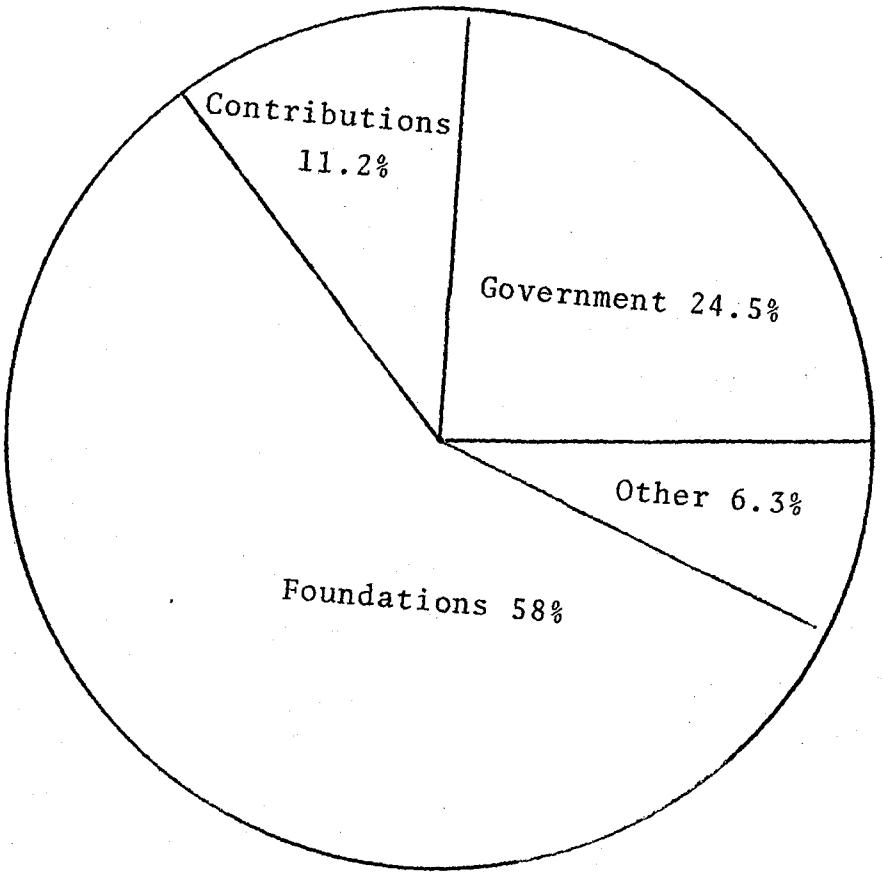
A small, but growing part of the fund raising is the direct mail program. While only in its fifth year, the project has shown a steady return, but like so many other areas, inflation has increased the operating costs making the price of riasing a dollar more expensive.

The increased spending in management is largely due to the absorption of renovation costs for the Washington, D.C. building and for the 1522 Broadway building in Boulder which could not be capitalized or passed along to grantors. Hopefully, the costs for the renovation of the Washington, D.C. building will be off-set over the next few years by rental income on the building, but it does show management at a spending at a disadvantage this year.

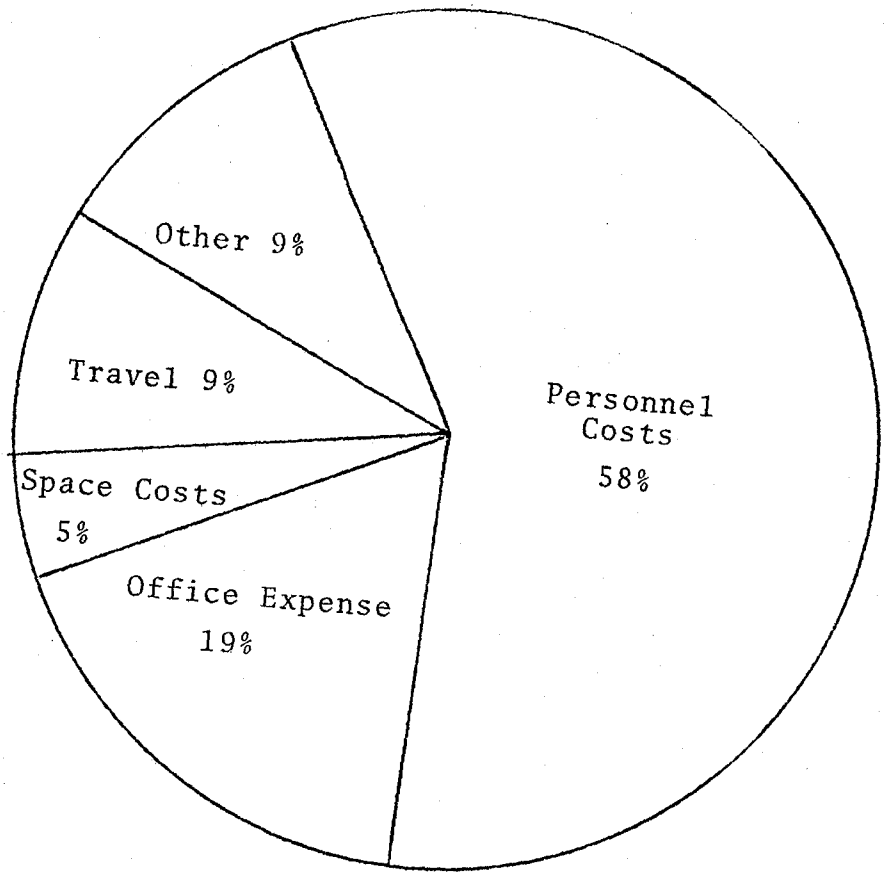
A smaller, but substantial part of the management percentage increase is due to the addition of more management staff positions (technical writer, one full-time bookkeeper), but this will not contribute to a very large percentage increase in future years.

