

○ PROMOTION OF HUMAN RIGHTS ○ ACCOUNTABILITY OF

PRESERVATION OF TRIBAL EXISTENCE ○ PROTECTION OF NATURAL RESOURCES

GOVERNMENTS TO NATIVE AMERICANS ○ DEVELOPMENT OF INDIAN LAW

**Native  
American  
Rights Fund**

**ANNUAL REPORT • 1980**



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# **Native American Rights Fund**

## **ANNUAL REPORT • 1980**



# Steering Committee and Staff During 1980

## Steering Committee

### Executive Committee:

David Risling, Jr. (Hoopa), Chairman, California  
Val Cordova (Taos Pueblo), Vice-Chairman, New Mexico  
Robert Bojorcas (Klamath), Oregon  
John Stevens (Passamaquoddy), Maine

### Committee Members:

Curtis Custalow, Sr. (Mattaponi), Virginia  
Lucille Dawson (Narragansett), Rhode Island\*  
ReNee Howell (Oglala Sioux), South Dakota  
Roger Jim (Yakima), Washington  
Bernard Kayate (Laguna Pueblo), New Mexico  
Leo LaClair (Muckleshoot), Washington  
Louis LaRose (Winnebago), Nebraska  
Leroy Logan (Osage), Oklahoma  
Jerry Running Foxe (Coquille), Oregon  
Herman Williams (Tulalip), Washington

## Corporate Officers

John E. Echohawk (Pawnee), Executive Director  
Lorraine P. Edmo (Shoshone-Bannock), Development Officer  
Susan R. Hart, Treasurer  
Oran G. LaPointe (Dakota), Secretary

## Staff Attorneys

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

## Of Counsel

Bruce R. Greene  
Charles Wilkinson

## Legislative Liaisons

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

## National Indian Law Library

Diana Lim Garry (Acoma Pueblo), Librarian  
Lanny Bennett (Seneca), Research Assistant\*  
Michael Kitchkommie (Potawatomi), Research Assistant\*  
Bryce Wildcat (Pawnee-Euchee), Research Assistant

## Indian Corrections Project

Richard B. Williams (Oglala Sioux), Director  
Delmar Hamilton (Kiowa), Coordinator\*  
Donald W. Holman (Sisseton-Wahpeton Sioux), Coordinator

## Head Bookkeeper

Marian Heymsfield

## Administrative Assistant

Rebecca Martinez

## Support Staff

Janice Black Elk (Oglala Sioux), Special Assignments  
Rose Brave (Rosebud Sioux), Legal Secretary  
Rosetta C. Brewer (Cheyenne River Sioux), Receptionist  
Sue M. Feller, Bookkeeper  
Debra Echo-Hawk (Pawnee), Library Clerk\*  
Kathy S. Frohlick (Chickasaw-Cherokee), Legal Secretary  
Joyce Gates (Seneca), Library Secretary  
Sara T. Hobson (Navajo), Legal Secretary  
Julie E. Hoxie, Legal Secretary  
Janette Joseph, Legal Secretary  
Alene Lee, Legal Secretary\*  
Constance McLeod, Legal Secretary  
Gloria J. Mesteth (Oglala Sioux), Legal Secretary  
Mary Mousseau (Oglala Sioux), Library Clerk  
Constance Olson (Cheyenne River Sioux), Secretary\*  
Mary Lu Prosser (Cheyenne River Sioux), Direct Mail  
Sheryl Reynolds, Legal Secretary\*  
Rebecca Sewall, Special Assignments\*  
Kenneth Springer (Menominee-Omaha), Printer  
Elizabeth Tahdoohnippah (Comanche), Legal Secretary\*  
Rena E. Tardugno, Legal Secretary  
Patricia Tate (Santo Domingo Pueblo), File Clerk  
Susan "Yuk Yin" Tuttle, Bookkeeper  
Natalie Waukau (Menominee), Library Clerk\*  
Marilyn Woodhull (Oglala-Rosebud Sioux), Library Clerk\*

## Law Clerks & Interns

Kevin Anderson, Georgetown Univ., Law School  
Leland N. Chisholm, Univ. Maine, Law School  
Martha Dunlap, Univ. Maine, Law School  
Robert Eshman, Dartmouth College  
Beth Fitts, Dartmouth College  
Theresa Gomez (Isleta Pueblo), Univ. New Mexico, Law School  
Harvey Hyman, Georgetown Univ., Law School  
Elke Kruse (Omaha), Dartmouth College  
Barbara Rath (Chippewa), Denver Univ., Law School  
Margarethe Roderick, Dartmouth College  
Faith Roessel (Navajo), Univ. New Mexico, Law School  
Ralph Simon (Kickapoo), Univ. Tulsa, Law School  
Sandra Snyder (Seneca), Cornell University  
George Tah-Bone (Kiowa), Denver Univ., Law School

\*Resigned during 1980.

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Message from the Steering Committee Chairman:

In 1980 the Native American Rights Fund celebrated its 10th anniversary of providing legal representation to Indian people in major cases across America. We are rightfully proud of this accomplishment and the progress it has meant for our people. NARF's many legal victories in the courts and in the Congress in the 1970s have played a major role in the revitalization of Indian tribes and communities. Modern assertions of tribal sovereignty and treaty rights have stopped and reversed the termination of our tribes and forced assimilation of our people. These principles have once again given Indian people hope for survival and self-sufficiency in this country.

At NARF's Tenth Anniversary Symposium on Indian Law held in July, we reviewed our past progress and the issues we face now and in the future. The fight for our right to exist as Indian people is not over. It will continue into the 1980s and beyond. NARF's continuing availability to represent those many tribes and tribal members who cannot afford counsel and to utilize its great expertise in Indian law is necessary if progress is to be achieved for all our people.

Unfortunately, hard economic times are threatening the ability of NARF to provide lawyers in these important cases. We earnestly solicit all financial assistance possible in order to sustain the Indian fight for survival in the courts and in Congress. On behalf of the Steering Committee, I thank all those who have helped in the past and hope that you will continue with us.

A handwritten signature in cursive script that reads "David Risling". The signature is written in dark ink and is positioned above the printed name.

David Risling, Chairman

**"It may be regarded as certain, that not a foot of land will ever be taken from the Indians without their own consent. The sacredness of their rights is felt by all thinking persons in America as much as in Europe."**

**Thomas Jefferon, 1786**



## **A. Executive Director's Report**

## **DIRECTOR'S REPORT**

In the ten years of its existence, the Native American Rights Fund has provided legal assistance in hundreds of major cases on behalf of Indian tribes, organizations and individuals in over 40 states who otherwise would have gone without adequate representation. We have achieved significant results for Indian people in such critical areas as tribal sovereignty, treaty rights, natural resource protection, and civil rights.

In 1980, NARF continued to provide legal assistance to many tribes and other Indian clients throughout the country in important Indian rights cases. A summary review of major developments in this year's activities, which are detailed in the "Activities" section of this report, illustrates the importance of NARF's work to Indian people.

### Preservation of Tribal Existence

The largest return of land to Indian people in U.S. history — 300,000 acres — was achieved in 1980 with the settlement of the Maine Indian land claims. The settlement act passed by Congress concluded a case brought by NARF in 1972 on behalf of the Passamaquoddy and Penobscot tribes who asserted that their aboriginal lands had been taken from them in violation of federal treaty processes required by law. The magnitude of the claims and preliminary court victories led to a settlement of \$27 million with another \$54 million for purchase of the 300,000 acres of land, as well as resumption of partial tribal jurisdiction. The settlement should secure the future existence of the tribes, which was their primary objective.

In similar developments on a smaller scale, the Siletz Tribe of Oregon received a 3,600-acre reservation by act of Congress, thus concluding an effort begun by NARF in 1975. The Tribe, which had its tribal status terminated by Congress in 1954, was restored by Congress in 1977 after they demonstrated the disastrous effects that termination had on them. Securing a reservation gives them the land base needed to sustain a tribe. And in another 1980 act, Congress settled a claim brought by NARF on behalf of the Pamunkey Tribe of Virginia against a railroad's illegal right-of-way

across their land. The railroad will pay \$100,000 in damages and future rentals.

In the area of Indian tax immunities, NARF was co-counsel in the successful Supreme Court case of *Central Machinery Company v. Arizona*, which held that states cannot impose their sales taxes on sales transactions concluded on Indian reservations regulated by federal trader laws. We were also successful in the Minnesota Supreme Court in the case, *Topash v. Commissioner of Revenue*, where it was held that the state could not tax the income earned on one of the Minnesota Chippewa reservations by a member of another tribe. NARF also worked with a broad coalition of tribes and organizations in securing an exemption for oil production on Indian lands in the Oil Windfall Profits Tax legislation that passed in 1980. This was in keeping with historic Indian tax immunity policies.

In the tribal jurisdiction area, NARF was co-counsel in *Joe v. Marcum* where a federal appeals court held that tribal law and self-government precluded the application of New Mexico state wage garnishment laws to Indian wages earned on the Navajo Reservation. The same federal appeals court also held in *Cheyenne-Arapahoe Tribes v. Oklahoma* that the State of Oklahoma lacks jurisdiction to enforce its hunting and fishing laws against Indians on Indian lands and that the tribes can exercise such jurisdiction.

The application of tribal zoning laws to non-Indians on the reservation was effectively upheld by another federal appeals court in *Trans-Canada Enterprises v. Muckleshoot Tribe*, where the court decided it had no jurisdiction to hear a challenge to the ordinance. In another important case, the authority of the Secretary of the Interior to place land in federal trust status for an Indian tribe was upheld by a federal district court in *Sault Ste. Marie v. Andrus*.

#### Protection of Natural Resources

In a case affecting hundreds of thousands of acres of individual Indian allotted trust lands, the U.S. Supreme Court in *United States v. Clarke* held that states and their political subdivisions may not condemn Indian allotments for public purposes by mere physical seizure, but must institute formal condemnation proceedings in court. This relieves the



federal government and Indian allottees from the burden of discovering such seizures and filing for just compensation. They will now have notice of such condemnations. NARF filed a brief in the Supreme Court on behalf of the Indian allottee involved in this case.

NARF played the lead role in securing a congressional extension of the federal statute of limitations on pre-1966 Indian damage claims against third parties for trespass and contract violations, which was scheduled to expire April 1, 1980. The federal government, as trustee, is responsible for bringing these claims on behalf of Indians, but when it became apparent that the Justice and Interior Departments had not reviewed and filed thousands of Indian claims, an act extending the statute of limitations until December 31, 1982 was secured.

NARF also worked with several tribes on other important Congressional developments affecting natural resources. We assisted the northwest tribes in protecting their interests in an act enhancing their fisheries and providing for cooperative fisheries management; the Pueblos of New Mexico in defeating attempts to cut off federal appropriations to support their water rights litigation; and the Ft. McDowell Indian Community of Arizona in preserving their allocation of Central Arizona Project water from a legislative threat. In 1980, we also completed a special project supported by the Administration for Native Americans assisting tribal energy management efforts at Jicarilla Apache and Laguna Pueblo in New Mexico and the Uintah and Ouray Reservation in Utah.

### Promotion of Human Rights

Major developments in this area in 1980 included the successful settlement of two religious freedom cases on behalf of Indian inmates. As a result of *Frease v. Griffin* and *Marshno v. McManus*, Indian inmates now have access to sweat lodges for religious purposes at the New Mexico and Kansas state prisons, thus continuing NARF's success on these issues throughout the country.

Significant legislative developments occurred in Indian housing where 2,000 Indian housing units proposed to be cut by the Administration were restored; and in Indian health, where the authorization for support of

of over 40 urban Indian health care centers was saved. In addition, NARF worked with several tribes in securing adequate appropriations for implementation of the Indian Child Welfare Act of 1978.

### Other Developments

Major new cases undertaken in 1980 included South Dakota v. Rippling Water Ranch, a general water rights adjudication involving the treaty water rights of seven Sioux tribes in the Dakotas, where we represent the Rosebud Sioux; the traditional Kickapoo Indians of Texas who need citizenship and tribal status clarification and eligibility for social services; and the Kootenai Tribes of Canada, Idaho and Montana who are fighting plans for a hydroelectric project on the Kootenai River in Montana which would destroy their sacred Kootenai Falls area.

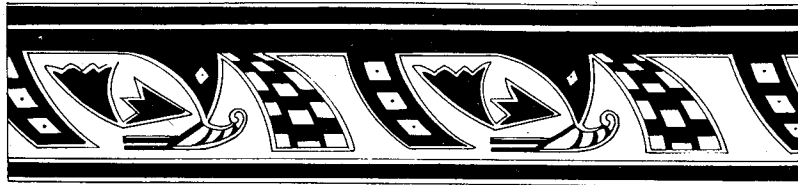
Important developments in on-going cases were the filing of a lawsuit on behalf of the Catawba Tribe of South Carolina for 140,000 acres after years of unproductive settlement negotiations on their 1790 Nonintercourse Act claim; and a preliminary recommendation by the Bureau of Indian Affairs that the Tunica-Biloxi Tribe of Louisiana is entitled to federal recognition as an Indian tribe. Our only major loss in 1980 was the Supreme Court's refusal to review a lower court decision holding that the Tellico Dam in Tennessee could be completed despite the Cherokee claims that their religious freedom rights were being violated by the flooding of sacred sites and burial grounds and disinternment and study of Cherokee bodies.

As these cases, and others reported in the "Activities" show, there is a demand and need for NARF's legal representation. Unfortunately, it is becoming increasingly difficult to raise sufficient funds to support such work. In 1980 NARF lost three attorney positions, 16% of our resources, because of a lack of funds. Future funding projections are not encouraging. On behalf of Indian people across America, we urge your support for justice for Native Americans.

  
John E. Echohawk  
Executive Director

**"Every human being born upon our continent, or who comes here from any quarter of the world, whether savage or civilized, can go to our courts for protection — except those who belong to the tribes who once owned this country. The cannibal from the islands of the Pacific, the worst criminals from Europe, Asia, or Africa, can appeal to the law and courts for their rights of person and property — all, save our native Indians, who, above all, should be protected from wrong."**

**Governor Horatio Seymour, New York (Circa 1860)**



## **B. The Program**

## THE PROGRAM

The Native American Rights fund is the oldest and largest national Indian interest law firm in the country. Now entering its eleventh year of existence, NARF has represented Indian clients in nearly every state. The hundreds of cases it has been involved in have concerned practically every area and issue in the field of Indian law. A brief review of NARF's origin will give a better understanding of NARF's role in Native Americans' struggle to protect their rights in today's society.

### The Origin of NARF

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 around the country to provide legal services to the poor and disadvantaged people. Many of these programs were located on or near Indian reservations. As they began working with Indian clients, legal services attorneys began to realize that Indians had unique legal problems which were, for the most part, governed 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.

Most legal services attorneys working in these Indian communities were relatively inexperienced or fresh out of law school. 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 "Indian" law as they became more aware of its importance to the legal problems of their Indian clients. This was especially so for legal services located on reservations where the presence of trust land, tribal resources, tribal agencies and federal laws necessarily involved in the most basic tenets of Indian law.

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

others working in 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 program which had a proven successful record in litigating Indian rights. They eventually contacted 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, NARF separated from CILS in 1971, relocated to Boulder, Colorado and incorporated separately under an all-Indian Board, the NARF Steering Committee.

NARF grew rapidly from a three-lawyer project 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 Native Americans to maintain their rights and traditional ways of life.

#### The Priorities

The Steering Committee of the Native American Rights Fund establishes the guidelines which the administration follows in determining NARF's activities. Since NARF's inception, it has always been its policy to pursue cases and projects which will have a significant impact on the rights 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 services 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 accept 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 of the existing 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, and NARF concentrates much of its resources in asserting tribal resource rights and protecting them from loss and exploitation by non-Indians. Major resource protection includes land rights, water rights, mineral rights, hunting, fishing and gathering rights, and environmental protection.

(3) The Promotion of Human Rights. NARF is also 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 lives 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 Organization & Administration

Presented here is a brief description of NARF's governing board, staffing, and organizational setup and operations. There have, of course, been many changes in NARF's ten-year history, but the basic purposes and the organizational structure have remained the same.

In its first few years, NARF experienced a rapid growth and soon consisted of a board and staff which has varied from 40 to 50 staff members. The Steering Committee presently has 13 members and the staff has stabilized at around 40 full-time personnel. From its inception, NARF has had an Indian preference policy which calls for the hiring of qualified Native Americans at both the professional and support staff level. Two-thirds of the attorneys and approximately three-fourths of support staff personnel are Native Americans. This policy does not, of course, prevent NARF from hiring qualified non-Indians where necessary, for NARF's paramount obligation is to its Native American clients and such obligation calls for the best personnel NARF can retain.

#### 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 eligible for three 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 representation.

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\* Please see front pages for a complete listing of the Steering Committee members.

During 1980 there were several changes in the Committee's membership, officers and Executive Committee. Lucille Dawson, a Narragansett Indian from Rhode Island was reluctantly forced to resign in November due to the commitments of her job. And Herman Williams, a Tulalip Indian from Washington, also left the Committee in November. The Committee had one new member in 1980. Bernard Kayate, a Laguna Pueblo from New Mexico was elected to the Committee in November.

David Risling, Jr., a member of California's Hoopa Tribe, is one of the few original Committee members still serving and he continued as Chairman during the year, as did Val Cordova, a Taos Pueblo from New Mexico, who served as Vice-Chairman. The Chairman and Vice-Chairman are automatically members of the Executive Committee and in November, Bob Bojorcas, a Klamath Indian, was selected to the Executive Committee. John Stevens of Maine's Passamaquaddy Tribe is the fourth member.

The Steering Committee meets twice a year at the Boulder office. Those meetings are devoted to discussions of policy; receiving reports from the attorneys on their cases; deciding on major administrative matters; and generally directing the activities of NARF. It has always been the philosophy of the Steering Committee to keep NARF as non-political as possible and to concentrate on activities which will lead to promoting rights for Native American people. The decisions of the Committee are not always easy for deciding on what issues are best pursued through the courts or through some other mechanism is difficult. But each member's own particular 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.

It is important that the Steering Committee 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 empowered to act on their behalf 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 decides on controversial cases presented to NARF.

#### The Directorship

The Executive Director is the chief operating officer of NARF. He 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 in general, and Indian law specifically, is a necessary requisite for the position.

