1979 Annual Report

Native American Rights Fund

Boulder, Colorado

Steering Committee*

David Risling, Jr., Hoopa Tribe, California, Chairman
Leo LaClair, Muckleshoot Tribe, Washington, Vice-Chairman
Val Cordova, Taos Pueblo, New Mexico, Vice-Chairman
John Stevens, Passamaquoddy Tribe, Maine

Robert Bojorcas, Klamath Tribe, Oregon
Curtis L. Custalow, Sr., Mattaponi Tribe, Virginia
Lucille Dawson, Narragansett Tribe, Rhode Island
ReNee Howell, Oglala Sioux Tribe, South Dakota
Roger Jim, Yakima Tribe, Washington
Louis LaRose, Winnebago Tribe, Nebraska
Leroy Logan, Osage Tribe, Oklahoma
Jerry Running Foxe, Coquille Tribe, Oregon
Herman Williams, Tulalip Tribe, Washington

Corporate Officers

Executive Director: John E. Echohawk (Pawnee)
Corporate Secretary: Oran LaPointe (Rosebud Sioux)
Corporate Treasurer: Susan R. Hart
Development Officer: Lorraine P. Edmo (Shoshone-Bannock)

Staff Attorneys

Lawrence A. Aschenbrenner
Kurt V. Blue Dog (Sisseton-Wapeton Sioux)
Richard B. Collins
Raymond Cross (Mandan-Gros Ventre)
Richard Dauphinais (Turtle Mountain Chippewa)
Bruce O. Davies (Oglala Sioux)
Sharon K. Eads (Cherokee)
Walter R. Echo-Hawk (Pawnee)
Daniel H. Israel
Yvonne T. Knight (Ponca-Creek)
Timothy A. LaFrance (Turtle Mountain Chippewa)
Arlinda F. Locklear (Lumbee)
Don B. Miller
Robert S. Pelcyger
Thelma J. Stiffarm (Cree-Gros Ventre)
Thomas N. Tureen
Jeanne S. Whiteing (Blackfeet-Cahuilla)

Legislative Liaisons

Ada Deer (Menominee)
Suzan Shown Harjo (Cheyenne-Creek)

Administrative Assistant: Rebecca Martinez

*Val Cordova succeeded Leo LaClair as Vice-Chairman in November of 1979; the first four are Executive Committee members.

Staff listing continued on inside back cover

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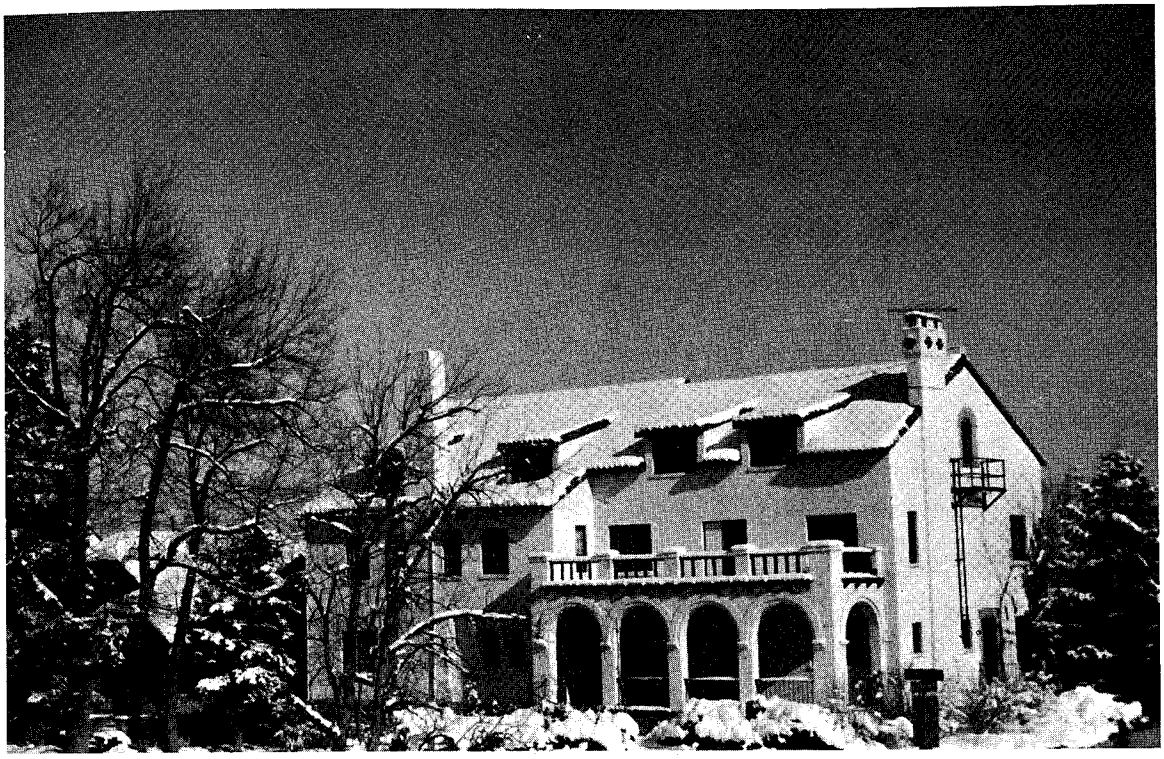

The main office of the Native American Rights Fund
Boulder, Colorado

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Main Office: Executive Director, Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302, (303) 447-8760. Branch Offices: Washington, D.C., Portland, Maine.

Message from the Steering Committee Chairman:

In 1969, a Senate report stated: "The American vision of itself is of a nation of citizens determining their own destiny; of cultural differences flourishing in an atmosphere of mutual respect; of diverse peoples shaping their lives and the lives of their children." This, unfortunately, is not true for Native Americans.

The policy of the Federal government has historically been to completely assimilate the Native communities into the American mainstream. This policy has led to the destruction of tribal communities and Indian cultures; to a severe and self-perpetuating cycle of poverty; and to the growth of a largely ineffective bureaucracy which retards economic development and self-determination rights rather than fostering them. And despite congressional and administrative pronouncements to the contrary, this assimilationist policy — based as it has always been on a desire to exploit Indian lands and resources — continues today.

And throughout the country, an attitude of racial intolerence and discrimination toward Native Americans still exists. Whereever Indians, Native Alaskans or Hawaiians attempt to assert their legitimate rights to self-determination, cultural preservation or economic self-sufficiency, they are confronted by hostile and uncompromising governments and by a citizenry that is manifestly uninformed about Native Americans and any understanding of their wish to maintain their cultural identity. And so

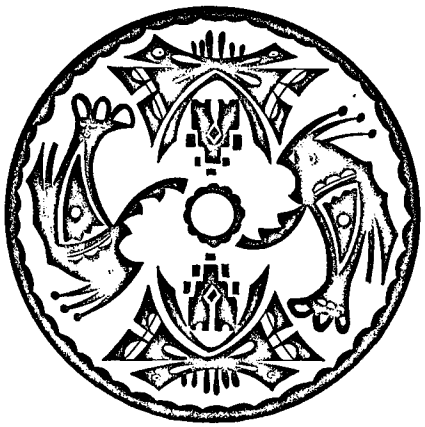
long as these attitudes continue to exist, Indians can expect to confront a society in which new injustices are given out day by day and a future in which they are offered neither a place nor a hope.

Nevertheless, despite three centuries of systematic efforts to destroy or assimilate the American Indians, there are no signs that Indians are disappearing. In fact, there is a resurgence of "Indianness" and tribal sovereignty movements which has led to the formation of a variety of national and regional Native organizations established to assert various Indian rights and interests. In 1970, as a part of this resurgence of cultural pride and growing concern over the future of American Indians in this country, the Native American Rights Fund was established. In its nearly ten years of existence, NARF has worked on behalf of hundreds of tribes, Indian communities, groups and individuals in over 40 states in cases to preserve tribal existence, to protect tribal resources, to promote human rights, to hold the dominant governments accountable to Native peoples, and to strengthen Indian law.

Speaking on behalf of all Steering Committee members, I believe Indian people nationally can be proud of the accomplishments of the Native American Rights Fund in its ten short years of existence, and, hopefully, can look forward to the expansion of its services in the years to come.

David Risling

David Risling
Chairman



Executive Director's Report

Executive Director's Report

As 1979 drew to a close and the decade of the '80's began, the Native American Rights Fund was approaching the tenth anniversary of its establishment in 1970. During the past decade, NARF has witnessed many changes in the conditions of Native Americans throughout the country and while there were signs of improvement, many obstacles yet remain in the efforts of Native Americans to achieve a secure and lasting place in this, their own country.

The need for legal representation in Indian country has continued as great as ever, as illustrated by the activities reported on for 1979. During the year, representation was provided to over 80 tribes and other Indian clients in 30 states on major Indian rights cases. The demand for legal assistance was such that many requests could not be met. In the past nine years, NARF has represented hundreds of Indian tribes, organizations and individuals in over 40 states throughout the country in the courts and before administrative agencies and congressional committees. In many of these cases, NARF has worked extensively with other Indian organizations, legal services and private attorneys, and Federal and state officials in seeking solutions to legal problems afftecting NARF's clients.

Although the major developments are described in detail elsewhere in this report, a brief summary of some of the highlights will help put the year in perspective.

Land Claims & Federal Recognition

The historic land claims of the Passamaquoddy and Penobscot Tribes in Maine moved very close to a final settlement. By the end of the year, the major terms regarding what land is to be returned to the tribes, the financial settlement, and jurisdictional issues were all generally agreed upon. Once the terms are finalized, the tribes, the Maine legislature and Congress will all have to approve the settlement. On the jurisdiction issue, there have already been favorable court decisions upholding the status of certain claim areas as "Indian Country,"

and therefore under tribal and Federal jurisdiction to the exclusion of the state. In New York, where the Oneidas are asserting both pre- and post-1790 claims, NARF filed suit on December 5th on behalf of the Wisconsin Oneidas and the Thames Band of Ontario to some five million acres in central New York. On Long Island, NARF submitted a petition for Federal recognition on behalf of the Shinnecock Indians. However, the Federal government rejected NARF's request that the U.S. sue on behalf of the Tribe regarding their claim for recovery of some 3,000 acres taken in violation of the Nonintercourse Act and NARF may be asked to file the land claim suit in 1980.

In Massachusetts, the U.S. Supreme Court declined to review a lower court finding that the Mashpees were not a bona fide tribe entitled to the protection of the Nonintercourse Act on which their land claim was based. However, the Supreme Court's action does not end the Mashpees' attempt for survival; NARF is also preparing a petition for Federal recognition of the Mashpees. In the Wampanoag's land claim for the return of approximately 500 acres in the Town of Gay Head, a preliminary settlement was in near final form by the end of the year. In South Carolina, negotiations on the land claim of the Catawba Indians continued to progress, with an aim toward establishment of a reservation, a tribal development fund, and restoration of Federal recognition.

NARF continued to assist the Narragansett Tribe of Rhode Island after the successful settlement of their land claim in 1978, in areas of land acquisition pursuant to the settlement, drafting of bylaws for the tribal corporation which will manage the land, and in preparation of a petition for Federal recognition which was submitted to the Bureau of Indian Affairs in October. In Virginia, NARF is assisting the Pamunky Tribe in establishing definite boundaries for their reservation, which first requires the settlement of a railroad right-of-way matter. In November, a settlement agreement between the railroad and the Tribe was signed which provides for past trepass damages and future lease terms; both the state legislature and Congress must now approve the settlement.

In 1978, NARF filed a petition for Federal recognition on behalf of the Tunica-Biloxi Tribe of Louisiana; and during the past year, at the request of the BIA, we supplemented the petition with geneological,

historical and anthropological information. This petition is expected to be one of the first decided upon by the BIA's Federal Acknowledgment Project. NARF also submitted a litigation request asking the United States to bring suit on the Tribe's behalf to recover several thousand acres of aboriginal land in north-central Louisiana.

Natural Resources Protection

A major victory for Indian fishing rights occurred in May when the U.S. District Court for Western Michigan ruled, in a comprehensive 140-page opinion which favored all the Indian claims asserted, that the right of two Michigan tribes to fish in traditional areas of the Great Lakes were reserved under the treaties in which their ancestors ceded vast areas of land and water to the United States. Two months later, the U.S. Supreme Court ruled that Washington tribes with adjudicated fishing rights were entitled to a definite share, up to 50%, of the harvestable catch passing through their traditional fishing sites. NARF is a lead counsel in the Michigan case, and continues to provide assistance to tribal and U.S. attorneys in the Washington case although we no longer have a lead counsel role in these proceedings which involve implementation of the "Boldt Decision." In Oregon, a Federal District Court ruled for the first time, in U.S. v. Adair, that tribes with adjudicated fishing rights also have a right to water sufficient to protect the fisheries resource.

Protection of Civil & Human Rights

In August, NARF completed its American Indian Religious Freedom Implementation Project with the submission of its report to the Department of the Interior. This project, conducted jointly with the American Indian Law Center in Albuquerque, began the implementation of the "American Indian Religious Freedon Act of 1978," the purpose of which is to require all Federal agencies to modify their practices and policies which unnecessarily interfere with Native Americans in the practice of their traditional religions. Also, NARF worked successfully on behalf of the Zuni Indians of New Mexico in getting the Denver Art Museum to return to the Tribe a sacred statute taken illegally many years ago from the reservation and donated to the museum. NARF also

continues to work on behalf of Indian inmates in securing their religious freedom rights. In April, a Federal court in California issued a consent decree in which Federal prison authorities were required to allow the construction of sweat lodges to be used by the Indian inmates for traditional religious ceremonies (Bear Ribs v. Taylor). In December, NARF began a project to study the conditions of Indian inmates in the Great Lakes and Northwest areas. These studies may lead to the establishment of special, tribally-controlled rehabilatative centers for Indians as alternatives to incarceration in Federal and state prisons, as was the case with an earlier NARF project now known as the Swift Bird Project operated by the Cheyenne River Sioux Tribe on their reservation in South Dakota.

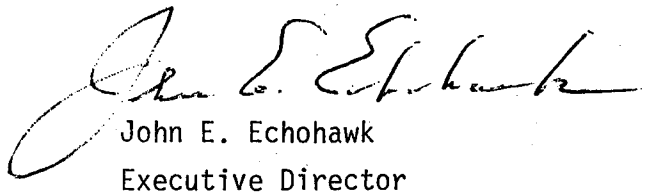
Indian education continues to be an important concern for NARF. In September, NARF completed the "Indian Education Legal Support Project," a special three-year project funded by Ford Foundation. Under this project, NARF attorneys were able to assist Indian parents in Los Angeles in having the school district modify its busing policy so as to leave intact natural concentrations of Indian students in order that they could qualify for certain Federal Indian education programs. At the Nevada Stewart Indian school, NARF assisted in the representation of Indian parents and students in a case in which students were unjustifiably dismissed from school without proper notice or hearings. The consent settlement now requires that BIA school officials to conform with due process procedures in handling student disciplinary actions in the entire BIA Phoenix area. In December, NARF filed a suit on behalf of the Coalition of Indian Controlled School Boards against HEW charging them with unlawful interpretation of the "Indian preference" section of the Indian Self-Determination and Education Assistance Act, which interpretation acts to deny Indian preference to the Coalition in their applications for Federal Indian education projects.

These are merely a few of the significant developments of 1979. The status of many of the cases indicates that 1980 will be an especially active year toward the resolution of many of NARF's pending cases.

When the Ford Foundation began its support of NARF back in the summer of 1970, Indian causes were in vogue. During he late '60s and early '70s, a new awareness of Indian issues and Indian problems began to surface and many non-Indians were intrigued with the "Indian experience." A major change since 1970 is the popularity of Indian causes — Indians are simply not as "fashionable" as they used to be. Although one of the reasons for this is that times change, it is also true that Indian rights successes in the 1970s, which were long overdue in coming, have met with some social and political resistance by the non-Indian community. It is unfortunate that the Indians' struggle to protect their rights is treated by some as nothing more than another fad. Nevertheless, one thing that will not change is the Indian resolve to achieve self-determination and the right to exist in this nation as Indians, and this resolve will continue into the 1980s and the future. Indians are not a thing of the past and will not be deterred from their goal of survival and perpetual existence.

NARF plays a key role in these efforts, working for Indian people in the courts, the administrative agencies, and the Congress. As a major force in Indian affairs, NARF's efforts must continue if Indian goals are to be realized.

We thank all those who supported us financially in 1979 and the years before. Without this support, our efforts on behalf of Indian people would not have been possible. Generating financial support for NARF's work is perhaps our greatest challenge in light of changing circumstances, and so we earnestly solicit assistance from all those who share our commitment to Indian survival.



John E. Echohawk
Executive Director

The Program

The Purpose and Goals

The Native American Rights Fund is the oldest and largest national Indian interest law firm in the country. Now nearing its tenth year of existence, NARF has represented Indian clients in nearly every state, and the hundreds of cases it has handled have involved practically all principles and issues in the field of Indian law. A brief review of NARF's origin will give a better understanding of NARF's role in the Indians' struggle to protect their rights in today's society.

As part of the "War on Poverty" which was launched in the mid-1960s under the guidance of the Office of Economic Opportunity, government funded legal services programs were established in selected areas around the country to provide to the poor and disadvantaged people their right of access to lawyers and the legal process; many of these programs were located on or near Indian reservations. As these programs began working with Indian clients, a common realization soon developed among them that Indians had unique legal problems which were, for the most part, goverened and controlled by a specialized and little-known area of the law known as "Indian Law" — a complex body of law composed of hundreds of Indian treaties and court decisions, and thousands of Federal statutes, regulations and administrative rulings.

The majority of the legal services attorneys were relatively inexperienced; many were fresh out of law school. And although most of their work with Indian clients consisted of the same types of legal problems faced by other legal services programs, they had to contend more and more with this body of law as they became more aware of its relevance and applicability to the problems of their Indian clients. This was especially so for legal services located on reservations where the presence of trust land, tribal resources, tribal government institutions and Federal laws necessarily involved the most basic tenets of Indian law.

The central principle of Indian law is that Indian tribes are limited sovereigns, but that they retain all the rights of self-government not expressly relinquished or taken by the United States. Tribes,

therefore, have certain self-governmental rights involving their land, natural resources, domestic relations, and tribal culture among other areas. Their self-determination is limited only by congressional actions since the U.S. Constitution places Indian affairs under the exclusive province of the Federal government. This limits the jurisdiction of the states over tribes only to areas which have been specifically approved by Congress. Furthermore, the United States, through the various treaties and statutes, has taken on a trust responsibility to protect the rights of the Indian tribes and to act in their best interests. The nature and scope of the Federal trust responsibility is the subject of many Indian litigation matters.

Consequently, legal services lawyers working on Indian law cases were often involved in matters with national implications, for case results could not always be restricted to the individual Indian or tribal client immediately involved. It was clear to many, both in the legal services and in other areas of Indian law, that cases involving major national issues of Indian law needed to be handled with the greatest consideration, by Indian advocates with experience and expertise in the field, and by a program sufficiently funded in order that important Indian cases were not abandoned for lack of money but could be carried on through the courts as far as necessary.

It was this state of affairs that the Ford Foundation confronted in 1970 when it became interested in establishing a national legal program for Indians. The Foundation sought out a legal services program which had a proven successful record in litigating Indian rights. They eventually contacted the California Indian Legal Services (CILS), one of the government-funded legal services programs serving Indians, and discussed the need for a national program to address major Indian legal problems.

With Ford Foundation funding, CILS agreed to institute a pilot project to expand their services to Indians on a national level. That project became known as the Native American Rights Fund. As planned, it separated from CILS in 1971, relocated to Boulder, Colorado, and incorporated separately under and all-Indian Board, the NARF Steering Committee. NARF grew rapidly from a three-lawyer staff to a firm of over 40 full-time staff members, including 18 attorneys, in a few short years. NARF's growth

and success over the years is attributable entirely to the validity of the original concept upon which it was founded – that a great need exists for legal representation on a national level of Indians who lack the financial resources to assert important legal rights related to their status as Indians. At the heart of this need is the common goal of all American Indian tribes and Native Alaskans and Hawaiians to maintain their status and traditional ways of life.

The Steering Committee

Consistent with the philosophy of Indian self-determination, the Native American Rights Fund is governed by a 13-member Steering Committee composed entirely of Indian people. This all-Indian board charts the direction of NARF's activities under the priorities and policies they have established. Members are elected for two-year terms and are chosen on the basis of their involvement in Indian affairs, their knowledge of the issues, and tribal affiliation – for wide geographical representattion.

There were no changes in the Committee membership in 1979. At the November meeting, the Committee re-elected Val Cordova, Leroy Logan, and David Risling to new, two-year terms. Mr. Risling was then re-elected as Chairman, and Mr. Cordova was selected as Vice-Chairman. These two automatically become members of the Executive Committee. John Stevens and Leo LaClair were chosen as the other members of the Executive Committee, with Bob Bojorcas as the alternate member (see inside front cover for a complete listing of Steering Committee members).

Steering Committee meetings are devoted to discussions of deciding overall policy, receiving reports from the attorneys on their cases, deciding on major administrative matters, and generally directing the future course for NARF to follow. It has always been the philosophy of the Steering Committee to keep NARF as non-political as possible and to concentrate on deciding policies which will lead to an orderly development of Indian law, which is relevant now and in the future for Native American people. The decisions of the Committee are not always easy, for deciding on what matters are best pursued through the courts or through some other mechanism is difficult. But each member's own par-

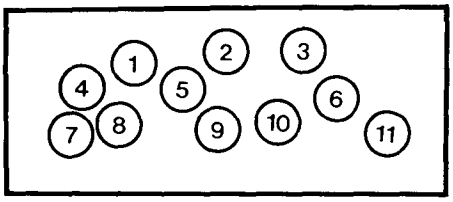
ticular experience in the conflict between Indian and non-Indian cultures adds a great deal to the wisdom and foresight to the Committee discussions as they develop policies and priorities for NARF to follow in asserting and protecting Indian rights.

An important function of the Steering Committee is to be able to guide the NARF administration at all times on important matters. This is made possible by the existence of the Executive Committee which is made up of four members selected by the entire Steering Committee and empowered to act on their behalf in certain areas between the regular meetings of the full Committee. This Executive Committee meets four times a year, and often conducts business through conference calls with the administration. At least two of their meetings are held on the home reservations of Steering Committee members. These on-site meetings are also attended by the Executive Director and generally by other NARF officers and attorneys. The Executive Committee considers and recommends policy changes, financial matters, funding plans, and also decides on some of the controversial cases presented to NARF.

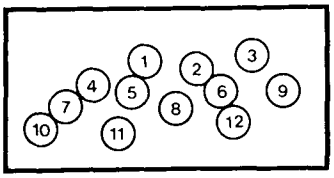
The Priorities

The Steering Committee of the Native American Rights Fund establishes the guidelines which the staff follows in determining the structure of NARF's caseload. Since its inception, it has laways been NARF's policy to pursue cases and special projects which will have a significant impact on the future of all Indian people throughout the country. These cases and projects are ones which affect a great number of Indian individuals and hopefully will lead to changes in the law for the benefit of Indians generally.

At the very outset, it was necessary for NARF to establish priorities for two reasons. First, since the purpose of the organization was to be in working toward the favorable resolution of cases involving major Indian law issues, priorities had to be set defining what the original board members considered to be the important issues for NARF to get involved in as the organization got started and to guide it in the future. Second, the demand that NARF would face for its service



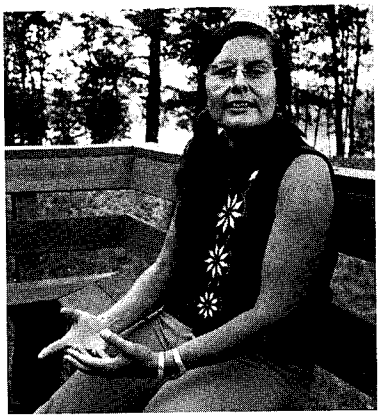
Steering Committee: (1) Herman Williams, Tulalip Tribe: (2) Leo LaClair, Muckleshoot Tribe; (3) Jerry Running Foxe, Coquille Tribe; (4) Louis LaRose, Winnebago Tribe; (5) Curtis Custalow, Mattaponi Tribe; (6) David Risling, Hoopa Tribe; (7) Lucille Dawson, Narragansett Tribe; (8) Val Cordova, Taos Pueblo; (9) Roger Jim, Yakima Tribe; (10) John Stevens, Passamaquoddy Tribe; and (11) Robert Bojorcas, Klamath Tribe. Not pictured: ReNee Howell, Oglala Sioux Tribe, and Leroy Logan, Osage Tribe.



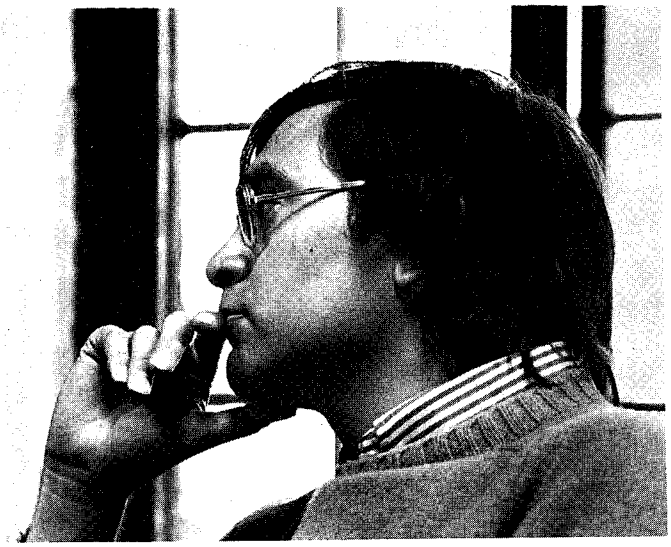
Staff Attorneys During 1979: (1) Kurt Blue Dog, Sisseton-Wahpeton Sioux; (2) Walter Echo-Hawk, Pawnee; (3) John Echohawk, Pawnee Executive Director; (4) Richard Dauphinais, Turtle Mountain Chippewa; (5) Robert Pelcyger; (6) Arlinda Locklear, Lumbee; (7) Lare Aschenbrenner; (8) Yvonne Knight, Ponca-Creek; (9) Don Miller; (10) Thelma Stiffarm, Cree-Gros Ventre; (11) Jeanne Whiteing, Blackfeet-Cahuilla; and (12) Tim LaFrance, Turtle Mountain Chippewa. Not pictured: Richard Collins; Ray Cross, Mandan-Gros Ventre; Bruce Davies, Oglala Sioux; Sharon Eads, Cherokee; Dan Israel; and Tom Tureen. Sharon and Dan resigned in the Fall of the year (See appendices for biographical sketches of the attorneys).

John Stevens, former governor of the Passamaquoddy Tribe of Maine, and a member of NARF's Steering Committee. During 1979, negotiations among the Indian, Federal and Maine officials on the land claims of the Passamaquoddy and Penobscot tribes continued. As the year ended, a final settlement in the case appeared to be near. This case, along with other Eastern Indian land claim cases, are narrated elsewhere in this Report.

John Echohawk, NARF Executive Director participated in Law Day activities at the White House in May of 1979 at the invitation of President Jimmy Carter.



Ada Deer, a member of the Wisconsin Menominee Tribe, is one of two legislative liaisons working in the Washington, D.C. office. Ms. Deer and Ms. Suzan Shown Harjo, a Cheyenne-Creek from Oklahoma, joined NARF in October of 1979 to work in the congressional and administrative advocacy areas on behalf of NARF's tribal clients.



Ray Cross, a member of the Mandan-Gros Ventre Tribe, is the Director of the Indian Law Support Center, a special project of the Native American Rights Fund. The Center is one of 13 national assistance support centers established by the Legal Services Corporation to lend backup assistance to legal programs around the country. The Center has been working with legal services programs located on or near Indian reservations, Indian communities and urban areas since 1972.