An analysis of budget line expenditures for 1976 reveals a similar spending pattern to that of 1975.

BUDGET EXPENSE CATEGORY	FY 76	% of TOTAL	FY 75	% of TOTAL
Salaries and Wages				
Professional Staff	$421,068	34	$322,534	30
Support Staff	215,410	18	220,930	20
Fringe Benefits	73,979	6	52,512	5
Total Salaries & Related Costs				
Contract Fees & Consultants	43,920	58	79,682	7
Travel	114,552	9	108,455	10
Space Cost	54,551	5	52,137	5
Office Expenses	229,416	19	194,562	18
Equipment Maintenance & Rental	13,538	1	6,597	1
Litigation Costs	27,438	3	28,819	3
Library Costs	12,854	1	8,709	1
Expenses Before Depreciation	1,206,723		1,074,937	
Depreciation	19,171		12,479	
TOTAL EXPENSES	$1,225,894		$1,087,416	



SUPPORT and REVENUE



EXPENDITURES

Over half of NARF's costs were in personnel-related areas. Almost a fifth (19%) of the charges were for office expenses, representing the second largest category. Travel at 9% and space costs at 5% followed. Noteworthy is the small proportional variation in line item spending between the two years, the greatest being 4%.

On September 30, 1976, the balance for all NARF funds was $761,538. Of this amount, $136,201 was restricted monies for specific grants and $250,943 was unrestricted funds. The balance, $374,394, was the value of NARF's land, buildings and equipment, less depreciation.

The unrestricted fund balance had a net increase of $39,503 from the beginning of the year. This amount, however, was less than the gain from the prior year and reflects an alarming trend of using unrestricted monies to subsidize the operation of programs funded by restricted monies, or even worse, using these vital monies to operate programs that have not been refunded but must be continued by NARF due to responsibility to our clients.

During the year, there were seventeen and three-fourths attorneys working for NARF. With an operating budget of $1.2 million, the per attorney cost was $67,605. This figure represents all costs, direct and indirect, that are associated with supporting an attorney. This amount is somewhat high, almost five thousand more than the previous year, and can be explained by the extraordinary building costs that have been stated earlier. It is estimated that for 1977 the per attorney cost should average $65,000. Projecting this figure with the full twenty-attorney staff would mean a budget of $1.3 million for FY 77.

IRS Classification

NARF is a non-profit charitable corporation which was incorporated under the laws of the District of Columbia on July 14, 1971. On July 20, 1971, NARF was classified by the Internal Revenue Service as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. On February 5, 1973, NARF was classified as an organization that is "not a private foundation" as defined in Section 509(a) of the code because it is an organization described in Section 170(b)(1)(A)(VI) and 501(a)(1). This classification, which remains in effect indefinitely unless NARF substantially alters its operation, relieves private foundations of expenditure responsibility for grants they may make to the Native American Rights Fund.

Public Information and Fund Raising Policies

NARF's public information and fund raising staff for public solicitations, foundation, governmental and corporate activities consists of salaried employees. During 1976, NARF retained data management consultants on a limited basis to advise on the maintenance of NARF's donor records and the use of public solicitation lists. No percentage inducements were offered or paid to these individuals. Although NARF engages in direct mail solicitation, it does not send unsolicited merchandise of any kind as an inducement to contribute.

During 1976, NARF's direct mail program experienced steady growth in both donors and income. Gross receipts were $102,176; $26,740 was the net income after expense. The donor file increased by 3,600 to over 10,000 contributions. These 3,600 new donors represent a substantial future revenue stream from renewed gifts, which NARF can rely on for several years to come.

Each contribution is recorded and each individual donor receives an official receipt for the contribution. NARF retains permanent records of all such gifts and makes available to the donor, upon request, a record of his or her individual contribution, including the date and amount of each gift.

Trademark, Publications and Certificate of Authority

NARF's name and logo is registered with the U.S. Patent Office and it is NARF's policy to defend its name and logo vigorously against unauthorized use by others.

The Native American Rights Fund, Inc. operates under a Certificate of Authority for a Foreign Non-Profit Corporation in the State of Colorado.

The report of Price Waterhouse and Co., Independent Certified Public Accountants, on NARF's financial statements, including a statement of revenues, expenditures and changes in fund balance, as well as supplemental notes and information as of September 30, 1976, is included at the end of this report for those readers who wish a more detailed analysis of the financial picture of 1976.

NATIVE AMERICAN RIGHTS FUND, INC.

FINANCIAL STATEMENTS

SEPTEMBER 30, 1976

Price Waterhouse & Co.

Price Waterhouse & Co.

2300 COLORADO NATIONAL BUILDING
DENVER, COLORADO 80202
303-571-1144

November 16, 1976

To the Steering Committee of
Native American Rights Fund, Inc.