The present Director, John E. Echohawk, has been with NARF since its establishment. He has served as a staff attorney and in various directorships roles in the past ten years.\* His experience enables NARF to maintain continuity in its program and to better plan for NARF's future.

The Director must work in close cooperation with the attorney staff on case litigation and other matters involving NARF's representation of Indian interests around the country. All meetings of the Steering Committee and the Executive Committee are attended by the Director. And although he does not, of course, have a vote in these meetings, his participation is important in order to inform the governing members of the status of NARF's current activities and any major problems that must be addressed.

#### The Attorney and Legislative Liaison Staff

NARF's success is a reflection of the exceptionally high quality of its attorney staff. In addition to the Executive Director, there were 16 full-time attorneys in 1980 at various times. Their experience ranged from three months to 20 years. In addition, there were two part-time contract attorneys retained by NARF because of their expertise on particular matters.

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\* See appendix for biographical sketch.

An important aspect of NARF's attorney staff is that 10 of the 16 attorneys are American Indians, a unique distinction among law firms or legal services program in the country. The presence of these Native American attorneys, along with the non-Indian attorneys who join 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. Nearly all full-time attorneys are based at the Boulder office. Two attorneys work permanently out of NARF's office in Washington, D.C., on Eastern Indian rights; and one attorney was based in a temporary office in Maine for the last several years in order to conduct the land claims negotiations NARF has been involved in.

During 1980, three staff attorneys - Raymond Cross, Timothy LaFrance and Thelma Stiffarm - left. Tim and Thelma resigned to accept other positions, while Ray left to take a well-earned extended vacation after serving as the Director of the Indian Law Support Center for many years. Tom Tureen resigned at the very end of the year but continued to work for NARF part-time on a contract basis. Anita Remerowski joined the NARF attorney staff in December to take over as the Director of the Indian Law Support Center.

In 1979, NARF decided to switch some of its limited resources to hire two full-time legislative liaison to work in Washington, D.C., on behalf of NARF matters pending before Congress and Administrative agencies. This decision meant that NARF could not immediately fill vacancies left by resigning attorneys, but was necessary in order to protect the interests of NARF's clients.

The work of the legislative liaisons, Ada Deer and Suzan Shown Harjo, was of immense value to NARF in 1980. Their efforts were instrumental in such areas as the passage of the Maine land claims settlement bill; obtaining tribal exemption from the windfall profits tax; Indian housing, health and education; establishment of a reservation for the Siletz Indians of Oregon; and numerous other matters.

#### Professional and Support Staff

The non-attorney staff consists of professional staff working 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.

Lorraine Edmo resigned in December from her position as NARF's Development Officer. A Shoshone-Bannock Indian from Idaho, Lorraine had first joined NARF as the technical writer and corporate secretary. When NARF decided in 1979 that it was essential that someone was needed to devote full-time to fund raising, Lorraine was appointed to the newly-created position of Development Officer. She is now at the University of New Mexico pursuing her masters degree in public administration.

In 1980, NARF conducted and completed a special "Indian Corrections Project" funded by the Law Enforcement Assistance Administration of the Justice Department (See the "Activities" section in this Report). Richard Williams, who served as the Director of the Project, has worked in Indian corrections for several years and is the former Director of the Cheyenne River Swift Bird Project in South Dakota. Donald Holman worked as the Great Lakes Regional Coordinator for the Project, and Delmar Hamilton was Regional Coordinator for the Northwest area.

#### Financial Accountability

The Native American Rights Fund is a non-profit charitable corporation which was incorporated under the laws of the District of Columbia on July 14, 1971. NARF is classified by the Internal Revenue Service as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. In 1973, NARF was classified as an organization that is "not a private foundation" as defined in Section 509(a) of the code because it is an organization described in Section 179(b)(1)(A)(VI) and 501(a)(1). This classification relieves private foundations of expenditure responsibility for grants they may make to the Native American Rights Fund. All contributions to NARF are tax deductible.

NARF's accounting system is maintained in accordance with the statement of position on accounting principles and reporting practices for certain non-profit organizations as set forth by the American Institute of

Certified Public Accountants in September, 1971. NARF meets the basic standards in philanthropy of the National Information Bureau, Inc., and the standards for charitable solicitations of the Council of Better Business Bureaus, Inc. Each year, NARF's financial records and statements are audited by a firm of independent, certified public accountants. Their report is included in NARF's Annual Report and is available separately upon request.

#### The Supporters of NARF

NARF's mandate is measured in part by the base of financial support which it maintains. Over its ten years of existence, NARF has attracted the dedicated support of many individuals, foundations, government agencies, corporations and tribal groups. None of NARF's work could be accomplished without our donors' commitment to the protection of Indian rights.

Federal grants were received from the Administration for Native Americans of the Department of Health and Human Services for several projects in 1980 — the National Indian Law Library, the Project to Strengthen and Facilitate Tribal Governments, the Project to Protect and Develop Tribal Natural Resources, and the Social and Economic Development Strategies. NARF appreciates the help of Commissioner David A. Lester and of Program Specialists Dorothy Johnson and Tom Vigil in ensuring the success of these projects.

The Indian Law Support Center (ILSC) was again funded in 1980 by the Legal Services Corporation. ILSC performs litigation work, trains and assists field program personnel, provides a Washington advocate to clients, and this year began a special project to aid several tribal groups in securing federal recognition.

The Law Enforcement Assistance Administration of the Department of Justice supported NARF's Indian Offender Needs Assessment Project in 1980. Mr. Dale Wing of LEAA was of great assistance during the project period.

Experts in various fields were provided for certain of NARF's case work under a contract from the Bureau of Indian Affairs of the Department of the Interior. Mr. Sam St. Arnold, Mr. Peter Markey and Guy Fringer of the BIA are to be congratulated for their assistance during the contracting period.

In 1980, NARF continued to receive much support from foundations. The Ford Foundation continued its decade long underwriting of NARF's work in Indian rights. In addition to general support funds, Ford Foundation provided a grant for the "Indian Education Legal Support Project," and a special grant to help defray the costs of NARF's Tenth Anniversary Symposium. R. Harcourt Dodds, NARF's Program Officer at the Ford Foundation, attended and spoke at the symposium celebration.

The Carnegie Corporation continues to fund NARF's 1980 "Indian Lawyer Intern Project," designed to bring talented Indian attorneys to train in Indian law at NARF. Richard Dauphinais and Bruce Davies were this year's interns.

The "Tribal Sovereignty and Indian Resources Project," which was funded through the William H. Donner Foundation ended in June 1980. NARF appreciates Donner's funding over many years, and hopes that the Foundation will soon renew its support for Indian rights.

The Lilly Endowment granted funds for NARF's work in water rights protection. The grant began in December 1980. NARF's thanks go out to Richard Ristine, Executive Vice-President of the Lilly Endowment, and to the Lilly Board for their continued enthusiasm for the protection of Indian rights.

The Muskiwinni Foundation provided support for the activities of staff attorney Arlinda Locklear, in keeping with the Foundation's interest in advancing minority women in the professions.

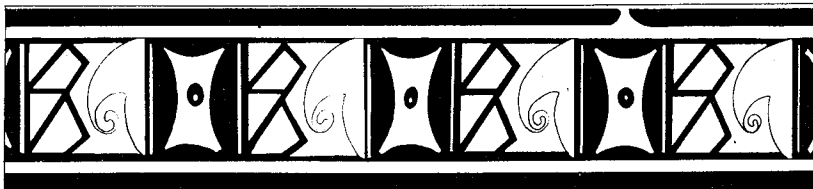
NARF also appreciates the gifts of the Aetna Foundation, Akbar Fund, Seacoast Foundation, Greyhound Corporation, Gulf Oil Corporation, McGraw-Hill Foundation, Grace Foundation, and the Toledo Community Foundation. Special gratitude is felt for the contributions of NARF's constituents in the Indian community. The Mississippi Band of Choctaw Indians and the Indian Center of Santa Barbara gave generous contributions to NARF in 1980.

Individuals contributed, collectively, over \$150,000 to NARF in 1980. They are too numerous to name, but those who contributed \$100 or more listed in the Treasurer's Report.

It is the support and good wishes of these people which enables NARF to continue with the work of protecting the rights of Native Americans throughout the country.

**"What treaty that the whites ever made with us red men have they kept? Not one. When I was a boy the Sioux owned the world. The sun rose and set in their lands. They sent 10,000 horsemen to battle. Where are the warriors today? Who slew them? Where are our lands? Who owns them? What white man can say I ever stole his lands or a penny of his money? ... Who has ever come to me hungry and gone unfed? Who has ever seen me beat my wives or abuse my children? What law have I broken? Is it wrong for me to love my own? Is it wicked in me because my skin is red; because I am a Sioux; because I was born where my fathers lived; because I would die for my people and my country?"**

**Sitting Bull, Hunkpapa Teton (Circa 1880)**



## **C. The Year's Activities**

## **THE YEAR'S ACTIVITIES**

The activities reported on in this section include NARF's major involvements during 1980 throughout the country. There were many other cases and non-litigation matters conducted during the year which are not reported on here either because there were no major developments in those matters or because they did not involve substantial attorney time.

The following activities are divided into NARF's five priority areas of preserving tribal existence, protecting tribal resources, promoting human rights, holding all levels of government accountable to Native Americans and furthering the development of Indian law.

NARF frequently works in association with other attorneys, law firms, Indian rights organizations and legal services programs on many of its cases, and where this is not acknowledged in the case report, it was an editorial oversight.

# Key to Numbers on Map

- |   |  |
|---|--|
| (1) U.S. v. Clarke: p. 40               | (39) Joe v. Marcum: p. 24                |
| (2) Hydaburg v. U.S.: p. 63             | (40) Ute Water Rights: p. 34             |
| (3) Ft. McDowell (CAP): p. 53           | (41) Oneida Land Claims: p. 33           |
| (4) Arizona v. California: p. 28        | (42) Maynor v. Morton: p. 64             |
| (5) Central Machinery v. Arizona: p. 17 | (43) Sequoyah v. TVA: p. 55              |
| (6) Ft. McDowell (Water Rights): p. 36  | (44) Davis v. Mueller: p. 19             |
| (7) Ft. McDowell (Orme Dam): p. 28      | (45) In re Knight: p. 47                 |
| (8) Papago v. Pima Mining Co.: p. 46    | (46) Sand Creek: p. 65                   |
| (9) Fort Defiance: p. 61                | (47) Wetumka Impact Aid: p. 59           |
| (10) D.Q. University: p. 60             | (48) Osage Mineral Estate: p. 51         |
| (11) Pt. Conception: p. 57              | (49) Cheyenne & Arapaho (Airport): p. 56 |
| (12) San Luis Rey: p. 35                | (50) Cheyenne & Arapaho v. Okla.: p. 49  |
| (13) CICS v. Harris: p. 65              | (51) Pawnee Sales Tax: p. 18             |
| (14) Ute Water Rights: p. 34            | (52) Logan v. Andrus: p. 21              |
| (15) Askew v. Seminole: p. 20           | (53) Seminole & Creek Food Prog.: p. 18  |
| (16) Brooks v. Nez Perce: p. 52         | (54) ARTA: p. 41                         |
| (17) Ross v. Scurr: p. 62               | (55) Kimball v. Callahan: p. 32          |
| (18) Tunica-Biloxi: p. 21               | (56) Siletz Restoration: p. 19           |
| (19) Maine Settlement: p. 27            | (57) U.S. v. Adair: p. 43                |
| (20) Wampanoag Tribe: p. 25             | (58) Catawba Land Claim: p. 22           |
| (21) Sault Ste. Marie v. Andrus: p. 31  | (59) Sioux Water Rights: p. 47           |
| (22) U.S. v. Michigan: p. 39            | (60) Sisseton-Wahpeton College: p. 61    |
| (23) Burt Lake Band: p. 48              | (61) Rosebud Sioux Finances: p. 26       |
| (24) Topash v. Comm'r of Revenue: p. 26 | (62) Rosebud Sioux Contracts: p. 34      |
| (25) Northern Cheyenne v. Adsit: p. 37  | (63) S.D. Trust Lands: p. 64             |
| (26) Montana v. U.S.: p. 26             | (64) Traditional Kickapoos: p. 23        |
| (27) Crow Section Two: p. 50            | (65) Pamunkey Trespass Settlement: p. 49 |
| (28) Kootenai River Dam: p. 57          | (66) Castle Rock: p. 60                  |
| (29) Blackfeet Comm. College: p. 60     | (67) Swinomish v. Burlington: p. 43      |
| (30) Santee Sioux: p. 36                | (68) Trans-Canada v. Muckleshoot: p. 24  |
| (31) White Eagle v. Storie: p. 62       | (69) Burlington v. Andrus: p. 52         |
| (32) Winnebago Condemnation: p. 53      | (70) Muckleshoot v. Trans-Canada: p. 44  |
| (33) Pyramid Lake: p. 29                | (71) Swinomish Boundary Matter: p. 43    |
| (34) So. Pac. v. Andrus: p. 42          | (72) Squaxin Island: p. 48               |
| (35) Walker River v. So. Pac.: p. 45    | (73) Muckleshoot Water Rights: p. 37     |
| (36) Baca Geothermal: p. 58             | (74) Swinomish v. FERC: p. 51            |
| (37) Pueblo Water Rights: p. 52         | (75) Lac Courte Oreilles: p. 38          |
| (38) Frease v. Griffin: p. 62           | (76) Tribal Energy Project: p. 34        |



# Major Activities \* 1980

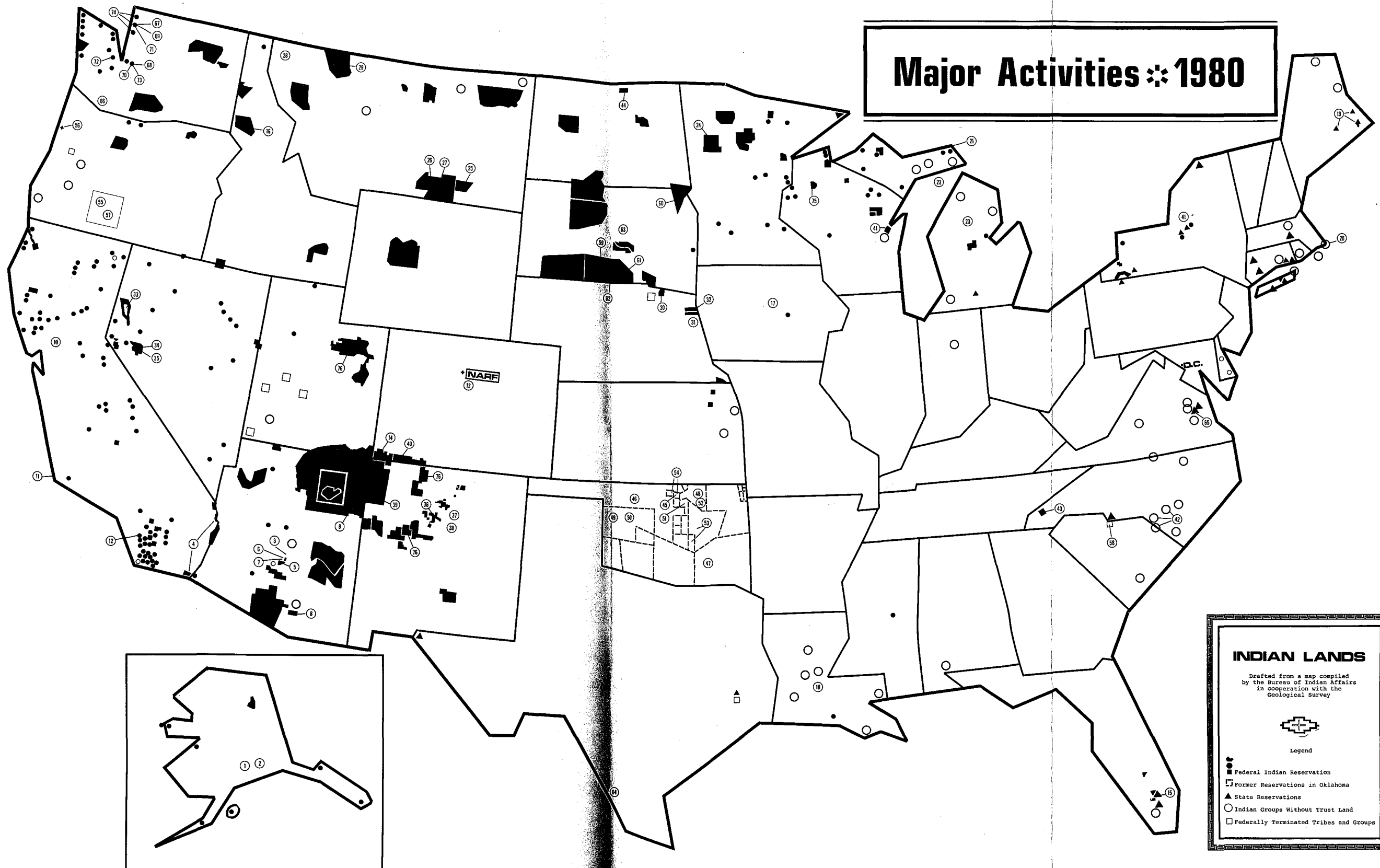
## INDIAN LANDS

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

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### Central Machinery Co. v. Arizona: State Sales Tax

56 This case questions whether the State of Arizona has jurisdiction  
9 to impose its tax on 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  
8 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. Central  
Machinery paid the tax under protest and sued for a refund. Although a  
lower State court ruled in the Company's 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.

9 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. In  
1980, briefing to the Supreme Court was completed. The case was argued in  
April and the Court decided in favor of the Company, and, therefore, the  
Tribe, in June (Central Machinery Co. v. Arizona, 100 S.Ct. 2592 (1980)).

○

### Oil Windfall Profits Tax: Indian Exemption

NARF worked with a broad coalition of Indian tribes and organi-  
zations and their attorneys in 1980 to successfully secure an exemption  
from the tax for Indian-owned oil production. Under existing federal Indian  
policies, Indian resources are not subject to federal taxation so such a  
tax would have constituted a major change in the status of Indian natural  
resources, which are generally held in trust status for Indians by the  
federal government. Furthermore, the prevailing poverty conditions on  
Indian reservations indicated that it would be inappropriate to impose  
such a tax which is intended to limit big oil company profits.