Walter Echo-Hawk (below), staff attorney, and Richard Williams (right). Mr. Echo-Hawk is the legal adviser to NARF's Indian Corrections Project, with Mr. Williams as Director. Under the Project, NARF is conducting a one-year evaluation of the conditions and problems of the American Indians incarcerated in Federal and state prisons in the Great Lakes and Northwest regions.

as a national Indian law firm made it essential that priorities be set in order to screen out cases which were not Indian law cases; and, as NARF's caseload reached maximum, to be able to decide among the true Indian law cases according to an established priority system.

The five priorities which the original members of the Steering Committee selected nearly ten years ago have proven to be very successful choices. They have never been revised although the Steering Committee has the authority to do so at any time. Following is a brief description of each of the priorities.

(1) The Preservation of Tribal Existence. The future existence of the remaining Indian tribes and Native communities in this country depends ultimately upon a secure and permanent land base, and the rights of self-determination necessary to preserve Native traditional customs and ways of life. This includes matters concerning Federal recognition, restoration of terminated tribes, self-government, tax immunity rights, Indian preference, and land claims cases.

(2) The Protection of Tribal Resources. The natural resources found on Indian lands vary greatly. NARF concentrates its efforts in asserting tribal resource rights and protecting them from loss and exploitation by non-Indians. Major resource protection includes land rights, including trespass violations and tribal title claims; water rights; hunting, fishing and gathering rights; and environmental protection.

(3) The Promotion of Human Rights. NARF is concerned with securing basic human rights for Native Americans, such as educational rights, including students' rights and recognition of students' cultural needs; adequate health care; rights of Indian inmates; and religious freedom rights.

(4) The Accountability of Governments. Native Americans have more laws and regulations governing their affairs than other Americans. NARF works to hold all levels of government accountable for the proper enforcement of these laws.

(5) The Development of Indian Law. The proper development of Indian law is essential for the security of Indian rights, and involves not only the establishment of favorable precedents in major areas of Indian

law but also the compilation and distribution of Indian law resources to everyone working on behalf of Indian rights.

The Staff

During 1979, there were several significant changes in NARF's organization and professional staff personnel. In November of 1979, the Steering Committee voted to reappoint John Echohawk as Executive Director. The Director, as chief operating officer of NARF, is responsible for the supervision and control of all the affairs of the organization in accordance with the policies and directives of the Steering Committee. Although not required by the organization's Articles of Incorporation or Bylaws, all three Directors NARF has had in its short history have been attorneys; and this may always be the case since a comprehensive understanding of law, and Indian law specifically, is a necessary requisite for the position.

NARF's success is essentially a reflection of the exceptionally high quality of its attorney staff. In addition to the Executive Director, there are 15 full-time attorneys, whose experience ranges from a few months to more than 20 years. In addition to the 15 attorneys, there are several part-time contract attorneys retained by NARF because of their expertise on a particular matter of law. An important aspect of NARF's attorney staff is tha 10 of the 15 attorneys are American Indians, a distinction which no other law firm or legal services program in the country can claim. The presence of these Native American attorneys, along with the non-Indian attorneys who come to NARF because of their interest in Indian law and the legal rights of Indian people, gives NARF an important quality of sensitivity to Indian rights which is necessary for the proper representation of Indian tribes.

During 1979, NARF lost the services of two experienced staff attorneys, but also added two recent Indian law school graduates. Dan Israel and Sharon Eads, attorneys at NARF since 1972 and 1975 respectively, resigned in the Fall. Dan left to join a private law firm in Denver, and Sharon resigned to accept a position with the Denver regional office of the Legal Services Corporation. Joining NARF as staff attorneys in the Boulder office were Richard Dauphinais and Bruce Davies. Richard joined

NARF as a staff attorney in June of 1979. A member of the Turtle Mountain Chippewa Tribe of North Dakota, Richard received both his undergraduate and law degrees from Notre Dame, and became licensed to practice law in Colorado in the Fall. Bruce, an Oglala Sioux from the Pine Ridge Indian Reservation in South Dakota, joined NARF in March of 1979 as a staff attorney. He received his B.A. from Wesleyan University in 1974, and his law degree from the University of Denver in 1979, and is admitted to practice law in Colorado.

The non-attorney staff is largely Native American, and work in such areas as finance, administration, program development, public relations and library services. The support staff consists of legal and administrative secretaries, reproduction and press personnel, and other staff indispensable to the operation of an organization the size and nature of NARF. In August, the NARF Steering Committee approved a reorganization of the corporate officer positions and their respective duties brought about by the resignation of Grace Gillette, and a reevaluation of NARF's major administrative needs. Lorraine Edmo, who had been corporate secretary and technical writer since joining NARF in 1976, was appointed to the newly-created position of development officer. In her new capacity, she is responsible for overall program development relating to fund raising. Oran LaPointe was hired to fill the technical writer position and will also serve as corporate secretary. Rebecca Martinez was named to the new position of administrative assistant and the business manager position was abolished.

Ada Deer and Suzan Shown Harjo joined NARF's Washington, D.C. office in October as NARF's legislative and administrative liaisons to work on behalf of NARF's tribal clients on matters pending before Congress and administrative agencies. As both Vice-President and Congressional Liaison of the "National Committee to Save the Menominee People and Forest," Ada played a key role in the passage of the Menominee Restoration Act of 1973. She is currently a member of the President's Commission of White House Fellows and serves on the national boards of the National Association of Social Workers, Americans for Indian Opportunity, American Indian Scholarships and the Council on Foundations. Ada received her B.A. in social work from the University of Wisconsin in 1957, and M.S.W. in 1961 from Columbia University.

Suzan, a Cheyenne-Creek from Oklahoma, has rejoined NARF's Washington, D.C. staff in her former capacity as legislative liaison. Suzan had previously directed NARF's legislative effrots from February 1977 to March 1978. In March 1978, she was appointed by Interior's Indian Affairs' Assistant Secretary Forrest J. Gerard as a Special Assistant for Legislation and Liaison Activities. In this capacity, she worked in the areas of congressional and tribal relations, and coordinated the multi-agency implementation of the American Indian Religious Freedom Act and prepared the subject report which was presented to the Congress in August 1979.

In December, NARF began a special "Indian Corrections Project," funded by the Law Enforcement Assistance Administration of the Justice Department, described elsewhere in this Report. Richard Williams is serving as the Director of the Project. Rick has worked in the area of corrections for the past five years, and is the former Director of the Cheyenne River Swift Bird Project in South Dakota. Prior to the Swift Bird Project, he was employed as a corrections paralegal for NARF. Rick received his B.A. in Corrections and Indian Studies from the University of Nebraska in 1975. Donald Holman, a member of the Sisseton-Wahpeton Sioux Tribe of South Dakota, is working as the Great Lakes Regional Coordinator for the Project. Don was most recently employed by the Cheyenne River Swift Bird Project, where he served as the Director of Programs. Delmar Hamilton, a member of the Kiowa Tribe of Oklahoma, is working for the Indian Corrections Project as the Northwest Regional Coordinator. Delmar is currently the Vice-President of the National Indian Youth Council and is serving on the National Advisory Board for the Cheyenne River Swift Bird Project.

The Supporters of NARF

The task of developing and carrying out a sound legal effort on behalf of NARF's clients would not be possible without an adequate financial base. Costs associated with litigation, client services and other areas connected with NARF's work run high. Through the past nine

years, NARF has been fortunate in securing the necessary funding from several sources, including individuals, foundations and government entities. Although all types of support are needed, that of the Ford Foundation and individual contributors provides an indispensable type of support since it is given for general program needs and not restricted to any particular class of clients or projects but can be used in all of NARF's priority areas of work.

During 1979, the Ford Foundation continued to support NARF and we would like to extend special thanks to its officers and staff - in particular Mr. R. Harcourt Dodds, Program Officer in the Division of National Affairs. Special thanks also goes to Ford's former President, Mr. McGeorge Bundy, for his commitment in supporting Indian legal rights through the decade of the '70s. And we welcome continued association with the Foundation through its new President, Mr. Franklin A. Thomas, who joined the Foundation in June, 1979.

A special expression of gratitude is also extended to Mr. David Lester, Commissioner for the Administration for Native Americans in the Department of Health, Education and Welfare. During 1979, ANA funded several special components of NARF's work, including: (1) The National Indian Law Library; (2) A Project to Strengthen and Facilitate Tribal Governments; (3) A Project for the Protection and Prudent Development of Indian Natural Resources; (4) A Project for Establishment of Tribal Energy and Social Development Offices; and (5) A Project for Implementation of the American Indian Religious Freedom Act. The Religious Freedom Project was co-sponsored by the Bureau of Indian Affairs and the Community Services Administration. We acknowledge the continued support of Mr. Lester and his staff. Mr. Tom Vigil, Program Specialist with ANA, provided valuable assistance to the NARF program, as did former Special Assistant, Jerry Bathke, now associated with the Department of Energy.

The Legal Services Corporation continued its support of the Indian Law Support Center in 1979. The Center provides assistance to legal service programs working in the area of Indian law. We extend our thanks to Mr. Dan Bradley, who assumed the post of President in June, 1979, as well as his predecessor, Mr. Thomas Ehrlich.

Beginning in July, 1979, the Carnegie Corporation of New York once again funded the Indian Lawyer Intern Project. Under this grant, NARF is able to hire and train new Indian law graduates in advocacy of Indian legal rights. We appreciate the assistance provided by Mr. Bernard Charles and Ms. Arlene Kahn of the Corporation's staff.

The William H. Donner Foundation continued to support NARF's Tribal Sovereignty and Indian Resources Project. The support provided is critical to NARF's work in preservation of tribal existence and protection of Indian resources.

In the area of NARF's work for Eastern tribes, the Lilly Endowment of Indianapolis funded NARF's Eastern Indian Legal Support Project enabling NARF to continue to work on behalf of its Eastern Indian clients on problems involving land claims, Federal recognition, and obtaining necessary Federal and state services. The Knistrom Foundation of Massachusetts also supported continuing negotiation in some of the Eastern Indian land claims. Both of these awards proved invaluable to NARF's work.

Many of NARF's cases require the services of expert consultants and witnesses. The Bureau of Indian Affairs' Office of Trust Responsibility funded NARF again during 1979 for many of these consultant services. Title research in connection with NARF's work on the Arkansas Riverbed issue was made possible through a grant from the Muskogee Area Office of the BIA. NARF continued to devote some of its attorney time to the revision of Felix Cohen's Handbook of Federal Indian Law, through a subcontract from the Indian Law Center in Albuquerque. The revised treatise should be published in 1980.

Four corporate entities made general support contributions to the NARF program during 1979, as well as three tribal groups. It was very gratifying to receive support from corporations such as the South Forest Company, the McGraw-Hill Foundation, Pittsburgh Bridge and Iron Works and the Equitable Life Assurance Society of the United States. Also encouraging is the support given by the three tribes: the Mattaponi Tribe of Virginia, the Yankton Sioux Tribe of South Dakota, and the Lone Pine Band of Owens Valley Paiute Shoshone in California.

In December of 1979, NARF began a nine-month "Indian Corrections Project" with a grant from the Law Enforcement Assistance Administration of

the Justice Department, and we would like to thank Mr. Dale Wing of LEAA for his support.

Additionally, during 1979, the Native American Rights Fund received 8,400 individual contributions. All individual contributions are greatly appreciated. And although we cannot include the names of all contributors in this report, we have acknowledged those who donated $100 or more during 1979 in the "Treasurer's Report" section.

NARF's work and services could not be possible without the support of friends and donors such as these. We are grateful, for such assistance enables NARF to continue its work on behalf of Indian rights throughout the country.

The Year's Activities

1979 Activities

The activities narrated in this section include all of NARF's major involvements during 1979 throughout the country. However, there were many other activities which were omitted, not because they were deemed unimportant, but because they consumed only a negligible amount of attorney time and no major decisions or other actions occurred in these cases during the year.

On many of its litigation activities, NARF works in association with other attorneys, firms, organizations and legal service programs. And although it was intended that anyone NARF was working in cooperation with on any of the following cases would be properly acknowledged, this was not always done. Where such acknowledgment was inadvertedly omitted, it was an editorial oversight and not an attempt on NARF's part to avoid recognizing co-workers.

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Native American Rights Fund

Major Activities - 1979

NARF

D.C.

INDIAN LANDS

Drafted from a map compiled by the Bureau of Indian Affairs in cooperation with the Geological Survey

Legend

- Federal Indian Reservation
- Former Reservations in Oklahoma
- State Reservations
- Indian Groups Without Trust Land
- Federally Terminated Tribes and Groups

Preservation of Tribal Existence

Maine Land Claims: Passamaquoddy and Penobscot Negotiations

NARF has assisted these two tribes since 1972 in their actions for recovery of some 12.5 million acres of land in Maine and billions of dollars in damages for illegal trespass and occupation. As in other Eastern land claims disputes, the Tribes contend that the lands were taken without congressional ratification as required under the Indian Nonintercourse Act of 1790. Negotiations aimed at settlement of the Maine land claims case have been on-going since October 1977, when President Carter appointed a task force to work on a settlement of the claim. In February 1978, the Passamaquoddy and Penobscot Tribes entered into an agreement by which the President agreed to ask Congress to provide $25 million for the two Tribes and conveyed an offer by the Tribes to settle with the large landowners if they would provide 300,000 acres, with the state agreeing that it would provide $25.5 million worth of services for the next 15 years. This proposal met with great local opposition. A new proposal on the part of the Federal government followed in October 1978, which the President agreed to at the urging of then Senator Hathaway of Maine. This proposal called for a totally Federally-funded settlement. This proposal was agreed to by the State of Maine, the large landholders and the Maine congressional delegation, and called for a substantially smaller settlement than originally envisioned for the Tribes.

Whereas the Joint Memorandum of Understanding provided for a settlement worth some $76 million, the so-called "Hathaway Plan" called for a settlement worth $62 million. Under the Hathaway plan, the Federal government was to give the two Tribes $27 million to be held in trust for them by the Interior Department, plus an additional $10 million to buy 100,000 acres from the 13 largest property owners. Other provisions which carried no price tag were worked out in later months, providing $10 million for capital improvements and $15 million in loans from the Bureau of Indian Affairs under the Indian Financing Act.

In a Tribal vote, conducted after the Hathaway Plan was announced, the Tribes agreed that they would accept a settlement which did not include the $25.5 million from the State of Maine or the option to purchase the additional 200,000 acres of land. The Tribes did decide in the vote that they would not accept a settlement which did not provide them with a trust fund of $25 million and 300,000 acres of land.

Following the Tribal referendum, various exchanges took place between the Tribe and Federal government officials in which the Tribes indicated their need to submit a counter proposal to the Hathaway proposal. On

August 2, 1979, the Tribal Negotiation Committee, unveiled a counter proposal which cost approximately $16 million more than the old Hathaway proposal. The new proposal offered by the Tribes asked for the following components: (1) $26 million for the Tribal trust fund; (2) $36 million for 300,000 acres of land (In contrast the Hathaway plan asked for $10 million for 100,000 acres; part of the land has already been agreed to by the Tribes and large paper companies); (3) $6 million for a sawmill complex (A part of this was included in the Hathaway plan as part of the Indian Financing Act loan funds); (4) $7.5 million to repair three schools (The Senator's proposal had $10 million for schools, road improvements or alternative land acquisition under the capital improvement budget of the BIA); (5) $1.5 million for a new bridge; and, (6) $1 million to extend a road.

The Administration announced that it supports most of the Tribes' proposal with the following exceptions. First, the Administration could not support a proposal that the Tribes receive $16 million economic development grant unless the grant can be justified under the regular EDA program. Second, the Administration does not at this point support the Tribes receiving priority for Department of Health, Education and Welfare or Department of Labor funds to repair three schools at a cost of $7.5 million. Third, the Administration also opposes giving the Tribes priority for $2.5 million in Federal highway and housing funds for a new bridge and the extension on one road, as proposed by the Tribes.

After the presentation to the Maine delegation, the negotiating process with the large paper companies began, and extensive negotiations with the State of Maine continued, which, at the end of the year, were not complete. As the year ended, there were still differences of opinion on the Tribes' counter proposal for settlement. Encouragingly, the State of Maine finally agreed to participate in settlement discussions. It has taken two years to reach this stage regarding the Maine Indian land claims case, and NARF remains confident that a solution to this claim will be reached during 1980.

State of Maine v. Francis

On July 18, 1978, a state of Maine trial court rendered a decision in the case which is related to the major land claims case of the Passamaquoddy and Penobscot Tribes. Ronald Francis, a member of the Penobscot Indian Tribe, was arrested and charged with building a fire in violation of a state law which prohibits building fires "on the land of another" without the owner's permission, the purported owner here being the Great Northern Paper Company. NARF defended Francis and argued that the land in question was not "the land of another," -- which the state was required to prove beyond a reasonable doubt -- because of the existing aboriginal land claim of the Penobscot Tribe. The court contended that Great Northern's title was not proven to be superior to the claimed aboriginal title of the Tribe, and dismissed the charge (Maine v. Francis, Crim. Docket No. 78-79-6272, Maine Dist. Ct., Div. of No. Penobscot).

Maine v. Dana

This land mark case, argued and decided by the Maine Supreme Court in 1979, posed a potential threat to the settlement negotiations in the Maine

land claims of the Passamaquoddy and Penobscot tribes. Two Passamaquoddy Indians were charged with arson which allegedly took place within the Reservation. At trial, the defense was raised that the Passamaquoddy Reservation constitutes "Indian country" as defined by Federal law, and that Federal courts, not state, have exclusive jurisdiction over major crimes, including arson, when committed by an Indian within Indian country. "Indian country," for purposes of the Major Crimes Act, is defined as "any dependent Indian community or any reservation under the jurisdiction of the United States." Appointed counsel of the two Indians argued that Indian country as defined in 1834 under the Trade and Intercourse Act included any unceded aboriginal territory.

Maine filed a lengthy brief in which it once again laid out its entire defense in the land claims case (U.S. v. Maine), and quite plainly attempted to get the Maine Court to cast doubt on the Federal Court's holding in Passamaquoddy v. Morton. Because of the impact an unfavorable decision, or one which questioned the validity of Passamaquoddy, would have on Maine land claims, NARF filed an amicus (friend-of-the-court) brief on behalf of the Passamaquoddy Tribe.

In July, 1979, the Maine Supreme Judicial Court issued its decision, holding that the Federal Court's decision in Passamaquoddy must be taken to mean that Congress' powers over Indians extends to each and every bona fide tribe of Indians, whether or not that tribe has been officially recognized as "tribal" or "dependent," and even though the tribe had earlier submitted to the state's protective guardianship; and that therefore, certain land in Maine occupied by Indians known as the "Passamaquoddy Tribe" is "Indian country" within meaning of the Major Crimes Act. The State petitioned the U.S. Supreme Court for review of the decision, and NARF prepared and filed briefs in opposition to review (Maine v. Dana, 404 A.2d 551 (Me. 1979); Petition for Certiorari Pending, U.S. Sup. Ct., No. 79-539).

State of Maine v. Holmes

This case involved an extension of the ruling in the Dana case regarding recognition of the Penobscot reservation as "Indian country," and, therefore, further defining the limits of the state's jurisdiction. The state had attempted to exercise jurisdiction over the manslaughter of an Indian by a non-Indian occurring within the Penobscot Reservation. The court ruled that under applicable Federal law, the United States has exclusive jurisdiction over major crimes involving Indians which take place within the Penobscot Reservation. NARF filed an amicus brief in support of Federal jurisdiction.

Bottomly v. Passamaquoddy Tribe

This is a case in which the former lawyer for the Passamaquoddy Tribe sued the Tribe seeking, in essence, a percentage of any recovery

which the Passamaquoddy Tribe might receive in connection with its current land claim. The action was dismissed in U.S. District Court on the grounds that the Passamaquoddy Tribe is immune from suit under common law and tribal sovereignty. Bottomly appealed the district court's decision, and the State of Maine, dismissed from the suit initially on the basis of an Eleventh Amendment defense, filed an amicus curiae brief on appeal in support of Bottomly. The case was argued in March, and on May 17, 1979, the First Circuit Court of Appeals affirmed the District Court's decision. (Bottomly v. Passamaquoddy Tribe, 599 F.2d 1061 (1979)).

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Oneida Indian Nation Land Claims

There are three related land claims cases currently being litigated involving the Oneida Indian Tribes. The Oneida Indian Nation, once a unified tribe, now consists of three groups: The Oneida of New York, the Oneida Tribe of Wisconsin, and the Oneida of Thames Council, a Band in Ontario, Canada. The land issues consist of two claims. First, 5-1/2 million acres which were wrongfully lost in treaties with New York State prior to 1790. Second, 246,000 acres which were lost after passage of the 1790 Indian Nonintercourse Act and in violation of the Act since the Federal government never approved the land transfer. NARF represents the Oneida of Thames Band and the Oneida Nation of Wisconsin in two of the cases, and the Oneida Nation of New York in the third case.

Oneida Nation of New York, Oneida Tribe of Wisconsin and Oneida of the Thames Band (Canadian) v. Oneida and Madison Counties of New York. This suit represents a land claim for six million acres of land taken in violation of the Nonintercourse Act. Originally filed in 1970, the question of Federal jurisdiction to hear the Oneida land claims occupied the courts until 1974 when the U.S. Supreme Court ruled in favor of Federal jurisdiction (Oneida Indian Nation of New York v. County of Oneida, 414 U.S. 661, (1974)).

In 1977, the Federal District Court issued an opinion in favor of the Oneidas on the issue of the liability of the counties. NARF, representing the Wisconsin and Thames Band Oneidas, began preparing for trial on the damage issue. These were near completion when, in April, 1979, Madison County moved for summary judgment in the case. The County argued that because the Indian Claims Commission had held that the United States was liable for breach of trust in failing to protect the Oneidas in their dealings with the State of New York--resulting in several Oneida-New York treaties under which the Indians ceded vast areas of aboriginal land--the Oneidas no longer had a claim to recover the land itself. In May, NARF attorneys briefed and argued the motion on the ICC issue. And although Judge Port ruled in the Tribes' favor, he allowed the counties to take an immediate appeal to the Second Circuit. NARF filed its brief on this appeal in December and argument is scheduled for early 1980 (Oneida Nation, et al. v. Oneida and Madison Counties, N.D.N.Y., Nos. 70-CV-35, 74-CV-187).

Oneida Nation of New York v. Abraham Williams, et al. This suit was filed under the Nonintercourse Act in 1974 by the New York Oneida Indians

for recovery of 1,100 acres of land in Madison County, and for trespass damages in the amount of $500,000. The case is presently being held in abeyance pending the outcome of Oneida Nation, et al. v. Oneida and Wisconsin Counties (N.D.N.Y., No. 70-CV-35). Because one faction of the membership of the New York Oneidas asked NARF to withdraw, NARF has petitioned the court for permission to withdraw from the particular case and this motion was pending at the end of the year (Oneida Nation v. Williams, N.D.N.Y., No. 74-CV-167).

Oneida Tribe of Wisconsin and Oneida of the Thames Band v. State of New York, et al. On December 5, 1979, NARF filed this land claim on behalf of the Oneidas of Wisconsin and Thames Band involving some five million acres of land. The suit challenges the validity of two pre-1790 land cessions from the Oneida Indians to the state of New York. NARF had earlier filed a litigation request with the Interior Department, but Interior refused to recommend to the Justice Department that the United States file suit on behalf of the Oneidas. Consequently, NARF filed suit for recovery of the approximately four and one-half million acres of aboriginal Oneida territory (Oneida Tribe of Wisconsin and Oneida of Thames Band v. State of New York, N.D.N.Y., No. 79-CV-798).

Shinnecock Land Claim

NARF is assisting the Shinnecock Tribe of Long Island in two matters. First, a petition for status as a Federally-recognized tribe; and second, a tribal land claim involving the recovery of over 3,000 acres of land in the town of Southhampton, which the Tribe lost possession of in 1859 in violation of the Indian Nonintercourse Act. The petition for Federal recognition was completed and is pending before the Federal Acknowledgement Project of the Bureau of Indian Affairs.

As for the land claim it is hoped a settlement can be reached avoiding the necessity of filing a suit. However, on September 4, 1979, the U.S. Solicitor's Office rejected the Tribe's request that the U.S. bring suit on the Tribe's behalf. Consequently, if there is no settlement NARF will probably file suit on the Tribe's behalf. Also in 1979, NARF filed a request with the U.S. Solicitor, under the Freedom of Information Act, demanding to know why and how he reached his decision in declining to recommend that the Department of Justice file suit on behalf of the Shinnecock Tribe.

Mashpee Tribe v. New Seabury Corp.

In October of 1979 the United States Supreme Court denied the petition of the Mashpee Tribe requesting that the Court review a lower Federal court decision which upheld a Federal jury finding that the Mashpees were not a bona fide tribe, and therefore, not entitled to the protection of the Nonintercourse Act on which their land claim was based.

The Mashpee Tribe had sought a declaration of ownership to approximately 13,000 acres of land in the Town of Mashpee, Massachusetts. Exempted from their claim were all individual homeowners within the claim area. The defendants asserted that the Mashpees were not a tribe and, therefore, not entitled to the protection of the Act. This question of tribal existence was set for a separate trial by the Federal District Court, and on March 24, 1979, the Mashpee claim was dismissed by the Court on the grounds that no tribe existed to assert the claim. The Court of Appeals affirmed the District Court's decision and the Supreme Court denied review.

However, the Supreme Court's denial of the petition does not mean the end of the Mashpee matter, for the United States is not bound by this decision on the tribe's existence because it was not a party to the suit and the United States is not bound by decisions rendered in its absence. Since the District Court's decision, the Department of the Interior has established new standards for determining tribal existence which are substantially different and more liberal than those "made up" by the Federal District judge. Consequently, NARF is now renewing an earlier request made to the Interior Department that they bring suit on the Tribe's behlf, and NARF is also proceeding with a petition for Federal recognition with the Interior Department. This petition will soon be completed and filed with the Acknowledgement Project of the Bureau of Indian Affairs early in 1980.

Wampanoag Tribe of Gay Head Indians v. Massachusetts

The Native American Rights Fund has been assisting the Wampanoags of Massachusetts since 1974 in the assertion and settlement of their aboriginal land claims. Located in the vicinity of Martha's Vineyard, the Gay Head Wampanoags are one of two remaining groups of the Wampanoag Indians, the other being the Mashpee Wampanoags. Today, the Gay Heads are living in very precarious existence. Until 1870, the Tribe was relatively successful in their efforts to retain their cultural identity and autonomy. However, with the transformation of the Gay Head Indian District (i.e., reservation) into a town, the tribal land was forcibly opened up for sale to non-Indians. Like the allotment experience of the western tribes, the Gay Heads' land soon passed almost entirely to non-Indians who settled in and soon dominated the town.

In 1863 the Commonwealth of Massachusetts established the Indian District of Gay Head. This development was not bad in itself, for it merely formalized the system of government that the Indians themselves had adopted. Voting membership within the district was limited to Indians, and the tribal property was shared only by tribal members. The creation of the district was nonetheless an ominous omen for it took only seven years for the Commonwealth to abolish the district over the unanimous opposition of the Indians and to create the town of Gay Head. Neither the right to reside nor the right to vote in the town of Gay Head was thereafter limited to Indians, and all of the property which the Tribe had held in common was conveyed to the new town. The land in the town was surveyed, individual members of the town were given unrestricted fee simple title to the lands they had used, and the

bulk of the remaining common lands were opened for sale. Only the clay cliffs, the cranberry bogs, and a strip one rod in width on either side of Herring Creek, which included a total of 230 acres, were reserved from sale. Nevertheless, for many years Gay Head remained an almost exclusively Indian town. Eventually, however, Martha's Vineyard became a fasionable summer resort and property at Gay Head was bought by non-Indians for summer homes. Although the selectmen of the town have always been and still are Indian, Indians no longer constitute a voting majority in the town. With recreation groups exerting increasing pressure to open the common lands to recreational use, the Tribe ultimately sought assistance from NARF in regaining control of the common lands.