In our opinion the accompanying balance sheets and the related statements of support, revenue, expenses and changes in fund balances and of functional expenses present fairly the financial position of Native American Rights Fund, Inc. at September 30, 1976 and the combined financial position for all funds at September 30, 1975, the results of its operations and changes in fund balances for the year ended September 30, 1976 and such combined results and changes for all funds for the year ended September 30, 1975, in conformity with generally accepted accounting principles consistently applied. Our examinations of these statements were made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Price Waterhouse & Co.

NATIVE AMERICAN RIGHTS FUND, INC.

BALANCE SHEETS

	September 30, 1976			Total all funds	
	Current funds		General fixed	September 30,	September 30,
	Unrestricted	Restricted	asset fund	1976	1975
ASSETS					
Current assets:					
Cash	$ 70,731			$ 70,731	$ 3,429
Marketable securities, at market in 1976 and at cost in 1975 (Note 2)	172,737			172,737	318,536
Grants receivable		$ 79,102		79,102	14,560
Other receivables	54,459			54,459	18,741
Prepaid expenses	10,115			10,115	11,800
Interfund receivable (payable)	(57,099)	57,099			
Total current assets	250,943	136,201		387,144	367,066
Property and equipment, at cost (Notes 1 and 4):					
Land and buildings			$313,938	313,938	140,135
Improvements to land and buildings			29,778	29,778	5,915
Office equipment and furnishings			76,695	76,695	67,245
Automobile			4,220	4,220	4,220
			424,631	424,631	217,515
Less - Accumulated depreciation			(50,237)	(50,237)	(33,100)
Net property and equipment			374,394	374,394	184,415
Investment in restricted common stock (Note 2)					18,000
	$ 250,943	$136,201	$374,394	$761,538	$569,481
LIABILITIES AND FUND BALANCES					
Current liabilities:					
Current portion of mortgages and notes payable			$ 8,365	$ 8,365	$ 2,960
Accounts payable	$ 41,366			41,366	28,346
Accrued expenses (Note 3)	74,099			74,099	38,667
Total current liabilities	115,465		8,365	123,830	69,973
Mortgages and notes payable (Note 4)			230,455	230,455	117,252
	115,465		238,820	354,285	187,225
Fund balance (Note 5)	135,478	$136,201	135,574	407,253	382,256
	$ 250,943	$136,201	$374,394	$761,538	$569,481

See notes to financial statements.

NATIVE AMERICAN RIGHTS FUND, INC.

STATEMENTS OF SUPPORT, REVENUE, EXPENSES AND CHANGES IN FUND BALANCES

	Year ended September 30, 1976			Total all funds	
	Current funds		General fixed	Year ended September 30,	
	Unrestricted	Restricted	asset fund	1976	1975
Support and revenue:					
Grants received		$1,032,411		$1,032,411	$1,110,011
Contributions	$140,026			140,026	72,978
Other (Note 2)	78,454			78,454	61,840
Total support and revenue	218,480	1,032,411		1,250,891	1,244,829
Expenses:-					
Program services:					
Litigation and client services	49,197	801,243	$ 14,570	865,010	825,810
National Indian Law Library	4,585	70,361	1,342	76,288	63,858
Total program services	53,782	871,604	15,912	941,298	889,668
Support services:					
Management and general	31,058	146,988	2,876	180,922	122,360
Fund raising	81,302	21,989	383	103,674	75,388
Total support services	112,360	168,977	3,259	284,596	197,748
Total expenses	166,142	1,040,581	19,171	1,225,894	1,087,416
Excess (deficiency) of support and revenue over expenses	52,338	(8,170)	(19,171)	24,997	157,413
Other changes in fund balances:					
Acquisition of fixed assets	(72,298)	(11,255)	83,553		
Reduction in mortgage payable	(6,989)		6,989		
Returned to grantor					(3,442)
	(79,287)	(11,255)	90,542		(3,442)
Fund balance, beginning of year	162,427	155,626	64,203	382,256	228,285
Fund balance, end of year	$135,478	$ 136,201	$135,574	$ 407,253	$ 382,256

See notes to financial statements.

NATIVE AMERICAN RIGHTS FUND, INC.

STATEMENTS OF FUNCTIONAL EXPENSES

	Year ended September 30, 1976							
	Program services			Support services			Total expenses	
	Litigation and client services	National Indian Law Library	Total	Management and general	Fund raising	Total	Year ended September 30, 1976	1975
Salaries and wages:								
Professional staff	$335,273	$29,046	$364,319	$ 50,331	$ 6,418	$ 56,749	$ 421,068	$ 322,534
Support staff	149,027	14,195	163,222	44,470	7,718	52,188	215,410	220,930
Fringe benefits	60,175	3,333	63,508	9,299	1,169	10,468	73,976	52,512
Total salaries and related costs	544,475	46,574	591,049	104,100	15,305	119,405	710,454	595,976
Contract fees and consultants	26,389	222	26,611	10,361	6,948	17,309	43,920	79,682
Travel	88,531	2,174	90,705	20,566	3,281	23,847	114,552	108,455
Space costs	29,296	738	30,034	23,964	553	24,517	54,551	52,137
Office expenses	113,340	21,791	135,131	17,481	76,804	94,285	229,416	194,562
Equipment maintenance and rental	9,903	1,960	11,863	1,477	198	1,675	13,538	6,597
Litigation costs	27,438		27,438				27,438	28,819
Library costs	11,068	1,487	12,555	97	202	299	12,854	8,709
Expenses before depreciation	850,440	74,946	925,386	178,046	103,291	281,337	1,206,723	1,074,937
Depreciation (Note 1)	14,570	1,342	15,912	2,876	383	3,259	19,171	12,479
Total expenses	$865,010	$76,288	$941,298	$180,922	$103,674	$284,596	$1,225,894	$1,087,416

See notes to financial statements.