Pawnee Sale Tax Issue: "Indian country" Status of Pawnee Trust Lands  
In Oklahoma

The Pawnee Indian Tribe has a small reservation in Oklahoma. In an effort to promote the welfare of its 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. At the Tribe's request, NARF researched the alternatives in disputing the imposition of such a sales tax. NARF 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 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. For 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 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 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 state sales tax under federal law.

The Tribe's application for a state tax exemption was subsequently withdrawn for jurisdictional reasons pending the opening of the food store by the Tribe. In 1980, the Tribe began preparations for the opening of the food store. During this period, NARF sought and obtained an Interior Department legal opinion that held that the Pawnee tribal trust lands constitute an "Indian reservation." NARF believes this opinion will be extremely helpful in resolving this case before the Tax Commission.

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Seminole and Creek Food Programs

The 1977 Food Stamp Act authorized Indian tribes to administer food commodity distribution programs if the tribe is "capable of effectively and efficiently administering such distribution." The Seminole and Creek Nations of Oklahoma requested NARF's assistance in submitting applications to the Department of Agriculture for certification of eligibility to distribute food commodities to tribal members.

In April 1980, the Seminole's application was rejected on the ground that the Tribe does not possess a defined geographical area over which it

exercises governmental jurisdiction. In other words, the Department of Agriculture has determined that the Seminole Nation no longer has a reservation and no longer exercises governmental jurisdiction and, therefore, is incapable of administering a food commodity program. NARF is now assisting the Tribe in resubmitting the application. In June 1980, NARF met with the Seminole Nation in order to review the Tribe's initial application and to map out a strategy for submitting a new application. Appropriate research, including an analysis of the 1977 Food Stamp Act and its legislative history and an analysis of relevant legislation and cases affecting the Seminole Nation, was then begun.

NARF also met with the Creek Tribe in 1980 to discuss the submission of their application. The Tribe has decided to postpone its application because of certain internal difficulties. In 1981, NARF plans to submit a revised Seminole application.

#### Siletz Restoration: Reservation Established

Since 1975, NARF has represented the Confederated Tribes of Siletz Indians of Oregon in their efforts to be restored to federal trust status. The Siletz, with numerous other western Oregon tribes, were terminated in the 1950s by an Act of Congress. In 1977, Congress passed the Siletz Restoration Act which restored the Tribe to federal trust status. The 1977 Act did not, however, establish a reservation for the Tribe. Rather, it directed the Secretary of the Interior and the Tribe to submit to Congress within two years a plan for the establishment of a reservation. In November 1979, the Secretary submitted to the Congress such a plan calling for the establishment of a 3,600-acre reservation from BLM timber land and a 40-acre parcel in the City of Siletz.

In January 1980, the Senate Select Committee on Indian Affairs held hearings on Senator Hatfield's bill to implement the reservation plan. Representative Les AuCoin introduced similar legislation in the House in May 1980, and House hearings were held before the full Interior Committee in June 1980. The bill passed both Houses of Congress and was signed by President Carter on November 4, 1980.

Income from sustained yield logging operations is projected to be adequate to make the Siletz Tribal Government self-sufficient and assist in the establishment of needed community facilities on the Government Hill tract in the City of Siletz. NARF represented the Tribe in every stage of the planning and legislative process serving as co-counsel with tribal attorney Sharon Gordon.

#### Davis v. Mueller: Tribal Extradition Laws

In 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 proceedings in State courts, including the North Dakota Supreme Court, the State courts concluded that the tribal extradition procedures were not controlling.

To allow such State action 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 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 procedures 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.

In December of 1979, the federal District Court denied the Indian defendant's motion for habeas corpus, whereupon NARF appealed to the Eighth Circuit Court of Appeals early in 1980. The case was still pending at the end of the year.



#### Askew v. Seminole Tribe: State Sales Tax

First filed by the State of Florida in 1976 in state court, this lawsuit will determine whether Florida sales taxes apply to on-reservation sales of businesses owned by the Seminole Tribe of Florida. NARF has been lead counsel for the Tribe since 1977.

In 1978, NARF filed a motion for summary judgment on the Tribe's behalf. Essentially, the Tribe argued: (1) The Florida sales tax is a direct tax on a business owner; and (2) States cannot tax a tribally-owned business operated on the reservation. At the Judge's request NARF submitted proposed findings of fact and conclusions of law in 1979 which, if signed by the Judge, would represent a complete victory for the Tribe.

For some unexplained reason, the Judge delayed deciding the case and, in the meantime, the U.S. Supreme Court decided three Indian taxation cases that appeared to affect the Seminole case. The three cases, all decided in 1980, were Confederated Tribes of Colville Indian Reservation v. State of Washington, where the Court held that Washington's cigarette stamp tax applied to reservation smokeshops; Central Machinery Co. v. Arizona, where the Court held that the Arizona transaction privilege tax did not apply to the on-reservation sale of farm machinery by a non-Indian to the tribe; and White Mountain Apache Tribe v. Bracker, where the Court held that Arizona's motor carrier license and use fuel taxes did not apply to the on-reservation opera-

tions of a non-Indian owned logging company. At NARF's suggestion, the Judge asked the parties to brief the impact of the 1980 Supreme Court cases on the Florida case. The briefs were written and submitted in 1980, and the cases will probably be heard in 1981.

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#### 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 land was parceled out to members of the Osage Tribe and the subsurface mineral estate was reserved to 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 ruled 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. In 1980, NARF argued the appeal before the Court of Appeals and the case was placed on submission pending a decision (Logan v. Andrus, 457 F.Supp. 1219 (N.D.Okla. 1978, Appeal pending in 10th Circuit).

○

#### Tunica-Biloxi: Federal Recognition and Land Claims

On September 17, 1978, NARF filed a petition for federal recognition with the Bureau of Indian Affairs on behalf of the Tunica-Biloxi Tribe of Louisiana. On December 5, 1980 the Federal Acknowledgment Project of the BIA issued its preliminary decision recognizing the Tunica-Biloxi Tribe. The final decision of the Assistant Secretary of the Interior for Indian Affairs is expected in the late spring of 1981.

In addition, NARF has pending a litigation request to the Department of the Interior asking the United States to bring suit on the Tribe's behalf to recover possession of several thousand acres in northcentral 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. The Solicitor for the Department of the Interior has deferred action on this request pending final decision of the Tribe's recognition petition. In the event the land claim is not favorably settled, NARF will bring suit for the Tribe.

## Catawba Tribe v. South Carolina: Land Claim

NARF has represented the Catawba Indian Tribe of South Carolina since 1975 in its efforts to resolve a 140-year-old claim to possession of its 140,000-acre treaty reservation. Under treaties entered into with the British Crown and the Colonies in 1760 and 1763, the Tribe ceded vast portions of aboriginal territory in North and South Carolina in return for a 140,000-acre reservation.

During the Revolutionary War, the Catawba Tribe fought on the side of the Colonies and retained possession of its reservation until 1840 when the State, without the consent or participation of the federal government, entered into a treaty with the Tribe. This treaty, which the Tribe maintains is void because it violates the Indian Nonintercourse Act which requires federal consent, purported to extinguish the Tribe's title to its treaty reservation. The State promised to purchase a new reservation for the Tribe, either in North Carolina or in a mountainous, unpopulated area of South Carolina. This was never done. Instead in 1842, the State purchased a 630-acre tract which was within the original boundaries of the 1763 reservation.

The Tribe existed in an impoverished state on this tiny reservation until 1943 when a 3,400-acre federal reservation was established and federal recognition and services were extended to the Catawba Tribe. The federal relationship lasted only 16 years, for in 1959 Congress terminated the trust relationship between the Tribe and the federal government.

Since 1976, the Tribe has attempted to negotiate a settlement with the State and the federal government. The Tribe's proposal provided that, in return for relinquishing its claim to the old reservation, Congress would establish a federal reservation on unoccupied lands; a tribal development fund would be set up; it would regain status as a federally-recognized Indian tribe; and a portion of the settlement funds would be distributed to tribal members.

In early 1980, with the approach of the statute of limitations deadline at hand, State and local officials began to show a more serious interest in settlement. When the statute of limitations was extended, the Tribe agreed to refrain from filing its law suit if serious settlement talks would continue. As a result, Governor Riley and Congressman Holland established an informal Work Group composed of state, local and tribal representatives. The Work Group was to attempt to negotiate the details of a settlement agreement and submit it in the form of a recommendation to the McFadden Commission, which was established by the South Carolina legislature to investigate and make recommendations on resolving the Catawba claims. However, in October 1980, the McFadden Commission rejected the settlement proposal of the Work Group.

Upon rejection of the settlement proposal, the Tribe immediately filed suit in the United States District Court for the District of South Carolina. The action was filed as a defendant class action, with 76 named defendants representing a defendant class of over 27,000 land owners. The complaint asked for return of 140,000 acres of land, plus trespass damages for the past 140 years. It is anticipated that the first issues considered by the court will be to decide whether the case may proceed as a class

action. That could take up to six months and will, in all likelihood, be followed by consideration by the court of some preliminary major legal issues (Catawba Indian Tribe v. State of South Carolina, et al., Civil Action No. 80-2050).

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### Traditional Kickapoos of Texas

The Traditional Kickapoo Indians of Texas have a reservation in Nacimiento, Mexico, where they maintain a residence for a portion of each year and conduct their religious ceremonies. However, most of the year, they are located in this country, either in Eagle Pass or further north working as migrant laborers. The vast majority of them are enrolled with the Kickapoo Tribe of Oklahoma, a federally-recognized Tribe and most were born in this country, either in Eagle Pass or on their migrant trails.

The Kickapoos live in cardboard and wood sapling houses near the International Bridge in Eagle Pass, where they share one water faucet and one outdoor bathroom. The Texas Department of Health has stated that "an imminent threat to public health" exists in this village community. They receive no federal benefits at Eagle Pass, but they are eligible for federal assistance if they travel to central Oklahoma. However, very few can afford to travel this 800-1000 miles when the need arises.

Since the vast majority of Kickapoos are already enrolled in the Kickapoo Tribe of Oklahoma, this precludes them from recognition as a separate tribe of Indians based upon the requirements for federal recognition. The BIA Acknowledgment Office has indicated that this requirement cannot be waived. NARF has, therefore, switched its efforts from federal recognition for the Kickapoos to attempting to get them federal services which they would be eligible for if they were separately federally recognized.

Since practically all federal Indian services are dependent upon being "on or near" an Indian reservation NARF's efforts in 1981 will be directed to getting a land base in Eagle Pass and putting it into trust status. NARF will also attempt to obtain basic health, education and other social services for them at Eagle Pass.

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### Recognition of the Tiwa Tribe

In 1980 NARF received a grant from the Legal Services Corporation to help prepare a petition for recognition of the Tiwa Indians of Tortugas, New Mexico. This will be one of the first complete petitions submitted to the BIA's Federal Acknowledgment Project by a group which has struggled to maintain their existence as a separate Indian political and cultural body.

At the close of 1980, historical and anthropological data were being collected through field research. The narrative report will be completed by May 1981. (The Tribe's formal acknowledgment petition will be filed by the Tribe's attorney, Reid Haltom of the Nordhaus, Haltom and Taylor firm in Albuquerque, New Mexico).



### Joe v. Marcum: Tribal Sovereignty

In this action, a New Mexico court attempted to assert jurisdiction on the Navajo Reservation in a garnishment proceeding. A member of the Navajo Tribe, who is employed by 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 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 and the creditor then appealed the decision to the Tenth Circuit Court of Appeals.

The issues in the case were 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 argued that the employer is a non-Indian company subject to the State Court's authority. Plaintiff contended 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 in 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 was heard in January 1980. In May, the Court of Appeals ruled in favor of the Indian plaintiff. The case is an important recognition of tribal sovereignty (Joe v. Marcum, 621 F.2d 358 (10th Cir. 1980)).



### Trans-Canada 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 its 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 a proposed trailer park 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 court seeking an injunction against the Tribe. The Court initially denied Trans-Canada's request in 1978 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 federal 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 was argued before the Ninth Circuit in the Fall of 1980 and in December the Court ruled in the Tribe's favor. The Ninth Circuit agreed with the Tribe's argument that a federal court has no jurisdiction over such a claim (Trans-Canada Enterprises v. Muckleshoot Indian Tribe, 634 F.2d 477 (9th Cir. 1980)).

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#### Wampanoag Tribe of Gay Head v. Town of Gay Head

The Gay Head land claim, filed in 1974, has been enmeshed in what appeared until the very last day of 1980 interminable settlement negotiations. In 1978 the Dean of the Harvard Law School, Albert Sacks, was appointed to mediate the dispute. At several junctures, settlement appeared imminent, but each time internal difficulties on one side or the other produced a collapse of the talks. Undoubtedly the decision in the Mashpee case and the subsequent refusal of the U.S. Supreme Court to review the case stiffened the resolve of the defendants.

Mashpee, however, is not dispositive of the Gay Head claim. Two of the three judges who decided the Mashpee case for the United States Court of Appeals for the First Circuit specifically refused to endorse the test for tribal existence which was developed and used by the trial court. Moreover, since the Mashpee decision was rendered, the United States Department of the Interior has developed other, more liberal, standards for determining tribal existence. And the courts have always given great weight to the opinions of the Department of the Interior on such matters, and it is more likely that any subsequent cases which raise a question of tribal existence will be decided in accordance with Interior's new standards rather than those adopted in Mashpee. Moreover, there are significant factual differences between the Gay Head and Mashpee cases, and the Gay Head Tribe might well succeed on the question of tribal existence even under the Mashpee test.

During meetings in Boston on December 30 and December 31, 1980, major obstacles to the settlement at Gay Head may have finally been removed. Under the terms of the settlement which the negotiators from both sides will submit for approval to their members in 1981, the Town of Gay Head will contribute approximately 250 acres to the settlement and the United States will provide funds to purchase an additional 200 acres. The lands will be held by a state-chartered corporation whose directors will be appointed by the Tribe, and the lands will be subject to an express federal restriction against alienation. This corporation will make payments in lieu of taxes to the Town of Gay Head for any of these lands which are developed. The lands will be subject to a land use plan which is agreed to in advance and which will replace town zoning for these lands. The land use plan cannot be altered in the future without the consent of the Tribe. The

Tribe will have the right to control hunting on these lands by means other than firearms or crossbow.

It is hoped that the Gay Head settlement negotiations can be completed in the first two months of 1981 and legislation submitted to Congress by March.



#### Topash v. Commissioner of Revenue

This was an action to recover state income taxes paid by a Tulalip Indian from Washington earned 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 taxing jurisdiction. This issue, whether the State 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 non-member Indians.

In 1979, the Minnesota Tax Court ruled against Mr. Topash. NARF appealed, and in 1979 the case was briefed to the Minnesota Supreme Court. Oral argument was heard in January 1980, and the Court decided in favor of Mr. Topash in March (Topash v. Comm'r, 291 N.W.2d 679 (Minn. 1989)).



#### Montana v. United States: Riverbed Ownership Regulation

In 1979, a federal court (Ninth Circuit Court of Appeals) held that title to the bed and banks of the Big Horn River situated within the Crow Reservation is held in trust by the United States for use and benefit of the Crow Tribe of Indians. It also held that the Crow Tribe's resolution closing the reservations to hunting and fishing by all non-Indians was generally valid, but regulation of non-Indian hunting and fishing was held to be subject to certain limited constraints.

Montana appealed to the Supreme Court which, in April 1980 agreed to review the case. NARF provided legal assistance on an amicus brief filed by several tribes to the U.S. Supreme Court. The case was argued in December 1980 and is awaiting decision.



#### Rosebud Sioux Tribal Finances

The Rosebud Sioux Tribe of South Dakota established a special committee to review and comment on a proposal agreement between the Tribe and a number of federal funding agencies. The purpose of the proposal agreement was to establish a system of financial accountability for federal funds which would be satisfactory to the Tribe and to the federal agencies. At the request of a member of the committee, NARF reviewed the proposed agreement and prepared an opinion letter on the issues with a view toward protecting tribal interests.

## The Maine Land Claims Settlement

On October 10, 1980, President Carter signed the Maine land Claims Settlement Act, which ended eight years of litigation and negotiations between the Maine tribes, state officials and the federal government. The settlement act authorized \$81.5 million to enable the Passamaquoddy Tribe and the Penobscot Nation to reacquire 300,00 acres of the 12 million acres of land which was taken from them in unratified transactions over 160 years ago. The act also established a trust fund as part of the settlement for the economic development of the tribes.

The Maine settlement is one of the greatest Indian victories of its kind in U.S. history. Never before has so much land been returned to Indian control after so long a time. The agreement also provides that the Maine tribes will continue to be considered federally-recognized tribes — a status they did not achieve until 1976 and, therefore, have not benefitted from the special programs that Congress has established for federally-recognized tribes. Legally, they were wards of the State of Maine. The federal government is now obligated to provide services to the Maine tribes to the same extent as it does other recognized Indian tribes. Under the act, the tribes are also eligible for all services which Maine provides its municipalities.

In regard to tribal governmental powers, the tribes will control hunting and trapping on all tribal lands, fishing on some of their waters, and will operate tribal courts with powers similar to those of tribal courts operated by other recognized tribes. Maine's general laws are to be applicable to the tribes, but only to the extent that they do not interfere with internal tribal affairs. The tribes will control access to tribal lands and determine whether non-Indians may live on their lands. NARF will continue to assist the tribes in land purchases and other matters provided for under the settlement act.

## **Protection of Tribal Resources**

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### Arizona v. California: Water Rights

This is an 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 U.S. Supreme Court in 1963. Subsequently, it became apparent that the five tribes were entitled to additional 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 1979, the Supreme Court appointed a Special Master to conduct a trial to determine the additional water claims of the five tribes.

Water is critical in the hot arid desert country of the Lower Colorado River Valley. If the total claims of the Chemehuevi and Cocopah tribes are sustained, their present water rights will be more than doubled. This will be of critical aid in improving the Tribe's economic status on a long-term basis. In 1980, the first part of the trial was held in Denver during September; the remainder of the trial will be heard during the Winter and Spring of 1981. Upon its conclusion, the Special Master will make his recommendations to the Supreme Court, which is expected to rule in the Fall of 1981 or Spring of 1982 (Arizona v. California, 373 U.S. 546 (1963)).

### Ft. McDowell Reservation: Orme Dam Threat

The Ft. McDowell Mohave-Apache Community straddles the Verde River in central Arizona. Their reservation is threatened with flooding by plans to construct Orme Dam on the Verde as a flood control measure to protect the downstream city of Phoenix. Federal studies, which are exploring alternate sites for a flood control project, have been underway and hopefully would result in the selection of an off-reservation site.