In December 1974, an action was filed (Wampanoag Tribe of Gay Head Indians v. Town of Gay Head) in the United States District Court of Massachusetts. In this action, the Gay Head Wampanoag Tribe has been trying to secure the return of approximately 240 acres of town-owned land, although the Tribe's potential claim includes the entire town of Gay Head, approximately 3,600 acres. During the past year, time was spent in negotiations, resulting in a preliminary agreement which, by the end of the year, was all but in final form. Under the agreement the Gay Head Indians would receive approximately 500 acres in the town of Gay Head. The settlement agreement is modeled after the Narragansett legislation and provides that the lands will be held in a state-chartered, tribally-controlled corporation. Negotiations are still in progress.

Alabama Creek Recognition

The Alabama Creek Community of Poarch, Alabama, consists of approximately 500 individuals. These Indians are the descendants of the Creek Indians who assisted Andrew Jackson in the Creek wars in the early 1800s, and were permitted, by treaty and statute, to remain in Alabama when the rest of the Tribe was forcibly removed to Oklahoma -- a tragic journey to become known as the "Trail of Tears."

Until the early part of this century, the treaty land which these Creeks had received was considered Federal Indian trust land and was protected by the Federal government. However, the group had never received any substantial Federal assistance, and in 1921 the U.S. Land Office erroneously concluded that their land was no longer subject to Federal protection. Since that time, the Poarch Community has been totally ignored by the Bureau of Indian Affairs. As a result, it has inherited all of the disadvantages of separate status, including a separate Indian-only school system (which did not include secondary education), as well as extreme poverty, with none of the ameliorating benefits the Federal Indian programs can provide.

In working with the Tribe on land status and Federal recognition issues, the original plan had been to get the Federal government to put the land in trust under the authority of the Indian Reorganization Act. However, subsequent decisions by the Interior Department held that its authority to take land in trust for tribes only extends to tribes that were recognized as of 1934. NARF, therefore, adopted a different tact which called for preparation for the submission of a "Petition for Federal Recognition," which was completed and will be submitted in January, 1980.

Catawba Indian Land Claim

In 1975, the Catawba Tribe of South Carolina requested NARF's assistance in a land claim arising out of treaties between the British Crown and the Tribe negotiated in 1760 and 1763, under which the Tribe ceded large areas of aboriginal land to the colonies. In return, the Tribe received guarantees of secure possession in a 15-mile square, 144,000 acre reservation on what is now the border between North and South Carolina. Even though the Catawba Tribe fought on the side of the colonies in the Revolutionary War, the State of South Carolina, without the participation and consent of the Federal government as required by the Nonintercourse Act, negotiated a treaty with the Tribe in 1840 purporting to extinguish the Tribe's title to its 1763 reservation. In return, South Carolina promised to secure for the Tribe a suitable reservation in North Carolina. This was never done, and instead the State purchased a 640-acre tract in 1842 within the original boundaries of the 1763 reservation. The Tribe existed in an impoverished state on this tiny reservation until 1943, when a small Federal reservation was established and Federal recognition and services were extended to the Catawba Tribe. The Federal period was short lived, however, and in 1959 Congress terminated the Catawba Tribe.

In 1976, after more than a year of historical and legal research, NARF submitted a litigation request asking the Secretary of the Interior to request the Department of Justice to initiate legal action on the Tribe's behalf to regain possession of the 1763 reservation. In 1977, the Interior Department submitted such a request to the Justice Department. Since 1977, the Tribe has been attempting to negotiate a settlement of the claim without actually filing suit. (The filing of such a massive claim would have devastating social and economic impact on the cities of Rock Hill and Fort Mill, S.C., which lie within the claim area.) A partial agreement was reached with the State in 1977 and sporadic negotiations were conducted during 1978 with the Federal government.

The Tribe proposes a settlement which would provide that, in return for the extinguishment of the Tribe's claim, Congress would establish a Federal reservation on unoccupied lands; a Tribal development fund; restored status as a Federally-recognized Indian tribe, and an opportunity to allow those members who desire to receive their portion of the settlement on an individual basis rather than a tribal basis to elect to do so.

In March 1979, the Congressman from the district in which the claim lies introduced a bill to settle the Tribe's claim. The bill did not, however, provide for the specifics of a settlement and was generally regarded by all parties as an attempt to get the settlement process started. Hearings were held on the bill in June 1979, and a complete record was built, which will form the informational basis for a future settlement in Congress. Because the Statute of Limitations for the filing of the damages portion of the claim will run out on April 1, 1980, the Tribe adopted a resolution in 1979 directing NARF to prepare and file, if necessary, a lawsuit in Federal district court seeking the return and possession of the Tribe's 1763 ancestral reservation and historic trespass damages. Settlement efforts will continue at least through March 1980, but it is anticipated that the lawsuit will have to be filed, either because of the running of the Statute of Limitations or because of the failure of the parties to reach a settlement agreement.

Narragansett Land Claim Settlement

When the Narragansett land claim was successfully settled in 1978, it marked the first of the Eastern Indian land claims to be settled. After President Carter signed the "Rhode Island Indian Claims Settlement Act," on October 2, 1978, the state passed corresponding legislation to implement the settlement agreement which provides for the Tribe to receive 1,800 acres of state and private land to be purchased with Federal funds at fair market value. These lands are to be held by a state-chartered, Indian-controlled corporation and subject to a permanent, Federally imposed restriction against alienation. The lands will be put in Federal trust for the Tribe if the Tribe gains Federal recognition. The Tribe also has the option to establish its own hunting and fishing rights on the settlement lands. The land will be prezoned, but otherwise exempt from local zoning restrictions. Although settlement lands will be free of property taxation, any profit-making activities would be subject to taxation. State civil and criminal law will generally apply, such as health, building and other codes.

During 1979, NARF has been assisting the Tribe in three areas. First, NARF has been assisting the Federal government's acquisition of the land that the Federal government is purchasing for the Tribe pursuant to the settlement. Second, NARF is assisting the Tribe in setting up bylaws for the tribally-controlled corporation which was established pursuant to the settlement to manage the newly-acquired tribal land. Third, NARF has been preparing a Petition for Federal Recognition which was submitted in 1979 to the Bureau of Indian Affairs of the Department of the Interior. The Federal Settlement legislation did not automatically give the Tribe Federal recognition, but it did provide that the Tribe could apply to the BIA for recognition along with all other non-recognized tribes. Considerable amount of time has been spent in preparing the 4,000-page petition which was submitted in October.

The Narragansett Settlement will undoubtedly have a beneficiary impact on the other Eastern Indian Land claims cases still pending, since the existence of the Indian claims not only subjects all parties to lengthy and expensive court battles, but also imposes a cloud over land titles which disrupts real estate and municipal bond sales in the disputed areas.

Pamunky Land Claim

For several years, NARF has been representing the Pamunky Tribe of Virginia in an attempt to negotiate a settlement of a claim arising out of an attempted condemnation of tribal land in 1855 by a predecessor of Southern Railway. On November 21, 1979, the Tribe and the railroad signed a settlement agreement which provides for the payment of $100,000 in damages to the Tribe for the railroad's use of approximately one mile of track that crosses the reservation; and which grants the railroad a perpetual right to use the right of way in the future in exchange for annual rental payments. However, the settlement will not become final until ratified by both Congress and the Virginia General Assembly. Legislation for that purpose is pending in both Federal and state legislatures.

Mohegan Tribe v. Connecticut

This land claim action was filed by a private attorney on behalf of an individual who claims to be the leader of the Mohegan Tribe. (The claim of this individual to the leadership of the Tribe is strongly contested by other members of the Tribe.) The State of Connecticut moved to dismiss the action, arguing that the Nonintercourse Act does not apply outside "Indian country," as defined in the 1834 Trade and Intercourse Act. "Indian country," as defined in that Act, is limited to lands outside of states. The State of Maine intervened in this action and participated in oral argument. And because of the importance of the issues presented, NARF also filed an amicus brief and participated in oral argument.

The decisions in Bottomly and Dana (reported elsewhere in this section) greatly enhance the potential for a favorable decision in this case. However, Maine and Connecticut informed the Connecticut court of certain language in a recent Supreme Court case (Omaha Tribe v. Wilson) which suggests that the 1834 Trade and Intercourse Act, including Section 12 (now 24 U.S.C. 177) of the Indian Nonintercourse Act, applied only in Indian country as defined in Section 1 of the 1834 Act. In July, 1979, NARF submitted a brief countering the states' argument in explaining this unfortunate language of the Supreme Court. In a subsequent decision, the U.S. District Court rejected the States' argument and ruled that the Nonintercourse Act applies in all parts of the country.

Tunica-Biloxi: Land Claims and Federal Recognition

On September 17, 1978, NARF filed a petition for federal recognition with the Bureau of Indian Affairs on behalf on the Tunica-Biloxi Tribe of Louisiana. During 1979, at the request of the BIA Federal Acknowledgment Project, NARF supplemented this petition with geneological, historical and anthropological information. The preliminary determination on this petition is expected in the Spring of 1980. In addition, on August 3, 1979, NARF submitted a litigation request to the Department of Interior asking the United States to bring suit on the Tribe's behalf to recover possession of several thousand acres in north central Louisiana which were lost in violation of Articles III and VI of the Louisiana Purchase Treaty of 1803, as well as the Indian Nonintercourse Act of 1790. In the event the United State does not act favorably upon the Tribe's request prior to the expiration of the Statute of Limitations on April 1, 1980, NARF will bring suit for the Tribe.

Sault Ste. Marie v. Andrus

In order to rectify some of the disastrous results of the allotment policy whereby millions of acres of Indian land was lost, Congress provided in the 1934 Indian Reorganization Act (IRA) not only for a halt to any

further allotments, but also a means to restore land to tribes. Section 5 of the Act authorizes the Secretary of the Interior "in his discretion to acquire through purchase, relinquishment, gift, exchange, or assignment," land areas for "the purpose of providing land for Indians." The Act also provided that the title to any such lands would be held by the United States in trust for the tribe and that the land would be exempt from state and local taxation, as is the case with all trust land.

Acting under this authority, the Secretary acquired several land parcels in and around the city of Sault Ste. Marie, located in Michigan's upper peninsula. The land was acquired on behalf of the Sault Ste. Marie Band of Chippewa Indians and was needed for a housing project, since the housing conditions of the Indians in the area is in a very deplorable condition. In addition, the Secretary, also pursuant to his discretionary authority under the IRA, put 79 acres of the land located within the city into trust status for the Indians.

Although the housing project issue was settled out of court, the city filed suit in 1977 against the Secretary to compel him to rescind the putting of the 79-acre parcel in trust. The United State's motion to dismiss the City's suit was denied. Shortly thereafter the Tribe intervened, represented by NARF and local counsel, on the side of the United States. NARF and the Federal administration have been attempting to negotiate a settlement with the City for the past year, but these efforts failed in November. At the year's end, briefing on the City's motion for summary judgment had begun (Sault Ste. Marie v. Andrus, U.S. Dist. Ct., Civ. No. 77-1388).

Siletz Restoration

For the past several years, NARF has been working for the Confederated Tribes of Siletz Indians of Oregon in the restoration of Federal recognition for the Tribe as well as the establishment of a reservation land base. The Tribe had been terminated in a 1954 Act of Congress. On November 18, 1977, President Carter signed into law the Siletz Restoration Act (25 U.S.C. 711), which restored this small western Oregon tribe to Federal status. NARF assisted the Tribe in every stage of the process, from initial drafting of the legislation through the three-year legislative effort to secure its passage. In the years following, NARF has assisted the Tribe in implementation of the Act, particularly in such matters as the drafting of a proposed tribal constitution, establishment of the tribal administration, and the implementation of Federal Indian services.

However, the Siletz Restoration Act did not provide for the establishment of a Federal reservation, but rather required the Secretary of the Interior, within two years of the Act's passage, to submit a proposed reservation plan to Congress. NARF has assisted the Tribe during the past year in the development of this proposed plan, which is a joint project between the Tribe and the Portland Area Office of the Bureau of Indian Affairs. It was completed in September of 1979 and submitted by the Secretary of the Interior to Congress on November 19, 1979. The plan calls for establishment of a Federal reservation of over

3,600 acres of BLM timber land close to the town of Siletz. The estimated value of the timber on the land is $45 million, and projected revenue from sustained-yield logging operations should be adequate to make the Siletz tribal government self-sufficient -- which is the primary objective of the reservation plan. In addition, the plan calls for establishment of tribal administrative and community facilities on 40 acres of former agency lands in the City of Siletz which is currently owned by the City. Voters in the City of Siletz, in a special referendum vote, have approved the plan and the voluntary transfer of the 40-acre parcel back to the Tribe. NARF's work in assisting with the development of the plan was a long and complex planning process, which required extensive consultation with numerous local, state and Federal agencies as well as laying the necessary groundwork with the White House, the Oregon congressional delegation, and the appropriate committees in each House of Congress. On November 28, 1979, Oregon Senator Mark Hatfield introduced Senate Bill 2055, the bill to establish a reservation for the Confederated Tribes of Siletz. Hearings are scheduled in the Senate for January in 1980, and action by both the Senate and the House on the bill is expected in 1980.

Maynor v. Morton: BIA Services & Land Status

In 1976, NARF prevailed in this lawsuit which established that 22 individuals, certified in 1957 under the Indian Reorganization Act (IRA) as one half or more Indian blood, were eligible to receive services from the Bureau of Indian Affairs (BIA). Those individuals have since received limited BIA services, and have also asked the BIA to take land in trust for them. After several meetings with the group, NARF prepared a constitution to organize the group under the IRA which has been submitted to the BIA for its review. Both the request to take land in trust and the proposed constitution were under consideration as the year ended.

O

Askew v. Seminole Tribe: Applicability of State Sales Tax

The question of whether the State of Florida has jurisdiction to apply its sales tax on tribal business activities within the Seminole Reservation was still pending in state court at the end of 1979. Florida originally filed this suit against the Tribe in October of 1976 to compel the Tribe to collect state tax on admissions the Tribe charges for the Seminole Village and on arts and crafts items it sells on the Reservation.

NARF has been attempting to obtain a dismissal of the case on the grounds that Florida has no jurisdiction to apply its sales tax on tribal activities within the reservation. Finally, in March of 1979, the Court indicated its intention to rule in the Tribe's favor when it requested NARF attorneys to submit proposed "Findings of Fact," and "Conclusions of Law." NARF filed the requested documents, but the court had issued no opinion during 1979 (Askew v. Seminole Tribe of Florida, Civ. No.76-17413 (Seventeenth Judicial Circuit Court, Broward County, Florida)).

Central Machinery Co. v. Arizona: Applicability of State Sales Tax

This case presents the question of whether the State of Arizona has jurisdiction to apply its business sales tax on a sales transaction involving an Indian tribe, where the company is based off the reservation but where the sale took place within the reservation and under the supervision of the Bureau of Indian Affairs. In this instance, the sale was made by Central Machinery Company, an Arizona corporation located in Casa Grande, Arizona, to Gila River Farms, an enterprise owned and operated by the Gila River Indian Community of the Gila River Reservation in south central Arizona. When Gila River Farms purchased tractors from Central Machinery, the State imposed its sales tax of several thousand dollars on the sales and Central Machinery added this to the price of the machinery.

Both the Tribe and Central Machinery paid the tax under protest, and although a lower state court ruled in their favor, the Arizona Supreme Court upheld the authority of the State to tax the transaction. Tribal attorney, Rod Lewis, requested NARF to assist in appealing the case to the United States Supreme Court. NARF prepared and filed the Notice of Appeal and Jurisdictional Statement. Probable jurisdiction was noted by the Court in October, 1979. NARF then prepared and filed the brief on behalf of Central Machinery. (Central Machinery Co. v. Arizona, 589 P.2d 426 Ariz. 1978).

Pawnee Sales Tax Issue

The Pawnee Indian Tribe has a small reservation in Oklahoma. In an effort to promote the welfare of tribal members, the Tribe began a Tribal food store which would sell basic food items to Indians at costs below that of similar items at local grocery stores. The Tribe, however, found that such a store would likely be subject to State sales tax. NARF researched the alternatives in disputing the imposition of such a sales tax, and met and discussed the situation with the Oklahoma Tax Commission. Because of the extremely low per capita income of Indians residing on or near the Pawnee Tribal Reserve and because of the prevalence of nutritional disease in the area, there is great need for low-cost basic food items. The ability of the Tribal food store to supply such items at low cost would be severely hampered if the Tribal food store and/or the tribal members were subject to Oklahoma's sales tax.

Because the store is to be located on a reservation and organized pursuant to the Pawnee Tribe's self-governmental powers, the imposition of a state sales tax raises substantial jurisdictional questions. If Oklahoma can tax within an Indian reservation in a manner that jeopardizes an important tribal program, the viability of tribal sovereignty is in jeopardy. In 1979, NARF attorneys learned that the Commission would, in all likelihood, attempt to impose a sales tax if the Tribe began operating the food store. NARF then appeared before the Tax Commission on behalf of the Tribe, and argued: (1) that the Oklahoma does not have jurisdiction over the Pawnee Tribal Reserve because it is classifiable as "Indian country" under Federal statute; (2) that Federal law has preempted imposition of a

state sales tax; and, (3) that the food store is a Federal instrumentality and exempt from sales tax under Oklahoma law. The Tribe's application for exemption from the state's sales tax is now pending before the Commission, and, if denied, the issue may be filed in the U.S. District Court.

Topash v. Comm'r of Revenue

This is an action to recover state income taxes paid by a Tulalip Indian from Washington while residing and working within the Red Lake Reservation in Minnesota. The State refused a refund on the ground that only members of the local tribe are exempt from state jurisdiction. This issue, whether the State of Minnesota has jurisdiction to tax income earned within the Red Lake Reservation by an Indian from another tribe, bears on the scope of tribal sovereignty respecting nonmember Indians.

In February, 1979, the Minnesota Tax Court ruled against Mr. Topash. NARF appealed, and in 1979 the case was briefed to the Minnesota Supreme Court and is awaiting oral argument (Sup. Ct., Minn., No. 50030).

Prairie Band of Potowatomi v. Jackman: State Property Tax Challenge

In 1978, NARF filed suit on behalf of the Potawatomi Tribe of Kansas seeking to halt the practice by Jackson County officials of enforcing and collecting Kansas State personal property taxes against Indians residing on the Potawatomi Reservation as a precondition to motor vehicle registration. In December 1978, NARF was successful in obtaining a final judgment which provided that the state is without jurisdiction to impose personal property taxes on Indians residing on the reservation; that taxes paid by reservation Indians in tax years 1976, 1977 and 1978 will be refunded; that property which is owned jointly by an exempt Indian and a non-Indian will be exempt from taxation; and that an orderly mechanism for the determination of eligibility for immunity from personal property taxation would be established.

In 1979, in violation of the Court's Order, the County sought to collect personal property taxes against all reservation residents who had not applied for a refund under the Court Order. NARF quickly sought and obtained an Order from the District Court clarifying the earlier Order and again enjoining the County from collecting the tax (Prairie Band of Potowatomi Indians v. Jackman, Civ. No. 4897, D.Kans.).

O

Trans-Canada Enterprises v. Muckleshoot Tribe: Tribal Zoning Rights

This action arises out of the efforts of the Muckleshoot Tribe of Washington to regulate the activities of a large real estate developer within reservation boundaries. In 1977, the Tribe enacted a comprehensive land use ordinance designed to regulate the use and development of lands within the boundaries of their Reservation. Shortly thereafter, Trans-Canada Enterprises began work on its proposed trailer and subdivision on private lands within the reservation boundaries, but without the requisite tribal permits. The proposed development would substantially alter the

rural character of the northern portion of the reservation and destroy what remains of the Tribe's treaty fishery.

When the Tribe attempted to enforce its land use regulations, Trans-Canada brought suit in Federal district court seeking an injunction against the Tribe. In 1978, the Court initially denied Trans-Canada's request for injunctive relief and held that the Tribe's interest in regulating land use on its own reservation was central to its governmental purposes and that Trans-Canada had not exhausted its remedies within the tribal administrative and judicial structure. However, following the U.S. Supreme Court's decision in Oliphant v. Suquamish Indian Tribe, the district court reversed its position and held that the Muckleshoot Tribe did not have jurisdiction to regulate land use by non-Indians on private lands within its reservation boundaries. In 1979, NARF, as co-counsel with Evergreen Legal Services, appealed the case to the Ninth Circuit Court of Appeals. The case will be argued and decided in 1980 (Trans-Canada Enterprises Ltd. v. Muckleshoot Indian Tribe, No. C-77-882, W.D.Wash.).

Pascua Yaqui v. Asta: State Jurisdiction

This matter represents a suit initiated by the Pascua Yaqui Tribe seeking relief against Pima County's enforcement of its building code on reservation lands. For some time, the county's enforcement of its building code made it impossible for the Tribe to build homes funded under the Farmers Home Administration loan program. In view of the Tribe's newly-acquired status as a Federally-recognized tribe and placement of its land in trust, this suit was initiated to test the county's jurisdiction over their reservation.

In a consent decree entered into in 1979, Pima County recognized that it had no regulatory authority over the construction of homes on the Yaqui Reservation, thus terminating the case (Pascua Yaqui Assoc. v. Asta, Civ. No. 76-228 (D.Ariz.)).

Eastern Cherokee North Carolina: Hunting and Fishing

This case is presently before the United States Supreme Court on a petition for a writ of certiorari by the State of North Carolina. The case, like several other cases, involves a dispute as between an Indian tribe and a state as to who has primary regulatory and taxing authority over reservation hunting and fishing activities. Both the district court and the court of appeals in this litigation ruled in favor of the Eastern Band of Cherokee Indians, finding that the sport fishery program on the Cherokee reservation was designed, created and financed solely by the Tribe in cooperation with the United States, and that North Carolina had no authority for or interest in the regulation of fish and game on the reservation. It is expected that the Supreme Court will either grant the petition and hear it in 1980, or will summarily rule in favor or against the state of North Carolina depending upon other tax preemption cases before it.

Davis v. Mueller: Tribal Extradition Laws

In October of 1978, Thomas Davis was arrested within the boundaries of the North Dakota Turtle Mountain Chippewa Reservation by county officials without a warrant and, most important, without receiving an extradition hearing to which he was entitled under the laws of the Turtle Mountain Chippewa Tribe. The arrest of a tribal member within an Indian reservation by a state official and his removal from the reservation in violation of tribal extradition laws, approved and recognized by the Federal government, is a most serious threat to tribal self-government. In four proceedings in the state courts, including the North Dakota Supreme Court, the state courts concluded that the tribal extradition procedures were not controlling. To allow such practice to go unchallenged would defeat the entire intent of the tribal extradition laws and seriously impair tribal self-government. Because of the importance of the issue to tribal self-government, NARF has agreed to represent Davis in appeals through the Federal courts.

One of the most basic tenets of Federal Indian law is that Federally-recognized tribes have the right to exercise self-governmental authority over their own members within the reservation and that neither states nor local governments have the right to interfere with the tribe's authority. The Turtle Mountain Tribe has a duly-adopted and Federally-approved extradition provision which provides for appropriate legal procedure whereby state and local officials can apply to tribal authorities to obtain custody of tribal members for any actions allegedly committed outside the reservation boundaries. But to allow local officials to deliberately ignore or circumvent legal tribal procedures would be to discredit tribal laws not only before local and state officials, but within the tribal membership itself. On December 27, 1979, the Federal District Court denied the Indian defendant's motion for habeas corpus, whereupon NARF prepared to appeal the case to the Eighth Circuit Court of Appeals early in 1980.

Cheyenne-Arapaho Tribes v. Oklahoma: Hunting & Fishing Rights

NARF filed this case on behalf of the Cheyenne-Arapaho Tribes of Oklahoma in 1975. The suit seeks a ruling that the members of the Tribes have the right to hunt and fish within the original boundaries of their reservation, and that the Tribes have the right to regulate such member hunting and fishing. The U.S. District Court for the Western District of Oklahoma issued its opinion in this case on March 31, 1978. The court held that the trust lands within the original reservation boundaries were "Indian Country," and as such, the State of Oklahoma had no authority to regulate within those areas except through application of the Assimilated Crimes Act. The court also held, however, that an 1890 allotment agreement with the Tribes disestablished the reservation and the Tribes no longer could regulate on non-trust (primarily ceded) lands within the former reservation.

NARF appealed the District Court's ruling to the Tenth Circuit Court of Appeals on the issues of the Tribes' authority over ceded lands and the application of the Assimilated Crimes Act. The case is pending before the Tenth Circuit (Cheyenne Arapaho Tribes v. Oklahoma (10th Cir.)).

Joe v. Marcum: Tribal Jurisdiction

In this action, a New Mexico court is attempting to assert jurisdiction on the Navajo Reservation in a garnishment proceeding. A member of the Navajo Tribe, who is an employee of a private mining company operating within the reservation, incurred an off-reservation debt on which he allegedly defaulted. The creditor obtained a state-court judgment against him and attempted to have the state court garnish his wages from the mining company. DNA Legal Services brought suit on his behalf in Federal District Court in Albuquerque to prevent the state court from garnishing his wages, and moved for dismissal of the state proceedings on the ground that the New Mexico court lacked jurisdiction. The Federal District court held that the state court had no authority, since it would interfere with the Tribe's right of self-government; the state then appealed the decision to the Tenth Circuit.

The issues in the case are whether a state court has jurisdiction to garnish wages earned by an Indian in Indian country and whether the garnishment infringes on tribal self-government. The creditor argues that the employer is a non-Indian company subject to the state court's authority. DNA contends that the Navajo courts have exclusive authority over the on-reservation execution of a judgment. The issues have significance for tribal self-government, although they are specific enough not to have great impact on other classes of cases. NARF advised DNA Legal Services during the proceedings in New Mexico, and became co-counsel when the state appealed the District Court decision to the Court of Appeals. Appellate briefs were filed in 1979, and oral argument is set for early in 1980 (Joe v. Marcum, 10th Cir., Nos. 78-1912, 78-1932).

California v. Quechan Tribe: Tribal Sovereign Immunity

In June, 1979, the Court of Appeals for the Ninth Circuit issued a decision in this case dismissing the case by reason of the sovereign immunity of the Quechan Tribe of Indians. In so ruling, the Court recognized that the sovereign immunity defense of an Indian Tribe could be raised for the first time on appeal, and that the defense of tribal sovereign immunity was applicable in hunting and fishing cases as well as cases affecting direct pecuniary interest of Indians and tribes.

White Mountain Apache Tribe v. Arizona: Hunting and Fishing

This case is among a number of cases involving disputes between Indian tribes and the states as to who has regulating and taxing authority over reservation wildlife activities. In this particular case, the U.S. District Court for Arizona ruled in favor of the state, finding that while the White Mountain Apache Tribe and the United States had primary management and financial responsibility for operating and maintaining the hunting and fishing program on the reservation, the state of Arizona maintained a residual authority to regulate the activities of non-Indians -- be they on

or off an Indian reservation. This decison appears to be inconsistent with other Federal court decisions, such as the ruling in Eastern Band of Cherokee Indians v. North Carolina, and the ruling of the district court in Mescalero Apache Tribe v. New Mexico. The White Mountain Apache Tribe of Arizona appealed this case to the United States Court of Appeals for the Ninth Circuit and it is expected that a hearing on the appeal will be held sometime early in 1980. It is expected that this issue of hunting and fishing regulation over reservation activities, including Indian and non-Indians, will eventually be resolved by the U.S. Supreme Court, probably during the 1980 term.

Crow Creek Sioux: Tribal Government

The Crow-Creek Sioux Tribe of South Dakota has been in the process of comprehensively reviewing and upgrading their entire code, tribal court procedures, and tribal council procedures. To assist and facilitate the procedure, the Tribe requested the assistance of NARF to review their work products. NARF complied by researching, commenting, and by making specific recommendations.

Sisseton-Wahpeton Sioux: Tribal Government

The Sisseton-Wahpeton Sioux Tribe is located on the Lake Traverse Reservation in South Dakota. The Tribe has been in the process of evaluating and upgrading its Tribal court system. In this process the Tribe requested NARF's assistance in reviewing certain Tribal code provisions, and in particular, their separation-of-powers doctrine. NARF complied with this request by researching the provisions and making appropriate recommendations.