NATIVE AMERICAN RIGHTS FUND, INC.

NOTES TO FINANCIAL STATEMENTS

SEPTEMBER 30, 1976

NOTE 1 - ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES:-

Organization:

Native American Rights Fund, Inc. (NARF) was organized in 1971 under the nonprofit corporation law of the District of Columbia and has a primary objective of providing legal representation, assistance and education to Native American people. NARF derives financial support from private foundations, the United States Government and from public contributions.

NARF is a tax-exempt organization as described in section 501(c)(3) of the Internal Revenue Code and as such is subject to federal income taxes only on unrelated business income.

Revenues:

Revenues are recorded when funds are received except for grants which provide for reimbursement of costs expended. Revenues from these grants are recorded when such reimbursable costs are incurred. Contributions of marketable securities or other in-kind contributions are recorded as revenues at their estimated fair market value at the date of contribution. Significant declines in market value which cause the recorded value of marketable securities to exceed market value are recorded as charges against revenue.

Allocation of expenses:

Expenses are allocated to grants based on related professional legal time devoted to projects except where expenses are specifically identifiable with a particular grant or project.

Professional staff:

Personnel classified as professional staff in the Statement of Functional Expenses include attorneys and office management personnel.

Fund raising:

Fund raising expenses are comprised of costs associated with contribution revenue as well as grants from private foundations and governmental agencies.

Property and equipment:

Purchases of property and equipment and payments on the mortgage liability are expenditures of the current funds. Such expenditures are treated as transfers to the general fixed asset fund and the net additions to such fund consist of the following:

	September 30, 1976	1975
Purchase of land and building	$173,803	
Less - Mortgage and notes payable	125,597	
Net additions	48,206	
Purchase of office equipment	11,484	$12,893
Principal payments on mortgage	6,989	2,713
Improvements to land and buildings	23,863	4,195
Net additions to general fixed asset fund	$ 90,542	$19,801

Depreciation:

Depreciation is computed over the estimated useful lives of the assets using the straight-line method for buildings and the declining balance method for other property and equipment.

NOTE 2 - MARKETABLE SECURITIES AND INVESTMENT IN RESTRICTED COMMON STOCK:

At September 30, 1976 marketable securities consist of marketable corporate securities and at September 30, 1975 consists of marketable corporate securities and mutual fund shares. These investments are stated at market value at September 30, 1976 which is approximately $17,000 less than cost. At September 30, 1975 such investments were stated at cost which approximated market. Net realized gains on sales of marketable securities were approximately $29,000 during 1976 and $9,000 during 1975.

The investment in restricted common stock at September 30, 1975 consisted of 9,000 shares of Elixir Industries unregistered common stock which had a market value of $34,875 at that date. Such stock was sold during fiscal year 1976 and a gain of approximately $18,000 was realized.

NOTE 3 - RETIREMENT PLAN:

During 1975 the Steering Committee of NARF authorized the establishment of a retirement plan for the full-time employees and a contribution to a plan by NARF of 5% of gross salaries of covered employees. Accordingly, $29,030 and $17,631 was recorded as an expense and liability for the periods ended September 30, 1976 and 1975, respectively. During the period ended September 30, 1976, $1,379 was paid to employees who terminated employment during the year. As of September 30, 1976, a plan has been approved by the Steering Committee but the accrued liability has not been funded.

NOTE 4 - MORTGAGES AND PROMISSORY NOTES PAYABLE:

Long-term debt consisted of the following:

	September 30, 1976		1975
	Current portion	Total	Total
Mortgage loan payable in equal monthly instalments of $1,113, including interest at 8 3/4%, through May, 1983, with a final principal payment of $89,491 due in June, 1983. Secured by land and building	$3,231	$117,252	$120,212
Mortgage loan payable in equal monthly instalments of $482, including interest at 5 1/2%, through March, 1985. Secured by land and building	3,517	42,809	
Promissory notes payable in equal monthly instalments of $720, including interest at 9%, through October, 1985, with the remaining principal due November, 1985. Secured by land and building	1,617	78,759	
	$8,365	238,820	120,212
Less - Current portion of long-term debt		8,365	2,960
		$230,455	$117,252

NOTE 5 - RESTRICTED FUND BALANCE:

The restricted fund balance consisted of the following individual grant balances:

	September 30, 1976	1975
Ford Foundation	$ 12,449	$ 3,387
Carnegie Corporation of New York	100,607	36,909
Legal Services Corporation	22,182	
Department of Health, Education and Welfare, Office of Native American Programs		102,163
Donner Foundation		7,794
Field Foundation		3,912
Laras Fund	963	1,047
Bureau of Indian Affairs		414
	$136,201	$155,626