In 1980, however, efforts were instituted in Congress by supporters of Orme Dam to stop the studies of alternative sites and authorize the construction of Orme Dam, thus flooding the reservation. On behalf of the Ft. McDowell Community, NARF worked against the legislation to build Orme Dam in Congress, arguing that any action should be delayed until the studies for alternative sites are completed. Luckily, the authorization bill for Orme Dam was not passed. NARF worked with the Friends Committee on National Legislation and several environmental organizations on this matter.

## Pyramid Lake Fisheries: Water Rights and 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 fishes' access to their Truckee River spawning grounds. The cui-ui, which is found only in Pyramid Lake, is 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 diversion, 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 six matters to stem the diversions and protect the tribal 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 the Tribe's local counsel, intervened as a plaintiff. The threshold 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 are 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 and the case was argued to the Court of Appeals in April 1980. During 1980, 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 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 was denied in August 1980. The Sierra Pacific Power Company has appealed to the Court of Appeals and opening briefs have been filed (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 has intervened as 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 deliver 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.

The District Court has issued an opinion holding that the Secretary's obligations under the Endangered Species Act take precedence over any conflicting obligations, but certain issues were left for trial. Discovery is proceeding but no trial date has been set (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 1980, 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. Trials have not been scheduled (United States v. Orr Water Ditch Co., U.S. District Court for the District of Nevada).

Truckee Carson Irrigation District v. Andrus. As a result of litigation brought by the Pyramid Lake Tribe against the Secretary of the Interior in the District of Columbia, the Secretary was required to issue and enforce regulations severely limiting the diversions to a reclamation project so that Pyramid Lake would receive more water. The Secretary's regulations also required other measures, such as the installation of measuring devices, designed to conserve water and make the project more efficient. When the Irrigation District, composed of the water users within the reclamation project, did not comply with the regulations, the Secretary notified the District that he was terminating their contract and that the Interior Department would take back physical and operational control over the project. The District then sued in the District Court in Nevada to prevent the Secretary from terminating its contract and to enjoin the Secretary from enforcing his regulations.

The Tribe, represented by NARF attorneys as well as its own attorneys, intervened on the side of the Secretary of the Interior. Most of the issues raised in the case concern the extent of the Secretary's power to control and regulate the use of water in reclamation projects. The District Court rejected the government's contention that the suit was barred by sovereign immunity. In 1980, a trial was held and the case was fully briefed. A decision by the District Court is expected in 1981.

Pyramid Lake and the Environmental Protection Agency. The cities of Reno and Sparks have been negotiating with the Environmental Protection Agency for grants to improve and expand their sewage treatment facilities. The effluent from their treatment plant is discharged into the Truckee River and adversely affects the spawning of the threatened Lahontan cutthroat trout and the endangered cui-ui that inhabit Pyramid Lake.

NARF attorneys along with the Tribe's own counsel have studied the various alternative proposals and their comparative impacts on the Pyramid Lake-Truckee River fisheries. They have also consulted with Fish and Wildlife Service biologists about the relationship between the sewage treatment project and the requirements of the Endangered Species Act.

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#### Sault Ste. Marie v. Andrus: Land Acquisition

In order to rectify some of the disastrous results of the allotment policy whereby millions of acres of Indian land were 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 provides that the title to any such lands shall be held by the United States in trust for the tribe and that the land shall be exempt from state and local taxation.

Acting under this authority, the Secretary took trust title to a 79-acre parcel of land in 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.

The City filed suit in 1977 against the Secretary to compel him to rescind his order putting the 79-acre parcel in trust. The United States' 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 federal attorneys attempted to negotiate a settlement with the City, but these efforts failed in 1979. In 1980, briefing on the motions for summary judgment were completed. The City's motion challenged the taking into trust on several grounds and, in the alternative, argued that even if the land is properly in trust, the City has full jurisdiction over it. Oral argument was heard on February 29th. In September, the Court decided all issues against the City. The City moved for rehearing, which the Court denied in December. At year's end, the City was considering whether to appeal.

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#### Kimball v. Callahan: Hunting and Fishing Rights

Since 1973, NARF has represented the terminated Klamath Tribe of Oregon in litigation to establish that the Tribe's treaty rights to hunt, fish and trap free of State regulation within their former reservation survived the termination act and that the Tribe's sovereign authority to regulate the exercise of those rights by its members also survived termination.

When the U.S. Supreme Court refused in 1979 to review the Ninth Circuit's decision upholding these tribal rights, the State of Oregon and the Tribe, represented by NARF, entered into settlement negotiations in an effort to avoid yet a third trial in the case. Because the Court of Appeals had sent the case back to the District Court to determine the nature and extent of the State's power to regulate treaty hunting and fishing for conservation purposes, the parties felt it was in their best interest to attempt to negotiate a conclusion to the case.

Activity in 1980 consisted mainly of negotiations between the State and the Tribe to establish a cooperative, joint management system on the former reservation. Substantial agreement was reached by late Summer and in the Fall the Tribe ratified the settlement agreement. Ratification of the agreement by the State of Oregon is expected in early 1981, followed by the entry of a consent decree in the District Court which will constitute a final judgment in the case (Kimball v. Callahan, 590 F.2d 768 (9th Cir. 1979), cert. denied, 62 L.Ed.2d 33 (1979)).

## Oneida Indian Nation Land Claims

There are three related land claims cases currently being litigated involving the Oneida Indians. 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 kinds of claims--one for illegal transactions between the State of New York and the Oneidas' potentially covering 246,000 acres in violation of the 1790 Indian Nonintercourse Act which requires federal consent for such Indian land transactions, which is absent; and the other for pre-1790 transactions covering five million acres in violation of the Articles of Confederation. NARF represents the Oneida of Thames Band and the Oneida Nation of Wisconsin in two of the cases.

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 challenges certain land transactions potentially covering 246,000 acres as a 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 Madison County moved for summary judgment in the case. The County argued that because the Indian Claims Commission (ICC) 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. The appeal was argued in February 1980 and shortly thereafter the Court dismissed the appeal as premature. Now all parties are preparing for trial on the measure of damages in the case.

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 of internal problems in membership of the New York Oneidas, NARF petitioned the Court for permission to withdraw from the particular case and this motion was granted in 1980.

Oneida Tribe of Wisconsin and Oneida of the Thames Band v. State of New York, et al. In December 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. The defendants have filed motions to dismiss which the Court will rule on in 1981.

#### Ute Water Rights Cases

NARF is representing the two Ute tribes of southeastern Colorado in water rights cases involving two states. NARF is representing the Ute Mountain Ute Tribe in New Mexico v. United States (No. 75-184, New Mexico District Court for San Juan County). At issue in this case is whether the New Mexico State Court has jurisdiction to determine the water rights of three Tribes, including the Ute Mountain Ute, Navajo and Jicarilla Apache. Also at issue is the amount of water the tribes are entitled to receive.

The Colorado case is titled In the Matter of the Application of the United States for Water Rights (District Court for Water Division No. 7, State of Colorado, Case No. W-1603-76). These applications were filed by the United States in 1976 on behalf of the two Ute tribes and on its own behalf. They were an outgrowth of the Supreme Court's decision in Colorado Water Conservancy District v. U.S., formerly known as the Akin case. The Supreme Court decided in the Akin case that the State of Colorado was entitled to have federal water rights, including those claimed on behalf of Indian tribes, litigated in state courts. The other active Colorado case was In the Matter of the Application for Water Rights of the Ute Mountain Ute Tribe in the La Plata River or its Tributaries in La Plata County (District Court for Water Division No. 7, State of Colorado, No. W-1422-76).

During 1979-80, and continuing into 1981, major activity consisted of studies which will lead to quantification of the tribes' water rights. NARF also supported legislation in Congress to appropriate funds for the reclamation projects which could lead to early settlement of the suits.

#### Rosebud Sioux Water Contracts

In this matter, the Rosebud Sioux Tribe of South Dakota contracted with an engineering firm to do a water resource inventory on the Rosebud Sioux Reservation. After the Tribe had paid over \$120,000 to the engineering firm, and received virtually nothing for its money, a dispute arose between the Tribe and the firm. The firm contended that the Tribe owed it more money and the Tribe refused to pay the money unless it was allowed to examine the firm's work products.

In 1980, NARF, on behalf of the Tribe, attempted to negotiate a mutually satisfactory settlement with the firm. The firm, however, still refused to allow the Tribe to examine its work products. Finally, in November 1980, NARF began preparing a suit against the firm.

## San Luis Rey River: Water Rights and Protection of Tribal Lands

Rincon Band v. Escondido Mutual Water Company. 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 1979, the U.S. 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 and that the water companies' arguments are insufficient as a matter of law. In April 1980, the Court of Appeals decided not to hear an interlocutory appeal. In December 1980, the District Court issued a further ruling in favor of the Bands and the United States concerning the water companies' liability for trespass damages and the nature of the parties' respective water rights. A trial will be required for the remaining issues which will probably be held in early 1982.

During 1980, there was considerable effort devoted to attempting to achieve a negotiated settlement of the case. Senator Cranston introduced a settlement bill in the Congress and hearings were held in March 1980. Further settlement negotiations were held under the auspices of a magistrate appointed by the District Court judge. By the end of 1980, prospects for settlement appeared to be dimming (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).

FERC Project No. 176. The Rincon, LaJolla, San Pasqual, Pala and Pauma Bands of Mission Indians are opposing the Escondido Mutual Waters Company's application for renewal of its Commission license for facilities which divert the flow the San Luis Rey River from their reservations in Southern California. The Bands also claim 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 could 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 the Federal Power Act, as well as other laws, prevents 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. In September 1980, the parties filed their opening briefs in the Court of Appeals. Briefing should be completed by the Summer of 1981 (Escondido Mutual Water Company, Project No. 176, Federal Energy Regulatory Commission).

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#### 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 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.

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. But because the Tribe could get no cooperation from the Corps of Engineers with regard to the disposal of these lands, it requested NARF's assistance. NARF has responded by gathering all relevant information, surveying the involved lands, and by opening up a dialogue with the Corps of Engineers. NARF is now attempting to assist the Tribe to gain use of these valuable and unused lands through long-term, low-cost leasing of the lands from the Corps of Engineers.

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#### 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. The Court of Appeals has directed that this case be heard by the same panel which hears the 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. Oral argument is expected in the fall of 1981 or spring of 1982. (Fort McDowell Mohave-Apache Indian Community v. Salt River Valley Users' Association, et al.)

### Northern Cheyenne v. Adsit: Northern Cheyenne 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, 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 also filed suit on behalf of the Tribe shortly after and the two cases were consolidated.

Various motions to dismiss the suit 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 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 appealed the District Court's decision to the Ninth Circuit Court of Appeals.

On appeal, the Northern Cheyenne cases are now consolidated with five other Montana Indian water rights cases which were dismissed in the same opinion and order. These seven cases involve the water rights of all of the Indian tribes in Montana. Extensive briefing was completed by all parties in September 1980. As 1980 ended NARF was awaiting oral argument and after that, the Court's decision.

In the meantime the Northern Cheyenne Tribe has begun settlement discussions with the Montana Reserved Water Rights Compact Commission. We are hopeful that some progress may be possible in these discussions. The central focus of the discussions at this time involves the need for a new Tongue River Dam which would resolve safety problems with the present dam and provide additional storage water. A new dam may serve as the vehicle through which a water rights settlement could be reached.

In 1981 we expect that oral argument will be held in the Court of Appeals on the question of whether the cases will be heard in state or federal court. A decision in the case may not even come until 1982 but settlement discussion with the State Compact Commission will continue (Northern Cheyenne Tribe, et al. v. Adsit, et al., 484 F.Supp. 31 (D.Mont. 1979) appeal pending, Ninth Circuit Court of Appeals; Local counsel is Calvin Wilson of Lame Deer, Montana).



### Muckleshoot Tribe: Water Rights

This water rights case involves proceedings pertaining to the jurisdiction of the Federal Energy Regulatory Commission to license a power project operated by the Puget Sound Power and Light Company. Constructed in 1911, the project 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, approxi-

mately two-thirds of the waters of the White River at a point approximately six miles above the Muckleshoot Indian Reservation (during the 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 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. In 1979, the case was briefed and oral argument was held in November 1980. A decision by the Court of Appeals is expected in 1981. NARF serves as co-counsel on the case with Evergreen Legal Services' attorneys (Puget Sound Power & Light Co. v. FERC, Muckleshoot Tribe, Washington Department of Game and Fisheries, and Secretary of the Interior, No. 78-3211, Argued Nov. 5, 1980, 9th Cir. Court of Appeals).

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#### Lac Courte Oreilles Band: Treaty Gathering Rights

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians, represented by NARF as co-counsel with a private attorney, has intervened in the relicensing proceedings for the operation of the Chippewa Flowage, a non-power producing reservoir and dam located partially on tribal lands. In addition to opposing re-licensing, the Band, joined by the Secretaries of Agriculture and Interior, is seeking recapture of the project by Congress in order that they may operate the project. In the alternative, it is asserted that any new license issued must include provision for the protection of the Band's treaty rights to grow and gather wild rice.

In 1974 the Federal Energy Regulatory Commission (FERC) reopened the record for the purpose of receiving into evidence a comprehensive joint management plan to be prepared by the Band, Interior and Agriculture. The plan was submitted in 1975 with a supplemental environmental impact statement (EIS) being completed in 1976. Hearings on the plan and the EIS were held in 1976, and in 1977 the Administrative Law Judge (ALJ) issued his initial decision finding against the Secretary and the Band and recommending the issuance of a new license to Northern States Power Company, the operator of the dam. The Band and the Secretary requested the full Commission to set aside the decision of the ALJ. The case was before FERC for over three years with no action being taken.

In 1980, under a new FERC procedure, the Commission, rather than issuing a decision in the case, appointed a settlement judge and ordered that a settlement conference between the parties be convened. The initial settlement conference was held in Washington, D.C. in December 1980, and the parties are now engaged in active settlement negotiations.

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

For many years, certain Chippewa tribes in the State of Michigan have been locked in a struggle with the State over their right to fish in certain waters of the Great Lakes pursuant to a 1836 treaty. The tribes have consistently maintained that at the time they entered into the treaty, they reserved rights to fish for commercial and subsistence purposes in approximately 50% of Lake Michigan, 50% of Lake Superior and 20% of Lake Huron. Michigan has vigorously opposed the existence of any Indian federal treaty rights. It believes the use of gill nets to be inconsistent with its preferred management plan which allocates the entire lake trout fishery to sportsmen, and to the exclusion of the Indians. The State's preferred management plan is based on what it considers in its best economic interest and consistent with the political climate of the State which strongly favors a sport fishing industry.

This case was originally filed in 1973 by the United States on behalf of the Bay Mills Indian Community and later on behalf of the Sault Ste. Marie Tribe of Chippewa Indians and the Grand Traverse Band of Ottawa and Chippewas against the State of Michigan. The tribes intervened in their own right and NARF has represented the Bay Mills Indian Community since 1974 and has acted as lead counsel throughout these protracted and complex legal proceedings.

The tribes and the United States asked the federal District Court to declare that the tribes, as descendants to signatories to the 1836 treaty, had reserved rights to fish in substantial portions of the Great Lakes. Further, the tribes and the United States contend that these federal treaty rights could not be regulated by Michigan in any manner, because the tribes, with the assistance of the Interior Department were regulating Indian fishing in the Great Lakes.

After many years of pre-trial work and a lengthy trial which required approximately four weeks and totalled some 3,000 pages of trial transcripts, the District Court issued an exhaustive 140-page opinion in May of 1979 upholding the claims of the tribes and the United States. Thereafter, the State of Michigan appealed to the United States Court of Appeals for the Sixth Circuit.

In February 1980, after extensive briefing, the Court of Appeals scheduled oral argument on the State's appeal of the District Court decision. Subsequent to that argument the Court asked for supplemental briefing on a particular issue and finally, in May 1980, issued two short opinions. The first remanded the case to the District Court to take further testimony on the issue of whether the State had authority to regulate Indian fishermen in view of the existence of comprehensive treaty fishing regulations promulgated by the Secretary of the Interior.

The second opinion of the Court of Appeals granted the State's application for a stay of the District Court judgment pending the outcome of the appeal. Thereafter, the tribes petitioned the Court of Appeals to reconsider its stay and allow Indian fishing pursuant to the comprehensive regulations pending the outcome of the appeal. The court granted the tribes



the motion and modified its previous stay order on July 16, 1980. During the 6 week period between the issuance of the stay and prior to its modification in mid-July, the State construed its authority to regulate as allowing it to eliminate gill net fishing -- something the tribes claimed was tantamount to eliminating the treaty right.

Beginning in the Fall of 1980, the tribes presented some ten days of trial testimony and numerous exhibits to the District Court addressed to the issue of the preemptive effect of the Secretary of the Interior's regulations on the authority of Michigan to govern Indian fishermen. The tribes and the United States await preparation of the transcripts so that they can submit briefs to the District Court, which thereafter will render a decision.

In addition to the actions in the Court of Appeals and the trial in District Court on remand, the tribes were also busy battling a new effort by the Sport Fishermen's Association to eliminate their treaty right to fish in an area known as Grand Traverse Bay. A local sports fishing association brought a suit in State Court against gill net fishermen claiming that such fishing was engaged in contrary to State law and should be stopped. The tribes went into federal Court seeking to prevent State Court from continuing to litigate this obvious attempt to circumvent and undermine the District Court's 1979 ruling that the tribes have valid treaty rights to fish. The federal Court, at the request of the tribes and the United States, restrained the State Court from proceeding further. Whereupon the sport fishing group appealed the federal Court's decision to the Court of Appeals. Those cases have yet to be briefed and decisions from the Court of Appeals are not expected until well into 1981.

NARF is working in conjunction with William James, director of Upper Peninsula Legal Services in Sault Ste. Marie, Michigan, who represents the Bay Mills Indian Community; Daniel Tegreen, tribal attorney for the Sault Ste. Marie Tribe of Chippewa Indians; and Bill Rastetter, Nancy Kita and Barry Levene of Michigan Indian Legal Services who represent the Grand Traverse Band of Ottawa and Chippewa Indians (United States v. Michigan, 471 F.Supp. 192 (W.D.Mich. 1979); appeal pending, Nos. 79-1414, 79-1527, 79-1528, United States Court of Appeals for the Sixth Circuit; remanded, 623 F.2d 448 (6th Cir. 1980)).