Wisconsin v. Baker: Wildlife Regulation

In December of 1978, trial was held in U.S. District Court in this case involving an attempt by Wisconsin to prevent the Lac Courte Oreilles Indians from regulating non-Indian fishing in the navigable waters of the Lac Courte Oreilles Reservation. At trial, Wisconsin attempted to show that when the reservation was established, the United States and the Lac Courte Oreilles Indians did not intend that the reservation be for the exclusive use of the Indians, and, further, that the reservation was not intended to include adjacent navigable bodies of water. The Tribe presented evidence to show that exclusive use was consistent with the Chippewa way of life and was embodied in the Treaty of 1854 which established the reservation, and that navigable bodies of water within the reservation and on its exterior boundary were to be included. After the trial, NARF and tribal attorneys prepared post-trial pleadings and briefs. At the end of 1979, the case was still pending in District Court (Wisconsin v. Baker, W.D.Wisc., No. 76-C-359)

Protection of Tribal Resources

The Tribal Energy Project

Indian tribes in the western United States possess a significant portion of this nation's known energy resources. Tribal development of these energy resources, such as low sulphur coal deposits, uranium, petroleum, natural gas and geothermal resources, is only in the beginning stages. While energy development represents a major opportunity for many tribes, it also brings with it a number of problems which will need to be resolved before full development can proceed.

For many years, Indian tribes and organizations, including NARF, have been involved in various activities to protect Indian natural resources. The wise development of energy resources on Indian lands is critical to the well being and continued existence of tribal communities. For those tribes who elect to develop their resources, legal and technical assistance is needed in order to develop the energy resources in a way that will have minimal impact on tribal communities, culture and land.

In October, 1978, NARF was awarded a special grant from the Administration for Native Americans (HEW/ANA) to develop "Tribal Energy and Social Development Offices" (TESDO) on three Indian reservations; during 1979, NARF assisted with the development of tribal energy and social development offices on three Indian reservations: Pueblo of Laguna (N.M.), Jicarilla Apache (N.M.), and Northern Ute (Utah). NARF subcontracted the socioeconomic aspects of the project to the Council of Energy Resource Tribes (CERT). The number of tribes who have been assisted in establishing energy resource management offices is now five; the Crow and Northern Cheyenne tribes of Montana set up resource offices in the mid-1970s. The Project's overall goal is to assist tribes to begin their own regulation and control over the development of energy resources on their reservations.

During the year, several objectives were accomplished. CERT completed a survey of socioeconomic and legal impacts of energy development on Indian reservations. CERT also developed an information system that had computerized oil and gas lease production and royalty records. Both CERT and NARF conducted training for the three participating tribal councils and the TESDO staff from each tribe. NARF hosted a three-day "Institute on Indian Energy Law," which provided an intensive overview of the legal issues that relate to energy development on Indian reservations. In addition, both NARF and CERT responded to several requests for technical assistance from the three tribes. In the establishment of offices on the three reservations, the most important achievement during the year, CERT was actively involved in the recruitment and selection of personnel for

each office. Each tribe now has an organizational unit responsible for comprehensive energy management.

Toward the latter part of 1979, the TESDO Project was being expanded to include all aspects of economic activity on Indian reservations. In keeping with the new theme, the project has been renamed the Social and Economic Development Strategy (SEDS) Project. Another change is that the participating tribes will now receive direct funding from ANA, as will CERT. Other changes include several new objectives. The project will adopt a formal method to determine what constitutes tribal "self-sufficiency" by developing activities aimed at formulating a definition and indicators of tribal self-sufficiency. The project has also been expanded to include additional tribes who will be selected on a competitive basis. A major portion of the project activities are aimed at providing legal technical assistance to the three original TESDO tribes and the additional tribes. Finally, ANA has expanded its role in the project by increasing the amount of its interaction with the project tribes. ANA has hosted informational meetings about the SEDS Project with tribes and is currently involved in selecting additional tribes to participate in the Project beginning in 1980.

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Blackfeet Oil and Gas Tax Code

The Native American Rights fund assisted the Blackfeet Tribe in drafting an oil and gas taxing code which, among other things, established a Blackfeet Tribal Tax Commission. The purpose of the code was to enable the Tribe to realize the maximum benefit from its natural resources. NARF attorneys have assisted the Tribe in the implementaion of the code, but this process is not yet complete. NARF is also prepared to assist the Tribe in any challenge to the code and in establishing the primary jurisdiction of the Tribe to tax oil and gas development on the reservation.

Pyramid Lake Fisheries: Water Rights & Fisheries Protection

Pyramid Lake is the heart of the Pyramid Lake Indian Reservation located in northwestern Nevada, about 30 miles north of Reno. The Lake is the remnant of a vast inland sea which once covered nearly 9,000 square miles of western Nevada. The Truckee River, which begins at Lake Tahoe 100 miles to the southwest, is the only significant source of water for Pyramid Lake. The Paiute Indians have, for as long as they can remember, depended on the Lake's vast fisheries resources as their primary food source. But the once thriving and world famous fisheries has been decimated because of upstream diversions -- principally a Federal reclamation project -- which have caused a decline in the lake level of 70 feet, and cut off the fish's access to their Truckee River spawning grounds. The cui-ui, which is found only in Pyramid Lake, is now classified as an endangered species, while the Lahontan cutthroat trout, the largest trout in the world which grew to more than 60 pounds in the rich waters of Pyramid Lake, is listed as threatened. These diversions began

around the turn of the century and with each new water project, the very life of the Lake, the fisheries and the Paiute Indians themselves are threatened.

Since its inception, NARF has been working in association with other attorneys in the following matters to control the diversions and protect the fisheries.

United States v. Truckee-Carson Irrigation District. This suit against some 17,000 defendants was brought in 1973 by the United States to establish a water right for the maintenance and preservation of the Pyramid Lake and Truckee River fisheries. The Tribe, represented by NARF and tribal attorney Robert Stitser, intervened as a plaintiff. The threshhold issue in the case is whether the United States and the Tribe are barred from claiming a water right for fishery purposes by the 1944 final decree entered in a case adjudicating Truckee River water rights. In that case, the United States represented the Pyramid Lake Tribe and the directly competing interests of the water users on a Federal reclamation project that are also dependent on Truckee River water. Owing to this conflict of interest, the United States claimed only a small water right for irrigation purposes for the Tribe. The Tribe claims that its interests were not adequately represented by the United States and that the Tribe's right to procedural due process was denied.

In 1977, the district court dismissed the case holding that the failure of the government to assert a water right for fishery purposes effectively extinguished that right and that the United States and the Tribe were barred by the 1944 decree from claiming that water right. The United States and the Tribe have appealed to the court of appeals. Final briefs were submitted in May 1979. The case is awaiting oral argument. During 1979, tribal and government attorneys also spent considerable time working on a proposed settlement of all of the Pyramid Lake water litigation (United States v. Truckee Carson Irrigation District, United States Court of Appeals for the Ninth Circuit).

Pyramid Lake Paiute Tribe of Indians v. Sierra Pacific Power Co. This matter concerns the jurisdiction of the Federal Energy Regulatory Commission (FERC) to license Sierra Pacific's four hydroelectric power plants on the Truckee River in Nevada. The Tribe's position is that FERC has jurisdiction to license the plants and that the plants cannot be operated without a FERC license. In addition, the Tribe has complained that the plants are being operated in a manner detrimental to the Truckee River and Pyramid Lake fisheries. The issues in this case are whether the hydroelectric plants are subject to FERC jurisdiction, and, if they are, the nature of the terms and conditions on which they should be licensed. The primary basis for FERC's jurisdiction is the navigability of the Truckee River.

In August 1979, FERC issued an opinion reversing the decision of the Administrative Law Judge and holding that the power plants are subject to FERC jurisdiction because the Truckee River is navigable. The power company filed a petition for rehearing which is still pending. An appeal to the U.S. Court of Appeals is expected (Pyramid Lake Paiute

Tribe of Indians v. Sierra Pacific Power Co., Federal Energy Regulatory Commission).

Carson-Truckee Water Conservancy District v. Andrus. This suit was brought by the State of Nevada and two water companies seeking to prevent the Secretary of the Interior from utilizing water stored in Stampede Reservoir for the benefit of the Pyramid Lake fishery. They claim that the Secretary is required to enter into a contract for the sale and delivery of Stampede water for municipal and industrial purposes in Reno and Sparks. The Tribe had intervened as a defendant and is represented by NARF and the Tribe's private counsel. The primary issue in this case is whether the Secretary of the Interior's responsibility to the endangered and threatened fish species of Pyramid Lake takes precedence over whatever obligation he might have to delivery water to the plaintiffs. There are several other subsidiary questions involving the Secretary's obligations under various reclamation laws and NEPA, and his trust responsibilities to the Pyramid Lake Tribe.

During 1979, all sides prepared briefs on motions for summary judgment, and in August the district court issued an opinion holding that the Secretary's obligations under the Endangered Species Act did take precedence over any conflicting obligations. The case is scheduled to go to trial in the Spring or Summer of 1980 (Carson-Truckee Water Conservancy District, et al., v. Andrus and Pyramid Lake Paiute Tribe of Indians, No. 76-152-BRT, D.Nev.).

United States v. Orr Water Ditch Co. In 1944, a final decree was entered in this case which defines the rights of numerous Truckee River water users, and also provided a water right for irrigation purposes for the Pyramid Lake Indian Reservation. However, most of the water allocated to the Tribe has not been put to use for irrigation purposes, and the Federal water master charged with enforcing the decree has permitted non-Indian water users in the Truckee Meadows to divert far more water into their ditches than the amount to which they are entitled under the terms and conditions of the decree.

To provide more water for the fisheries in Pyramid Lake and the Truckee River, the United States filed a petition seeking permission to use the Tribe's unused agricultural water right for fishery purposes, and also complained to the water master about his lack of enforcement of the decree. The water master filed a petition with the court asking for instructions regarding the enforcement of the decree. With regard to the question of whether water reserved for tribal agricultural purpose may be used for fisheries in the Truckee River and Pyramid Lake, the legal issues are: (1) whether the permission for change in use will be decided by the Federal court or the state engineer; (2) whether Federal or state law will be applied; and (3) the standards to be applied in changing the purpose of an Indian water right that is not being used for the purpose for which it was originally adjudicated. During 1979, NARF attorneys worked with the Tribe's private attorney and with government attorneys in preparing these matters for trial and in researching the various legal issues (United States v. Orr Water Ditch Co., U.S. District Court for the District of Nevada).

Rincon Band v. Escondido: Water Rights

This is a suit brought by two Southern California Indian Bands and by the United States on their behalf and three other Bands to declare certain old water rights contracts invalid or, in the alternative, to determine the meaning of the contracts. The contracts, which were approved or executed by the Secretary of the Interior, permit two water companies to divert the waters of the San Luis Rey River away from the reservations. Without this water, the reservations cannot become viable economically self-sustaining communities. The Bands and the United States also claim that the water companies are illegally using portions of three of the reservations for their diversion system. The principal issues in this case involve the validity of the contracts; whether the Secretary of the Interior is authorized to give away Indian water rights; and determining the proper theory of damages for deprivation of the Bands' water rights.

In September of 1979, the district court ruled that the water rights contracts are void insofar as they limit or convey Indian lands and water rights. The court also held that certain canal rights of way across the reservation had not been validly acquired. The district court has not yet decided whether to permit an interlocutory appeal which is supported by the water companies and opposed by the United States and the Bands. During 1979, the parties made considerable progress toward a negotiated resolution that would ultimately require congressional approval, and a bill has been introduced in Congress which could be the vehicle for such a settlement. Hearings are scheduled for early 1980 (Rincon Band of Mission Indians v. Escondido Mutual Water Company, Civ. Nos. 69-217-S, 72-276-S and 72-271-S, U.S.D.C. Southern District, California).

Rincon v. Gonzales: Tribal Water Ordinance Authority

The Rincon San Luiseno Band of Mission Indians brought a suit in the state courts of California against certain Band members and non-Band members who refused to comply with the Tribe's water ordinance. The ordinance generally requires an application to be filed for water services, that tribal officials make or authorize the connection, and that non-members pay an established water monthly fee. The defendants consistently violated the ordinance by using unapproved and illegal water hookups and by not paying the monthly water fees. In short, these defendants refused to recognize the governmental authority of the Rincon Band to regulate domestic water use from the Rincon domestic water supply system. Since the United States refused to bring an action and the Rincon Band did not have an existing tribal court, the enforcement action was filed in the state courts of California in June, 1978.

In 1979, two significant events occurred. First, the court awarded $2,500 in attorney fees to NARF in order to compensate for attorney time made necessary by the defendants' failure to provide factual information pertaining to the law suit as required by state law. Second, a favorable settlement for the Rincon Band was reached in this case on September 11, 1979. After long hours of negotiation, proposals, and counter-proposals, the govern-

mental authority of the Rincon Band was the clear winner in this settlement The basic content of the settlement is as follows: (1) The Indian and non-Indian defendants (who were in violation of the Rincon Band's water ordinance) agree to abide by all rules and regulations of the Rincon Band concerning the operation of the Rincon domestic water system; (2) The defendants agree to pay $800 in back water fees; (3) The Rincon Band agrees to approve the defendants' application for water service; (4) The non-Band member defendants agree to pay $500 each for application fees (total of $2,000); and (5) The defendants agree to a priority system during times of water shortage whereby Rincon Band members will always have priority over non-Band members. Therefore, during times of severe water shortage, non-Indians on the system will be the first group required to disconnect from the water system. Following settlement, the lawsuit was dismissed and no further activity is planned (Rincon v. Gonzales, Civ. No. N-10601, Superior Court, San Diego County, California).

Rincon Band of Mission Indians: FERC Project No. 176

The Rincon, LaJolla, San Pasqual, Pala and Pauma Bands of Mission Indians are opposing the Escondido Mutual Water Company's renewal of its 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 original license has been violated by the water company. The Bands, supported by the Secretary of the Interior, are also seeking a non-power license that would enable them 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 and develop their reservations. The water company opposes the Bands' application for a non-power license and has filed a competing application for a license that would enable it to continue diverting the water away from the reservations. The Bands' claim that several provisions of Federal Power Act, as well as other laws, prevent the Commission from issuing a license to the water company. If the Bands prevail, their water rights will be protected and their sovereignty will be greatly strengthened.

The Federal Energy Regulatory Commission issued its decision in February 1979 and denied rehearing in November 1979. The Commission agreed with the Bands that the water company had violated the terms and conditions of its license and ruled that the company was liable for damages. It granted a new license to the water company subject to conditions that are much more favorable to the Bands. In particular, the water company is required to deliver water to three of the reservations. All parties are appealing the Commission's decision to the court of appeals (Escondido Mutual Water Company, Project No. 176, Federal Energy Regulatory Commission).

U.S. v. Adair: Klamath Water Rights

In 1979 an Oregon Federal District Court decision confirmed the right of the Klamath Tribe of Oregon to the use of all water from the

Williamson River as necessary to protect the Tribe's hunting and fishing rights. The court also ruled that the Tribe's priority date for these water rights dates from time immemorial. At the close of the year, the Tribe and the United States were preparing to file a separate proposed judgment with the court to counter the defendants' proposed judgment which does not adequately incorporate the court's "Findings of Fact and Conclusions of Law."

NARF is also in the process of identifying expert witnesses, (i.e., fisheries biologists, wildlife biologists, hydrologists) who will conduct the necessary studies and testify to the Tribe's water rights needs (U.S. v. Adair, 478 F.Supp. 336 (D.Ore.1979)).

Schonchin v. Sexson: Klamath Water Rights

NARF is assisting attorneys from the Organization of Forgotten Americans (OFA) in representing former Indian allottees of the Klamath Reservation in Oregon who are seeking to preserve their water rights from loss under State administrative proceedings. These water rights have been guaranteed to the Klamath Tribe by Federal statute, but the State is seeking to determine their water rights by requesting and requiring every claimant to file a claim to the water rights within the Klamath River Basin or within the three counties that comprise the former Klamath Indian Reservation.

In 1978, suit was filed in the U.S. District Court for Oregon on behalf of the former allottees seeking a declaration that they retain reserved right to use of water sufficient to meet their needs, and that the state of Oregon has no authority to adjudicate their reserved rights in state proceedings under certain state laws. NARF intends to continue to assist OFA's efforts though it does not anticipate any direct counsel role. During 1979, NARF assisted in drafting briefs for a hearing before the U.S. Magistrate, and also obtained a $6,000 grant for the Tribe to conduct a water study. A decision by the Magistrate is expected in 1980 (Schonshin v. Sexson, Civ. No. 78-294, D.Ore.).

Zuni Water Rights

The Zuni Pueblo, located in the western portion of the State of New Mexico, was concerned that proposed construction activity near the Pueblo lands would illegally draw on and use up the subterranian water supply located beneath the Pueblo. The Zuni Pueblo Tribal Council contacted NARF and requested assistance in researching this topic in conjunction with the Indian Pueblo Legal Services. During 1978 and 1979, NARF analyzed and researched the voluminous background materials gathered on this topic. The status of the case is that the legal services office is presently gathering necessary hydrological data which will help determine whether NARF will initiate litigation on this issue.

Jicarilla Apache Tribe v. U.S.: Water Rights

The Jicarilla Apache Tribe of New Mexico sued the United States and others in Federal court to adjudicate the Tribe's rights to the Navajo River. The Federal court dismissed the Tribe's suit in favor of a water adjudication action brought by the State of New Mexico in state court. Following an unsuccessful appeal to the Court of Appeals, the Tribe filed a petition for certiorari with the U.S. Supreme Court.

One issue presented by this case is whether Indian water rights can be adjudicated in state courts in those states which have Indian jurisdictional disclaimer clauses in their enabling acts, organic acts or state constitutions as New Mexico does. Another issue is whether a Federal law known as the "McCarran Amendment" permits Federal courts to dismiss water adjudication suits brought by Indian tribes pursuant to 28 U.S.C. 1362.

NARF attorneys assisted the attorneys for the Jicarilla Apache Tribe, Nordhaus, Moses & Dunn of Albuquerque, in preparing the petition seeking Supreme Court review and in persuading the United States to support the petition. On December 11, 1979, the Supreme Court declined to review the case, with two justices dissenting (Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir. 1979); cert. denied, Dec. 11, 1979, 48 U.S.L.W. 3387).

Puget Sound Power & Light Co. v. FERC: Water Rights

These proceedings pertain to the jurisdiction of the Federal Energy Regulatory Commission to license Puget's White River Power Project. Constructed in 1911, it is located in Pierce County, Washington, east of the city of Tacoma, on the White River, a glacial stream fed by ice and snow from Mount Rainier. This hydroelectric facility diverts, on an annual basis, approximately two-thirds of the waters of the White River at a point approximately six miles above the Muckleshoot Indian Reservation (During low flow periods, substantially all of the waters of the river are diverted by Puget). The diverted waters are transported via flumes and canals into a storage reservoir known as Lake Tapps. At the Lake's outlet, energy is generated at a power house near Dieringer, Washington, and the waters are released back into the White-Stuck River downstream of the Muckleshoot Indian Reservation. In other words, Puget diverts a substantial amount of the White River's waters which would normally pass through the Muckleshoot Reservation in order to generate electricity and then returns the water below the reservation. As a result, the Muckleshoot Indian Tribe is deprived of its vital fisheries resource.

Since the initiation of these proceedings in 1964, the jurisdiction of the Federal Energy Regulatory Commission (FERC) has been the primary issue. In 1977, FERC ruled the White River to be a navigable stream and that

FERC, therefore, had licensing authority. Puget Sound Power & Light has appealed this finding to the Ninth Circuit Court of Appeals. During 1979, NARF attorneys, working in association with tribal attorneys Allen Sanders and Richard Reich, prepared briefs for the Appeals Court (Puget Sound Power & Light Co. v. FERC, Muckleshoot Tribe, Wash. Dept. of Game & Fisheries, U.S. Sec. of Int., No. 78-3211, U.S. Ninth Circuit Court of Appeals).

Arizona v. California: Water Rights

This is a historical suit to adjudicate the waters in the lower basin of the Colorado River between the states of Arizona, California, Nevada, the Federal Government and five Indian Reservations in which NARF represents the Cocopah and Chemehuevi Tribes. The original opinion in this case was handed down by the Supreme Court in 1963. Subsequently, it became apparent that the five tribes were entitled to additonal water rights because of the Government's failure to fully assert their claims at the original trial, and by reason of the addition of irrigable lands as the result of the resolution of boundary disputes since 1963.

In August 1979, the Special Master appointed by the Supreme Court allowed the five tribes to intervene for the purpose of asserting these additional rights. Trial is set for May 26, 1980, in Denver. Upon its conclusion, the Special Master will make his recommendations to the Supreme Court, which is expected to rule in the Winter or Spring of 1981 (Arizona v. California, 373 U.S. 546 (1963)).

Northern Cheyenne Tribe v. Adsit: Water Rights

NARF represents the Northern Cheyenne Tribe of Montana in this general water adjudication case which seeks to establish the Tribe's right to sufficient water to fulfill the purposes, both present and future, for which their reservation was created. The suit, which was filed in 1975, involves the adjudication of rights of numerous defendants to the waters of the Tongue River, Rosebud Creek, and their tributaries. The United States filed suit on behalf of the Tribe shortly after, and the two cases have been consolidated.

Various motions to dismiss were filed in 1975 and 1976. The motions present the question of whether the Tribe's water rights should be adjudicated in Federal or state court. NARF has argued strongly that a Federal forum is required and is certainly preferable to any state courts which are historically hostile to Indian rights generally. The motions were before the court for three full years before the Court finally ruled on November 29, 1979, to dismiss the cases from Federal court for reasons of "wise judicial administration." NARF has appealed the district court's decision to the Ninth Circuit Court of Appeals. In the years since that case was filed, NARF and the United States have been involved in assembling the evidence necessary to prove their case. This has required extensive studies and investigations by various technical experts (Northern Cheyenne Tribe v. Adsit, et al. (9th Cir.)).

Ft. McDowell Reservation: Water Rights

On April 13, 1979, NARF filed suit on behalf of the Fort McDowell Tribe of Arizona against the Salt River Valley Water Users' Association, the State of Arizona and others to adjudicate the Tribe's rights to the waters of the Verde River in Arizona. The Defendants moved to dismiss on the ground, among others, that under the McCarran Amendment the case should have been brought in State Court. After extensive briefing and argument, the Court entered an Order dismissing the Tribe's case. This decision is currently on appeal to the Ninth Circuit. It is anticipated that this case will likely be consolidated for hearing on appeal with recent Montana and related Arizona Indian water rights cases which present the same issue -- namely, under what circumstances, if any, may an Indian tribe have its water rights adjudicated in Federal rather than State Court (Fort McDowell Mohave-Apache Indian Community v. Salt River Valley Water Users' Association, et al.).

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Walker River Paiute Tribe v. Southern Pacific: Railroad Trespass

On April 13, 1880, in exchange for payment of $750 and a promise of free railway transportation for Indians, a special council of the Walker River Paiute Tribe orally granted the Carson and Colorado Railroad Company a right of way through their reservation in Western Nevada. The railroad, however, failed to secure the required Congressional approval for the right of way, although four bills were introduced to ratify the agreement, which was put in written form on August 9, 1882. Nevertheless, the railroad proceeded to construct and operate their line across the reservation. After 1888, no further attempts were made by the Carson and Colorado Railroad to obtain Congressional approval of the right of way. The railroad and its predecessors in interest have ever since continued to operate a railroad through the reservation, apparently basing their right to do so upon the invalid 1882 agreement with the Tribe, although no more than mere token rail service was provided to the Indians. Indeed, in the 1950s, even this was stopped.

The Walker River Paiute Reservation was established by administrative action in 1859, and formally confirmed by executive order of President Grant on March 19, 1874. The reservation is sparsely populated. Most of the tribal members live in and around Schurtz, Nevada, on tribal land or on trust allotments. The Tribe and its members subsist on cattle grazing and a small amount of hay farming. No natural resources have been found or developed on the reservation, and there are no industries. Thus, the Tribe views the railroad as a potential resource in the economic development of the Tribe. Indeed, historical documents show that this was the reason the Tribe originally agreed to permit the railroad to cross the reservation, although the railroad contributed little to the reservation's development over the years. If the railroad is to continue to operate across the reservation, the Tribe seeks compensation for future use, and fair payment for past illegal use. And, in addition, the Tribe demands that maximum precautions be taken to protect its members from the danger of explosives transported by the railroad.

In 1929, the U.S. Army constructed a munitions depot south of the reservation to be served by the railroad. During times of military

activity, explosives are transported over the right of way. The Tribe has long been concerned about the danger of explosions--especially since the train passes through the center of the only tribal community on the reservation--next to the reservation school, the hospital, and the tribal government and community center. The Tribe's discontent with the railroad grew and in the 1950s, the Tribe initiated formal inquiries into the legality of the railroad's use of the right of way. In the early 1970s, after years of a lack of response by the Federal government to the Tribe's inquiries, the Tribe contacted the Native American Rights Fund for assistance in pressing its inquiry into the legality of the railroad's use of Indian lands on the reservation.

In 1972, NARF brought this suit on behalf of the Tribe against Southern Pacific, present owners of the line crossing the reservation, asserting that the railroad had never acquired a valid right of way for its line across the reservation. The United States, as trustee for the Tribe, filed a companion suit on behalf of the Tribe and allottees.

Besides the trespass action, other issues in the suits are the damage award to the Tribe for past and continuing illegal trespass, and a possible ejectment proceeding against the railroad. In 1974, the Federal District Court held that while the railroad had not acquired a valid right of way, it had acquired an "implied license" which had not been revoked by the Tribe until the filing of the suit. The "license" immunized the railroad from trespass damages. Both sides appealed this decision to the Ninth Circuit Court of Appeals, and in 1976 the Ninth Circuit ruled that not only had the railroad never acquired a valid right of way, it never acquired any "implied license" to operate its railroad across reservation lands; and, that, therefore, it is and always has been a trespasser and is liable in damages. The case was then remanded to the district court for further proceedings in conformity with the Ninth Circuit's decision.

Hence, the major issues pending before the district court on remand are the questions of damages and the propriety of ejecting the railroad from reservation lands. As to the ejectment issue, in May of 1979, NARF filed a motion for ejectment of the railroad, but the Department of Justice requested extensions of time to respond to the Tribe's motion for ejectment in order to resolve the conflict of interest which it faces between the Tribe on one hand, and the Army, on the other, with respect to the ejectment of the railroad. The Army, in response to the Indians' motion to eject, requested the United States to institute a condemnation action if it appears that the ejectment motion may be granted. Representatives of the Tribe, the Army and the Justice Department met to discuss possible settlement approaches, but until the Tribe and the Army have obtained appraisals of the present fair market value of the right of way, settlement discussions are not practical insofar as ejectment is concerned. Moreover, fair compensation is not the only issue to be settled. The explosive danger is another important aspect to be resolved in any settlement on future use of the right of way (NARF is now preparing to obtain an appraisal of the present fair market value of the right of way).

The ejectment issue became further involved when, in October of 1979. the Army requested that the Court postpone the Tribe's ejectment action until condemnation or settlement proceedings could be exhausted. At this point, two other parties sought to intervene in the case. The Interstate Commerce

Commission and the State of Nevada moved to intervene, both claiming that they, and not the Court, have exclusive jurisdiction to determine whether the railroad can be ejected by the Tribe. The Tribe's position is that the intervention motions should be disposed of first since they pose preliminary obstacles to the Court's adjudication of the ejectment issue, and, until disposed of, they serve to remove pressure on the Army and Southern Pacific to pursue speedy settlement of the ejectment issue. Discussion between NARF and the Justice Department with respect to the advisability of the requested stay are continuing. Meanwhile, the Tribe and Southern Pacific completed briefing on the intervention motions.

As to the other pending issue on remand, namely, damages for past trespass, in August, 1979, Southern Pacific filed a "Motion for Summary Judgment," setting forth its contended measures of damages in this action. Southern Pacific contends that consideration of damages is inappropriate until the Court determines the proper measure to be applied. On November 7 and 13, 1979, the Tribe and the United States, respectively, filed cross motions for partial summary judgment setting forth their theories of damages in the case. A final round of briefing on this issue will be forthcoming in early 1980 (Walker River Paiute Tribe of Nevada v. Southern Pacific Transportation Co., and United States v. Southern Pacific Transportation Co., Civ. Nos. 2707-BRT and 2708-BRT, Consolidated Cases).