NATIVE AMERICAN RIGHTS FUND

CONTRIBUTORS 1976

Foundations	Grant Purpose
Carnegie Corporation of New York	Indian Lawyer Intern Project
Donner Foundation	Assistance to Hawaiian Coalition of Native Claims
Field Foundation	Southwest Indian Environmental Project
Ford Foundation	General Support
Ford Foundation	Indian Education Legal Support Project
Lilly Endowment, Inc.	Eastern Indian Legal Support Project

Religious, Governmental and Public Institutions	Purpose
Community Corrections Resource Programs	Feasibility Study For An Alternative Corrections Center
Department of Health, Education and Welfare	Indian Education Legal Support Project
Department of Health, Education and Welfare	National Indian Law Library and Indian Technical Assistance Project
Department of Health, Education and Welfare	South Dakota Alternatives to Incarceration
Legal Services Corporation	Indian Law Support Center
National Indian Lutheran Board	Central Utah Project - Evaluation for Tribal Members
Skagit System Cooperative	Treaty Rights Regarding Potential for Fisheries Development

Religious, Governmental and Public Institutions (cont.)	Purpose
University of Colorado	Indian Law Backup Center

Corporations	Purpose
Weissbrodt and Weissbrodt	General Support

Individual Contributors over $100	Purpose
Mrs. Hilda Aarons	General Support
Mr. Scott Abbott	General Support
Ms. Pauline E. Ahl	General Support
Mr. Arthur Albert	General Support
Amerika Haus Berlin	General Support
Mr. David H. Anderson	General Support
Mr. Dwight L. Arnold	General Support
Mrs. Fanny H. Arnold	General Support
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Frank C. Baldwin, M.D.	General Support
Ms. Florence L. Becker	General Support
Ms. Florence B. Beresford	General Support
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Ms. Nettie Tamler, Tamler Foundation	General Support
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Mr. Frank H. Teagle, Jr.	General Support
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Mr. Raymond S. Thompson	General Support
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Mrs. Vera Whaley	General Support
Mrs. Maria White	General Support
Ms. Suzanne C. Wilson	General Support

Individual Contributors over $100	Purpose
Mr. Alan Winslow	General Support
Mrs. Julie D. Winslow	General Support
Ms. Mary Young	General Support

NATIVE AMERICAN RIGHTS FUND

Professional Staff

Thomas W. Fredericks is the Director of the Native American Rights Fund. Mr. Fredericks is a Mandan-Hidatsa Indian from the Fort Berthold Reservation in North Dakota. He served as Deputy Director from April, 1974 until his appointment as Director. He has had considerable experience in tribal government and in resource management. He is also currently serving as President of the American Indian Lawyers' Association and Vice-President of the Native American Technical Assistance Corporation.

B.S., Minot State College, 1965; J.D., University of Colorado School of Law, 1972. Teacher, Bowbells High School, Bowbells, North Dakota (1965-1966); Tribal Administrator, Standing Rock Sioux Tribe, Fort Yates, North Dakota (1966-1969); Native American Rights Fund (May, 1972 to present). Member of the Bars of Colorado and North Dakota.

John E. Echohawk is a Pawnee and a past Director of Native American Rights Fund. He was the first graduate of the University of New Mexico's special program to train Indian lawyers and achieved national attention in that capacity. He was a founding member of the American Indian Law Students Association while in law school and has been with NARF since its inception. He was Deputy Director of NARF from March, 1972 until April, 1973 when he was appointed Director. Since June, 1975, he has been serving as a staff attorney and Vice-Executive Director of the corporation.

B.A., University of New Mexico, 1967; J.D., University of New Mexico School of Law, 1970. Reginald Heber Smith Fellow (1970-1972). Native American Rights Fund (August, 1970 to present). Member of the Bar of Colorado.

Richard B. Collins joined NARF as a staff attorney in November, 1975. Mr. Collins has had extensive experience in Indian law trial and appellate work. He has worked in Indian legal services programs since 1967, and has done a great deal during this time.

B.A., cum laude, Yale, 1960; LL.B., Harvard Law School, 1966; Law Clerk, U.S. Court of Appeals, San Francisco

California (1966-1967); Associate Attorney/Deputy Director, California Indian Legal Services, Santa Rosa and Oakland, California (1967-1971); Director of Litigation, DNA Legal Services, Window Rock, Arizona (1971-1975); Native American Rights Fund (November, 1975 to present). Member of the Bars of California, Arizona and New Mexico and Colorado.

Raymond Cross, joined NARF as a staff attorney in the Boulder office in November, 1975. He came to NARF after two years of experience in Indian law with California Indian Legal Services. He has been practicing in the area of Indian Civil Rights including sales, consumer law and domestic law. Mr. Cross is a Mandan-Gros Ventre Indian from North Dakota.

B.A., Stanford University, 1970; J.D., Yale University, 1973, California Indian Legal Services (August, 1973 to October, 1975). Native American Rights Fund (November, 1975 to present). Member of the Bar of California.

Sharon K. Eads joined NARF in July, 1975 as a staff attorney in the Washington office. Effective May, 1976 she transferred to the Boulder office. Ms. Eads is a Cherokee Indian from Oklahoma. She is presently concentrating on her work on NARF's Eastern Indian Legal Support Project, particularly the claims of Eastern Indians to lands illegally taken from them 150 years ago.

B.S., University of Oklahoma, 1972; J.D., University of Oklahoma, 1975. Native American Rights Fund (July, 1975 to present). Member of the Bars of Oklahoma and the District of Columbia.