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#### United States v. Clarke: Condemnation of Interests in Allotted Lands

This case concerns the construction and use of a road across an Indian land 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 a right of way across an individual Indian's trust land cannot be condemned unless Anchorage first files a condemnation lawsuit in federal court. If Anchorage's position were upheld, all Indian allottees and the United States would 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 review to the Supreme Court. After the United States' petition for review was filed, NARF became involved and prepared a brief urging the Supreme Court to hear the case. In October 1979, the Supreme Court agreed to review the lower court's decision.

NARF attorneys then prepared and filed a brief in support of the United States' position, and advanced several arguments that it 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 was argued in January 1980. In March, the Supreme Court issued its opinion upholding the position of the United States without reaching the alternate arguments briefed by NARF attorneys. The case has been remanded to the district court where these arguments will be presented.

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#### Riverbed Claims of Oklahoma Tribes

The Arkansas River Trust Authority (ARTA) is an association of five Oklahoma tribes — Ponca, Pawnee, Otoe, Kaw, and Tonkawa. One of ARTA's purposes is to clear the tribes' title to the riverbeds which border their respective reservations. NARF represents the Ponca and the Pawnee tribes and also plays a large role in coordinating the efforts of all five tribes of ARTA and their attorneys in preparing their riverbed claims for trial.

NARF has researched and prepared a comprehensive litigation plan which was adopted by ARTA and the tribal attorneys as ARTA's general plan of action in preparing for litigation. Based upon this plan, the federal government agreed to fund necessary expert studies. On behalf of ARTA and its clients, NARF contracted with several experts who conducted studies which form the factual foundation for the contemplated lawsuit.

By Fall of 1979, preliminary expert reports had been received. Based upon these reports and extensive legal research, NARF filed a litigation request with the Secretary of the Interior in January of 1980 for its client tribes, the Ponca and Pawnee, as well as the Otoe Tribe. The Kaw and Tonkawa claims were still in preparation.

In February, a meeting was held in Oklahoma City to discuss the views of the Interior Solicitor on the litigation request. The results of the meeting were inconclusive, but in April, the Acting Solicitor for Indian Affairs sent a letter to the counsel for the tribes setting forth certain concerns he had after reviewing the request in depth. NARF and other tribal attorneys are preparing a response to the Solicitor's letter. Among other matters, the response must also take into account the impact of a decision in the United States v. Montana, then pending in the U.S. Supreme Court, which raises the question of whether the Crow Tribe owns the bed of the navigable river that flows through its reservation.

### Southern Pacific v. Andrus: Illegal Trespass

This case is an offshoot of a trespass case brought by the Walker River Paiute Tribe of Nevada against the Southern Pacific Railroad in which Southern Pacific was found to be in trespass on the Walker River Reservation (See Walker River Paiute Tribe v. Southern Pacific, reported herein). Various phases of the trespass case are still on-going. However, as a result of the trespass finding against the railroad, Southern Pacific applied to the Secretary of the Interior in 1976 for a right of way through tribal lands. However, the Secretary refused to file the application because written tribal consent was not attached. This decision of the Secretary of Interior is now being challenged by Southern Pacific in this case.

Hence, the case presents the issue of whether tribal consent is required before a railroad can obtain a right of way across tribal lands. In September 1979, motions for summary judgment were filed by the Secretary of the Interior, the Tribe represented by NARF, and Southern Pacific, all seeking a legal ruling by the Court on the issue. Oral argument on the motions was held on March 12, 1980, but the Court continued the hearing until June 20, 1980, requesting that the parties explore settlement of the case.

On May 14, 1980, attorneys for the Tribe met with counsel for Southern Pacific to compare appraisals and generally to discuss possible settlement. The discussion, unfortunately, demonstrated that the parties were far apart in their ideas of what would constitute a fair settlement. All parties filed written reports with the Court on the unsuccessful settlement discussion, and a hearing was held in June to confirm the parties' unsuccessful attempts to settle the case.

On July 25, 1980, the Court granted Southern Pacific's motion for summary judgment by ruling that Southern Pacific could obtain a right of way across tribal lands without tribal consent. The Court's decision ignores long-standing interpretations by the Interior Department; conflicts with present federal policy encouraging maximum tribal control over their land; and resurrects an 1899 Act which the Tribe believes has long been amended to require tribal consent to a right of way. Accordingly, NARF filed a notice of appeal, as did the Secretary of the Interior, to the Ninth Circuit Court of Appeals. Opening briefs on Appeal are being prepared by NARF on behalf of the Tribe and by Justice Department attorneys on behalf of the Secretary.

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### U.S. v. Adair: Klamath Water Rights

In this case, NARF represents the Klamath Tribe of Oregon whose Indian status was partially terminated by Congress in 1954. In 1979 an Oregon federal District Court decision upheld the right of the Klamath Tribe to the use of water from the Williamson River as necessary to protect the Tribe's surviving treaty hunting and fishing rights. The Court also ruled that the Tribe's priority date for these water rights dates was from time immemorial. In 1980 the defendants appealed. Briefing of the appeal was partially completed at year's end (United States v. Adair, 478 F.Supp. 336 (D.Ore. 1979)).

## Swinomish Tribe v. Burlington Northern: Trespass Action

In 1980, a railroad line was constructed across the tidelands of the Swinomish Reservation in Washington. Neither the original railroad nor its present 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 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 have the right of way confirmed 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 postpone the Tribe's trespass suit until 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 in 1979.

In 1980, the Court consolidated the railroad trespass suit with one involving Trans-Mountain Pipeline which maintains a pipeline that also crosses tribal lands without a right of way from the Tribe or the United States. After the pipeline company sued the Tribe, the Tribe and the United States cross-claimed for the companies' trespass on tribal lands. In 1978 the pipeline's claim against the Tribe was dismissed by the Court, but not the Tribe's claim against the company. A similar suit against another Olympic Pipeline was settled favorably in 1979.

The remaining action involves the liability of companies for use of 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 (Swinomish Tribal Community v. Burlington Northern, Inc., Trans-Mountain Oil Pipeline Corp. V. Swinomish Tribal Community).

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## Swinomish Reservation 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 tidelands 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.

In March 1980, NARF submitted a major litigation request to the Department of the Interior to initiate litigation to establish the Tribal Community's right to the above described lands. The request sets out the legal and factual arguments in the case and requests the United States to take appropriate action. The request has not yet been acted upon.

In 1981, we hope that the request will be approved and a law suit filed by the United States. The technical experts and anthropologist will also continue to do additional work on the case (Local counsel is Donald Means of Seattle, Washington).

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#### Muckleshoot Tribe v. Trans-Canada; Riverbed Rights

In 1977, NARF and Evergreen Legal Services filed a suit on behalf of Washington's Muckleshoot Tribe 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. It also asserts that the course of the river has been changed over the years by illegal diking and diversion of the river by 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 private 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. Trans-Canada 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. In Trans-Canada v. Muckleshoot Tribe, reported elsewhere herein, the Ninth Circuit has dismissed for lack of jurisdiction a case brought by the developer against the Tribe seeking to prohibit enforcement of tribal land use regulations.

Activities in 1980 focused around preparation for trial which was held in Seattle in November 1980. A decision is expected in early 1981 (Muckleshoot Indian Tribe v. Trans-Canada Enterprises, Ltd., Western District of Washington).

Walker River Paiute Tribes v. Southern Pacific Railroad: Illegal Trespass  
Across Reservation Lands

This case tests whether longstanding federal laws designed to protect against loss of Indian lands and to insure that Indians have control over their lands will be enforced even where the violation involved has existed for almost 100 years. It also tests the good faith of the United States in protecting Indian rights where it has a conflict of interest involving a powerful arm of the government. The plaintiffs in this case are the Walker River Paiute Tribe of Nevada, a class of tribal members, and the United States versus the Southern Pacific Transportation Company, one of the largest corporations in this country.

The Southern Pacific Railroad has crossed the reservation since 1881 when it built its road pursuant to an agreement with the Tribe but which never received the required Congressional approval. The Tribe had agreed to permit the Railroad to cross its lands on the condition that free passenger and freight services be provided to the Tribe. The Tribe, then as now, subsists on cattle grazed on the reservation lands, and on the proceeds from hay farming. Over the years, the rail service to the Indians went from bad to non-existent. Meanwhile the Railroad never obtained the legal right to operate across the Reservation. Nevertheless, over the years, the Railroad continued to serve non-Indian customers off the reservation, and in 1920 began hauling explosive munitions across the reservation from an Army munitions depot. The Tribe became increasingly frustrated with the knowledge that not only was it receiving absolutely no benefit from the Railroad's use of Indian land but was also forced to endure the risk of explosions when the trains passed through the main tribal community — next to the hospital, school, and tribal government and community buildings.

In 1972, NARF brought this suit on behalf of the Walker River Paiute Tribe and a class of allottees against Southern Pacific Transportation Company asserting that the Railroad has never acquired a valid right of way for its line across the Reservation and claimed relief in damages and ejectment. The United States, with some reluctance in view of the Railroad's service to the Army munitions depot south of the reservation, filed a companion suit on behalf of the Tribe and allottees.

In 1976, the federal Court of Appeals (Ninth Circuit) ruled that the railroad had never acquired a valid right of way, nor did it have a license to operate its railroad across reservation lands, and, therefore, it is and always had been a trespasser and was liable in damages. Remanded to the District Court, the major issues pending before the District Court are the questions of damages and ejectment of the railroad from reservation lands. Trial preparation on the damages question was preempted in 1979 when Southern Pacific filed a motion to establish its theory of damages, and, in response, NARF and the Justice Department filed cross motions for their theories of damages in the case.

In light of lack of progress of settlement efforts, NARF moved to eject the Railroad, but the Department of Justice requested time in order to resolve the conflict of interest which it faces between the Indians, on the one hand, and the Army, on the other. The Army's munitions depot south of the reservation is a customer of the railroad and has requested the United States to institute a condemnation action if it appears that the ejectment

motion will be granted. In late 1979, the United States' attorneys finally filed a response to the Indians' motion to eject by requesting that the Court stay all proceedings with respect to the ejectment motion pending action by Army to condemn or settle the future use of the right of way. The Tribe opposed the stay because of the Justice Department's conflict of interest and because it encompassed not just the Indians' motion for ejectment, but the more pressing intervention motions of the Interstate Commerce Commission and the State of Nevada.

Briefing on the issue of what damages the Tribe should receive for past trespass was completed in April of 1980. Meanwhile, NARF and Justice attorneys worked closely with appraisers to ascertain the amount of damages for the trespass under various theories of damages. Final appraisals have now been received and the parties were awaiting oral argument on the damages question when, in August 1980, the District Court in the related case of Southern Pacific v. Andrus held that Southern Pacific has the authority to condemn tribal lands for a right of way. Since it appears that this decision will affect not only the ejectment question but also the damages question, the District Court ordered all proceedings in the trespass case held in abeyance pending the Tribe's appeal in Southern Pacific v. Andrus. However, the Court did permit the ICC and Nevada to intervene.



#### Papago Tribe v. Pima Mining Co.: Water Rights

The Papago Indians of the San Xavier portion of the Papago Reservation in Arizona have been farming their lands using the surface and groundwater of the Santa Cruz River from time immemorial. Due to extremely heavy pumping of groundwater on all sides of the reservation by several large copper mines, the City of Tucson and major agricultural interests, the surface flows have all but disappeared and the groundwater table underlying the reservation has been severely depleted.

The Tribe and some allottees as well as the United States brought suit to enjoin interference with the Tribe's rights to the surface waters on the reservation and groundwaters beneath the reservation. The suits were originally brought only against the major users of surface and groundwaters, but the District Court ruled that all water users in the basin should be joined. In the meantime, the Tribe became involved in detailed settlement negotiations. In the Summer of 1980, Congressman Udall introduced a bill to achieve a legislative settlement of the complex dispute.

During 1980, one of the defendants sought to have the case dismissed because the United States had not complied with the Court's order to join all of the other water users. The motion was denied, but the United States was ordered to file its amended complaint. NARF attorneys reviewed the proposed amended complaint and other pleadings and consulted co-counsel and government attorneys about the amended complaint as well as the proposed settlement. The Tribe is represented by NARF attorneys and its local counsel; the allottees are represented by Papago Legal Services and by NARF attorneys.

### In re Knight: Allotment Trust Status

The question raised in this proceeding is whether the trust imposed on Indian allotments by the General Allotment Act attaches by operation of that Act to an undivided interest inherited by an Indian from a non-Indian heir where no fee patent was ever issued to the non-Indian for such interest, or whether the trust as to that interest is automatically terminated upon the inheritance by the non-Indian, and the General Allotment Act no longer applicable to that interest.

We contend in behalf of the Indian heirs, that under the General Allotment Act the Secretary continues to have certain powers over the undivided interest in the lands of a non-Indian heir until the Secretary takes all action he deems necessary to protect the interests of the Indian heirs and signals that the trust as to the non-Indian's interest is terminated by issuing a fee patent. If the interest is inherited by an Indian before a fee patent issues the trust as to that interest simply continues and the Indian heir need not petition the Secretary to reacquire the interest in trust and also avoids any tax assessment which might otherwise accrue during the time the reacquisition is in process.

Activities accomplished pursuant to this matter include the following. On August 1, 1979, a motion and brief were filed with the probate court challenging the BIA's omission of the undivided interest in question from the inventory of decedent's trust property. The motion was denied on November 29, 1979. On January 25, 1980, a petition for rehearing was filed. The petition was denied on June 25, 1980. A notice of appeal to the Board of Indian Appeals was then filed on July 31, 1980 and on October 31, 1980, appellants' opening brief was filed. A decision is now awaited from the Board of Indian Appeals.



### South Dakota v. Rippling Ranch: Sioux Water Rights

In March 1980, the State of South Dakota filed suit in State Court to adjudicate all the water rights in the Missouri River system in the western two-thirds of the State. The water rights of seven Sioux tribes are involved. It is anticipated that as many as 60,000 defendants eventually will be included in the action. The major issues in the case involve determining whether the case will be tried in state or federal court and the extent and priority of the Indians' water rights.

NARF attorneys were asked to attend a meeting to assist in planning strategy for the tribes and the government. In May 1980, NARF was retained by one of the affected tribes, the Rosebud Sioux Tribe. The United States sought to remove the case to federal court, but the State of South Dakota has filed a motion to remand the case back to State Court. NARF attorneys assisted in the briefing of this issue by the United States and several of the tribes, and also filed an amicus brief on behalf of the Rosebud Tribe in support of the retention of federal court jurisdiction. The District Court has postponed a decision while the tribes, the federal government and the state attempt to come to some agreement on federal or state jurisdiction and other issues.



### Squaxin Island: Tidelands Protection

Squaxin Island, located in Washington's Puget Sound, is owned by the Squaxin Island Tribe, individual Indians, and individual non-Indians. The Tribe, however, is sole owner of the tideland area around the Island. The problem in this matter is that if the Tribe allows access over its tidelands to the Island uplands, the prime tideland shellfish area would suffer great damage and the uplands would be commercially developed. The Tribe is concerned over the affect of unrestrained use of the tidelands for access, and would also like to retain the Island uplands in their natural state.

In 1980, NARF researched issues concerning access over the tribal lands and tribal sovereign immunity since it is possible that in 1981 the non-Indian upland owners will sue for access. The Squaxin Island tribal attorney, Rob Wilson-Hoss, is lead counsel in this matter.

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### Burt Lake Band: Land Acquisition

In 1899, the Burt Lake Band of Ottawas of Michigan lost their 640-acre land base by a county tax foreclosure sale. As restitution for the illegal tax foreclosure, the Michigan legislature passed a resolution in 1903 directing the executive branch to convey 400 acres of state land to the Band. However, the Governor never implemented the resolution.

After historical and legal research on the matter, NARF advised the Band that its legal claim to recover the 640 acres, although illegally taken, was questionable. NARF recommended instead that the Band request the Governor to implement the 1903 resolution.

The Band agreed to negotiate with the Governor's Office on the 1903 resolution and NARF, along with Michigan Indian Legal Services, represented the Band in the negotiations. In 1980, NARF prepared a specific written request to the State detailing the proposed uses of the land and listing parcels of state-owned land located close to the Band's original homeland. To date, the State has not responded to the Band's proposal, but NARF will continue to seek implementation of the resolution in 1981.

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### Pacific Northwest Fisheries Enhancement Act

The recent treaty fishing rights decision in U.S. v. Washington led to the introduction of Congressional legislation to enhance the salmon and steelhead fisheries in the Northwest and to coordinate fisheries management among tribal, federal and state governments. NARF worked with the Northwest Indian Fish Commission to maintain provisions beneficial to the Indians and secure passage of the Pacific Northwest Fisheries Enhancement Act of 1980. In the process, NARF also worked with the Wilkinson, Cragun and Barker law firm to defeat efforts to place Indian fisheries and treaty rights in the Great Lakes area and California under state jurisdiction.

## Cheyenne and Arapaho Tribes of Oklahoma v. Oklahoma

NARF filed this case on behalf of the Cheyenne and Arapahoe Tribes of Oklahoma in 1975. The suit sought a ruling that the members of the Tribes have the right to hunt and fish within the boundaries of their original reservation and that the Tribes have the right to regulate hunting and fishing of tribal members. 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 their 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 — an act which incorporates state law as federal law if there is no existing federal law.

In March 1980, the Tenth Circuit issued its opinion in which it essentially upheld the Tribes' position on all issues. The court agreed that the Tribes have authority to regulate member hunting and fishing on all tribal and individual trust lands, and on ceded lands formerly within the Cheyenne-Arapaho Reservation. The case was remanded to the District Court for further proceedings. In 1981, we expect to conclude an agreement with the State of Oklahoma which will settle any remaining questions in the case at the District Court level (Cheyenne and Arapaho Tribes of Oklahoma v. Oklahoma, 618 F.2d 665 (10th Cir. 1980)).