United States v. Clarke

This case concerns the construction and use of a road across an Indian allotment in Alaska. The road is maintained by the City of Anchorage but the Indian allottee has fought against the grant of a right of way for more than 20 years and no right of way has ever been authorized. A Federal law permits the condemnation of allotted Indian lands pursuant to state law, and Anchorage claims that it has exercised its power of condemnation by physically occupying the allotment. The lower courts agreed with this position. However, the position of the United States is that the right of way cannot be condemned unless Anchorage first files a condemnation lawsuit in Federal court. If Anchorage's position is upheld, all Indian allottees and the United States will have the burden of discovering encroachments on all allotted Indian lands and of bringing suits to recover compensation.

The United States lost in the lower courts, but sought Supreme Court review. Although the Indian allottee was separately represented, her counsel did not file a brief or argue before the court of appeals nor file a petition for certiorari to the Supreme Court. After the United States' petition for certiorari was filed, NARF became involved and prepared a brief urging the Supreme Court to hear the case. On October 1, 1979, the Supreme Court agreed to review the lower court's decision. NARF attorneys prepared and filed a brief in support of the government's position, and advanced several arguments that the government did not make, including the argument that the right of way could not be obtained without the consent of the Secretary of the Interior and the allottee. The case is scheduled for argument in January, 1980 (United States v. Clarke, United States Supreme Court).

Swinomish Tribe v. Burlington Northern: Railroad Trespass

In 1890, a railroad line was constructed across the tidelands of the Swinomish Reservation in Washington. Neither the original railroad nor its successor, Burlington Northern, ever obtained a right of way from the Tribe or the United States. In 1978, represented by NARF and local counsel, the Tribe filed suit maintaining that the Railroad has been in trespass of tribal lands since 1890. The suit asks that the Tribe be compensated for the trespass and that the railway be removed from the Reservation. In 1979, the suit progressed through pretrial procedure toward a trial on the merits.

The suit will decide whether the northern extent of the reservation includes the tidelands traversed by the Railroad. In the past the tidelands were a major food source for the Tribe, the area abounding in fish, shellfish and waterfowl. Today, the tidelands represent the single greatest potential for economic self-sufficiency for the Tribe. A major marine development, to be located just north of the railway line, is now being planned by the Tribe. The suit will also decide whether general treaty language can be interpreted to include lands used and relied upon by a tribe but not specifically described in the treaty. Because most treaties use general language, a decision for the Tribe in this case will be a very positive precedent for those tribes who may be engaged in future reservation boundary disputes.

Shortly after the suit was filed, the Railroad attempted to obtain the right of way through Interior Department proceedings, but NARF was successful in opposing this move. The Railroad then filed suit in Federal court in late 1979, appealing the adverse decision of Interior (See case summary of Burlington Northern v. Andrus), and moved to stay the Tribe's trespass action pending a decision in its suit against the Secretary of the Interior. NARF opposed the motion, and the Court denied the Railroad's motion to stay the Tribe's suit on October 4, 1979. Also in 1979, the Tribe and the Railroad agreed to a trial on the issue of the Railroad's trespass liability and, should the Railroad be found to be in trespass, a second trial on the proper remedy for the Tribe. The first trial is expected sometime in the summer of 1980 (Swinomish Tribal Community v. Burlington Northern, Inc. (W.D.Wash., Civ. No. C78-429V)).

U.S. v. Olympic Pipeline: Trespass on Tribal Lands

The Swinomish Indian Reservation is located on a peninsula in northwestern Washington. Two oil pipeline companies maintain pipelines which cross tribal lands without a right of way from the Tribe or the United States. After the pipeline companies sued the Tribe, the Tribe and the United States cross-claimed for the companies' trespass on Tribal lands. In 1978, the pipelines' claim against the Tribe was dismissed by the Court. The Tribe's claim against the companies was not dismissed and in 1979 the Tribe received a favorable -- though partial -- judgment.

These actions involve the liability of companies which decided to cross tribal lands without tribal consent. Also involved are issues of the extent of lands reserved to the Tribe by treaty and the remedy for

damage to such lands resulting from trespass. After the pipeline companies' claim against the Tribe was dismissed, Olympic resumed negotiations with the Tribe. Negotiations progressed in 1979 and have resulted in a settlement of the Tribe's trespass claim against Olympic. Olympic will pay the Tribe a substantial sum for its trespass and for future use of tribal lands. The other pipeline company, Transmountain, has not negotiated with the Tribe. If it does not do so, the Tribe will continue to prosecute its trespass claim. It is likely that this claim will be consolidated for trial with Swinomish Tribal Community v. Burlington Northern, Inc. (Olympic Pipeline Co., Transmountain Pipeline Co. v. Swinomish Tribal Community and United States v. Olympic Pipeline Co., Transmountain Pipeline Co., Consolidated cases (W.D.Wash. Civ. No. CV-550V)).

Burlington Northern v. Andrus: Railroad Trespass

This is an action by the Swinomish Tribal Community of Washington against Burlington Northern, filed in 1978, in which the Tribe maintains that the Railroad illegally crosses tribal tidelands (see case summary of Swinomish Tribal Community v. Burlington Northern, Inc.). Shortly after the suit was filed, the Railroad attempted to obtain a right of way for that portion of the railway crossing Swinomish lands. The Railroad initially sought a right of way from the Bureau of Indian Affairs. NARF, on behalf of the Tribe, opposed the granting of such a right of way because the Railroad had not obtained the Tribe's consent as required by applicable Federal law, and the BIA refused to grant the right of way for that reason. The Railroad then appealed the decision through the Department of the Interior. At each stage, the BIA's decision was upheld. The Railroad then sued the Secretary of the Interior claiming that tribal consent to a grant of right of way across tribal lands was not required by law. Trial is expected in the Spring of 1980. The suit will decide the important issue of whether Indian tribes have the self-governmental power to prevent the unwanted disposition of tribal lands (W.D. Wash., Civ. No. C79-1199V).

Southern Pacific v. Andrus: Tribal Approval for Right of Way

This case is an offshoot of a trespass case brought by the Walker River Paiute Tribe of the Walker River Reservation in Nevada, against the Southern Pacific, in which the Southern Pacific was found to be in trespass on the Walker River Reservation. Various phases of the trespass case are still on-going. Southern Pacific also applied for a right of way for its railroad through administrative procedures, but was not allowed to file its application without tribal consent. The decision of the Secretary of the Interior on this matter is now being challenged by the railroad. The case presents the issue of whether tribal consent is required before the railroad can obtain a right of way across tribal lands. The Walker River Tribe intervened in the case and is represented by NARF. A motion for summary judgment was filed by the Secretary of the Interior and the Tribe, and a cross motion for summary judgment was filed by Southern Pacific. (Southern Pacific Transportation Company v. Andrus, D.Nev.).

U.S. v. Michigan: Great Lakes Fishing Rights

On May 7, 1979, a decision was handed down in this land mark Great Lakes Indian fishing rights case. In a 140-page opinion, Judge Fox, of the U.S. District Court for the Western District of Michigan, held that tribal members of the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians have the right to fish free of state regulation in the areas of Lakes Superior, Michigan and Huron which were ceded in treaties.

This case was originally filed in 1973 by the United States on behalf of the Bay Mills Indian Communtiy and later on behalf of the Sault Tribe against the State of Michigan. The Tribes intervened in their own right and NARF represents the Bay Mills Indian Community and has acted as lead counsel throughout the proceedings. Plaintiffs asked the Court to declare that the tribes, as descendants to signatories to the 1836 Treaty had reserved rights to fish in a substantial portion of the Great Lakes. Under the 1836 Treaty, the Indians ceded a large portion of the lower peninsula of Michigan, the eastern half of the upper peninsula of Michigan, together with approximately half of Lake Superior, most of Michigan's waters in Lake Michigan, approximately 20% of Lake Huron and the St. Mary's River system connecting Lakes Huron and Superior. The Indians contended that even though this area was ceded, they retained the right to go into the ceded waters and fish for commercial and subsistence purposes.

The case finally came to trial in 1978 after years of intensive discovery. The trial began in March and continued for almost four weeks at different times during the year. The trial transcript is contained in 10 volumes and totals nearly 3,000 pages. At trial, approximately 300 exhibits were introduced by the United States, the Tribes, and the State of Michigan. The trial was characterized by extensive expert testimony of historians, ethnohistorians, archeologists, and anthropologists. In addition, tribal witnesses testified regarding oral tradition in their community as it pertained to the meaning of the treaties of 1836 and 1855.

The Indians' basic claim was that in the 1836 Treaty, they reserved the right to fish in their traditional fishing waters. In agreeing with this interpretation, the District Court stated that in Article Thirteen of the 1836 Treaty, the Indians reserved a right to hunt on the lands ceded, along "... with the other usual privileges of occupancy, until the land is required for settlement." The court ruled that the reserved rights contained in this article included the right to fish in all of the ceded waters of the Great Lakes, wherever there are fish. It also ruled that even in the absence of the language in Article Thirteen, the Indians reserved by implication the right to fish in the Great Lakes. Central to this interpretation is the well-established principle of Indian treaty interpretation that the Indians are the grantors of the land and water. They had original (aboriginal) title before the coming of the white man. It was this land title they conveyed to the United States - the grantee in the treaty transaction - and anything not explicitly granted away by the Indians was necessarily retained. Thus, the lack of explicit reference to the relinquishment of their fishing rights gives rise to the implication that the Indians kept this right, not that they gave it up. Given the significance of the fishery to the Indians, it was

highly unlikely, indeed inconceivable, that they would relinquish this valuable right.

The State of Michigan appealed the decision to the Sixth Circuit Court of Appeals, and also filed a motion to stay the implementation of the District Court's decision pending a decision by the Appeals Court. Consequently, after the May District Court decision, NARF and U.S. attorneys were not only busy drafting the appeal briefs on behalf of the Tribes, but also engaged in preparing for the 10-day trial in District Court in opposition to the state's "Motion to Stay" the lower court's decision. It is expected that the Sixth Circuit will hear oral arguments early in 1980 and render a decision later in the year. NARF is working in conjunction with William James of Upper Peninsula Legal Services in Sault Ste. Marie, Michigan, and Daniel Green, tribal attorney. (U.S. v. Michigan, 471 F.Supp. 192 (W.D.Mich. 1979); appeal pending, No. 79-1414, U.S. Court of Appeals for the Sixth Circuit).

Idaho v. Cutler: Tribal Hunting Rights

This case involves a determination of the nature and scope of off-reservation hunting rights reserved by the Shoshone and Bannock Indians in the Treaty of July 3, 1868. Specifically, the litigation, now in the state courts of Idaho, involves the question as to whether the Indians' hunting rights are subject to state season and bag limits. The particular treaty involved reserved hunting on the unoccupied lands of the United States. The Shoshone-Bannock Tribe contends that the critical understanding of the treaty was that the Indians would be able to hunt as they previously had hunted subject to, but only to, the limitations brought about by actual white settlement. Thus, the Tribe contends, it is irrelevant whether or not the United States or the state of Idaho or some other public entity owns the land. The issue is simply whether the land is settled and not feasibily subject to hunting and fishing. A decision is expected in this case in 1980 and it is anticipated that the litigation will ultimately be appealed to the Idaho Supreme Court (Idaho v. Cutler).

Kimball v. Callahan: Sovereignty Survives Termination

On January 28, 1979, the Court of Appeals for the Ninth Circuit issued its second opinion in this ongoing litigation between the Klamath Indian Tribe and the State of Oregon over surviving hunting, fishing and trapping rights on the former Klamath Indian Reservation. This second decision upheld the first decision and ruled that the Klamath Termination Act did not affect the sovereign status of the Klamath Indian Tribe. As a result, the Tribe retains the right to regulate hunting and fishing by its members and its members' descendants on all public lands which were formerly a part of the Klamath Indian Reservation and on all private lands where consent is given the landowner to hunt, fish and trap. The Court of Appeals remanded the case to the District

Court to establish emergency conservation standards under which Oregon may attempt to restrict Indian hunting, fishing and trapping when necessary to protect a specie of game or fish.

The State of Oregon sought to have the Ninth Circuit decision reviewed by the Supreme Court, and NARF prepared and filed a brief in the Supreme Court in opposition to Oregon's petition for review. On October 1, 1979, the Supreme Court refused to hear the case, thereby allowing the Circuit Court opinion to stand.

Before litigating the remaining issues in the District Court, NARF will attempt to reach an agreement with the State regarding the scope of the State's power to regulate treaty hunting and fishing for conservation purposes. A preliminary meeting between the State and Tribe was held in December, 1979, and negotiations will continue in 1980 (Kimball v. Callahan, 590 F.2d 768 (9th Cir. 1979), cert. denied, 62 L.Ed.2d 33 (1979)).

Nevada v. Crutcher: Northern Paiute Hunting Rights

In the Fall of 1978, three Northern Paiute Indians of the Fort McDermitt Indian Reservation, located on the Oregon-Nevada border, were arrested outside the Reservation and charged with possession of deer without Nevada state tags or licenses in violation of state law. The arrest occurred in the Humboldt National Forest area, an area which lies well within the Tribe's aboriginal hunting area. NARF agreed to represent the three individuals in conjunction with Nevada Indian Legal Services (NILS), in establishing the Indians' right to hunt in the area free from state jurisdiction.

At a hearing held in January before the local Justice Court, the Indians asserted that the State's license and tag requirement did not apply to them as members of the Fort McDermitt Tribe, since the Tribe had the right to hunt and fish on their aboriginal land where they had always traditionally hunted. The magistrate, however, found them guilty, and imposed $200 fines. The decision was appealed to the State district court where a new trial was held in August of 1979.

In November 1979, this court ruled that the three Northern Paiutes had no aboriginal hunting rights and affirmed the decision of the Justice Court. NARF, in consultation with NILS and the individual defendants, made the decision not to appeal the decision to the Nevada Supreme Court in order to avoid the possibility of establishing a bad precedent which could adversely affect other Nevada Indian hunting cases (State of Nevada v. Crutcher, 6th Judicial Dist. Ct., Nev.).

Skagit River Fisheries

The Skagit River flows out of Canada into the North Cascades National Park in Washington State, turns westward as it leaves the park,

crosses approximately 75 miles of non-park land and flows into Puget Sound north of Seattle. The Skagit River is the largest river in the Puget Sound complex, contributing approximately one-third of the viable wild salmon runs for certain major species in the Puget Sound fishery, and is the only river system in the State of Washington with major viable natural runs of all six anadromous species indigenous to North America: steelhead, chinook, sockeye, coho, pink and chum. The Swinomish Tribal Community, the Sauk-Suiattle Tribe, and the Upper Skagit Tribe have adjudicated treaty protected fishing rights in the Skagit River, its tributaries and adjacent marine areas. It is the destruction to the fisheries by the operation of three power dams on the Skagit River -- and possible future dams -- which the tribes and the Native American Rights Fund are now attempting to prevent.

Swinomish v. FERC. In 1970, the City of Seattle, Department of Lighting, filed an application for an amendment to its license for Project No. 553 on the Skagit River. The City is seeking authority to amend its license by raising the height of Ross Dam, the largest and furtherest upstream of the three dams included in the license. NARF, in conjunction with Evergreen Legal Services, intervened in the amendment proceedings on behalf of the three tribes. In August, 1978, the Commission issued its final order authorizing the raising of Ross Dam. The Commission has instituted an ancillary proceeding known as Ross Dam - FERC Project No. 553-EL78-36, concerning downstream flows of the Project. NARF and Evergreen Legal Services have intervened in this proceeding on behalf of the three tribes.

The Tribes have petitioned for review to the U.S. Court of Appeals for the D.C. Circuit on the basis of three issues: (1) pursuant to Section 15(a) of the Federal Power Act, the Commission may issue an annual license only upon the same terms and conditions as the original license, and the Commission does not have the authority to amend an annual license; (2) pursuant to Section 10(a) of the Federal Power Act, the Commission must consider the effect of Project No. 553's downstream flows on Indian treaty fishing rights to determine if the license, as amended, is in the best interests of a comprehensive plan for development of the waterway; and (3) pursuant to Section 4(e) of the Federal Power Act, the Secretary of the Interior has power to impose conditions on the operation of any power project for the protection of Indian treaty rights, and it was error for the Commission to refuse to include these conditions in the amended license.

During 1979, NARF attorneys completed the briefing of these issues to the court of appeals. The case was argued to the court in November 1979 and is awaiting decision (Swinomish Tribal Community v. Federal Energy Regulatory Commission, United States Court of Appeals for the District of Columbia Circuit).

Skagit River -- Copper Creek Dam. The City of Seattle is attempting to construct another new dam on the Skagit River system; this one on Copper Creek, a tributary to Skagit River below the three existing dams. The Swinomish, Upper Skagit and Sauk-Suiattle Tribes are opposing the Copper Creek dam on grounds that it will further threaten the fisheries by lowering the flow levels of Copper Creek and Skagit River.

NARF has asked the Bureau of Indian Affairs to provide funds for expert consultants (i.e., geneticists, biologists, hydrologists and biometric people) to do studies which would be introduced as evidence in court. The tribes are trying to design a comprehensive study of the entire river system with the cooperation of various state and national agencies to have a definitive basis upon which to measure and judge the impact of the present and future dams on the fisheries on which the tribes depend for their subsistence and livelihood. During 1979, NARF attorneys worked with the expert consultants in preparation for the anticipated trial on Seattle's application for a license to construct Copper Creek Dam (City of Seattle Department of Lighting, Project No. 2795, Federal Energy Regulatory Commission).

Knight v. Gardner: Recovery of Trust Land

In this case, NARF is assisting attorneys from Nevada Indian Legal Services in representing several Western Shoshone Indians of Ruby Valley, Nevada, who are heirs to certain property homesteaded by their ancestors. The patents to the Indian homesteads were erroneously issued as fee simple patents instead of Indian trust patents. Indian trust land is not subject to state property tax and any forced sale for failure to pay such tax is illegal. However, the land was subsequently taxed and sold by the Elko County.

Suit was brought in January, 1978, against the present occupants of the land in order to recover possession of the land and for reformation of the patents. The United States was also made a party as required by statute. A trial in the case was held in January, 1979, and a favorable opinion was issued by the district court on March 21, 1979. No appeal was taken by the defendants. In its decision, the court agreed with NARF's arguments that the patents were erroneously issued as fee simple patents and that they should have been issued as trust patents with restrictions on alienation. The court, therefore, held that the county tax sales were void and that the heirs of the original Indian homesteaders are entitled to possession of the land (Knight v. Gardner, D.Nev., 1979).

Swinomish Boundary Matter

NARF is assisting the Swinomish Tribe of western Washington in preparing a case to establish the extent of the boundaries of the Swinomish Reservation. The reservation is located on a peninsula and, therefore, various issues of ocean boundary law and tideland ownership are involved. NARF has been working extensively with several experts in order to develop the necessary factual background for the case, and has continued research on the various legal issues. The case involves establishing tribal ownership to tidelands, internal sloughs, and the Swinomish Channel -- a navigable body of water on the eastern boundary of the Reservation. In addition, there is a large area on the northwestern boundary of the reservation which the Tribe claims as a part of their original reservation.

Brooks v. Nez Perce County

This case involves an attempt to recover an Indian land allotment at Lapwai, Idaho, within the boundaries of the Nez Perce Indian Reservation. The land was taken many years ago for non-payment of real estate taxes, but illegally because it was non-taxable Indian trust land. The Indian clients in the case include enrolled members of the Nez Perce Tribe and the estate of the clients' deceased mother. The case was filed in 1972, and, until recently, the main issue has been the jurisdiction of the Federal court to entertain it. The Federal district court dismissed the original action in 1974, and the dismissal was appealed to the Ninth Circuit Court of Appeals where it was reversed and sent back to the district court in 1977. Jurisdiction remained at issue until the U.S. Government finally concluded that it would enter the case on behalf on the Indian plaintiffs.

In 1979, the court granted partial summary judgment to the Indian plaintiffs ordering return of the land to the United States in trust for them. At year's end the case awaited a hearing on legal issues related to damages for the period during which plaintiffs were deprived of the land (Brooks v. Nez Perce County, D.Idaho, Civ. No. 2-72-27).

Central Utah Project and the Ute Indian Tribe

During 1979, NARF continued to provide assistance to the Ute Indian Tribe in their efforts to quantify their water rights in the Unitah Basin in eastern Utah. For several years, the Ute Tribe has been engaged in protracted negotiations with the State of Utah and the Bureau of Reclamation concerning the Tribe's Winters Doctrine water claims and its participation in the Central Utah Project.

In 1979, the Tribe and the State of Utah dealt with a number of related issues in this regard. The Tribe and the state continued to prepare an overall quantification of Winters Doctrine rights. A proposed settlement was prepared and considered by the Utah legislature on a preliminary basis and reviewed by the Governor. The proposed agreement provided that the water, measured by the practicably irrigable acreage on the reservation, could be utilized by the Ute Tribe for any purposes including agricultural, municipal and industrial. The agreement allocates governmental responsibility over the utilization of Winters Doctrine rights between the Tribe and the state. It is expected that in 1980 the Utah legislature will review and ratify the agreement as a compact, and that the Governor will approve the agreement. Once the state has ratified the agreement, it will then be necessary for the Ute Tribe to hold a referendum of its members and to obtain congressional approval.

As a part of the overall settlement over the Unitah Basin resources, Utah and the Ute Tribe have also been negotiating an agreement on hunting and fishing rights within the original Unitah and Umcompahgre reservation boundaries. It has been the position of the Ute Tribe that the boundary, water rights, and hunting and fishing claims are so intertwined that they all must be resolved in one package. It appears unlikely, however, that the hunting

and fishing issues will in fact be resolved through settlement. On the contrary, like the jurisdictional and boundary issues, hunting and fishing rights will ultimately have to be resolved through litigation. The boundary issue, in fact, went to trial in August of 1979 in the U.S. District Court for Utah. At that time the United States, the Ute Tribe, the State of Utah and the Unitah and Duchesne Counties put on evidence relating to whether or not Congress has disestablished the Unitah Valley Reservation and the Uncompahgre Reservation through the various statutes opening up those reservations to non-Indian settlement. The disestablishment trial involves the critical question of whether, when opening up the reservation to non-Indian settlement, Congress intended to preserve or to extinguish the preexisting boundaries. That issue is determined by reference to the language used in the statutes, their legislative history, the surrounding circumstances, and the subsequent jurisdictional treatment of the reservation. A decision in this boundary case is expected to be rendered by the District Court early in 1980.

Santee Sioux Tribe: Land Acquisition Legislation

The Santee Sioux Tribe is located on a small reservation in the northern part of Nebraska. In the 1950s, the U.S. Army Corps of Engineers built the Gavins Point Dam and Reservoir adjacent to and on this reservation. As in the case of many Corps dam projects, little or no consideration was given to the wishes of the Tribe.

Recently, the Tribe has discovered that the Corps was planning to reissue long term leases of valuable adjacent lands to certain governmental agencies. Nowhere in this process was the Tribe given any consideration. The Tribe desires to acquire at least a portion of these lands for the purpose of developing several economic ventures for Tribal members.

Because the Tribe could get no cooperation from the Corps of Engineers with regard to the disposal of these lands, the Tribe requested NARF's assistance. NARF has responded initially by gathering all relevant information, surveying the involved lands, and by opening up a dialogue with the Corps of Engineers. The Tribe, with NARF's assistance, plans to submit appropriate legislation in Congress, through the Nebraska Senate delegation, to acquire certain of these lands.

Fort Hall Land and Water Matters

NARF is assisting the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho with a number of matters involving the Tribes' claims to certain lands. To date, these matters have included the Tribes' claim to land on which the Pocatello Airport is built and the Tribes' right to certain lots within the exterior boundaries of the City of Pocatello. NARF has concluded that the Tribe has no basis to make a claim to the airport lands, but there is a strong basis for a tribal claim to 38 lots in Pocatello. NARF has prepared a litigation request to the Department of the Interior asking them to initiate litigation for recovery of the lots.

Arkansas Riverbed Claims (Oklahoma)

The Arkansas River Trust Authority (ARTA) is an association of five Oklahoma Tribes--Ponca, Pawnee, Otoe, Kaw, and Tonkawa. ARTA's purpose is to protect the member tribes' water rights and to clear the tribe's titles to the riverbeds which traverse their respective reservations, especially the bed of the Arkansas River. NARF represents the Ponca and Pawnee tribes as to their respective claims to ownership of the riverbeds in question. NARF also plays a large role in coordinating the efforts of all five member tribes of ARTA and their attorneys in preparing their riverbed claims.

In 1978, the ARTA tribes made significant progress in their efforts to prepare their riverbed claims for litigation. At the beginning of the year, NARF attorneys researched and prepared a comprehensive litigation plan which was adopted by ARTA and the other tribal attorneys involved as the general plan of action of ARTA in preparing for litigation. Based on this plan, NARF prepared a funding request on behalf of ARTA to conduct necessary studies, and partial funding was subsequently received. Several experts are currently conducting studies which will, to a major extent, form the actual foundation for the litigation of the five Tribes' riverbed claims.

During 1979, final reports were completed on all studies except the hydrological study. Using the data contained in the expert reports, and based upon extensive legal research, NARF prepared the first draft of a proposed litigation request to be submitted to the United States. The litigation request will be a comprehensive analysis covering both the legal and factual bases for the tribal claims, and include an analysis of the claims of the Ponca and Pawnee tribes, represented by NARF, and that of the Otoe-Missouria Tribe, represented by a private attorney (the Kaw and Tonkawa tribes analyses were still in preparation). The draft was circulated to other tribal attorneys involved for their input. A meeting to discuss the first draft was held on September 28, 1979, in Oklahoma, among attorneys and ARTA tribal delegates. NARF attorneys were requested to complete a second draft of the proposed litigation request, taking into account any comments and suggestions made as a result of the meeting. NARF is now preparing a revised draft of the proposed request which will be submitted early in 1980.

Squaxin Island Tidelands

The Squaxin Island reservation, located in Washington's Puget Sound, was set aside for the Squaxin Island Tribe in 1854. Parts of the island have passed out of Indian ownership, and the Tribe has leased a section of its tidelands to the State Parks and Recreation Commission for a boat marina site adjoining a state park on the Island. NARF and the Tribe have initiated research into the ramifications of non-Indian ownership of Island uplands and possible legal recourse for abuses by the Commission of its lease of tidelands. The Tribe owns the tidelands exclusively surrounding the Island, and non-Indian owners must cross tribal tidelands to get to their land. An important Indian law question arises as to the extent to which tribal lands can be used, against the Tribe's wishes, for access by non-Indians, for if unrestricted access is allowed, the tidelands

will be effectively lost to the Tribe and the Tribe would be powerless to stop unwanted development of the Island.

Since the initiation of the Commission's lease of tribal tidelands in 1961, numerous violations of the lease have occurred. Failure of the Commission to adequately patrol the park results in the illegal use of alcohol, the building of illegal fires, the leaving of trash, and trespass upon adjacent Tribal lands. Most serious, however, was the decertification of Tribal Oyster beds by the State in 1971, resulting in the Tribe being prohibited from harvesting shellfish from its tideland areas near the park. Ironically, the State Department of Social and Health Services' refusal to certify the oyster beds was a direct result of the State Parks Commission's boat marina. If the pollution caused by refusal of the Parks Commission to patrol the park and control the number and use of boats near the park continues, pollution will continue to damage tribal lands. In light of the state's failure to remedy the problem so far, administrative proceedings or litigation may be necessary in the near future.

Seminole Tribe v. Florida

This suit challenges the legality of a 1950 dedication of 16,000 acres of a Seminole State Reservation by Florida for use as a flood control district. The 16,000 acres had been part of the East Big Cypress Reservation first set aside by the state as a reservation for the Seminoles' exclusive and perpetual use in 1936. In this suit, the Tribe claims that the 1950 dedication was void by virtue of non-compliance with the 1790 Indian Non-Intercourse Act and constituted a breach of the state's trust responsibilities toward the Seminole Tribe.