Walter R. Echohawk, Jr., a staff attorney in the Boulder office, is a Pawnee Indian from Oklahoma. While he was in law school, Mr. Echo-Hawk worked extensively in the Northern Oklahoma area with the Pawnee Indians and served as a consultant of the United States Civil Rights Commisison through a contract with the National Indian Youth Council. For the past three and one-half years, he has concentrated his work at NARF in the field of Indian corrections.

B.A., Oklahoma State University, 1970; J.D., University of New Mexico School of Law, 1973. Native American Rights Fund (June, 1973 to present). Member of the Bar of Colorado.

Karl A. Funke is the newest NARF attorney, having joined the staff in November, 1976. Karl has done extensive

work with the American Indian Policy Review Commission, during its two-year existence. He is a member of the Lake Superior Band of Chippewa/Keweenaw Bay Indians of Upper Michigan.

B.S., cum laude, Central Michigan University (1972); J.D., Antioch School of Law, Washington, D.C. (1975). Native American Rights Fund (November, 1976 to present). Member of the Michigan State Bar.

David H. Getches was NARF's Founding Director from July, 1970 until April, 1973. He carried the primary responsibility for the initial development of NARF, and is well known for his legal work in the areas of fishing, hunting and other treaty rights. From April, 1973 to July, 1975 he was a full-time staff attorney. During 1976, he worked on a half-time basis.

A.B., Occidental College, 1964; J.D., University of Southern California, 1967 (staff member, University of Southern California Law Review). Associate, Luce, Forward, Hamilton & Scripps, San Diego (1967-1968); Staff Attorney, California Indian Legal Services (1968-1970); Native American Rights Fund (July, 1970 to present). Member of the Bars of Colorado and California.

Bruce R. Greene returned to NARF in January, 1975 following a two-year period with California Indian Legal Services. Mr. Greene is a staff attorney and Director of the Indian Law Support Center at NARF, and in this capacity advises and assists legal services programs across the country on a wide variety of Indian law issues. He has acquired extensive experience in the areas of administrative and environmental law.

B.S., University of California, 1964; J.D., University of California's Hastings College of Law, 1967. Attorney-Advisor to Commissioner of Federal Power Commission, Washington, D.C. (1967-1969); Associate, Feldman, Waldman and Kline, San Francisco (1970); Staff Attorney, Native American Rights Fund, Boulder, Colorado (1971-1972); Director, California Indian Legal Services, Oakland, California (1972-1974). Member of the Bar of California.

Daniel H. Israel is a staff attorney in the Boulder office. Since joining the NARF staff, Mr. Israel has specialized in tax, jurisdictional disputes, coal, water and other natural resource problems.

A.B., Amherst College, 1963; M.A., University of Pennsylvania, 1964; J.D., University of Michigan, 1967. Instructor, University of Washington Law School (1967-1968); Associate, Roberts and Holland, New York (1969-1970); Staff Attorney, Colorado Rural Legal Services, Boulder (1970-1971); Native American Rights Fund (July, 1972 to present). Member of the Bars of New York and Colorado.

Yvonne T. Knight, a Boulder staff attorney, is a member of the Ponca Tribe and the first Indian woman law school graduate from the University of New Mexico's Indian law program. She is a founding member of the Board of Directors of AILSA. Since joining NARF's staff, she has worked in the fields of education and jurisdiction as well as on the Menominee Restoration Act.

B.S., University of Kansas, 1965; J.D., University of New Mexico School of Law, 1971; High School teacher, Kansas City, Kansas (1966-1968); she was a Reginald Heber Smith Fellow from August, 1971 until July, 1974; Native American Rights Fund (1971 to present). Member of the Bar of Colorado.

Charles H. Lohah joined NARF's Boulder staff as an attorney in September, 1975. Since then he has been the Legal Advisor to the National Indian Law Library as well as providing technical assistance to several tribes on tribal constitutuion and tribal court problems. Mr. Lohah is an Osage Indian from Oklahoma and was Chairman of the Native American Rights Fund Steering Committee from October, 1971 until October, 1973.

B.A., Benedictine Heights College, Tulsa, Oklahoma, 1959; J.D., University of Tulsa School of Law, 1963; County and District Court Judge, Oklahoma (1967-1970); Assistant Professor, Baltimore-Washington Campus of Antioch College in charge of the Indian Studies Program (1971-1973); Director, Indian Education Opportunity Program, University of Colorado (1973-1975); Native American Rights Fund (September, 1975 to present). Member of the Bar of Oklahoma.

Arlinda F. Locklear joined the NARF staff in August, 1976. She is a Lumbee Indian and is especially interested in doing legal work on behalf of Eastern Indians. During her final year in law school, Arlinda was winner of the National Moot Court Competition held in New York City.

B.A., from the College of Charleston, South Carolina (1973); J.D., Duke University, Durham, North Carolina (1976). Native American Rights Fund (August, 1976 to present). Member of the Bar of North Carolina.

Barry A. Margolin is presently working for NARF on an Of Counsel basis out of Boston, Massachusetts. From August, 1974 until April, 1976 he was a Reginald Heber Smith Community Fellow with the Indian Legal Services Unit of Pine Tree Legal Assistance, Inc., in Calais, Maine, working on land claims for Eastern Indians which is his primary area of law.