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## Pamunkey Railroad Trespass Settlement

In 1980, the Pamunkey Indian Tribe of Virginia and Southern Railway signed a settlement agreement that concludes a long-standing dispute between the Tribe and the railroad over the legality of the railroad's right-of-way across the Pamunkey Reservation. The agreement provides for a payment of \$100,000 to the Tribe for the railroad's past use of the right-of-way and future rental payments in exchange for a waiver of the Tribe's trespass claim against the railroad and future use of the right-of-way. The settlement required approval of both the Virginia legislature and the U.S. Congress to become final and binding. The Virginia Governor signed the state legislation in April 1980 and President Carter signed the federal legislation in November 1980. At that point, the \$100,000 and the interest it accrued during the legislative process were transferred to the Tribe. NARF has represented the Tribe throughout the negotiations and the legislative ratifications of the settlement agreement. In 1981, NARF will assist the Tribe in establishing definite and permanent boundaries for their reservation.

## The Tribal Energy Project

Indian tribes in the western United States possess a significant portion of this nation's known energy resources. In deciding whether and under what conditions energy resource development should occur, each tribe needs legal and technical advice and assistance from competent energy staff or consultants. Unfortunately, few tribes have had such personnel available in the past. To assist in meeting these needs, the Administration for Native Americans (ANA) of the Department of Health and Human Services in 1978 initiated a project to develop Tribal Energy and Social Development Offices (TESDOs). NARF received a grant for this project which was partially subcontracted to the Council of Energy Tribe (CERT), a tribally controlled organization providing technical assistance on energy matters. The goal of the project, which ended in 1980, was to enhance tribal management capacities in the energy resources area.

In 1980, NARF continued its legal and financial assistance under the grant to tribal energy office activities for three tribes. The Ute Tribe of the Uintah and Ouray Reservation in Utah staffed and trained an Energy and Minerals Department; the Jicarilla Apache Tribe of New Mexico had their Oil and Gas Administration augmented and trained and they developed land reclamation procedures, archeological clearance procedures, and geologic studies; and the Laguna Pueblo of New Mexico had their Land and Minerals Office systematically organize their energy resource data for future planning purposes. NARF also worked with ANA and CERT as ANA expanded its TESDOs concept programatically to include all aspects of social and economic development on reservations. The new program, Social and Economic Development Strategies, will be available to all tribes. Lastly, NARF researched, drafted and distributed a Model Tribal Environmental Code and a paper of the feasibility of tribes issuing revenue bonds for development capital.

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## Crow Section Two

NARF represents the Crow Tribe of Montana in this matter which seeks enforcement of the 1920 Crow Tribe Allotment Act. Section 2 limits the amount of land which non-Indians can own on the Crow Reservation and provides that sales of land from Indians to non-Indians who hold more than the statutory amount of land shall be void. The purpose of the section is to protect the integrity of the Crow Reservation as a homeland for the Indians.

However, the statute has never been vigorously enforced, and the matter remains a high priority of the Crow Tribe. Due to a federal statute of limitations and other problems, it is probable that only the United States can bring suit to enforce Section 2. NARF has been working on behalf of the Crow Tribe with the Justice and Interior Departments for over six years to get the case filed, but due to the complex nature of the case and potential political ramifications, the case has not yet been filed.

During 1980, some progress was made in finalizing all aspects of the case for filing. There were indications from the Justice Department that final approval on filing would be forthcoming. However, Justice asked that

the Solicitor for the Department of the Interior also indicate his approval of the case. NARF responded to a number of questions raised by the Solicitor for the Department of the Interior and met with him in December. As a result, the Solicitor approved the filing of the suit in a letter sent to the Justice Department the same month. In 1981, NARF will continue to monitor the case in the Justice Department in the hope that it will be filed soon.

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#### Swinomish v. FERC: Indian Fishing Rights

In 1970, Seattle's Department of Lighting filed an application for an amendment to its license for its project on the Skagit River. The City is seeking authority to amend its license by raising the height of Ross Dam, the largest and most upstream of the three dams included in the license. NARF, in conjunction with Evergreen Legal Services, intervened in the proceedings on behalf of three tribes.

In 1978, the Commission issued its final order authorizing the raising of Ross Dam. (The Commission has also 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 Skagit River Tribes have petitioned for review of the Commission decision to the U.S. Court of Appeals on the basis that the Commission may issue an annual license only upon the same terms and conditions as the original license; the Commission must consider the effect of the Project'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 that the Interior Secretary 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.

The Court of Appeals upheld the Commission's decision and did not consider most of the substantive issues, but simply held that the Commission acted within the scope of its discretion in instituting the separate ancillary proceeding to deal with the tribe's claims to downstream fishery flows. By the end of 1980, it appeared that the downstream flow issue would be resolved through an interim agreement negotiated by Evergreen Legal Services attorneys and the City of Seattle.

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#### Osage Mineral Estate: Skiatook Dam and Reservoir Threat

On behalf of several Osage Indians holding interests in the Osage mineral estate in Oklahoma, NARF has opposed the efforts of the Army Corps of Engineers to obtain Congressional approval to build Skiatook Dam and Reservoir. Such a project would flood out a substantial portion of the Osage mineral estate containing producing oil wells. NARF worked in conjunction with the Environmental Policy Center and luckily averted Congressional authorization of the Dam in December.

### Burlington Northern v. Andrus: Illegal Trespass

This case was initiated as a result of the tribal suit in Swinomish Tribal Community v. Burlington Northern reported elsewhere. In this action, the Burlington Northern Railroad seeks to retain a right of way over the tidelands of the Swinomish Tribal Community contending that because of an 1899 railroad right-of-way act, tribal consent to the grant of a right of way over tribal lands is not needed.

In 1980, NARF, on behalf of the Tribe, moved to intervene in this action, which was initially against only the Secretary of the Interior, and the motion was granted. Both the United States and the railroad then moved for summary judgment, in which NARF wrote a memorandum in support of the United States' motion. Oral argument was heard on these cross motions in July 1980.

The Court later postponed any action, however, pending the outcome of a decision in a similar case now before the Court of Appeals for the Ninth Circuit, Southern Pacific v. Andrus, so nothing will happen in this case until Southern Pacific v. Andrus is decided (NARF worked with Ken Marra, U.S. Attorney, and Peter Wilke, tribal attorney).

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### Pueblo Water Rights Protection

In conjunction with several Indian Pueblos and their attorneys, NARF worked to secure federal appropriations for support of their Indian water rights litigation pending in New Mexico. Because of the federal trust responsibility to protect Indian resources, the Bureau of Indian Affairs has traditionally provided support for these cases. However, the Pueblos' adversaries in these cases sought to gain an advantage by eliminating the appropriation of \$400,000 in federal trust monies by Congress for use in the litigation. Through an informational effort stressing the federal-Indian trust responsibility, the funds were appropriated.

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### 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 property 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 United States concluded that it would enter the case on behalf of 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. In 1980 the Court ruled that the Indian plaintiffs could not recover damages from the County for wrongfully taking the land. The plaintiffs, and the United States as trustee, appealed this ruling. At year's end, briefing of the appeal had not yet begun (Brooks v. Nez Perce County, D.Ida.).

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#### Ft. McDowell Reservation: Central Arizona Project Water Allocations

The Central Arizona Project (CAP) presently under construction will divert water from the Colorado River to the water short central part of Arizona for municipal, industrial and agricultural uses. There are a dozen Indian tribes in that area, including the Ft. McDowell Mohave-Apache Community, that have sought allocations of CAP water to be delivered upon completion of the project. NARF has represented the Ft. McDowell Community in seeking an allocation and was successful in receiving an allocation of 4,300 acre feet of water from the Secretary of the Interior in 1980 when Indian allocations were made. Litigation against the Secretary challenging these Indian allocations brought by state interests is pending. NARF was also involved in stopping proposed federal legislation that would have prevented the Secretary from making the Indian allocations.

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#### Winnebago Tribe: Protests Land Condemnation

The Winnebago Tribe of Nebraska is seeking to prevent the construction of a power transmission line across its reservation. The Nebraska Public Power District (NPPD) has commenced a condemnation action against 29 parcels of land within the reservation for a 67-mile 345kv Electrical transmission line. The Native American Rights Fund is assisting local legal services in representing the Tribe and individual members in defending against the NPPD condemnation action.

The case raises the issue of whether Congress has empowered NPPD to condemn tribal lands and the lands of individual Indian members of the Tribe. The laws upon which NPPD relies are laws which apply generally to Indian tribes and Indians across the country. Hence, a ruling in this case will affect the rights of Indian people across the country in preventing unwanted infringement of their right to exclusive use and occupancy of their trust lands by private companies such as NPPD.

In 1980 NARF, working in conjunction with legal services attorneys, obtained a agreement from the opposing counsel for NPPD that the legal de-

fenses raised by the Tribe would be ruled on by the Court prior to a trial on damages. The Court adopted this pretrial agreement and briefs were filed by all parties in November and December of 1980. The parties are now awaiting a hearing to be scheduled by the Court in 1981 (Nebraska Public Power District v. 100.95 Acres).

## **Promotion of Human Rights**

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### American Indian Religious Freedom Act Implementation

NARF has continued to monitor the implementation of the American Indian Religious Freedom Act passed by Congress in 1978, which establishes a national policy of protection of Indian religious freedom rights. Specifically, NARF is monitoring the implementation of a 1979 report to Congress by various federal agencies outlining policies and procedures to protect such rights. An Executive Order may be necessary in order to fully implement these agency practices. Administration proposals regarding possible new legislation to further protect Indian religious freedom are also being monitored.

One particular issue, the creation of uniform rules to carry out the Archaeological Resources Protection Act, has been the subject of NARF activity in 1980. The Act calls for a permit system involving the affected Indians before any archeological diggings for Indian artifacts can proceed. NARF has provided information to the national Indian community on the progress of the Heritage Conservation and Recreation Service in establishing these rules.



### Sequoyah v. TVA: Flooding of Religious Sites

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 U.S. 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 this 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 Katoah 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 reinter the 1,000 Cherokee bodies being held by TVA.

In 1979, the District Court rejected all Cherokee claims and dismissed the case. The Cherokee attorneys filed an immediate appeal of the dismissal in the U.S. Court of Appeals. 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. Without an injunction to stop it, TVA completed the Tellico Project, inundating the land held sacred by the Cherokee people.

In 1980, the Court of Appeals affirmed the District Court's dismissal. NARF sought a review of the Court of Appeals' decision by the U.S. Supreme Court, but this effort did not meet with success. The Supreme Court denied the petition for writ of certiorari in late 1980 (*Sequoyah v. TVA*, 620 F.2d 1159 (6th Cir. 1980), cert. den. U.S. Sup. Ct.).



#### Cheyenne and Arapaho Tribes: Airport Expansion

The Cheyenne and Arapaho Tribes of Oklahoma requested NARF's assistance in opposing the plans of the city of Clinton to expand its airport runway and thus the capacity of the city airport to handle larger aircraft and increased traffic. The Tribe fears the adverse impact such expansion will likely have on the Indian hospital located near the airport, and on land use plans of the Tribe and its members within the area to be impacted by the expansion. The expansion seems likely to result in increased noise and increased risk of accidents principally affecting the ability of the Indian hospital to serve effectively the tribal members who are patients there. The Tribe was especially upset with the City's plan because there exists an alternative site for any such airport improvement plans which would not affect Tribal concerns.

NARF attorneys reviewed the City's funding proposal to the Federal Aviation Administration, in light of federal regulatory requirements, and prepared a written statement for the Tribe. NARF attorney's submitted the statement and amplified it with oral comments at a public hearing on the FAA proposal held in Clinton. The statement presented the position of the Tribe that the City's proposal was not in compliance with applicable FAA regulations because the City failed to consult with the Indian Health Service,

the Bureau of Indian Affairs and the Tribe itself in order to ascertain whether the proposed expansion might adversely affect the land use operations and plans of those entities. NARF attorneys also filed the statement with the FAA, along with a memorandum of applicable legal authorities. The City has not yet submitted its proposal to the FAA, and NARF continues to monitor the situation.

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#### Kootenai River Dam FERC Project: Religious Freedom Rights

In early 1980 a rural electric cooperative filed an application before the Federal Energy Regulatory Commission (FERC) for a license to construct a hydroelectric dam on the Kootenai River, near Libby, Montana. The dam would destroy a key religious area of the Kootenai Indians and also adversely affect the fishery of the river in violation of Kootenai treaty rights. In a related proceeding, the cooperative's agents obtained an archaeological permit from the U.S. Forest Service to conduct excavations in the project area in connection with the FERC licensing proceeding. The permit was issued without notice to the Kootenai Indians and authorized digging in the Tribe's religious area.

In the Spring of 1980, the attorneys representing the Kootenais in these two proceedings contacted NARF. In response, NARF has provided technical legal assistance in briefs before the Forest Service and comments on the FERC Environmental Impact Statement. NARF participated in a series of strategy sessions in Montana, Idaho and Canada, which resulted in NARF's agreement to represent the Kootenai Indians in Canada before FERC and the retention of a number of experts to begin preparing various reports for the FERC and Forest Service proceedings.

On the legislative aspect NARF explored the possibility of inclusion of the Kootenai River as a part of the National Wild and Scenic River System.

As 1980 closed, the Forest Service permit had been stayed pending an administrative appeal, and preparation for the FERC licensing proceeding was well under way. In 1981, NARF expects considerable effort in both proceedings as they develop further. NARF is working on these cases with Idaho Legal Services and the attorneys for the Confederated Salish and Kootenai Tribes of the Flathead Reservation. (In the Matter of the Application of Northern Lights, Inc. for a Hydroelectric Project on the Kootenai River, Project No. 2752 (FERC); In re the Permit of Cultural Resource Consultants, Inc. for Archeological Project (USFS)).

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#### Point Conception: Protection of Sacred Sites

Since 1978, NARF has represented the Santa Barbara Indian Center in efforts to block the construction of a liquified natural gas terminal at Point Conception on the California coast. The Point Conception area contains the sites of numerous ancient Chumash Indian villages and cemeteries. The Indians consider the site to be the sacred location of the western door through which the souls of Indian dead and newborn pass, and

believe that construction of the terminal would be desecration of the grounds and violate their religious freedom rights.

Following the 1979 approval by the DOE of the Point Conception site, appeals of that decision were filed early in 1980 in the U.S. Court of Appeals. However, the Court of Appeals postponed action pending a decision by the Federal Energy Regulatory Commission (FERC), on whether to reconsider its decision in light of new evidence of seismic instability of the site. Upon FERC's refusal to reconsider, various parties in opposition to the project, including the Indian Center, moved to have the case remanded to FERC. The Court of Appeals granted the motions and remanded the case to FERC for further consideration of seismic issues. FERC is expected to begin its reopened hearings in February or March in 1981.

NARF serves as co-counsel in the case, being primarily responsible for the federal proceedings, while proceedings before the California Public Utilities Commission are handled by local counsel and California Indian Legal Services (Pacific Alaska LNG Co., et al., FERC Docket Nos. CP75-140, CP74-160, CI-78-453, CI-78-452).

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#### Indian Child Welfare Act Implementation

The Indian Child Welfare Act of 1978 was passed by Congress in order to stop the alarming numbers of Indian children being lost to Indian families and tribes through adoption and placement by state and private agencies. Specific features of the Act included a grant program for the establishment and operation of Indian child and family service programs. When Congressional appropriations to carry out such programs were lacking, NARF, in conjunction with several northwestern and southwestern tribes and Indian organizations, successfully persuaded Congress to appropriate sufficient funds to implement the Act.

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#### Baca Geothermal Project: Religious Freedom

In the Spring of 1980 the Department of Energy (DOE) issued a final decision to fund a demonstration geothermal energy plant on the Baca Ranch in New Mexico. This location contains a number of religious shrines of the Santa Clara and other Pueblos of the Rio Grande Valley. At that time the Governor of the Pueblo requested NARF to advise him about available steps to protect the Pueblo's religious interests.

After reviewing the stage of the DOE's plans, NARF advised the Pueblo that litigation must be undertaken as soon as possible to protect their religious interests. Since the Pueblo had previously retained counsel on this matter but was without funds to pay for continued representation, NARF represented the Pueblo in seeking conflict-of-interest attorney funds from the Interior Department to continue this legal representation. On an interim basis, NARF represented the Pueblo. The Pueblo was eventually successful in securing counsel to file suit in late 1980, and NARF's interim representation ended.

## Wetumka, Oklahoma: Impact Aid

Wetumka, Oklahoma, is a small town located in east-central Oklahoma. The Indians in Wetumka, who comprise approximately one-half of its inhabitants, are members of the Muscogee (Creek) Nation with tribal headquarters in Okmulgee, Oklahoma. They are among the most traditional of the Oklahoma tribes in that they have an unusually high percentage of full-bloods (77%), and a large proportion of them speak their native language. However, they have a low educational achievement rate and a very high unemployment rate.

Tribal leaders and parents are therefore very concerned with the education of their young people. In efforts to become informed and involved with the education program at Wetumka, the Indian parents were confronted by a situation in which a newly-hired superintendent and the popularly elected all-white school board constantly discouraged efforts by the Indians to become informed about school programs and to have some input into school programs as they affect Indian children. The school district took this course of action despite the fact that the school receives substantial federal funding because of its Indian students.

The Impact Aid Act was enacted in 1950 to fund local school districts which educate children whose parents live or work on federal lands and thus pay no local property taxes to help support the school districts. Indian lands qualify because they are owned by the federal government with the beneficial title in the Indians. In 1978, the Impact Aid law was amended when it was determined that the lack of Indian involvement and participation in public school programs was largely responsible for the Indian student problems. The 1978 amendments require school districts to enact policies for meaningful Indian parental input into all facets of the educational program funded by Impact Aid monies. Additionally, the new law establishes a complaint procedure which a tribe can resort to if it determines that the school is not properly fulfilling its responsibilities.

When the Wetumka District failed to provide for Indian parental input, NARF initially attempted to settle the differences with the school to provide for acceptable policies. The school district refused to do this, however, and it was, therefore, necessary to hold an administrative hearing on the parents' complaints.

In preparing for the hearing, NARF discovered startling evidence that Indian students at Wetumka are testing out approximately 1½ grade levels below their white counterparts, and that the drop out rate for Indian students is far higher than their white counterparts. The district, with no Indian representation on the school board, had made no effort to even ascertain these problems, let alone resolve them. In fact, they maintained that there was no problem at all. It was precisely this attitude and this type of situation which Congress meant to address in enacting the 1978 amendments. In his report to the Secretary of Education, the examiner's recommendations essentially adopted most of the policies which NARF had recommended and we now await the final decision. The importance of this case is amplified by the fact that the Secretary's determination could affect all public school districts located in the State of Oklahoma which receive federal funding via the Impact Aid Act, and perhaps schools outside Oklahoma. Practically all of them utilize policies and procedures which are virtually identical to those at Wetumka.