After the suit was filed by the Seminole tribal attorney, the Tribe asked NARF to serve as co-counsel. NARF drafted and filed an amended complaint, and shortly thereafter the Attorney General's office indicated its interest in settling the case. In 1978, the Assistant Attorney General recommended to the Attorney General that the case be settled. The Tribe has agreed on an appropriate measure of damages for purposes of settlement, and during 1979, NARF and tribal attorneys held two meetings in Florida with representatives of the Attorney General's office to work out preliminary settlement terms (Seminole Tribe v. Florida, Civ. No. 78-6116-DIV-NCR, S.D. Fla.).

Yankton Sioux Tribe v. Nelson

Since 1976, NARF has been working with the Yankton Sioux Tribe of South Dakota in asserting tribal ownership of Lake Andes, a once navigable lake in the middle of the original Yankton Reservation. Both the Tribe and the State of South Dakota, who had intervened in the action, have filed motions for summary judgment. In April of 1979, the State's motion was argued and is still under consideration by the court (Yankton Sioux Tribe v. Nelson, Civ. No. 76-4066, D.S.D.).

Muckleshoot Tribe v. Trans-Canada: Riverbed Rights

In 1977, NARF and Evergreen Legal Services filed a suit on behalf of the Muckleshoot Tribe of Washington against Trans-Canada Enterprises. The Tribe asserts that it, and certain individual Indian allottees, retain title to the original bed of the White River which flows through the reservation. The Tribe asserts that the course of the river has been changed over the years by illegal diking and diversion of the river by the county and Federal governments. Because the change in the river's course was brought about by man-made rather than natural causes, the Tribe claims that it and the allottees retain title to the original bed of the river.

It is partially upon this former riverbed that Trans-Canada plans to construct a large subdivision, trailer park and shopping center. This development, which would be built partially on fee lands which Trans-Canada has acquired within the reservation boundaries, would turn virtually the entire northern portion of the reservation into a suburb of the City of Auburn and drastically alter the rural nature of the reservation. Air and water pollution would increase substantially and whatever hope the Tribe has of re-establishing its treaty fishery on the White River would be effectively destroyed. The developer has refused to comply with tribal land use planning and zoning requirements; but by asserting its claim to the riverbed, the Tribe hopes to effectively stop the proposed development. A companion case reported elsewhere, Trans-Canada v. Muckleshoot, is now before the Ninth Circuit Court of Appeals and deals with the legal issues of the extent of tribal civil regulatory control over non-Indian business activity on private lands within the reservation.

Activities in 1979 focused on factual and historical investigation and preparation of evidence by expert witnesses for trial which is expected in 1980 (Muckleshoot Indian Tribe v. Trans-Canada Enterprises, Ltd., W.D.Wash.).

Wilson v. Omaha Indian Tribe

This suit involves title to 2,900 acres of prime agriculture land claimed by the Omaha Indian Tribe that was affected by the movement of the Missouri River. The Tribe had been denied possession of this land for many years. The outcome of the case turns on whether the River changed its course in the late nineteenth and early twentieth centuries as a result of accretion or avulsion.

The Tribe lost in the district court but prevailed in the court of appeals. The U.S. Supreme Court agreed to review two issues: first, whether Federal or state law applies in controversies of this nature; and, second, whether a Federal law (25 U.S.C. 194) places the burden of proof on the non-Indian claimants to the land. NARF filed a brief as amicus curiae arguing that Federal law applies and that all of the defendants have the burden of proving their factual contentions.

The Supreme Court rendered its decision in June 1979. On the first issue, the Court held that Federal law applies in determining title to lands claimed by Indians, but that Federal law "borrows" state law

unless some overriding Federal policy requires application of Federal law. In this case, the law of Nebraska would govern. On the second issue, the Court ruled that Federal law (25 U.S.C. 194) applies to suits brought by Indian tribes (and by the United States on behalf of tribes) as well as suits by individual Indians, and that it places the burden of proof on all non-Indian claimants except sovereign states. The case was sent back to the lower courts to see if the Tribe would prevail under the law as determined by the Supreme Court (Wilson v. Omaha Indian Tribe, U.S. Supreme Court).

U.S. v. Washington: Treaty Fishing Rights

On July 2, 1979, the U.S. Supreme Court handed down an important decision in this Washington State fishing case which has become a land mark in the field of Indian fishing rights. The case was before the Court on review of certain District Court orders implementing the now famous "Boldt Decision" decided in 1974. Although the Court ruled on other matters, the important issue was over the interpretation to be given certain language in the treaties of 1854 and 1855.

The "Boldt Decision" held that treaty Indians are entitled to an opportunity to catch one-half of the fish destined for their usual and accustomed off-reservation fishing places; that they are entitled to regulate the exercise of their members' right at those locations; and that they are exempt from state regulation of fishing laws except to the extent that their practices are proven to be inconsistent with the goal of preserving the fishery. On this appeal, the State argued that under the treaties, the Indians merely had a right of access to their traditional fishing sites and an equal opportunity with non-Indian fishermen to catch fish. The Indians argued, and the Supreme Court agreed, that the treaty language is to be interpreted as the Indians who signed the treaty must have understoood the intent of the language. It cannot, therefore, be concluded that they were only reserving merely "a chance," along with all non-Indians, to fish at their traditional sites. Rather, the treaties must be interpreted to reserve to the Indians a specific share of the fishery run, and that this share coud be up to one-half of the harvestable fishery resources.

Since the Ninth Circuit's affirmance of the "Boldt Decision" in 1975 and the Supreme Court's denial of review, NARF has ceased its lead counsel role, but NARF attorneys continue to aid counsel for the Tribes and the United States. NARF attorneys assisted other attorneys for the Tribes and the United States in the preparation of their Supreme Court briefs. NARF's support role is expected to continue as problems connected with this case continue to arise (Washington v. Fishing Vessel Assoc., 61 L.Ed.2d 823 (1979)).

Promotion of Human Rights

American Indian Religious Freedom Act Implementation Project

In August of 1979, NARF concluded its Religious Freedom Project. This project was begun in mid-1978 to work with Native religious and spiritual leaders and Federal agencies to implement the provisions of Section 2 of the American Indian Religious Freedom Act (42 U.S.C. 1996). The Act is a significant new Federal law, which for the first time establishes an express national policy to protect and preserve for Native Americans their right to freedom to believe and practice their traditional tribal religions. In this enactment, Congress sought to remedy the historical and ongoing infringements upon Native religious practices by Federal agencies. Section 2 of the Act required the President to conduct a government-wide evaluation of its practices and policies which interfered with Native religious practices, and to report back to Congress within one year the Administration's findings and recommendations of the evaluation.

NARF and the American Indian Law Center in Albuquerque jointly conducted the American Indian Religious Freedom Act Implementation Project to identify problem areas and to guarantee that the concerns of the Native religious practitioners were adequately represented in the evaluation process mandated by the Act. The activities of the Project were summarized in the President's Report to Congress as "a parallel study to the governmental assessment required by the Act." The legal associations established a project advisory board comprised of American Indian, Alaska Native and Native Hawaiian tribal and religious leaders. Project activities included: (1) notifying Native Americans of the Act, proposed Federal actions and Task Force consultations; (2) conducting legal, historical and cultural research on issues and problems identified by religious practitioners, tribes and agencies; and (3) assisting the Task Force and member-agencies to prepare their reviews.

After the conclusion of the Religious Freedom Project in August of 1979, NARF continued to be heavily involved in religious freedom issues as a result of the Project and other NARF cases described elsewhere in this Annual Report. During 1979 NARF provided research and technical assistance to tribes, Indian individuals and attorneys to secure religious rights for Native Americans. Assistance to attorneys included cases involving the religious freedom of Native American Church members (Washington v. Eagle Elk, State Court), and (Indian Inmates v. Vitek, D.Neb.); prosecutions against Indians for possession of Moose meat for ceremonial uses (Alaska v. Carlon Frank, Alas. Supreme Ct.); destruction of Hawaiian sacred sites by the U.S. Navy (Aluli v. Brown, D.Haw.); and religious freedom rights of Indian inmates (Escanlati v. McDougell, D.Ariz.).

Other research and technical assistance included efforts to maintain the integrity of Native sacred areas of central importance to the religions of Indian tribes, such as the endangered portion of Bear Butte in South Dakota and San Francisco Peaks in Arizona. Bear Butte is revered by the Cheyenne, Arapaho, Sioux and other tribes as a religious site of great significance. In 1979, the Bureau of Indian Affairs purchased the endangered portion of Bear Butte and placed it in trust for the benefit of the tribes. San Francisco Peaks is held sacred by the Navajo, Hopi, Zuni, and other tribes. In 1979, NARF provided backup assistance in an intensive effort to prevent the destruction of this holy area.

In the legislative area, NARF worked to further the implementation of the American Indian Religious Freedom Act in such related legislation as the Archeological Resource Protection Act of 1979 and insure adequate Native input into the implementation of this Act which is intended to protect Native religious freedom rights against violations by persons excavating and removing artifacts from Indian and public lands. O

Sequoyah v. TVA: Flooding of Cherokee Religious Sites and Burial Grounds

In September of 1979, NARF was asked by the Eastern Band of Cherokee Indians of North Carolina and a number of individual Cherokee Indians to represent them in filing a lawsuit against the Tennessee Valley Authority to enjoin it from impounding the Little Tennessee River for the Tellico Dam Project. Impoundment would result in the flooding of Cherokee religious sites, burial grounds and ancient villages. The Cherokees were also concerned about desecration of over 1,000 Cherokee bodies which were unearthed from their resting places by TVA for the project and being retained by that agency for "study" purposes.

The Tellico Dam Project had been the subject of much opposition and controversy in the past and eventually resulted in a permanent Supreme Court injunction in 1978 on the grounds that the impoundment by the Dam would destroy the habitat of the "snail darter" fish in violation of the Endangered Species Act. However, in 1979 Congress overruled the Supreme Court decision by exempting the Tellico Dam from the Endangered Species Act "and all other laws." Upon receiving Congressional authority, TVA proceeded to complete the Tellico Project and impound the river.

NARF accepted the request for assistance and, working in association with the Eastern Band's tribal attorney and the National Indian Youth Council, a suit was filed in October of 1979. The Eastern Band of Cherokees and individually-named Cherokee plaintiffs were joined by the United Ketooah Band of Cherokees from Oklahoma. The lawsuit claimed that TVA's action in flooding the historic Cherokee homeland, together with its tribal religious sites, graves and villages, violated Cherokee freedom of religion and culture. The suit also claimed that the TVA's treatment of Cherokee bodies amounted to invidious racial discrimination and grave desecration. The suit sought an Order directing the TVA not to flood the Cherokee homeland and to reintern the 1,000 Cherokee bodies being held by TVA.

On November 2, 1979, the District Court rejected all Cherokee claims and dismissed the case. The Cherokee attorneys filed an immediate ap-

peal of the dismissal in the U.S. Court of Appeals for the Sixth Circuit. In addition, the attorneys also requested that the Court of Appeals issue an injunction halting the impoundment of the river until the appeal could be heard on the merits. When this motion for an injunction pending appeal was denied by the Court of Appeals, the Cherokee attorneys took the motion to the U.S. Supreme Court, where it was also denied.

As 1979 closed, the dismissal of the case by the District Court was on appeal before the Court of Appeals, but without an injunction to stop it, TVA had completed the Tellico Project, innundating the land held sacred by the Cherokee people. (Sequoyah v. Tennesee Valley Authority, 480 F. Supp. 608 [E.D. Tenn. 1979], Appeal Pending).

Point Conception

NARF represents the Santa Barbara Indian Center in their efforts to block construction of a liquified natural gas receiving terminal on the California coast at Pt. Conception. The Pt. Conception area has long been regarded by the Indians of the Santa Barbara channel area as sacred land. It is considered to be the sacred location of the western door through which the souls of Indian dead and newborn pass, as well as the site of numerous ancient Chumash Indian villages and cemeteries.

The Indian Center intervened in the case in proceedings before the Federal Energy Regulatory Commission (FERC) in 1978, and, represented by NARF, presented the testimony of numerous Indian people and experts regarding the sacredness of Pt. Conception at local hearings before FERC in Santa Barbara in January, 1979. Initial and reply briefs were filed in May of 1979 by NARF.

In August, 1979, the Administrative Law Judge (ALJ) issued his initial decision, finding against the Indian Center on all issues. NARF prepared and filed a Brief on Exceptions before both the Federal Energy Regulatory Commission and the Economic Regulatory Administration (ERA). In September, 1979, the ERA approved the applicant's license for the Pt. Conception site, and on October 12th, FERC affirmed the decision of the ALJ. In October and November, 1979, NARF filed Applications for Rehearing before both the ERA and FERC. Both were denied. NARF is currently preparing and will file, in late January and early February, 1980, Petitions for Review of the FERC and ERA decisions in the United States Court of Appeals for the District of Columbia Circuit (Pacific Alaska LNG; FERC Docket Nos. CP75-140 et al.).

Zuni War God

In March, 1978, NARF was contacted by representatives of the Zuni Tribe regarding a sacred war god statue (Ahayu:da) which was on display at the Denver Art Museum. The war god statue is a carved wood figurine of approximately two feet in height which is of extreme religious significance to the Zuni people. Because the Zuni war god is communally owned by all the members of the Zuni religion, its removal from its original shrine on the reservation was unauthorized and illegal. The Ahayu:da was stolen from the Reservation in approximately 1899, and it changed hands several times before the Denver Art Museum received the war god as a gift

from a private party in 1953. The Zunis were unaware of the Museum's possession of the war god until 1978.

In April, 1978, NARF met with officials of the Denver Art Museum at which time the Zuni officials requested the museum to return the war god to them. Museum officials stated that proper procedure for deaccession of an item required the Museum's Collections Committee to pass on the proposal, with the final decision resting with the Board of Trustees. Museum officials also stated various practical and legal objections to their return of the war god. Nevertheless, NARF requested meetings with the Collections Committee and the Board of Trustees. For various reasons, a meeting with the Collections Committee and the Board of Trustees could not be scheduled until January, 1979. On January 10, 1979, a Zuni delegation made a full presentation to these museum officials. The Zuni delegation consisted of religious and political leaders, two anthropologists, representatives from the Colorado Lieutenant Governor's office, and NARF. At the January 10th meeting, the delegation presented moral, humanitarian, and legal reasons as to why the statue should be returned. In March, 1979, the Board of Trustees decided to return the sacred Ahayu:da to the Zunis. Discussions between the Denver Art Museum and the Zuni officials are continuing with respect to providing security at sacred shrine sites in order to prevent future thefts of Zuni religious objects.

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The Indian Corrections Project

The Native American Rights Fund is presently conducting two feasibility studies under a grant from the Law Enforcement Assistance Administration of the Justice Department (LEAA). The project is intended to research and identify the unmet needs of Indian inmates in the Great Lakes and Northwest areas, and to develop a comprehensive plan for addressing those needs.

Almost from its inception, NARF has been involved with the special problems of Indian inmates in state and Federal correctional institutions around the country. Studies indicated that Indians are over-represented throughout all components of the criminal justice system in the United States. This over-representation has been carefully documented in adult correctional facilities in several states. It was this over-representation that prompted LEAA to initiate funding on developing a plan to meet the needs for this special group of offenders. The major thrust of the project is to assess the legal and rehabilitative needs in the two regions and to develop detailed plans for addressing the special needs. The target population of the project are adult Indian offenders, both male and female, and juveniles.

The Northwest region includes the states of Alaska, Washington, Idaho, Oregon and northern California; the Great Lakes region consists of Wisconsin, Michigan, Iowa and eastern Minnesota (Western Minnesota is included in the Swift Bird Project area, an earlier NARF project now operating on the Cheyenne River Reservation in South Dakota).

The project study will identify Indian offenders in the criminal justice system; the characteristics and types of facilities in which they are housed; the programs offered; and the effects of their incarceration. The pro-

ject will evaluate the assessed needs of these offenders which are not currently being met by state and Federal correctional systems; identify resources to meet these needs; and develop alternative plans of action to respond to these needs. Ultimately, a master plan of action will be developed for each of the two regions. The project consists of three components which are being undertaken consecutively. One component is to collect relevant information available in all states in the regions. A second component is extensive field research in the two regions. These two components will result in a detailed needs assessment report developed by project staff and consultants. The third component of the project will be to develop alternative solutions to the unmet needs, a comprehensive plan of action for each region, and the implementation of the comprehensive plan for each region.

Plans generated for each region may serve as a basis for careful allocation of resources in these two regions, and become the basis for coordinating a network for alternative Native corrections programs. The goal of the project is to increase the effectiveness with which the Indian offenders are handled in the correctional system and increase the level of tribal government involvement with correctional rehabilitation. The ultimate benefits to be derived will be the reduction of crime, and reduced recurrent criminal activity by Indian offenders through a coordinated network of tribal, state and Federal corrections programs. The project will also serve as a model to other regions of the country as a means of systematically identifying and responding to the unmet and unique needs of Indian offenders.

Bear Ribs v. Taylor: Religious Rights of Indian Inmates

On April 18, 1979, a U.S. District Court in California issued a consent judgment which ordered the building of a sweat lodge at Lompoc Federal Correctional Institution in California for the religious use of the Indian inmates. Begun in 1977 as a class action lawsuit on behalf of all Indians at the Lompoc prison, the lawsuit claimed that the refusal of the prison officials to provide access to a sweat lodge was a violation of religious freedom rights of Indian inmates under the U.S. Constitution. The successful outcome has established an extremely important precedent for the granting of Indian religious rights within other Federal prisons (Bear Ribs v. Taylor, Civ. No. 77-3985 RJK(G), C.D.Calif., Consent Judgment of April 18, 1979).

Frease v. Griffin: Rights of New Mexico Indian Inmates

This is a religious freedom case filed on behalf of Indian prisoners of the New Mexico Penitentiary. The Indians claim that the prison officials have denied them their right to practice their Native religion. They seek an order that will require the prison officials to permit the Indian prisoners to wear their hair in the traditional style required by their religion and allow the construction of a traditional Indian sweat lodge at the prison for worship ceremonies. NARF attorneys, along with

the Indian Pueblo Legal Services, have begun discovery and other preparatory trial work on behalf of the Indian Inmates (Frease v. Griffin, No. 79-693-C, D.N.M., Filed Sept. 1979).

White Eagle v. Storie: Nebraska Jail Conditions Challenged

This is a class action suit brought by Indian prisoners against the Thurston County Jail in Nebraska. This jail houses large numbers of Indians from the Omaha and Winnebago Reservations. The litigation challenges the constitutionality of the jail's physical conditions, medical practices, staffing policies, visitation rights, law library facilities and unlawful confinement. Filed late in 1977, attorneys for the Indian inmates have thus far obtained several favorable preliminary orders for injunctive relief against unlawful confinement. In 1979, a consent order was issued which provides relief on the medical treatment issues. A comprehensive settlement of the case is now being explored by NARF attorneys and staff attorneys from the Inter-Tribal Legal Services of Winnebago and Omaha Legal Services (White Eagle v. Storie, 456 F.Supp. 302 (D.Neb. 1978)).

Left Hand Bull v. Carlson: Indian Inmates' Religious Rights

This lawsuit was originally filed by inmate Merle Left Hand Bull as a class action suit against the Warden of the Sandstone Federal Correctional Institution in Minnesota, and Mr. Carlson, Director of the Federal Bureau of Prisons. The suit claims that the inmates are being denied reasonable access to their religion by prison officials. Left Hand Bull and other Indian inmates requested NARF's legal assistance, and NARF entered the case for the purpose of assisting these inmates in their religious denial claims. NARF's efforts in this action thus far have been limited to attempting to negotiate a favorable settlement. NARF is working in a support capacity on this lawsuit with the Legal Aid to Minnesota Prisoners Program and Leech Lake Legal Services (Left Hand Bull v. Carlson, Civ. No. 3-77-404, D.C.Minn.).

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Sisseton-Wahpeton Community College

The Sisseton-Wahpeton Sioux Community College is a relatively new two-year Indian-controlled college located on the Lake Traverse Indian Reservation in South Dakota. The College requested legal assistance from NARF with regard to its operations, and NARF agreed to assist the College in drafting a Tribal Charter of Incorporation and a set of appropriate bylaws under which the College will function. NARF has further assisted the College by providing legal assistance with regard to securing a tax-exempt status. Additionally, NARF has rendered legal assistance with regard to the College's efforts to secure a stable base of funding under the provisions of the Tribally Controlled Community College Assistance Act.

Ronan, Montana: Indian Parent Committee

Conflicts between the Indian Parent Committee in Ronan, Montana, and the Ronan School Board caused the Parent Committee to request NARF's assistance in 1978 and this assistance continued in 1979. Ronan is largely a non-Indian community with a substantial Indian population located within the Flathead Indian Reservation in western Montana. There are, however, no Indians on the school Board. The Indian Parent Committee oversees the Johnson-O'Malley (JOM) Indian education program in Ronan. JOM is a Federally-funded supplemental education program to be used for Indian children. In most instances, the Indian Parent Committee makes application for these funds in cooperation with the school district, and the programs are integrated within the school system. Title IV is another Federally-funded program designed to provide supplemental education programs for Indian children. The school district applies for Title IV funds in cooperation with the Indian Parent Committee.

Approximately five or six years ago, the Ronan School Board concluded that the JOM and Title IV programs discriminated against non-Indian students, and the Board refused to apply for Title IV funds or to allow the JOM program to operate within the schools. At that time, extensive negotiations were conducted by the Community Relations Service of the Department of Justice with the school Board and the Parent Committee. The negotiations resulted in an agreement between the school Board and the Parent Committee which required close cooperation between the two in the education of Indian children, although the JOM program was still to be operated outside the school system.

When the Parent Committee contacted NARF in 1978, they were concerned that the school district was not operating within the spirit of the agreement which had been reached. NARF worked with the Parent Committee in order to define their concerns and arranged for a meeting between the Parent Committee and the school Board in March of 1979. Representatives of the Confederated Salish and Kootenai Tribe and the State Indian Education Association also attended. The Parent Committee felt that the response from the school Board was positive and that they are now on the way to closer cooperation in matters involving the education of Indian students. There are still problems to be resolved but a positive step forward has been made.

D-Q University

In the early 1970s, D-Q University, an Indian and Chicano controlled educational institution, entered into an agreement with the government whereby it acquired possession of a 640-acre tract near Davis, California, for its campus. Under this agreement -- if all conditions were met -- it would eventually acquire title after 30 years. These conditions, however, barred D-Q from utilizing this land base as collateral in securing loans or even as an asset in securing accreditation. To eliminate the financial and accreditation problems resulting from these conditions, D-Q had House Bill 2449 introduced, which would grant D-Q outright title to this land immediately. NARF researched the historical precedents for such an educational land grant and assisted D-Q in drafting and negotiating the terms of the bill, which was pending in Congress at the end of 1979.

Los Angeles School District Busing Issue

NARF's involvement in this matter concerns alleviating the adverse effects of forced desegregation upon special Federal educational programs designed for Native American children attending public schools in urban areas. In Los Angeles, court-ordered desegregation through busing has resulted in dispersing natural concentrations of Indian students and thus destroying the effectiveness of Title IV programs since there is no longer a "sufficient number" of Indian students to utilize the programs at given locations. When the school District could not resolve the problem, a meeting was held in January of 1979 to explore alternatives and recommend solutions to the special Indian educational problems created by the court-ordered desegregation.

This meeting was attended by District administrative officials and attorneys, the chairman of the school board, a representative from the court-appointed referee's office, Indian parent representatives, the local Title IV officer, and a NARF attorney. As a result of this meeting, the District officials agreed to make changes in their desegregation busing policy which would promote the general goals of the Title IV program. Specifically, District officials agreed to avoid further disruption of Title IV programs; to inform the Indian parents of all their options concerning desegregation and the accessibility of Title IV programs; and to implement these changes for the coming school year. The District has so far abided by their intentions and implemented the needed changes for the school year which started in September, 1979, and no further activity is anticipated in this matter.

Education Task Force Assistance (P.L. 95-561, P.L. 95-471)

In 1978, President Carter signed into law the "Education Amendments Act of 1978," which provides for substantive changes in Indian Education programs within the Office of Indian Education of the Bureau of Indian Affairs (P.L. 95-561). Also, Public Law 95-471, the "Tribally Controlled Community College Assistance Act," provided for grants for the operation and improvement of tribally-controlled community colleges to ensure continued and expanded educational opportunities for Indian students on and near Indian reservations and communities. The implementation of both Acts stressed Indian self-determination, calling for expanded Indian control of Indian education.

Twelve task forces, composed of Indian educators, community members, teachers and bureaucrats, were assigned the responsibility of developing regulations and guidelines as required by the new Acts. Because of previous work experience in certain of these areas, NARF was contacted by several Indian educators -- representatives of the task forces -- to review and comment on proposed new regulations. NARF's major work was with Task Force 12, the Tribal Community College Task Force. NARF attorneys reviewed the products, suggesting necessary changes in the draft regulations. NARF's efforts on these topics centered on assuring the greatest amount of Indian control over Indian education programs. NARF is presently in the process of helping to monitor the implementation of the new regulations in Indian country to ensure that the intent of Congress is complied with by the affected school districts.

Velasco v. Sorenson: Indian Students' Rights

The issue in this case involved the rights of Papago Indians attending Stewart Indian School in Nevada to be afforded due process of law prior to serious disciplinary actions. Specifically, the students were expelled without any official notice of the charges, were not given a hearing, and their parents were not notified. Such denials of due process by the Bureau of Indian Affairs not only violated Federal regulations, but also the Fifth Amendment of the United States Constitution. Also challenged in the suit was the authority of BIA administrators to summarily expel students under the guise of "emergency power."

NARF's involvement consisted of assisting the local attorney with research, developing strategy, and negotiating a favorable settlement, which occurred in August of 1979. The settlement, which applies to all BIA boarding schools in the Phoenix BIA area, now limits the authority of BIA school personnel to suspend or expel Indian students under the guise of emergency powers. The settlement further requires the BIA school officials to utilize due process procedures in all school disciplinary proceedings. No further activity is anticipated in this matter since the settlement has been duly implemented by the BIA.

American Indian Higher Education Consortium

The American Indian Higher Education Consortium (AIHEC) consists of 17 tribally-controlled Indian community colleges located on or near Indian reservations. Founded in 1972, with the assistance of NARF, it is a non-profit organization established for the purpose of assisting its member institutions in strengthening their programs and aiding in their further development. NARF has rendered legal assistance to AIHEC on matters pertaining to their constitution and bylaws, and in regard to complex tax questions. Most importantly, NARF assisted AIHEC in drafting legislation which eventually came to be known as the "Tribally Controlled Community Colleges Assistance Act." This Act assures continued vitality and more stable funding to the Indian community colleges. NARF continues to assist AIHEC with regard to legal advice concerning the implementation of the Tribally Controlled Community College Assistance Act on its member campuses located throughout the country.

National Advisory Council on Indian Education

The National Advisory Council on Indian Education (NACIE) was established pursuant to the Indian Education Act of 1972 (Public Law 92-318) for the purpose of providing meaningful Indian input to HEW on all matters pertaining to Indian education. In 1979, President Carter signed into law legislation creating the new cabinet level Department of Education. The new department includes all Indian education functions formerly located

in HEW. NACIE was greatly concerned that such a move would result in less importance being attached to Indian education, and therefore requested from NARF a special legal analysis regarding the trust relationship between the Federal government and the Indian tribes as this responsibility applies to Indian education. NARF complied by researching and drafting a paper entitled "Historical Basis for the Federal Trust Responsibility to Indian Education." NARF continues to monitor the status and progress of the transition team which has been assigned the task of overseeing the transfer of HEW's Indian education functions to the new Department of Education.

Satellite Community College

The Satellite Community College is a two-year higher education institution located in Nebraska, chartered and operated by and for the Winnebago Tribe, the Omaha Tribe, and the Santee Sioux Tribe. Classes are offered by the College at several locations within each of the three reservations. Because of this unique configuration, the directors of the college requested NARF's assistance in designing its Tribal Charter so as to comply with the requirements of the recently-enacted Tribally Controlled Community College Assistance Act. NARF has provided the requested assistance, and has assisted the Board of Trustees of the College by providing legal assistance with regard to acquiring a stable base of funding through the provisions of the Act.