B.A., Harvard College, 1970; J.D., Northeastern University, 1974. Member of the Bar of Maine.

Don B. Miller is a staff attorney in the Washington, D.C. office of the Native American Rights Fund. In addition to working on the problems of the Eastern Indians, he assists the Boulder office on a wide variety of issues in the Capitol. Prior to coming to NARF, Mr. Miller was the first employee and Director of the Organization of the Forgotten Americans, which provided legal, economic, consumer protection and health services to the Klamath Indians in Oregon.

B.S., University of Colorado, 1969; J.D., University of Colorado, 1972. Executive Director, Organization of the Forgotten Americans, Klamath Falls, Oregon (1972-1974); Attorney-Advisor, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, Washington, D.C. (September, 1974 - December, 1974); Native American Rights Fund (January, 1975 to present). Member of the Bars of Colorado and the District of Columbia.

Dennis M. Montgomery joined NARF's Boulder staff as a research assistant in March, 1975 and worked in that capacity until January, 1976 primarily on the water rights of the Pyramid Lake Paiute Tribe of Indians. In February, 1976, he moved to Calais, Maine to work with Tom Tureen as a staff attorney of the Indian Unit of Pine Tree Legal Assistance, Inc. In October, 1976 he joined NARF's staff to work out of the NARF office in Calais on the Eastern Indian Legal Support Project.

B.S., University of Michigan, 1967; J.D., University of Colorado, 1974. Member of the Bars of Colorado and Maine.

Robert S. Pelcyger, a staff attorney in the Boulder office, is well known for his work in the area of water rights. He also in involved in several proceedings before the Federal Power Commission. Mr. Pelcyger is one of the original NARF staff attorneys having been with NARF since it began as a pilot project in June, 1970.

A.B., cum laude, University of Rochester, 1963; LL.B., Yale Law School, 1966. Fulbright Fellow (1966-1967). Staff Attorney, DNA Legal Services (1967); Staff Attorney, California Indian Legal Services (1968-1971); Native American Rights Fund (August, 1971 to present). Member of the Bars of California and New York.

Thomas N. Tureen became the staff attorney in charge of the NARF office in Calais, Maine on October 1, 1976. Previously, he had worked for NARF on an Of Counsel basis and has been working with NARF since 1973 on the problems of recognition, land claims and services for Eastern Indians.

A.B., Princeton University, 1966; J.D., George Washington University, 1969. Reginald Heber Smith Fellow (1969-1970); Directing Attorney, Pine Tree Legal Assistance, Calais, Maine (1969 to present); Native American Rights Fund (October 1, 1976 to present). Member of the Bars of Maine and the District of Columbia.

A. John Wabaunsee, a Boulder staff attorney, is a Prairie Pottawatomie Indian. Since July, 1975, he has headed NARF's Indian Education Legal Support Project, while also working on resource protection and leasing issues.

J.D., DePaul University School of Law, 1973. Mr. Wabaunsee was a Reginald Heber Smith Fellow from August, 1973 until July, 1975. Native American Rights Fund (June, 1973 to present). Member of the Bar of Colorado.

Jeanne S. Whiteing joined the staff of NARF in June, 1975 as a staff attorney in the Boulder office. Mrs. Whiteing, a Blackfeet-Cahuilla Indian, is one of the two Indian law graduates selected in 1975 as an Indian Lawyer Intern under a special grant provided by the Carnegie Corporation of New York. She is presently working on issues involving hunting and fishing, treaty rights, federal recognition and natural resource protection,

B.A., Stanford University, 1972; J.D., University of California-Berkeley, 1975. Native American Rights Fund (June, 1975 to present). Member of the Bar of Colorado.

Sally N. Willett has been a staff attorney in the Washington, D.C. office since April, 1976 when she transferred East from NARF's Boulder office. She is a Cherokee Indian who has been concentrating her efforts on resource problems and education law.

B.A., Washburn University (1968); Instructor, Universidad Industrial de Santander, Bucaramanga, Columbia (1969); M.S., Kansas State Teachers College (1970); Teacher, Santa Fe Trails High School Overbrook, Kansas (1969-1971); Instructor, Kansas State Teachers College (1971); J.D., UCLA School of Law (1974). Native American Rights Fund (August, 1974 to present). Member of the Bar of California.

Lorraine P. Edmo, Secretary to the Corporation/ Technical Writer, joined the staff of NARF in August, 1976. She is a member of the Shoshone-Bannock Tribe of Eastern Idaho.

B.A. from the University of Montana, Missoula, Montana (1970); graduate work at Columbia University, New York City (1971); summer law program at the University of New Mexico, Albuquerque, New Mexico (1976).

James A. Laurie, Treasurer of the Corporation/ Business Manager, joined the staff of the Native American Rights Fund in September, 1976 and has two year's administrative experience as Business Manager of the Sinte Gleska College on the Rosebud Sioux Reservation.

B.A., from the University of Colorado, Boulder (1969); M.B.A., University of Notre Dame (1976).

Susan R. Hart, Head Bookkeeper, has been a member of the bookkeeping staff of the Native American Rights Fund for five years and prior to that time, served as Bookkeeper to the Boulder Valley Head Start Program. Ms. Hart is currently pursuing studies with Loretto Heights College in Denver, Colorado to obtain her B.A. degree in Business.