### D. Q. University

For the last two years NARF has been assisting D. Q. University near Davis, California in matters to help assure their financial and academic future. Currently, the ten-year old accredited junior college has only limited use of the surplus federal property it occupies. Federal law prohibits the school's trustees from mortgaging or leasing-out any portion of the property, even to obtain basic operating funds to make structural improvements in existing buildings, both of which are sorely needed. In the 96th Congress (1979-80), a bill was introduced which would have divided the school's prime agriculture land into three parcels of equal value and would have transferred title to D. Q. as long as the school remains accredited and if certain requirements regarding student enrollment and structural renovations were met. In addition, the bill would have allowed the school to acquire ownership of the existing buildings on the property, and the last segment of the transfer occurring nine to twelve years after enactment of the legislation.

Unfortunately, the bill did not pass in 1980. It is anticipated that similar legislation will be reintroduced in 1981 for such legislation will allow the college to make sound educational decisions based on a more secure financial future. The land is the college's most valuable asset and D. Q. must be permitted to fully utilize it in order to survive. Although D. Q. has received numerous grants from federal sources and receives funding under a special education program directed at Indian operated schools, these sources have not been sufficient to make the much needed physical improvements and maintain the core academic program. The legislation has broad, bipartisan support from the California congressional delegation — 14 co-sponsors in the 96th Congress — and NARF will continue its efforts in 1981 to get it passed.

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### Blackfeet Community College

The Blackfeet Community College is located in western Montana on the Blackfeet Indian Reservation. This college has been extremely successful despite its short six-year existence in that it has already achieved Candidate for Accreditation status and is presently preparing for exhaustive testing to become fully accredited.

Blackfeet Community College officials requested NARF's assistance to review that college's basic operating documents and to advise on certain accreditation matters. NARF provided the requested advice and suggested numerous revisions to the tribal charter and bylaws so as to assist the college in the accreditation process.

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### Castle Rock, Washington: Education

Indian parents from Castle Rock, Washington, and legal services attorneys requested NARF's assistance with regard to the educational problems

which they have encountered in that school system. Specifically, they requested guidance with regard to legal questions which they raised about the provisions of Title IV designed to address the special and unique educational needs of Indian children. That Act provides federal funding to address these needs, but when the public school district refused to apply for this funding, the Indian parents requested NARF's guidance as to whether this action constituted a basis for them to file a lawsuit.

NARF conducted legal research into this issue and advised the parents that under certain circumstances, such activity could constitute a violation of Title VI of the Civil Rights Act of 1964. However, based upon the factual situation at Castle Rock, there was no cognizable legal claim to force the public school district to apply for Title IV funding in this instance.

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#### Fort Defiance: Loss of Education Funds

As part of the Education Amendments Act of 1978, Congress directed that a 25% increase in impact aid monies be added to the present level of expenditure. Following this Congressional action, the Arizona legislature met in a special session in 1979-1980 to revamp their state school finance formula.

The resulting state legislation takes credit for these federal impact aid monies into its own revenue control limit. The effect of this new school finance formula is that the impact aid money is unavailable to predominantly Indian schools during years when their impact aid monies result in them having revenue in excess of the revenue control limit. This excess is designed to reduce local taxes; in fact, it is possible that it could eliminate local property taxes.

In effect, the new Arizona school finance law denies the intent of Congress and deprives Indian children of educational services to which they are entitled by federal law. At the request of the Fort Defiance School District, located near Window Rock on the Navajo Indian Reservation in Arizona, NARF has begun to investigate the most effective legal method to attack the finance formula. We anticipate that we will be involved extensively in litigating this complex issue over the next year or two, along with the local legal services units in Arizona.

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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 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, and in its efforts to prepare for and to attain accreditation status.

#### Ross v. Scurr: Prisoner Religious Freedom

In the Summer of 1980, an Indian prisoner of the Iowa State Penitentiary filed a pro se lawsuit in federal court claiming that prison officials refused him access to an Indian sweat lodge for religious worship and even took actions to prevent him from filing his lawsuit on this claim. In September, the Court entered an adverse order dismissing the religious claim regarding the sweat lodge. At that point, the prisoner requested NARF's assistance.

After interviewing the prisoner, NARF entered its appearance in the case and filed an Amended Complaint together with a motion and brief to vacate the Court's order on the sweat lodge. After reviewing NARF's motion and brief, the Court vacated its order and reinstituted the religious issue as part of the lawsuit. As 1980 ended, NARF was working on a negotiated settlement of this case. Co-counsel in the case is an attorney for the Iowa Civil Liberties Union. (Ross v. Scurr, No. 80-214-A (S.D. Iowa, 1980)).

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#### Frease v. Griffin: Prisoner Religious Freedom

This case was filed in 1979 on behalf of Indian prisoners of the New Mexico Penitentiary who claimed prison officials were violating their religious freedom. The prisoners sought to wear their hair in traditional style and to have access to a sweat lodge in order to worship. In 1980, NARF obtained a favorable consent judgment on all issues (Co-counsel were Indian Pueblo Legal Services and a private counsel from Santa Fe; Frease v. Griffin, No. 79-693-C (D.N.M., Order of Dec. 3, 1980)).

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#### White Eagle v. Storie: Jail Conditions of Indian Inmates

This is a class action suit filed by NARF in late 1977 on behalf of prisoners of the Thurston County jail in Nebraska claiming violations of a wide variety of constitutional rights. The suit sought to improve the physical conditions of the jail, medical treatment, unlawful confinement and other practices at the jail. Since 1977, NARF has conducted discovery in the case and obtained a number of favorable interim judgments on issues such as medical treatment and illegal confinement.

In 1980, NARF engaged in extensive negotiations aimed at a comprehensive settlement of the remaining issues of the case. As a part of this process, NARF entered into a stipulated dismissal of one of the defendants, a state district judge, based upon resolution of the issues relating to that defendant. As 1980 ended, the parties reached an agreement on the substantive provisions of all claims and were drafting language for a comprehensive settlement (Co-counsel in this case are attorneys of the Inter-Tribal Legal Services and Omaha Legal Services; White Eagle v. Storie, No. 77-L-245 (D.Neb. 1977)).

## **Accountability of Governments**

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### Statute of Limitations Extension

On March 27, 1980, Public Law 96-217 was enacted into law extending the statute of limitations for the filing by the United States of claims for damages on behalf of Indian tribes against third parties until December 31, 1982. Prior to this extension, the right of the United States to bring these claims on behalf of tribes or individuals was fixed at April 1, 1980. The extension was thus for a period of approximately two years and nine months.

The statute of limitations establishing time limits on the filing of claims by the United States was originally enacted in 1966 establishing a deadline of July 1, 1972. This statute was amended in 1972 fixing a 1977 deadline, and amended again in 1977 fixing a deadline of April 1, 1980.

As it had led the effort to extend the 1977 deadline, NARF coordinated the national Indian effort to extend the 1980 deadline. In the early weeks of 1980, the Senate passed a four-year extension measure which would have required that all identified claims be published in the Federal Register. The House rejected the publication provision, passing a bill for a shorter time and imposing a requirement that the Administration provide to the Congress its recommendations for legislative solutions for those claims it considers inappropriate for litigation. A compromise between the House and Senate was agreed to wherein the deadline for filing would be extended to December 31, 1982, and that Administration proposals for legislative solutions would be delivered to the Congress June, 1981. This measure was enacted five days before the statute expired.

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### Hydaburg v. United States: Federal Liability to Village Cannery

NARF is assisting Alaska Legal Services in representing the Hydaburg Cooperative Association in a Court of Claims suit against the United States. In the original federal district court action, Hydaburg asserted that the Bureau of Indian Affairs violated its trust responsibility under the Indian Reorganization Act (IRA) by defaulting upon a cannery loan to the Cooperative without notice and then allowing the collateral on the loan, the IRA's cannery, to deteriorate. The federal District Court ruled that the Indian Reorganization Act did not create a fiduciary relationship under the loan provision of the statute. However, under general commercial law, it held that a creditor who takes possession of a debtor's collateral has a



fiduciary duty to maintain the collateral in the condition it was in when taken or dispose of it.

NARF recommended, after settlement negotiations with the BIA were vetoed by the Solicitor's Office, that the case be transferred to the Court of Claims to avoid damages limitations in the District Court under the Tucker Act. Working with Drew Peterson of Alaska Legal Services, NARF organized the factual issues for trial by reviewing the voluminous exhibit files, past pleadings of the federal government and Hydaburg, and fact findings of the District Court. This material was organized into a pre-trial submission made to the Court in April (NARF staff attorney, Bruce Davies, who will begin private practice in Alaska in 1981, will appear as co-counsel on the case on motions and at the trial before the Court of Claims in 1981).

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#### South Dakota Trust Land Claims

The Bureau of Indian Affairs had a long-standing policy in South Dakota to sell an Indian's individual trust land to pay his debts when he died. This policy was discontinued upon a solicitor's ruling that this was in violation of trust law, but not before many Indians were divested of their interest in the trust lands which were unlawfully sold.

In the Spring of 1980, NARF received a request from the Northern Plains Legal Services for legal assistance in analyzing this wide-scale problem in South Dakota and in taking steps to solve it. NARF researched possible litigation strategies together with recommendations on a legislative approach to resolving the claims and the Department of the Interior was contacted concerning the legislative solution. NARF will continue in 1981 in working with the Northern Plains Legal Services to reach a solution to this problem.

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#### Maynor v. Morton: IRA Rights

In 1976, the litigation in this matter was concluded and established that twenty-two individuals who had been certified as one-half or more Indian blood in 1938 were eligible for services and benefits authorized by the Indian Reorganization Act (IRA). As a result of the litigation, the individuals did receive limited services. However, these individuals now wish to organize under a tribal constitution as authorized by the Indian Reorganization Act and NARF has continued to represent them in that effort.

In 1977, the group requested that Interior take a parcel of land in trust as a base for the tribal organization, and in 1980, the group submitted a proposed constitution. After a long series of meetings, the Assistant Secretary for Indian Affairs denied the group's request to establish a land base. Because a group cannot organize under the IRA without a land base, the proposed constitution was returned to the group. At the end of 1980, the group was planning to meet to plan its next step.

## Sand Creek Massacre

In 1864, the U.S. Cavalry attacked and massacred a group of peaceful Cheyenne Indians (mostly women and children) near Sand Creek, Colorado, despite the fact that they were supposedly under the protection of the United States flag. In 1865, the United States signed a treaty with the Cheyenne people wherein, among other things, they promised lands to survivors and descendants of those killed at Sand Creek. The treaty directed the Secretary of the Interior to determine those survivors and descendants eligible and to ascertain and set aside the lands for them. This has never been done.

The descendants of these Cheyenne people now live in Oklahoma. They requested NARF's assistance to determine their legal rights and to assist them in obtaining these lands. In 1980 NARF conducted extensive legal research into the applicable law and began preparing a petition to the Secretary of Interior requesting that he comply with the treaty provisions and set aside the land. NARF is also preparing for litigation on this issue if it becomes necessary.

## CICSB v. Harris: Indian Preference

This case involved an interpretation of the "Indian Self-Determination and Education Assistance Act," which provides that Indian organizations are to be given preference in the award of government subcontracts and subgrants. In this case, NARF, on behalf of the Coalition of Indian Controlled School Boards (CICSB), began an action against the Department of Health, Education, and Welfare contending that § 7(b) of the Act should be applied to the initial award of government contracts and grants.

Only in this way, NARF argued, could the broad purpose of the Act - to give Indians experience in the administration of contracts and grants for the benefit of Indians - be fulfilled. In early 1980, both CICSB, as plaintiff, and HEW, as defendant, moved for summary judgment. Although finding our arguments "appealing," the federal District Court decided that, given the language of the Act, it should only apply to the award of subcontracts and subgrants. CICSB was awarded one of the contracts at issue in this case and decided not to have NARF appeal the case.

## Development of Indian Law

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### The National Indian Law Library

During 1980, NARF has continued to fulfill its commitment to the development of Indian law through the operation of the National Indian Law Library (NILL). The development of Indian law includes more than NARF's work in strengthening of important legal precedents in the area of Indian rights which is done through litigation. In addition to NARF, many other organizations, law firms, attorneys and others are working to assert and defend Indian rights. Therefore, by aiding other Indian advocates in their work through the distribution of information and materials on Indian law by NILL, the development of Indian law for all tribes is promoted.

NILL began in 1972 in response to an increased demand for Indian legal materials which resulted from an upsurge of Indian rights activity, due to a great extent to the civil rights movement of the late '60s. Indian legal materials were scattered throughout the country and there was no central collection accessible to attorneys or scholars working in law. With the aid of a start-up grant from the Carnegie Corporation, the library began the task of collecting, cataloging and distributing Indian legal materials. The library is now supported mainly by a grant from the Administration for Native Americans of the Department of Health and Human Services.

### The NILL Collection

The library houses a unique collection. The major part, in terms of both volume and importance, are the briefs and pleadings in nearly every major Indian case since the late '50s as well as the opinions in these cases. The collection also includes treaties, books, articles, studies, reports, legislation, and other materials on Indian law. All materials which are added to the collection are indexed using the more than 400 subject headings and subheadings of a special subject index to Indian law developed and copyrighted by NARF.

### The NILL Catalogue

The National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources, is a comprehensive listing of the library's holdings. First published in 1973, the Catalogue contains a "Subject Index," a "Table of Cases," and an "Author-Title Index." The publication and distribution of such a catalogue is essential to the library's goal of servicing the Indian legal community since the library's users are scat-

tered throughout the country. Users order copies of NILL's holdings listed in the Catalogue and pay copying charges. The NILL staff is presently working on a 1981 edition of the Catalogue which will contain over 3,300 items.

### The Computer Conversion

A major part of 1980 was spent working on a computerized information storage and retrieval system for the library's collection. Computerization will mean easier, faster, and more accurate retrieval of materials from the collection and will speed publication of the Catalogue and the Supplements.

### Other 1980 Activities

During the year, the NILL staff again updated and revised the "Bibliography of Selected Areas of Indian Law" for the Federal Bar Association's annual Indian Law Conference in Phoenix. An agreement was made with the Federal Bar Association to make this an annual contribution by the NILL staff to the conference.

The staff also continued its other activities of updating and preparing material for the next edition of the Catalogue; answering requests for information from NARF staff attorneys, legal services programs, Indian tribes, organizations and individuals; maintaining NARF's law library and searching for and acquisitioning material for the collection. The library staff also contributed regularly to the Indian Law Support Center's newsletter.



### 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 obligation 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 completed in 1980 and the new edition is to be published in 1981.

## 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. One of these centers, 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, in 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 Committee (PAC) consisting of client and legal services project representatives.

Like the other national assistance centers, the Center's basic purpose is to enhance the quality of the services that local programs and attorneys render to their clients. This is an especially necessary service considering the fact that most of the Indian programs are in remote areas, have a high percentage of 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, materials and information and other matters. The Center seeks to respond to every request through: (1) letter and telephone advice on Indian law problems; (2) the furnishing of legal materials; (3) legal research; (4) direct research; (5) direct field consultation; (6) the review of court pleadings and briefs sent in from the field; (7) analysis of legislation; and (8) assistance in locating expert witnesses and other consultants. 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.

### Management Framework Plan

The Center's Project Advisory Committee adopted a Management Framework Plan which was implemented by the Center Director on September 1, 1980. The plan is designed to have the Center accept requests for services and litigation assistance on a priority system and to assure that requests are handled efficiently with quality control. The plan will be modified as the need arises.

### Summary of 1980 Center Activities

Major activities for the year include the following developments.

The Center Newsletter. The Center publishes a monthly newsletter to Indian legal services programs, the purpose of which is to provide information on significant developments in Indian law and legislation and to serve as a forum enabling Indian legal services attorneys to exchange ideas and information.

Legislative and Administrative Advocacy. The Center's Washington Advocacy Project concentrated their efforts in such areas as 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 (HUD), the Bureau of Indian Affairs, and the Indian Health Service (IHS) to eliminate substandard housing on Indian reservations. Center advocacy efforts on behalf of legal services attorneys and their clients resulted in the restoration of 2,000 units of Indian housing to HUD appropriations and successful coordination of IHS' water and sewer appropriation to meet increased construction demands. A study of urban Indian health programs, funded under Title V of the Indian Health Care Improvement Act and commissioned by the Center, was successfully used for continued reauthorization by Congress of a program for over 40 urban Indian health care facilities.

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 1980, the Center acted as co-counsel in 14 legal services cases. These cases are described in other sections of the Annual Report. Some of the major cases during 1980 were U.S. v. Michigan (fishing rights of the Great Lakes Tribes); Brooks v. Nez Perce County (illegal tax sale of an Indian trust allotment); Rincon Band of Mission Indians v. Escondido Mutual Water Co. (a water rights case involving several California Bands); Hydaburg Cooperative v. U.S. (damages suffered to Alaska village cannery); and In re Lathim (Indian Child Welfare Act case).

Training Activity. Center participation in national training is one of the Center's important functions. NARF attorneys trained attorneys and paralegals from Indian legal services programs and components in LSC's annual Indian Law training event in May 1980.

The Indian Law Support Center continues to render all legal assistance possible to legal services programs around the country. The Center is one of NARF's most important projects, providing contact 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.



#### Conference and Organization Activities

During 1980 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 nec-

essary that NARF keep itself informed of current Indian issues around the country and share its Indian law expertise with others.

Participation at non-Indian conferences also is necessary because the development of Indian law is not only accomplished by litigation, but also through educating the non-Indian community on the nature and jurisdiction of Native American rights. And it is necessary that staff attorneys, who generally concentrate their work in specialized legal areas such as energy, environment, water, education, etc., keep up to date with developments in these fields and 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.

**"My young men shall never work. Men who work can not dream, and wisdom comes to us in dreams ... You ask me to plow the ground. Shall I take a knife and tear my mother's bosom? You ask me to dig for stone. Shall I dig under her skin for her bones? You ask me to cut grass and make hay and sell it and be rich like white men. But how dare I cut off my mother's hair?"**

**Smohalla, Wanapum (Circa 1884)**



## **D. Treasurer's Report**



### Treasurer's Report\*

Although this Annual Report is for the 1980 calendar year, NARF's financial records are kept according to its fiscal year. Therefore, the financial summary and report which follow are based on NARF's 1980 fiscal year — October 1, 1979 to September 30, 1980. The single exception is the list of individuals who contributed \$100 or more to NARF, that list consisting of those whose gifts were received in 1980.