Accountability of Governments

Nevada Federal Judicial Appointment

There were a number of new Federal court judges nominated by President Carter and subject to confirmation by the Senate in 1979 as the Federal judiciary system was expanded. Since most major Indian legal controversies are uniquely under Federal court jurisdiction, the quality of the Federal bench is especially important to Indians, particularly in the West where most Indian tribes are located. When Edward Reed, an attorney involved in several important cases against Indians, was nominated for a new Federal district court judgeship in Nevada, the tribes in that state opposed the nomination based on their experiences that he was prejudiced against Indians and not of proper judicial temperament. NARF assisted the Pyramid Lake Paiute Tribe and the Intertribal Council of Nevada in opposing the nomination before the Senate Judiciary Committee. Despite these objections and those of other groups, the nomination was confirmed, but Mr. Reed is required to avoid participation in those Indian cases involving or related to his previous anti-Indian representation.

Trust Responsibility Review

Former Attorney General Griffin Bell announced in 1978 a high level policy review of the Justice Department's duties and obligations to represent Indian tribes in litigation under the Federal Indian trust relationship. Concerned about the implications of such a review of the Federal trust responsibility, NARF joined the American Indian Law Center and tribal leaders from the Southern Ute, Cheyenne River Sioux, Quinault, Umatilla, Alaska Federation of Natives, Yakima, Northern Cheyenne and All Indian Pueblo Council in a letter to the Attorney General opposing what appeared to be the most serious threat to Indian rights since the termination era of the 1950s and '60s.

The letter pointed out how the Attorney General's public statements on the trust responsibility were inconsistant with the law, congressional policy and the Administration's Indian Policy. NARF and other Indian representatives met with Justice Department representatives and called for a reaffirmation of the Federal trust responsibility. In 1979, with the Interior Department and the White House supporting the Indian position, the Justice Department concluded its review and basically reaffirmed the Federal trust responsibility to represent Indian tribes as trustee in the protection of their natural resources.

Whiskers, et al. v. U.S.: Judgment Funds Distribution

This case involves a dispute over the method of distribution of the funds awarded in an Indian Claims Commission judgment. The plaintiffs represent a class of over 2,000 Southern Paiute Indians residing in remote parts of the Southwest. Under the Indian Claims Commission Act, allowing Indians to assert claims based on inadequate compensation for lands taken by the United States, attorneys were hired to prosecute a claim on behalf of the Southern Paiute Tribe or Nation. No such unified group ever existed, so notice of the claim and subsequent award to its potential members was incomplete. The attorneys were hired, the case settled, and distribution made to less than half the number of persons eligible to share in the claim. The plaintiffs named in the suit represent all others who had no notice of the existence of the claim until after distribution was made, effectively excluding them from any share, and they sued to recover a share. The Federal District Court in Utah dismissed their case for lack of jurisdiction over it; and the Tenth Circuit Court of Appeals affirmed, holding that the United States cannot be liable for the wrong claimed. A petition for review was then filed in the United States Supreme Court.

During 1979, the adverse decision of the Court of Appeals was rendered. In association attorneys Thomas Luebben and Richard Hughes, NARF then entered the case at that point to assist in preparing the petition for Supreme Court review. The petition was prepared, filed, and pending at year's end (Whiskers v. U.S., 600 F.2d 1332 (10th Cir. 1979)).

Fullilove v. Kreps

This is an action to determine the Constitutionality of a Federal law which sets aside 10% of Federal funds for the hiring of minority contractors on Federally-funded public works construction projects. Since the employment and economic rights of Indian contractors as well as other minority contractors were at stake in this case, NARF decided to submit an amicus curiae ("friend of the court") brief to the United States Supreme Court, which was considering the legality of the 10% set aside provision in this particular case. This amicus brief was submitted on behalf on the Minority Contractors Association, an association of predominately Native American construction contractors and subcontractors in Montana. In response to the non-minority contractors' arguments that the 10% set aside provision constituted "reverse discrimination" and was, therefore, unconstitutional, the amicus brief submitted by NARF argued that Federal legislation which benefited Indians (especially Indian preference legislation) has always been upheld by the courts as constitutional because of Congress' unique obligations to Indians. The brief noted that the Supreme Court has consistently upheld Indian employment preference legislation because Indians, unlike other minorities, are entitled to a preferred and protected legal status under Federal law. Thus, the brief argued that the 10% set aside provision of the Public Works Employment Act was constitutional as applied to Indians. A decision from the Supreme Court is expected in 1980 (Fullilove, et al. v. Juanita Kreps, Secretary of Commerce of the United States of America, et al., United States Supreme Court, No. 78-1007).

Logan v. Andrus: Authority of the Osage Tribal Council

NARF represents a group of Osage Indians seeking to clarify the nature and extent of the governmental powers of the Osage Tribal Council. The Council was created in 1906 when Congress allotted the Osage Reservation. Under the Allotment Act, the surface estate was parceled out to members of the Osage Tribe and the subsurface estate was reserved in the Tribe, to be managed by the Osage Tribal Council. However, for a number of years, the Tribal Council has been expanding its powers into areas some members believe are unrelated to the reserved mineral estate, and, therefore, are beyond the scope of authority granted to it by Congress.

In October, 1978, a U.S. District Court in Oklahoma issued a decision ruling in part in the plaintiffs' favor and in part against the plaintiffs. The Court ruled that the Osage Tribal Council was a general governing body which owed its existence, not to the 1906 Allotment Act as plaintiffs urged, but instead to the 1881 Osage Tribal Constitution. The Court also ruled that to the extent that the Tribal Council had expended mineral estate funds on matters unrelated to the mineral estate, the council had acted beyond the scope of its authority. In 1979, NARF appealed a portion of the District Court's decision to the U.S. Court of Appeals in Denver. All briefs have been filed and a hearing will take place in 1980 (Logan v. Andrus, 457 F.Supp. 1219 (N.D.Okla. 1978); Appeal pending in 10th Circuit).

Kelly's Flooring v. Califano

This is an action filed by two wholly Indian-owned subcontracting firms which were denied Indian preference on their bids for a Federally-funded school construction project located on the Crow Indian Reservation in Montana. Section 7b of the Indian Self-Determination and Education Assistance Act provides that Indian preference shall be given to Indian "contractors" and "subcontractors" on Federally-funded projects intended for the benefit of Indians. The Indian plaintiffs here claimed that HEW failed to give Indian preference to their bids because HEW did not consider plaintiffs to be "subcontractors" within the meaning of Section 7b. The question in the case then was whether an Indian flooring firm and an Indian masonry firm were subcontractors within the meaning of Section 7b. HEW claimed that the school board, which received the money to build the school, was the contractor; that the prime construction contractor hired by the school board to build the school was the one and only "subcontractor;" and that the flooring and masonry firms to be hired by the prime contractor were "subcontractors" and, therefore, were not entitled to Indian preference. Since this interpretation operated to exclude the Indian subcontracting firms from consideration for Indian preference on all HEW projects across the country, NARF deemed it important to take the case in order to protect Indian employment and economic rights.

In April, 1979, the Indian subcontracting firms filed the action in the U.S. District Court in Montana. Plaintiffs sought: (a) to have HEW's interpretation of 7b's term "subcontracts" declared invalid; and (b) to require HEW and the other defendants to rebid the flooring and masonry subcontracts and have Indian preference criteria applied to the plaintiffs' bids. On April 25, 1979, the District Court held that HEW's interpretation of the

term "subcontracts" was "hypertechnical and inconsistent with the stated congressional purposes" of the Self-Determination Act. This ruling had obvious beneficial affects on Indian subcontracting firms all across the country. However, the court refused to order a rebidding of the project and refused to have the contracts awarded to these particular two Indian subcontracting firms for the reason that their bids were 14% and 12% respectively higher than the lowest non-Indian bids. The court also ruled that since contracts had been entered into, and since school construction was about to begin, that plaintiffs' remedy was an action in money damages and not an action to be awarded the contract. Believing that the Federal agency, not the court, should initially apply Indian preference criteria to the Indian bids, the plaintiffs appealed to the Ninth Circuit to compel a rebidding of the flooring and masonry subcontracts. In June 1979, the Ninth Circuit denied plaintiffs' appeal. Thus, the non-Indian masonry contractor was allowed to begin construction.

The case is now back in the District Court for Montana for the purpose of determining whether and to what extent plaintiffs are entitled to money damages. Later in 1979, plaintiffs amended their complaint to request money damages and made a motion in the Montana court to issue a final summary judgment on HEW's unlawful interpretation of subcontractors. The plaintiffs also moved the court to issue an order requiring HEW to publish Indian preference regulations in the Federal Register in compliance with the mandate of Section 7b. These motions are currently pending in the District Court (Kelly's Flooring Inc. et al. v. Patricia Harris as Secretary of the Department of HEW et al., U.S. District Court, District of Montana, No. 79-38-BLG).

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Coalition of Indian-Controlled School Boards v. Harris

This lawsuit concerns HEW's interpretation of the Indian preference section of the "Indian Self-Determination and Education Assistance Act," which has the effect of excluding Indian organizations from receiving contracting preference for Federally-funded projects designed for Indians. At issues is whether Section 7(b) of the Act requires HEW to grant Indian preference to Indian organization contractors, such as the Coalition, when HEW is making the initial award of a contract for an Indian program.

The Coalition of Indian Controlled School Boards' membership consists of over 160 Indian-controlled schools and school boards, parent committees, advisory boards, and Indian education groups. The Coalition has been performing important educational services for its member schools and organizations in the area of training and technical assistance for nearly ten years. When the Coalition was denied Indian preference by HEW, they requested NARF's assistance in challenging HEW's position. In August of 1979, NARF attempted unsuccessfully to settle the issue out of court and contacted the Secretary of HEW, Patricia Harris, informing her of HEW's interpretation of Section 7(b) and that this interpretation illegally excluded Indian firms from Indian preference but no response was received. In October, a second HEW project was sought by the Coalition, and again the same interpretation of the Indian preference provision was applied. And once more, HEW failed to respond to NARF's request to settle the issue short of litigation. Finally, in December, NARF filed a lawsuit on behalf of the Coalition in Federal court. The Federal government is expected to file an answer late February, 1980, whereupon NARF will file for summary judgment in the Spring of 1980 on behalf of the Coalition.

Development of Indian Law

The National Indian Law Library

A major part of NARF's fulfillment of its priority of Indian law development is the continued operation of the National Indian Law Library, a repository and clearinghouse for materials on Native American law. The Library was established by NARF in 1972 in response to a growing demand for materials on Indian law. At the time, there was no library or major collection devoted entirely to this area. The demand was brought about by a resurgence of Indian rights activity beginning in the late 1960s and continuing today. With the aid of a three-year start-up grant from the Carnegie Corporation, and with continued support from the Administration for Native Americans (ANA/HEW), the Library began collecting, organizing and distributing an ever-growing collection of materials on Indian law.

The Collection. The holdings of the Library, which now total over 3,100 items, consist of: (1) Indian law case decisions and related pleadings and briefs; (2) articles on Indian law from law journals and other periodicals; (3) legal opinions and memoranda of Federal and state solicitors on Indian issues; (4) books, monographs, and dissertations on Indian affairs; and (5) various other types of collections and resource materials on Indian law. Almost from the beginning, the Library staff and NARF attorneys determined that it would be necessary to develop a special indexing system for the collection since all existing indices for Indian law were out-dated and entirely inadequate. The result was an index subject list of 400 titles and sub-titles, under which nearly every conceivable issue of Indian law could be indexed. This special index, copyrighted by NARF, enables quick and accurate access into the Library's collection.

The Services. The Library handles well over 100 requests each month. These requests come from NARF staff, legal services programs, Indian tribes and organizations, Indian individuals, private attorneys, students, scholars, law libraries, and state and Federal government offices. Services are free of charge for all Indian requests, although those who can pay for copying costs are urged to do so. Non-Indian requests receive the same attention as Indian requests, but are billed for all copying costs. Although all the materials are available at the Library for anyone to study, not all can be sent out either because of copyright restrictions or excessive copying costs.

The Catalogue. The Library disseminates information on its holdings primarily through publication of the "National Indian Law Library Catalogue:

An Index to Indian Legal Materials and Resources." The Catalogue is designed for those who cannot visit the Library, but would like to know what the Library has available in any particular area and to be able to request materials. In addition to the "Subject Index" referred to above, the Catalogue includes "Plaintiff-Defendant" and "Author-Title" Indices. And a most useful feature is that the Catalogue is supplemented periodically. Nearly 1,000 copies of the Catalogue have been subscribed to since its publication in 1976. The Library is now preparing for publication of the "Second Cumulative Edition" in 1980 or 1981. The publication date is dependent upon conversion of the Library's holdings from magnetic typewriter cards to a computerized system. Intensive planning and preliminary work was begun in 1979 for the conversion. After publication of the new cumulative edition, all additions to the collection will be entered in the data bank as they occur, thus assuring more accurate and up-to-date research at any time.

In 1979, in addition to responding to routine requests for materials and research assistance and in preparing for the next Catalogue edition, the Library also revised and updated "A Bibliography of Selected Areas of Indian Law" for the Federal Bar Association's 1979 annual spring conference. The Library also began distribution of Cases and Materials on Federal Indian Law by opening a bookstore account with the publisher and selling the textbook at a modest profit. This Indian law casebook was authored by David Getches, Daniel Rosenfelt and Charles Wilkinson. Mr. Getches and Mr. Wilkinson are former NARF attorneys and are now on the law school faculties at the universities of Colorado and Oregon respectively.

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The Indian Law Support Center

The Legal Services Corporation (LSC) has established 13 national backup centers to assist their local legal services programs around the country in specialized areas of law. The Indian Law Support Center ("Center") was established at NARF in 1972 to render legal assistance in the area of "Indian Law" to legal services programs working on reservations, Indian communities, and urban areas with substantial Indian populations. The Center operates within the policy guidelines of NARF, and is also governed by a nine-member Program Advisory Committe (PAC) consisting of Indian clients, client representatives, a legal services project director, and legal services attorneys.

Like the other national assistance centers, the Indian Law Support Center's basic purpose is to enhance the quality of the services of the local programs and attorneys rendered to their clients. This is an especially necessary service considering the fact that most of the programs with a substantial number of Indian clients have a high percentage of young, inexperienced attorneys and a high turnover rate. The experience of NARF's attorney staff is, therefore, of great value in this regard.

Assistance Available From the Center

Legal Services attorneys request assistance on Indian law matters in areas of litigation, legal research, and related matters. The Center seeks

to respond to every request through: (1) letter and telephone advise on Indian law problems; (2) the furnishing of legal materials; (3) legal research; (4) direct field consultation; (5) the review of court pleadings and briefs sent in from the field; (6) analysis of legislation; and (7) assistance in locating expert witnesses and other consultants. In sum, the attempt is made to put the full resources of NARF at the disposal of local Legal services, including attorney staff, the National Indian Law Library, and other resources, limited only by funding levels of the Center and of NARF.

Reorganization of the Program Advisory Committee

In 1979, all recipients of LSC funds were required to reorganize their governing boards to conform with Federal regulation requirements regarding the composition of those boards and the Center proposed a plan for the reorganization of the Center's board, the Program Advisory Committee. This plan, approved by LSC and the NARF Steering Committee, provided for an increase in board size to add three Indian client board members, including client Board members that are familiar with and reflect the needs of terminated, unrecognized, and off-reservation Indians. The board also includes representatives chosen by the National Association of Indian Legal Services (NAILS), which represent all Indian legal services programs in the country. The Program Advisory Committee meets twice a year, with their Executive Committee meeting an additional two times a year. Bylaws were also approved to govern the reorganization and operations of the board and include some delegated authority from the NARF Steering Committee over Center activities.

Summary of 1979 Center Activities

The Center significantly improved its support services despite funding limitations that made it impossible to accept any new litigation requests beginning in mid-1979. Major activities during the year include the following developments.

The Center Newsletter. The Center began publication of a monthly newsletter in the summer, and three editions of The Reporter were issued to Indian Legal services programs during the year. The purpose of the newsletter is to provide information on significant developments in Indian law and legislation, and to provide a forum enabling Indian legal services attorneys to exchange ideas and information.

Legislative and Administrative Advocacy. The Center's new Washington Advocacy Project is now able to address some advocacy needs of indigent Indians. The Project has chosen Indian health, education and housing as its priority advocacy areas. Particular emphasis is being given to Indian education, including tribally-controlled community colleges, bilingual/bi-cultural education, and Indian adult education. These important educational and cultural programs suffer similar difficulties in that they do not have sufficient advocates in Congress and, consequently, they have low funding levels from an increasingly fiscally conservative Congress. In the area of housing, Indians still do not have safe, decent and sanitary dwellings despite the approximately 30,000 new homes built on Indian reservations between 1961 and 1979, and despite the decade-old promises of the Department of Housing and Urban Development, the Bureau of Indian Affairs, and the Indian Health

Service to eliminate substandard housing on Indian reservations. Center advocacy efforts will include the establishment of a new Federal Office of Indian Housing, better government-sponsored technical assistance to Indian Housing authorities, and simplification of the complex Indian housing regulations. In the Indian health area, the Center's goal is to secure the authorization of adequate funding of Title V of the Indian Health Care and Improvement Act. There must be congressional action reauthorizing the funding for over forty urban Indian health care clinics to provide medical care and other services to needy Indian people. A meeting with client representatives, the National Health Law Project and other Indian health advocates occurred in December 1979. Strategies were discussed and adopted for securing a fair authorization level for Title V, and the Center cooperated with the American Indian Health Care Association in preparing testimony for the congressional appropriations and congressional reauthorization hearings to be held in 1980.

Litigation. One of the major functions of the Center is to assist legal services programs in litigation matters. Acting as co-counsel, Center attorneys of the Native American Rights Fund work with local legal services on cases involving major issues of Indian law that are of importance to all tribes. The extent to which NARF can participate in legal services' litigation as co-counsel is restricted, of course, by resources of both the Center and NARF. In 1979, the Center acted as co-counsel in 14 legal services' cases. These matters are described in other sections of the Annual Report. Some of the major cases during 1979 were U.S. v. Michigan (fishing rights of Great Lakes Tribes); Brooks v. Nez Perce County (illegal tax sale of an Indian trust allotment); Bear Ribs v. Taylor (religious rights of Indian inmates); and Joe v. Marcum (state garnishment proceedings over tribal members).

Training Activity. The Center held a national training session on Indian health in March of 1979. The session was attended by twenty lawyers from Indian legal services programs throughout the country, and laid the basis for the joint legislative and administrative advocacy effort by the National Health Law Project and the Native American Rights Fund referred to above. Additionally, Center attorneys provided training sessions in Montana, Idaho and New Mexico. Participation in regional training by Center attorneys is one of the Center's important functions.

The Indian Law Support Center continues to render all legal assistance possible to legal services programs around the country. The Center in one of NARF's most important projects, providing contact as it does with thousands of Native Americans through local legal services programs. The better the quality of legal representation given by these local programs to their Indian clients, the more Indian rights and interests are advanced.

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Cohen Revision

In 1942, the Federal government published Felix S. Cohen's Handbook of Federal Indian Law which is widely recognized as the leading treatise in the field. In 1958, a revision of the 1942 edition was published, but is considered an inferior work by many Indian legal scholars. In matters involving the duties and responsibilities of the Federal government

to Native Americans, Cohen had forthrightly acknowledged the obligations of the United States, whereas the 1958 revision retreated substantially from that position. The latter also reflected much of the termination policy of the 1950s.

In the 1968 Indian Civil Rights Act, Congress mandated a new revision of Cohen's work. A few years later, funds were appropriated and an office was set up in the Interior Department. Unfortunately, the revision was never accomplished and Interior later abandoned the project. The revision project was then turned over to the University of New Mexico. Since 1977, NARF attorneys have been working on portions of the revision, partly under a special contract with the University of New Mexico. NARF's work was nearly completed in 1979, and the new edition may be published in 1980.

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Law Review Article: Oliphant Case

In 1978, the U.S. Supreme Court held in Oliphant v. Suquamish Tribe that tribal courts have no criminal jurisdiction over non-Indians for crimes against Indians within tribal reservations. The University of Washington Law Review requested that staff attorney Richard Collins prepare an article reviewing the implications of this important case and related questions. The article was published in 1979 as "Implied Limitations on the Jurisdiction of Indian Tribes" (54 Wash. L. Rev. 479).

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Conference and Organization Activities

During 1979 NARF attorneys and other staff members participated in a wide variety of conferences, workshops, seminars and board meetings on Indian law and other areas of Indian affairs. As an organization working on a national level with Indian clients in over 40 states, it is necessary that NARF keep itself informed of current Indian affairs around the country and on what the important issues and concerns are in different areas. And participation at non-Indian conferences is often necessary, for the development of Indian law is not only accomplished by litigation, but also through educating the non-Indian community on the nature and justification of Native American rights (See following page for NARF participation in '79 meetings).

In addition, it is necessary that staff attorneys who concentrate their work in specialized legal areas -- such as energy, environment, water, education, etc. -- not only keep up to date with developments in these fields, but also participate in meetings which will further their legal training. At many of these affairs, NARF staff members serve as board members, participate in panel discussions or deliver presentations on various areas of Indian law.

1979 NARF Participation in Meetings and Conferences

January	
Indian Water Rights Meeting	Boulder, CO
National Congress of American Indians	Washington, DC
February	
Indian Law Students' Convention	Albquerque, NM
Environmental Law Conference	Washington, DC
March	
Denver Museum of Natural History	Denver, CO
U.S. Commission on Civil Rights	Washington, DC
Women-In-The-Law Conference	San Antonio, TX
April	
Federal Bar Association Meeting	Phoenix, AZ
State-Wide Idaho Indian Conference	Boise, ID
May	
White House Law Day	Washington, DC
Conference on Indian Law	Boston, MA
Indian Law Planning Meeting	Phoenix, AZ
Yakima Legal Seminar	Yakima, WA
Indian Natural Law and Finance Conference	Denver, CO
Indian Students' Seminar	Berkeley, CA
Biddeford High/Indian Awareness Week	Biddeford, ME
June	
Western Attorneys General/Water Rights Conference	San Francisco, CA
July	
Rocky Mountain Mineral Law Institute Meeting	Seattle, WA
University of New Mexico/Summer Indian Law Program	Albuquerque, NM
National Indian Health Board Conference	Spokane, WA
August	
Indian Students' Rights Workshop	Bemidji, MN
October	
National Congress of American Indians	Albuquerque, NM
Museum Conference	Jackson Hole, WY
Los Angeles/Indian Students' Meeting	Los Angeles, CA
November	
National Legal Aid and Defender Association	Albquerque, NM
Energy Conference on Coal	Denver, CO
Association on American Indian Affairs	Albuquerque, NM
December	
National Indian Education Association/Annual Meeting	Denver, CO

Treasurer's Report

TREASURER'S REPORT

The Native American Rights Fund is classified by the Internal Revenue Service as a charitable organization under Section 501(c)(3) of the IRS Code. Also under the Code, NARF is not a private foundation but is an organization described in Section 170(b)(1)(A)(VI) and Section 501 (a)(1). The latter classifications relieve private foundations who fund NARF activities from responsibility for the expenditure of funds given. Contributions to the Native American Rights Fund are tax deductible by the donors.

NARF's fiscal year runs from October 1 through September 30. In the year ended September 30, 1979, revenue of $1,945,416 was received from the following sources in the following amounts and percentages:

Government Agencies	$1,147,177	59%
Private Foundations	555,239	28%
Contributions from Individials and Corporations	172,921	9%
Other Sources	70,079	4%
	$1,945,416	100%

You will find a detailed list of grantors and contributors in the appendices of this annual report.

Operating costs for the fiscal year were $1,871,024. That amount paid for 16.75 attorneys' time in litigation and client services, with all necessary support costs; and for the activities of the National Indian Law Library. Costs for the year are shown below, by natural expense category:

Salaries and Wages	$ 779,370
Fringe Benefits	101,067
Contract Fees and Consultants	457,268
Travel	158,599
Space Costs	75,547
Office Expenses	212,183
Equipment Maintenance and Rental	13,594
Litigation Costs	20,025
Library Costs	19,054
Expenses before Depreciation	$1,836,707
Depreciation	34,317
Total Expenses	$1,871,024

The total of expenses is larger by $171,814 than the total for fiscal 1978. This difference is largely attributable to the higher expenditures for consultants and contract services which were necessitated by the project for implementation of the Indian Religious Freedom Act (P.L. 95-341) and for the formulation of Tribal Economic and Social Development Offices.

Functional expenses for the year are shown by percentage below, and are compared to the functional expenditures for the previous fiscal year:

	FY79	FY78
Litigation and Client Services	76.5%	75%
National Indian Law Library	4.5%	5%
Program Expense Sub-Total	81.0%	80%
Management and General	11.5%	13%
Fund Raising	7.5%	7%
Support Expense Sub-Total	19.0%	20%
Total	100.0%	100.0%

The percentage of expenditures for litigation and client services is higher than last year's due largely to the contract services and consultants needed to carry out the Indian Religious Freedom Act and TESDO Projects. Expenditures for those services helped to make costs for management support proportionately less. Fund raising costs grew as a percentage of total costs by .5% this year as a result of NARF's continuing effort to develop its direct mail fund raising campaign into an ever more effective source of program income.

The audited financial statements of the Native American Rights Fund for the fiscal year ended September 30, 1979, are reproduced on the pages which follow.

Susan Rosseter Hart
Treasurer

FINANCIAL STATEMENT

SEPTEMBER 30, 1979

NATIVE AMERICAN RIGHTS FUND

Price Waterhouse & Co.

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

December 3, 1979

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

In our opinion, the accompanying balance sheet and the related statements of support, revenue, expenses and changes in fund balance, of changes in cash and of functional expenses present fairly the financial position of Native American Rights Fund, Inc. at September 30, 1979 and the results of its operations and changes in fund balances and the changes in its cash for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of these statements was 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 SHEET

SEPTEMBER 30, 1979

	Current funds		General fixed	Total
	Unrestricted	Restricted	asset fund	all funds
ASSETS				
Cash (including savings accounts and short-term investments of $459,239)	$ 616,258			$ 616,258
Marketable securities, at market (Note 2)	51,750			51,750
Grants receivable (Note 6)		$135,774		135,774
Other receivables	25,077			25,077
Prepaid expenses	13,168			13,168
Interfund receivable (payable)	(206,266)	206,266		
Property and equipment, at cost (Notes 3 and 4):				
Land and buildings, pledged			$ 313,938	313,938
Improvements to land and buildings			66,274	66,274
Office equipment and furnishings			178,413	178,413
Professional library			50,712	50,712
			609,337	609,337
Less - Accumulated depreciation			(136,364)	(136,364)
Net property and equipment			472,973	472,973
	$ 499,987	$342,040	$ 472,973	$1,315,000
LIABILITIES AND FUND BALANCES				
Accounts payable	$ 216,798			$ 216,798
Accrued expenses (Note 5)	101,373			101,373
Deferred revenue (Note 6)		$332,722		332,722
Interfund loan payable (receivable) (Note 7)	(41,124)	9,318	$ 31,806	
Mortgages and notes payable (Note 4)			213,822	213,822
	277,047	342,040	245,628	864,715
Fund balances	222,940		227,345	450,285
	$ 499,987	$342,040	$ 472,973	$1,315,000

The accompanying notes are an integral part of the financial statements.

NATIVE AMERICAN RIGHTS FUND, INC.