Oran LaPointe, Rosebud Sioux, received his B.S. degree from the University of Kansas in 1965, and attended the University of Colorado Law School for two years. From July, 1974, to December, 1976, he was research assistant for the National Indian Law Library and in December he was named as the Coordinator of Libraries and Research.

Diana Lim Garry, National Indian Law Library Librarian, joined the staff of the Native American Rights Fund in 1972. She has been the Librarian since 1973. She is an Acoma Pueblo from New Mexico and received her B.A. from the University of Colorado in 1971.

SUPPORT STAFF

Law Clerks -- Summer

Vance Gillette (Arikara)
Timothy A. LaFrance (Sioux)
Kurt V. Roberts (Sisseton-Wahpeton Sioux)
Clifford B. Schilling (Pawnee)

Law Clerks -- School Year

Peter Birge
Jane Cantor
Polly A. Dammon
Bruce O. Davies (Oglala Sioux)
Ralph E. Gonzales (Laguna Pueblo)
Jeffrey J. Kahn
Lawrence Laub
Laurie P. McManus
Elizabeth M. Morse
Ralph R. Nordwall (Pawnee-Chippewa)
Jeffrey J. Schuster
Cathryn D. Wells

Paralegals

Dwayne Boyer (Shoshone-Bannock) - until March, 1976
Richard B. Williams (Oglala Sioux)

Legal Secretaries

Jacqueline B. Aucoin - until August, 1976
Angela D. Begay (Navajo) - until March, 1976
Sarah S. Carufel (Chippewa-Santee Sioux)
Gloria J. Cuny (Oglala Sioux)
Valerie D. Emery (Passamaquoddy)
Erna Faulkner - until October, 1976
Sharon A. Frause - until June, 1976
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Cheryl C. Greeble - until April, 1976
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Charles A. Lewis
Sheryl A. Livingston
Sigrid Eisberg-Melus
Karletta J. Naha (Tewa-Navajo) - until June, 1976
Lucy W. Preston (Passamaquoddy)
Candace L. Randall
Terry A. Slotnick
Terese M.W. Smith
Freida L. Wagner (Pomo) - until November, 1976
Lynda M. Zephier (Cheyenne River Sioux) - until May, 1976

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Norma A. Cuny (Oglala Sioux) - until September, 1976
Marian Heymsfield
Carmel H. Lewis (Acoma Pueblo)
Bernadine W. Quintana (Rosebud Sioux)

Receptionist

Kimberly Torres (Kickapoo)

Records

Mary Lu Prosser (Cheyenne River Sioux)

Reproduction

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Wesley M. Wildcat (Pawnee-Euchee) - until March, 1976
Robert W. Frazier, Jr. (Choctaw)
Kenneth W. Springer (Omaha-Menominee)
Sylvia C. Sweeney (Ottawa-Chippewa) - until April, 1976

Custodian

Oliver S. Pease (Crow) - until July, 1976
Patrick Keahbone (Kiowa) - until August, 1976
George D. Tahbone (Kiowa) - until September, 1976
Monroe Tonahcot (Kiowa)
Roberto A. Frazier (Choctaw)

Special Assignments/Driver

Bryce M. Wildcat (Pawnee-Euchee) - until May, 1976
Cecil R. Campbell (Pawnee)

Direct Mail

Edith Lentini

Temporary Assistance

Rosalyn Clifford (Oglala Sioux)
Mary Doyle
Lucille Edmo (Shoshone-Bannock)
Ava N. Hamilton (Arapaho)
James T. Holden (Cherokee)
Peter S. Hrobsky
Carol J. Kerlinger
Karen K. King
Claudia W. Maas
Joseph Membrino
Mary Miller

Temporary Assistance (cont.)

Tisa E. Olsen
Donna L. Olsen (Nez Perce)
Holly Onco, Jr. (Kiowa)
Jane B. Patterson
Charles Poor Bear (Sioux)
Amy Semmel
Kristin Peterson
Muzzette M. Stubben (Chippewa-Sioux)
Carleton D. Tahbone (Kiowa)
Otis L. Tahdooahnippah (Commanche)
Roscoe V. Thompson

NATIONAL INDIAN LAW LIBRARY

Librarian

Diana Lim Garry (Acoma Pueblo)

Legal Advisor

Charles H. Lohah (Osage)

Research Assistant

Oran LaPointe (Rosebud Sioux)

Secretaries

Janice C. Bray (Kiowa) - until November, 1976
Lois Elaine Eagle (Rosebud Sioux)

NILL Clerk

Bernadine W. Quintana (Rosebud Sioux) - until November, 1976
Constance M. Olson (Cheyenne River Sioux)

NARF PUBLICATIONS

1976 REPORT PERIOD

The Reemergence of Tribal Nationalism and Its Impact on Reservation Resource Development

Daniel Israel, Staff Attorney. (47 Colorado Law Review 617). National Indian Law Library No. 003084. Single copies available upon request.

Jurisdiction Over Indian Hunting and Fishing Activity

David Getches, Staff Attorney. Prepared for the American Indian Policy Review Commission, Task Force No. Four - Federal, State and Tribal Jurisdiction

Penobscot Tribe: A Summary of Research

Thomas Tureen, Staff Attorney.

Passamaquoddy Tribe: A Summary of Research

Thomas Tureen, Staff Attorney

Educational Assistance and Employment Preference: Who Is An Indian?

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