STATEMENT OF SUPPORT, REVENUE, EXPENSES AND

CHANGES IN FUND BALANCES

FOR THE YEAR ENDED SEPTEMBER 30, 1979

	Current funds		General fixed	Total
	Unrestricted	Restricted	asset fund	all funds
Support and revenue:				
Grants		$1,702,416		$1,702,416
Contributions	$172,921			172,921
Other (Note 2)	70,498			70,498
Loss on disposal of fixed assets			$ (419)	(419)
Total support and revenue	243,419	1,702,416	(419)	1,945,416
Expenses:-				
Program services:				
Litigation and client services	1,940	1,401,683	26,768	1,430,391
National Indian Law Library	13,634	66,028	2,059	81,721
Total program services	15,574	1,467,711	28,827	1,512,112
Support services:				
Management and general	30,614	181,852	4,804	217,270
Fund raising	114,847	26,109	686	141,642
Total support services	145,461	207,961	5,490	358,912
Total expenses	161,035	1,675,672	34,317	1,871,024
Excess (deficiency) of support and revenue over expenses	82,384	26,744	(34,736)	74,392
Other changes in fund balances:				
Acquisition of fixed assets	(1,357)	(13,372)	14,729	
Reduction in mortgage payable	(2,822)	(6,883)	9,705	
Telephone usage charge (Note 7)	-	(6,489)	6,489	
	(4,179)	(26,744)	30,923	
Fund balances, beginning of year	144,735	-0-	231,158	375,893
Fund balances, end of year	$222,940	$ -0-	$227,345	$ 450,285

The accompanying notes are an integral part of the financial statements.

NATIVE AMERICAN RIGHTS FUND, INC.

STATEMENT OF CHANGES IN CASH

FOR THE YEAR ENDED SEPTEMBER 30, 1979

	Current funds		General fixed	Total
	Unrestricted	Restricted	asset fund	all funds
Cash was provided by:-				
Excess (deficiency) of support and revenue over expenses	$ 82,384	$ 26,744	$(34,736)	$ 74,392
Add (deduct) items not using (providing) cash:				
Deferred contributions and grants receivable recognized as support and revenue		(201,666)		(201,666)
Depreciation			34,317	34,317
Decrease in unrealized depreciation of marketable securities	(5,400)			(5,400)
Loss on disposal of fixed assets			419	419
Net cash provided by (used for) operations	76,984	(174,922)		(97,938)
Deferred contributions received and grants receivable collected		343,288		343,288
Increase (decrease) in interfund payables (receivables)	148,111	(141,622)	(6,489)	
Net fund balance transfers	(4,179)	(26,744)	30,923	
Proceeds from sale of marketable securities	49,204			49,204
Increase in accounts payable and accrued expenses	130,545			130,545
Net cash provided	400,665	-0-	24,434	425,099
Cash was used for:				
Purchase of marketable securities	36,463			36,463
Fixed asset additions			14,036	14,036
Repayment of mortgages and notes payable and equipment purchase obligation			10,398	10,398
Increase in prepaid expenses	1,295			1,295
Increase in other receivables	21,702			21,702
Net cash used	59,460		24,434	83,894
Increase in cash	$341,205	$ -0-	$ -0-	$ 341,205

The accompanying notes are an integral part of the financial statements.

NATIVE AMERICAN RIGHTS FUND, INC.

STATEMENT OF FUNCTIONAL EXPENSES

FOR THE YEAR ENDED SEPTEMBER 30, 1979

	Program services			Support services			
	Litigation and client services	National Indian Law Library	Total	Management and general	Fund raising	Total	Total expenses
Salaries and wages:							
Professional staff	$ 463,222	$29,294	$ 492,516	$ 77,971	$ 13,368	$ 91,339	$ 583,855
Support staff	125,688	20,201	145,889	30,729	18,897	49,626	195,515
Fringe benefits	77,568	5,642	83,210	13,204	4,653	17,857	101,067
Total salaries and related costs	666,478	55,137	721,615	121,904	36,918	158,822	880,437
Contract fees and consultants	428,477	2,878	431,355	17,163	8,750	25,913	457,268
Travel	131,923	1,804	133,727	21,165	3,707	24,872	158,599
Space costs	38,555	1,436	39,991	34,454	1,102	35,556	75,547
Office expenses	92,977	13,461	106,438	16,070	89,675	105,745	212,183
Equipment maintenance and rental	8,054	4,013	12,067	1,332	195	1,527	13,594
Litigation costs	20,025		20,025				20,025
Library costs	17,134	933	18,067	378	609	987	19,054
Expenses before depreciation	1,403,623	79,662	1,483,285	212,466	140,956	353,422	1,836,707
Depreciation	26,768	2,059	28,827	4,804	686	5,490	34,317
Total expenses	$1,430,391	$81,721	$1,512,112	$217,270	$141,642	$358,912	$1,871,024

The accompanying notes are an integral part of the financial statements.

NATIVE AMERICAN RIGHTS FUND, INC.

NOTES TO FINANCIAL STATEMENTS

SEPTEMBER 30, 1979

NOTE 1 - ORGANIZATION AND SUMMARY OF 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.

Revenue recognition:

A substantial portion of NARF's revenue is derived from restricted grants and contracts. Revenue from such restricted sources is deemed to be earned when NARF has incurred costs which satisfy restrictions imposed by the respective grants or contracts. Funds received from restricted sources in excess of costs incurred are reported as deferred revenues. Where costs have been incurred in excess of funds received from restricted sources, revenue and related receivables are recognized to the extent of such costs unless, in management's opinion, future grant or contract funds will be insufficient. In such cases, costs are charged to unrestricted funds.

In absence of a designated period for use, contributions and donations from unrestricted sources are generally recognized when received; however, enforceable pledges are recorded as revenue and receivables in the year made. Donations of marketable securities or other in-kind contributions are recorded as revenue at their estimated fair market value at the date of contribution.

Interfund receivables (payable):

Generally, funds received by NARF are deposited in a general bank account and segregation of cash and certain other assets and liabilities between restricted and unrestricted funds is not maintained in

the accounting records. Segregation of revenue and expenditures applicable to restricted, unrestricted (including segregation within the restricted fund by grant source) and the general fixed asset funds is maintained in the accounting records. The interfund receivable (payable) results from the receipt of deferred revenue in excess of net assets specifically identifiable with the restricted fund at September 30, 1979.

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 accompanying financial statements include attorneys and office management personnel.

Fund raising:

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

Property and equipment:

Purchases of property and equipment and payments on the note and mortgage liabilities are expenditures of the current funds. Such expenditures are treated as transfers to the general fixed asset fund (Note 3).

Depreciation:

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

NOTE 2 - MARKETABLE SECURITIES:

Marketable securities consist of marketable corporate securities. These investments are stated at market value which was approximately

$11,600 less than cost at September 30, 1979. The net effect of realized and unrealized gains and losses recognized in the unrestricted fund during the year was as follows:

Net realized losses on security sales	$ 6,992
Less - Losses recognized in prior years	(8,505)
Net gain on sales	1,513
Decrease in unrealized depreciation on other securities	5,400
Net gain	$ 6,913

NOTE 3 - TRANSFERS TO GENERAL FIXED ASSET FUND:

Net transfers to the general fixed asset fund from current restricted and unrestricted funds consisted of the following during the year:

Telephone usage charge	$ 6,489
Purchases of office equipment and furnishings	5,496
Improvements to land and buildings	3,952
Principal payments on mortgages and notes	9,705
Additions to professional library	4,588
Principal payments on equipment obligation	693
	$30,923

NOTE 4 - MORTGAGES AND PROMISSORY NOTES PAYABLE:

Long-term debt consisted of the following at September 30, 1979:

	Portion due within one year	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	$ 4,195	$106,656
Mortgage loan payable in equal monthly instalments of $482, including interest at 5 1/2%, through March 1985. Secured by land and building	4,147	31,651
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	2,117	73,437
Equipment purchase obligation payable in equal monthly instalments of $132, including interest at 13%, through February 1981. Secured by equipment	1,385	2,078
	$11,844	213,822
Less - Current portion of long-term debt		11,844
Portion due after one year		$201,978

NOTE 5 - RETIREMENT PLAN:

Effective October 1, 1976, NARF adopted a money purchase pension plan for all full-time employees. Annual contributions to the plan by NARF are at amounts equal to 5% of each participant's compensation. Additional contributions to the plan may be made by the participants but are not required. Pension expense is provided at an amount equal to 5% of each full-time employee's compensation. A participant's interest in NARF's contribution becomes vested at the rate of 10% for each year of service. Contributions by NARF and by participants are principally invested in life insurance annuity contracts. Pension expense for 1979 was $36,162. Pension expense provided in excess of

funding requirements (due to forfeitures, etc.) is reserved for sabbatical leave for eligible employees, payments for which totaled approximately $5,000 in 1979.

NOTE 6 - GRANTS RECEIVABLE AND DEFERRED REVENUE:

Grants receivable and deferred revenue consisted of the following individual restricted grants or contracts at September 30, 1979:

	Receivable	Deferred revenue
Ford Foundation		$ 86,170
Department of Health, Education and Welfare, Administration for Native Americans	$ 40,461	209,311
Legal Services Corporation		9,251
Donner Foundation		894
Carnegie Corporation		26,967
Pawnee Indian Agency	7,208	
Bureau of Indian Affairs	85,605	
University of New Mexico Law School	2,500	
ACTION		129
	$135,774	$332,722

NOTE 7 - INTERFUND LOAN PAYABLE (RECEIVABLE):

During September 1978, NARF purchased a telephone system which replaced previously rented equipment. The cost of the telephone system was financed with funds borrowed from the unrestricted fund which will be repaid over a five-year period with the unpaid balance bearing interest at 8% per annum.

The repayment is being effected through a usage charge to grantors who have approved the terms of the borrowing or otherwise, in an amount equivalent to depreciation.

NATIVE AMERICAN RIGHTS FUND

CONTRIBUTORS

10/1/78 - 9/30/79

Foundations	Grant Purpose
Carnegie Corporation of New York. . .	Indian Lawyer Intern Project
William H. Donner Foundation.	Tribal Sovereignty and Natural Resources Research
Ford Foundation	General Support Indian Education Legal Support
Knistrom Foundation	Eastern Indian Land Claims Negotiations
Lilly Endowment	Eastern Indian Legal Support
Governmental and Public Institutions	
Bureau of Indian Affairs; Muskogee Area Office	Title Research, ARTA
Bureau of Indian Affairs; Office of Trust Responsibility . .	Expert Witnesses and Consultant Contracting
Department of Health, Education and Welfare; Administration for Native Americans	National Indian Law Library; Strengthening Tribal Governments; Protection of Indian Natural Resources; Indian Religious Freedom Act Implementation; Establishment of Tribal Energy and Social Development Offices
ACTION.	Colorado Committee for Responsive Philanthropy
Legal Services Corporation.	Indian Law Support Center
University of New Mexico; Law School	Revision, Cohen's Handbook of Federal Indian Law

CONTRIBUTORS (cont'd)

Corporations	Grant Purpose
S. Forest Company, Inc.	General Support
McGraw-Hill Foundation, Inc.	General Support
Pittsburgh Bridge & Iron Works . . .	General Support
Equitable Life Assurance Society of the United States	General Support
Tribal Groups	
Lone Pine Band Owens Valley Paiute Shoshone Indians	General Support
Mattaponi Indian Reservation	General Support
Yankton Sioux Tribe	General Support

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Helen Zuckerman

Appendices

Appendix A

Professional Staff Members During 1979

Executive Director:

John E. Echohawk (Pawnee) is the Executive Director of the 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. John has been with NARF since its inception, having served as Deputy Director of NARF, 1972-1973; Director, 1973-1975; and Vice-Executive Director, 1975-1977. He was reappointed Executive Director in October, 1977.

John has lectured on Indian law at the University of California at Berkeley and the University of Colorado at Denver. He serves on the Boards of Directors of the American Indian Lawyer Training Program, the Association on American Indian Affairs, and the National Committee for Responsive Philanthropy. He also served on the Task Force on "Trust Responsibilities and the Federal-Indian Relationship, Including Treaty Review" for the United States Senate's American Indian Policy Review Commission in]976-]977.

B.A., University of New Mexico (1967); J.D., University of New Mexico (1970). Reginald Heber Smith Fellow (1970-1972). Native American Rights Fund (August, 1970 to present). Admitted to practice law in Colorado.

Staff Attorneys:

Lawrence A. Aschenbrenner joined NARF as a staff attorney in March, 1977. Mr. Aschenbrenner has over 20 years litigation experience and is the directing attorney for NARF's Washington, D.C. office. He is a graduate of the University of Oregon Law School and did his undergraduate work there as well.

Prior to joining NARF's staff, Mr. Aschenbrenner served in a number of legal capacities including: Acting Associate Solicitor for Indian Affairs and Assistant Solicitor for Indian Affairs in the Department of Interior from 1974 through February, 1977. In addition, he has been chief counsel for the Lawyers' Committee for Civil Rights Under Law in Jackson, Mississippi, 1967-1969; a partner in a public interest law firm in Oregon; public defender for the State of Oregon; and District Attorney for Josephine County, Oregon. Mr. Aschenbrenner's legal responsibilities in Indian law have related primarily to issues and cases involving lands, minerals, hunting and fishing, water rights and the environment.

Kurt V. Blue Dog, came to NARF as a staff attorney in August of 1977. A former summer law clerk at NARF, Kurt is a Sisseton-Wahpeton Sioux from South Dakota. He is working primarily in the areas of Indian education and Indian corrections. During the past year, Kurt served as Co-Director of the American Indian Religious Freedom Project.

B.A., University of South Dakota (1972); J.D., University of Minnesota (1977). Native American Rights Fund (August, 1977 to present). Admitted to practice law in Minnesota.

Richard B. Collins joined NARF as a staff attorney in November, 1975. Mr. Collins has had extensive experience in Indian law in both trial and appellate work, and has worked in Indian legal services programs since 1967.

B.A., 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 (1967-1971); Director of Litigation, DNA Legal Services, Window Rock, Arizona (1971-1975); Native American Rights Fund (November 1975 to present); Legal Adviser to the National Indian Law Library. Admitted to practice law in California, Arizona, 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 experience in Indian law with California Indian Legal Services. He has been practicing in the area of Indian civil rights including consumer law and domestic law. He is the present Director of NARF's Indian Law Support Center, which provides legal backup assistance to legal services programs working with Indian clients. 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). Admitted to practice law in California and Colorado.

Richard Dauphinais joined NARF as a staff attorney in June of 1979. A member of the Turtle Mountain Chippewa Tribe of North Dakota, Mr. Dauphinais will be working in natural resource law among other areas.

B.B.A., Notre Dame (1975); J.D., Notre Dame (1979); Native American Rights Fund (June 1979 to present). Admitted to practice law in Colorado.

Bruce O. Davies, an Oglala Sioux from South Dakota, joined NARF in March of 1979 as a staff attorney. While attending law school, Mr. Davies had considerable experience as a law clerk and legal intern for various organizations and programs, including NARF. His initial assignment at NARF is working for NARF's Indian Law Support Center which gives legal backup assistance to legal services programs located on or near reservations around the country.

B.A., Wesleyan University (1974); J.D., University of Denver (1979); Native American Rights Fund (March 1979 to present). Admitted to practice law in Colorado.

Sharon K. Eads, a Cherokee from Oklahoma, joined NARF in July, 1975, as a staff attorney in the Washington, D.C. office working on the Eastern Indian Project. Transferring to the Boulder office in 1976, she was involved in cases concerning taxation, hunting and fishing rights, protection of tribal resources, Federal power projects, and Indian education. Prior to entering law school, she worked as a counselor in juvenile corrections in Oklahoma. Ms. Eads is one of the founding directors of the American Indian Law Review. In August of 1979, she resigned to accept a position with the Legal Services Corporation.

B.D., University of Oklahoma (1972); J.D., University of Oklahoma (1975); Native American Rights Fund (July 1975 to August 1979). Admitted to practice law in Oklahoma and the District of Columbia.

Walter R. Echo-Hawk, Jr., a staff attorney in the Boulder office is a Pawnee Indian from Oklahoma, For the past six hears, he has concentrated his work at NARF in the field of Indian corrections. He has served as Co-Director of NARF's American Indian Religious Freedom Project, and Director of the Indian Corrections Project.

B.A., Oklahoma State University (1970); J.D., University of New Mexico (1973); Native American Rights Fund (June 1973 to present). Admitted to practice law in Colorado and the United States Supreme Court.

Daniel H. Israel joined NARF as a staff attorney in the Boulder office in 1972. Mr. Israel has specialized in Indian tax issues, jurisdictional disputes, and 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 (1970-197]); Native American Rights Fund (July 1972 to October 1979). Admitted to practice law in New York and Colorado.

Yvonne T. Knight, a Boulder staff attorney, is of Ponca-Creek descent, a member of the Ponca Tribe, and the first Indian woman law graduate of the University of New Mexico's Indian Law Scholarship Program. She is a founding member of the American Indian Law Students Association and served on the first AILSA Board of Directors. She was a member of Task Force No. 9 of the American Indian Policy Review Commission. Since joining NARF, she has worked in Indian education rights, and was actively involved in the passage and implementation of the Menominee Restoration Act. Recently, her work has been concentrated on real property rights, including interests in rights of way and submarginal lands, and hunting and fishing rights. She is also working in the area of Oklahoma Indian rights.

B.S., University of Kansas (1965); J.D., University of New Mexico (197]); High School Teacher, Kansas City, Kansas (1966-1968); Reginald Heber Smith Fellow (August 197] to July]974); Native American Rights Fund (197] to present). Admitted to practice law in Colorado and Federal Courts of Appeals for the Ninth and Tenth Circuits.

Timothy A. LaFrance joined NARF's Boulder staff in August, 1977. Previously, he had worked with the Planning Commission and legal staff of the Quinault Indian Nation of Washington in the summer of 1975. He has also served as a consultant in tribal land use planning and zoning to the American Indian Policy Review Commission's Task Force on Tribal Government and to the Legal Services Corporation. He has served as a consultant to a BIA Task Force concerned with Indian students' rights. He is currently working on a variety of cases involving jurisdiction, hunting and fishing rights, water rights, and riverbed claims. He is a member of the Turtle Mountain Band of Chippewa Indians of North Dakota.

B.S., cum laude, University of North Dakota (1974); J.D., University of California at Berkeley (1977); Native American Rights Fund (August 1977 to present). Admitted to practice law in California and Colorado.

Arlinda F. Locklear, a Lumbee Indian from North Carolina, joined the NARF staff in August, 1976. Since joining NARF she has concentrated her work in the area of Eastern Indian rights. During her final year in law school, Ms. Locklear was a winner of the National Moot Court Competition held in New York City.

B.A., College of Charleston, South Carolina (1973); J.D., Duke University (1976); Native American Rights Fund (August 1976 to present). Admitted to practice law in North Carolina and the District of Columbia.

Don B. Miller is a staff attorney in the Boulder office. Before transferring to the Boulder office, he was Directing Attorney of NARF's Washington, D.C. office for almost three years. He works on a variety of issues including land claims and tribal restoration. Prior to coming to NARF, Mr. Miller was the first director of the Organization of the Forgotten American, 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, of the Organization of the Forgotten Americans, Klamath Falls, Oregon (1972-1974); Attorney-Adviser, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, Washington, D.C. (September to December, 1974); Native American Rights Fund (January 1975 to present). Admitted to practice law in Colorado and the District of Columbia.

Robert S. Pelcyger, a staff attorney in the Boulder office, is nationally known for his work in the area of water rights. Mr. Pelcyger is one of the original NARF attorneys having been with NARF when it began as a pilot project in 1970 in California. Recent publications include two articles on Indian water rights: "Indian Water Rights: Some Emerging Frontiers," 21 Rocky Mountain Mineral Institute 743 (1976); and "The Winters Doctrine and the Greening of the Reservations," 4 Journal of Comtemporary Law 19 (1976).

B.A., magna sum laude, University of Rochester (1963); LL.B., Yale Law School (1966); Fulbright Fellow (1966-1967); Staff Attorney, DNA Legal Services, Navajo Nation (1967); Staff Attorney, California Indian Legal Services (1967-1971); Native American Rights Fund (August 1971 to present). Admitted to practice law in California and New York.

Thelma J. Stiffarm, of Cree and Gros Ventre descent from Montana, is currently serving as NARF's Director of the Tribal Energy and Social Development Office Project. Prior to coming to NARF, Ms. Stiffarm served as Deputy Director of the American Indian Law Center in Albuquerque, and as a consultant to the U.S. Commission on Civil Rights' National Indian Project. Her special interest area is Indian juvenile law. She was the principal author of two Indian juvenile law publications and serves as adviser on several national juvenile research centers and projects.

B.A., University of Montana (1970); J.D., University of New Mexico (1974); Deputy Director of the American Indian Law Center at the University at New Mexico (1974 to 1977); consultant, U.S. Commission on Civil Rights, Denver, Colorado (1977 to 1978); Native American Rights Fund (October 1978 to present).

Thomas N. Tureen became a staff attorney in October, 1976. Previously, he had worked for NARF on an of-counsel basis, and has been working with NARF since 1973 on the Eastern Indian problems of tribal recognition, land claims and services.

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

Jeanne S. Whiteing joined the staff of NARF in June, 1975 as a staff attorney in the Boulder office. Ms. Whiteing, a Blackfeet-Cahuilla Indian from California, was one of the two Indian law graduates selected in 1975 as Indian laywer 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). Admitted to practice law in Colorado.

Other Professional Staff:

Lanny R. Bennett joined NARF in March, 1979, as the Research Assistant for the National Indian Law Library. He is a member of the Seneca Nation of New York, and attended Jamestown Community College and Oswego State University. He worked for his Tribe as a job placement director and a museum technician in Niagara Falls previous to the NARF position.

Ada E. Deer, a member of the Menominee Tribe of Wisconsin, joined NARF's Washington, D.C. staff in October 1979 as a fulltime legislative liaison. As both Vice-President and Congressional Liaison of the "National Committee to Save the Menominee People and Forest," Ada played a key role in the passage of the Menominee Restoration Act of 1972. Following this, she was elected Chairperson of the Menominee Restoration Committee and assisted in drafting a tribal constitution and bylaws and reorganizing self-government on the Menominee Reservation.

Most recently, Ms. Deer has served as a lecturer in the School of Social Work and Native American Studies Program at the University of Wisconsin. She has been a member of the national boards of Common Cause and the Girl Scouts of America, and served on the Congressional Commission on the Mental Health of Children, and the American Indian Policy Review

Commission. She is currently a member of the President's Commission on White House Fellows and serves on the national boards of the National Association of Social Workers, Americans for Indian Opportunity, American Indian Scholarships and the Council on Foundations. She is currently serving as President of the Association of American Indian and Alaska Native Social Workers.

Ms. Deer received her B.A. in social work from the University of Wisconsin in 1957, and M.S.W. in 1961 from Columbia University. In 1966, she was selected as one of the Outstanding Young Women of America. She holds Honorary Doctorate degrees from the University of Wisconsin-Madison and Northland College. In September 1977, Ms. Deer was chosen as Fellow of the Harvard University Institute of Politics.

Lorraine P. Edmo is Development officer of the Corporation, and a member of the Shoshone-Bannock Tribe of Idaho. She first joined NARF in August 1976 as technical writer and Corporate Secretary. Prior to coming to NARF, she served as a consultant to the American Indian Policy Review Commission and the American Indian Lawyer Training Program. She worked over two years as Executive Director of the Idaho Inter-Tribal Policy Board in Boise, which is made up of the State's five Indian tribes; she also served as Resource Development Specialist for that organization. Ms. Edmo has also worked as a tribal newspaper editor and television news reporter in Idaho.

Ms. Edmo received her B.A. degree in journalism and political science from the University of Montana in 1970. She has done graduate work at the University of Montana and Columbia University in New York.

Grace B. Gillette, a member of the Arikara Tribe of the Fort Berthold Reservation in North Dakota, joined NARF's staff as the business manager in October 1978. Her duties in this capacity were office management, personnel administration and funding research and development.

Ms. Gillette came to NARF with four years office management experience with Osoro and Associates of Englewood, Colorado. She also served as Logistical Support Coordinator for this training firm. In addition, she has worked as administrative assistant for the American Indian Commission on Alcohol and Drug Abuse and possess expertise in office management, conference planning and organization and proposal development. Ms. Gillette resigned in Spetember, 1979.

Suzan Shown Harjo, an enrolled member of the Cheyenne-Arapahoe Tribes of Oklahoma, has rejoined NARF's Washington, D.C. staff in her former capacity as legislative liaison. Ms. Harjo had previously directed NARF's legislative efforts from March 1977 to March 1978 when

she was appointed by Assistant Secretary of the Department of the Interior, Forrest J. Gerard, as a Special Assistant for Legislation and Liaison. Ms. Harjo worked in the areas of congressional and tribal relations, and coordinated the multi-agency implementation of the American Indian Religious Freedom Act and prepared the subject report which was presented to the Congress in August 1979.

Previous to her initial NARF employment, she served as Communications Director and Legislative Assistant for the National Congress of American Indians. In 1975, she was Project Coordinator for the NCAI/ National Tribal Chairmen's Association project for review and analysis of Federal regulations proposed for implementation of P.L. 93-638, the Indian Self-Determination and Education Assistance Act. She also has served as news director of the American Indian Press Association. Until 1974, she was faculty coordinator of a lecture series on contemporary Indian issues for six semesters at the New York University School of Continued Education. For four years, she co-produced a biweekly news and analysis program, "Seeing Red," for WBIA-FM radio in New York City, where she also worked as Director of the Pacifica Network's Drama and Literature Department. She is currently listed in the Directory of Significant Minority Women of the 20th Century.

Susan R. Hart, Controller and Corporate Treasurer, has been with NARF since 1971. She first joined NARF as an assistant bookkeeper, and became head bookkeeper in October of 1975. In May of 1978, she was promoted to Corporate Treasurer. Ms. Hart is currently studying for her B.A. degree in business at Loretto Heights College of Denver.

Marian Heymsfield joined the NARF staff as bookkeeper in January 1976 and was promoted to Head Bookkeeper in January, 1979. She received her B.A. in Economics from the University of California at Los Angeles, summa cum laude, in 1974.

James E. Hofbauer, a member of the Keweenaw Bay Indian Community, received his B.S. degree from Northland College in Ashland, Wisconsin and attended the University of Michigan Law School at Ann Arbor for two years.

Mr. Hofbauer joined the staff of the National Indian Law Library as research assistant in October, 1977. He has served as a legal intern for the American Indian Lawyer Training Program as well as the Western Interstate Commission on Higher Education and Law Students Civil Rights Research Council. Mr. Hofbauer resigned in March of 1979 to accept a position with ACKCO, Inc.

Oran LaPointe, a member of the Rosebud Sioux Tribe of South Dakota and a 1965 graduate of the University of Kansas, rejoined the NARF staff in September of 1979 as the Technical Writer and Corporate Secretary. He had previously worked for NARF for three years as a

research assistant for the National Indian Law Library, when he left to work as Communications Director for the Coalition of Indian Controlled School Boards and most recently as a research assistant for the Council of Energy Resource Tribes.

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

Rebecca Martinez joined the NARF staff as Legal Secretary in January, 1977. Ms. Martinez also worked as Administrative Secretary from October 1978 to August 1979 and was promoted to Administrative Assistant in September 1979. Her duties in this capacity include office management and personnel administration. Ms. Martinez is Chicano from Utah and is pursuing studies with the University of Colorado to obtain her B.A. in business administration.

Index

State Index to Major Activities in 1979*

*See last page of Index for listing of general activities.

MONTANA (Cont'd)

NEBRASKA

NEVADA

NEW MEXICO

NEW YORK

NORTH CAROLINA

VIRGINIA

WASHINGTON

WISCONSIN

Special Programs, Research Projects, and Miscellaneous Matters

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Iva Burr (Mesquakie), Legal Secretary*
Gloria Cuny (Oglala Sioux), Legal Secretary
Norma Cuny (Oglala Sioux), Legal Secretary*
Bernadine Eagle (Oglala Sioux), Bookkeeper*
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Julie Hoxie, Legal Secretary
Alene Lee, Legal Secretary
Paul Martinez (Chicano), Special Assignments
Constance McLeod, Legal Secretary
Dorothy Moore (Seminole), Special Assignments*
Mary Mousseau (Oglala Sioux), Direct Mail Clerk
Constance Olson (Cheyenne River Sioux), Administrative Secretary
Freda Primeaux (Osage), Bookkeeper*
Mary Lu Prosser (Cheyenne River Sioux), Direct Mail Coordinator
Pat Repshur, Legal Secretary*
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