In the 1980 fiscal year, the Native American Rights Fund supported 14.87 attorneys and two full-time legislative liaisons in work on behalf of Native American clients. Total expenditures for the year for those principals, their staffing and support costs, and the National Indian Law Library were \$2,116,116. The previous year's figure for principals was 16.75 and total expenditures were \$1,871,024.

The percentage of NARF's total expenditures which was devoted to litigation and client services increased by one percent this year. Percentage of expenditures by function is shown below for fiscal 1980 and 1979:

	<u>Fiscal Year 1980</u>	<u>Fiscal Year 1979</u>
Litigation and Client Services . . . . .	78%	76.5%
National Indian Law Library . . . . .	4%	4.5%
Program Expense Percentage . . . . .	82%	81.0%
Management and General Overhead . . . . .	11%	11.5%
Fund Raising . . . . .	7%	7.5%
Support Expense Percentage . . . . .	18.0%	19.0%

Total dollar expenditures increased by 13% over the previous year, whereas services increased by only .7%. This disparity is largely a function of inflation whose effects we all suffer. (Inflation presses NARF's fund raising ingenuity to its limits each year.) At least \$200,000 in additional funds must be sought annually to provide for the effects of inflation and new sources of support must continually be sought to replace funding which has ended due to a change in a foundation's or the government's priorities.

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\*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. Under the Code, NARF is not classified as 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 revenues for fiscal 1980 were \$2,183,824. Proportions of funding are compared for FY 1980 and FY 1979 by source type below:

	<u>Fiscal Year 1980</u>	<u>Fiscal Year 1979</u>
Government Agencies . . . . .	68%	59%
Private Foundations . . . . .	21%	28%
Contributions from Individuals & Corporations . . . . .	8%	9%
Other Sources . . . . .	3%	4%
	<u>100%</u>	<u>100%</u>

It is notable that the share of NARF's funding which comes from government agencies grew by 9% over 1979's share. Since it is the funding of human services organizations, such as NARF, which suffers most during governmental administrative changes such as we are experiencing now, NARF must begin to rely more heavily on corporations, private foundations and individual contributions for support.

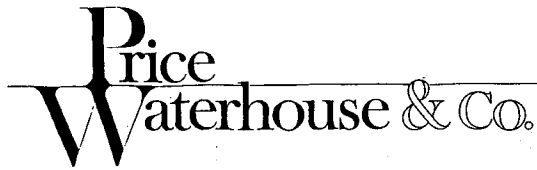
Audited financial statements for fiscal 1980 follow this narrative. A detailed list of contributors to the Native American Rights Fund is included at the end of this section.

  
 Susan Rosseter Hart  
 Treasurer

NATIVE AMERICAN RIGHTS FUND, INC.

FINANCIAL STATEMENTS

SEPTEMBER 30, 1980



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

December 2, 1980

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, 1980 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 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, 1980

	<u>Current funds</u>		<u>General fixed</u>	<u>Total</u>
	<u>Unrestricted</u>	<u>Restricted</u>	<u>asset fund</u>	<u>all funds</u>
<u>ASSETS</u>				
Cash (including savings accounts and short-term investments of \$300,000)	\$501,066			\$ 501,066
Marketable securities, at market (Note 2)	28,207			28,207
Grants receivable (Note 6)		\$308,256		308,256
Other receivables	7,768			7,768
Prepaid expenses	17,532			17,532
Interfund receivable (payable)	(28,781)	28,781		
Property and equipment, at cost (Notes 3 and 4):				
Land and buildings, pledged			\$ 313,937	313,937
Improvements to land and buildings			66,274	66,274
Office equipment and furnishings			185,859	185,859
Professional library			59,694	59,694
			625,764	625,764
Less - Accumulated depreciation			(167,462)	(167,462)
Net property and equipment			458,302	458,302
	<u>\$525,792</u>	<u>\$337,037</u>	<u>\$ 458,302</u>	<u>\$1,321,131</u>
<u>LIABILITIES AND FUND BALANCES</u>				
Accounts payable	\$137,892	\$ 33		\$ 137,925
Accrued expenses (Note 5)	130,541			130,541
Deferred revenue (Note 6)		327,686		327,686
Interfund loan payable (receivable) (Note 7)	(34,097)	9,318	\$ 24,779	
Mortgages and notes payable (Note 4)			201,978	201,978
	234,336	337,037	226,757	798,130
	291,456		231,545	523,001
Fund balances	<u>\$525,792</u>	<u>\$337,037</u>	<u>\$ 458,302</u>	<u>\$1,321,131</u>

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, 1980

	<u>Current funds</u>		<u>General fixed</u>	<u>Total</u>
	<u>Unrestricted</u>	<u>Restricted</u>	<u>asset fund</u>	<u>all funds</u>
Support and revenue:				
Grants		\$1,943,017		\$1,943,017
Contributions	\$163,958			163,958
Other (Note 2)	77,399			77,399
Loss on disposal of fixed assets			\$ (550)	(550)
Total support and revenue	<u>241,357</u>	<u>1,943,017</u>	<u>(550)</u>	<u>2,183,824</u>
Expenses:-				
Program services:				
Litigation and client services	36,400	1,588,443	25,096	1,649,939
National Indian Law Library	1,500	84,236	1,608	87,344
Total program services	<u>37,900</u>	<u>1,672,679</u>	<u>26,704</u>	<u>1,737,283</u>
Support services:				
Management and general	28,603	195,488	4,183	228,274
Fund raising	104,575	44,697	1,287	150,559
Total support services	<u>133,178</u>	<u>240,185</u>	<u>5,470</u>	<u>378,833</u>
Total expenses	<u>171,078</u>	<u>1,912,864</u>	<u>32,174</u>	<u>2,116,116</u>
Excess (deficiency) of support and revenue over expenses	70,279	30,153	(32,724)	67,708
Capital additions - Contribution of library books			5,008	5,008
Excess (deficiency) of support and revenue over expenses after capital additions	70,279	30,153	(27,716)	72,716
Fund balances, beginning of year	<u>222,940</u>	<u>-0-</u>	<u>227,345</u>	<u>450,285</u>
Other changes in fund balances:				
Acquisition of fixed assets	(130)	(12,915)	13,045	
Reduction in mortgage and notes payable	(1,633)	(10,211)	11,844	
Telephone usage charge (Note 7)		(7,027)	7,027	
	<u>(1,763)</u>	<u>(30,153)</u>	<u>31,916</u>	
Fund balances, end of year	<u>\$291,456</u>	<u>\$ -0-</u>	<u>\$231,545</u>	<u>\$ 523,001</u>

NATIVE AMERICAN RIGHTS FUND, INC.  
STATEMENT OF CHANGES IN CASH  
FOR THE YEAR ENDED SEPTEMBER 30, 1980

	<u>Current funds</u>		<u>General fixed</u>	<u>Total</u>
	<u>Unrestricted</u>	<u>Restricted</u>	<u>asset fund</u>	<u>all funds</u>
Cash was provided by (used for):-				
Excess (deficiency) of support and revenue over expenses before capital additions	\$ 70,279	\$ 30,153	\$(27,716)	\$ 72,716
Capital additions - Contribution of library books			(5,008)	(5,008)
Excess (deficiency) of support and revenue over expenses after capital additions	70,279	30,153	(32,724)	67,708
Add (deduct) items not using (providing) cash:				
Deferred contributions and grants receivable recognized as support and revenue		(640,978)		(640,978)
Depreciation			32,174	32,174
Decrease in unrealized depreciation of marketable securities	(6,539)			(6,539)
Loss on disposal of fixed assets			550	550
Net loss realized on investments	(4,284)			(4,284)
Cash provided by (used for) operations	59,456	(610,825)	-0-	(551,369)
Deferred contributions received and grants receivable collected		463,493		463,493
Increase (decrease) in interfund payables (receivables)	(170,458)	177,485	(7,027)	
Net fund balance transfers	(1,763)	(30,153)	31,916	
Proceeds from sale of marketable securities	46,547			46,547
Decrease in other receivables	17,309			17,309
Cash provided (used for)	(48,909)	-0-	24,889	(24,020)
Cash was used for:				
Purchase of marketable securities	12,180			12,180
Fixed asset additions			13,045	13,045
Repayment of mortgages and notes payable			11,844	11,844
Decrease in accounts payable and accrued expenses	49,739			49,739
Increase in prepaid expenses	4,364			4,364
Cash used	66,283	-0-	24,889	91,172
Decrease in cash	\$ 115,192	\$ -0-	\$ -0-	\$ 115,192

NATIVE AMERICAN RIGHTS FUND, INC.  
STATEMENT OF FUNCTIONAL EXPENSES  
FOR THE YEAR ENDED SEPTEMBER 30, 1980

	<u>Program services</u>			<u>Support services</u>			<u>Total expenses</u>
	<u>Litigation and client services</u>	<u>National Indian Law Library</u>	<u>Total</u>	<u>Management and general</u>	<u>Fund raising</u>	<u>Total</u>	
Salaries and wages:							
Professional staff	\$ 537,617	\$35,610	\$ 573,227	\$ 88,920	\$ 26,232	\$115,152	\$ 688,379
Support staff	153,431	15,574	169,005	30,418	19,736	50,154	219,159
Fringe benefits	85,356	5,436	90,792	14,256	5,829	20,085	110,877
Total salaries and related costs	776,404	56,620	833,024	133,594	51,797	185,391	1,018,415
Contract fees and consultants	389,700	177	389,877	17,945	9,750	27,695	417,572
Travel	205,174	63	205,237	14,377	4,911	19,288	224,525
Space costs	45,168	3,850	49,018	32,587	2,287	34,874	83,892
Office expenses	135,134	21,364	156,498	21,863	79,096	100,959	257,457
Equipment maintenance and rental	19,391	2,195	21,586	3,210	861	4,071	25,657
Litigation costs	28,738		28,738				28,738
Library costs	25,134	1,467	26,601	515	570	1,085	27,686
Expenses before depreciation	1,624,843	85,736	1,710,579	224,091	149,272	373,363	2,083,942
Depreciation	25,096	1,608	26,704	4,183	1,287	5,470	32,174
Total expenses	<u>\$1,649,939</u>	<u>\$87,344</u>	<u>\$1,737,283</u>	<u>\$228,274</u>	<u>\$150,559</u>	<u>\$378,833</u>	<u>\$2,116,116</u>



NATIVE AMERICAN RIGHTS FUND, INC.

NOTES TO FINANCIAL STATEMENTS

SEPTEMBER 30, 1980

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, 1980.

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 \$5,100 less than cost at September 30, 1980. 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	\$ 14,652
<u>Less - Losses recognized in prior years</u>	<u>(10,368)</u>
Net loss on sales	4,284
Decrease in unrealized depreciation on other securities	<u>6,539</u>
Net loss	<u>\$ 10,823</u>

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	\$ 7,027
Purchases of office equipment and furnishings	9,071
Principal payments on mortgages and notes	10,459
Additions to professional library	3,974
Principal payments on equipment obligation	1,385
	<u>\$31,916</u>

NOTE 4 - MORTGAGES AND PROMISSORY NOTES  
PAYABLE:

Long-term debt consisted of the following at September 30, 1980:

	Portion due within <u>one year</u>	<u>Total</u>
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	\$ 4,577	\$102,458
Mortgage loan payable in equal monthly instalments of \$482, including interest at 5 1/2%, through March 1985. Secured by land and building	4,381	27,505
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	2,315	71,322
Equipment purchase obligation payable in equal monthly instalments of \$132, including interest at 13%, through February 1981. Secured by equipment	693	693
	<u>\$11,966</u>	<u>201,978</u>
<u>Less - Current portion of long-term debt</u>		<u>11,966</u>
Portion due after one year		<u>\$190,012</u>

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 1980 was \$41,546.

NOTE 6 - GRANTS RECEIVABLE AND DEFERRED  
REVENUE:

Grants receivable and deferred revenue consisted of the following individual restricted grants or contracts at September 30, 1980:

	<u>Receivable</u>	<u>Deferred revenue</u>
Ford Foundation	\$ 55,757	
Department of Health and Human Services, Administration for Native Americans		\$254,471
Legal Services Corporation	11,882	12,250
Carnegie Corporation		60,965
Law Enforcement Assistance Administration	59,532	
Bureau of Indian Affairs	181,085	
	<u>\$308,256</u>	<u>\$327,686</u>

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 in an amount equivalent to depreciation.

# NATIVE AMERICAN RIGHTS FUND

## CONTRIBUTORS

10/1/79 - 9/30/80

### Foundations

### Grant Purpose

Aetna Life & Casualty Foundation.....	General Support
Akbar Fund, Inc.....	General Support
Boller (Thomas) Foundation.....	General Support
Carnegie Corporation of New York.....	Indian Lawyer Intern Project
Donner (William H.) Foundation.....	Tribal Sovereignty and Natural Resources Research
Ford Foundation.....	General Support Indian Education Legal Support Tenth Anniversary Symposium
Grace Foundation.....	General Support
Muskiwinni Foundation.....	Activities of Arlinda Locklear
Seacoast Foundation.....	General Support
Toledo Community Foundation.....	General Support

### Governmental

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Legal Services Corporation.....	Indian Law Support Center Tribal Recognition Project
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**"If we fight for civil liberties for our side, we show that we believe not in civil liberties but in our side. But when those of us who never were Indians and never expect to be Indians fight for the Indian cause of self-government, we are fighting for something that is not limited by accidents of race and creed and birth; we are fighting for what Las Casas, Vitoria and Pope Paul III called the integrity or salvation of our own souls. We are fighting for what Jefferson called the basic rights of man. We are fighting for the last best hope of earth. And these are causes which should carry us through many defeats."**

**Felix Cohen, U.S. Solicitor (Circa 1940)**



## **E. Appendices**

## Professional Staff Members During 1980

### 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 1977, and again in 1979.

He 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 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 1976-1977.

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 1980 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 the 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. Aschebrenner'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 1977. A former summer law clerk at NARF, he is a Sisseton-Wahpeton Sioux from South Dakota. He is working primarily in the areas of Indian education and Indian corrections. Kurt served as Co-Director of the American Indian Religious Freedom Project in 1979.

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, having worked in Indian legal services programs from 1967 to 1975.

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 for NARF's National Indian Law Library. Admitted to practice law in California, Arizona, New Mexico and Colorado.

Raymond Cross, a Mandan-Gros Ventre from North Dakota, 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, practicing in the area of Indian civil rights including consumer law and domestic law. He was the Director of NARF's Indian Law Support Center from 1975 to 1980. The ILSC provides legal backup assistance to legal services programs working with Indian clients. Mr. Cross resigned in June 1980.

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 June 1980). 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 works in natural resource law and 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 was 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.

Walter R. Echo-Hawk, Jr., a staff attorney in the Boulder office, is a Pawnee Indian from Oklahoma. For the past six years, 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.

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; land and water 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 (1971); High School Teacher, Kansas City, Kansas (1966-1968); Reginald Heber Smith Fellow (August 1971 to July 1974); Native American Rights Fund (1971 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. At NARF he worked 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. Mr. LaFrance resigned in May 1980 to join Colorado Rural Legal Services.

B.S., cum laude, University of North Dakota (1974); J.D. University of California at Berkeley (1977); Native American Rights Fund (August 1977 to May 1980). Admitted to practice law in California and Colorado.

Arlinda F. Locklear of the Washington, D.C. office, 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, Organization of the Forgotten American, 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 Indian 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. His publications include: "Indian Water Rights: Some Emerging Frontiers," 21 Rocky Mountain Mineral Law Institute 743 (1976); "The Winters Doctrine and the Greening of the Reservations," 4 Journal of Contemporary Law 19 (1976); and the Principal Speech on Indian Water Rights at American Indian Water Law Symposium, 15 Tulsa L. J. 699 (1980). He is also a contributing author to the revised Handbook of Indian Law (1981), and has taught at the Law School at the University of Colorado.

B.A., magna cum 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.

Anita Remerowski is a Boulder staff attorney and Director of the Indian Law Support Center, a project funded by the Legal Services Corporation.

A graduate of Boalt Law School, University of California, Berkeley, she has worked as General Counsel to the Alaska State Operated School System and directed a state-wide reservation legal services program in South Dakota. In that capacity she has worked in Indian land claims, tribal court development, Indian housing and health issues and community education. She has co-authored "Reservation Street Law" (a handbook on Indian law for reservation high school students) with Frank Pommersheim of Sinte Gleska College in Rosebud.

B.S., University of California, Berkeley (1969); J.D., University of California, Berkeley (1973); Assistant State Attorney General, Anchorage, Alaska (1973-1974); South Dakota Legal Services (1974-1980); Native American Rights Fund (September 1980 to present). Admitted to practice law in Alaska, South Dakota, Federal District Court of South Dakota and the Eighth Circuit Court of Appeals.

Thelma J. Stiffarm, of Cree and Gros Ventre descent from Montana, served 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 advisor on several national juvenile research centers and projects. She resigned in 1980.

B.A., University of Montana (1980); J.D., University of New Mexico (1974); Deputy Director of the American Indian Law Center at the University of New Mexico (1974 to 1977); consultant, U.S. Commission on Civil Rights, Denver, Colorado (1977 to 1978); Native American Rights Fund (October 1978 to 1980).

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. Mr. Tureen resigned at the end of 1980, but continues to work for NARF as of counsel.

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 1980). 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 by NARF in 1975 as an Indian lawyer intern under a special grant provided by the Carnegie Corporation of New York. She is presently working on issues involving water rights, 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.

### Legislative Liaisons

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, she played a key role in the passage of the Menominee Restoration Act of 1973. Following this, she was selected 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. She also served on the Congressional Commission on the Mental Health of Children, the American Indian Policy Review Commission, and currently serves on the President's Commission on White House Fellows. She serves on the national boards of Rural America, Americans for Indian Opportunity, American Indian Scholarships and the Council on Foundations. She is past President of the Association of American Indian and Alaska Native Social Workers, and a member of the National Committee on Minority Affairs of the National Association of 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, Ashland, Wisconsin. In September 1977, Ms. Deer was chosen as a Fellow of the Harvard University Institute of Politics.

Suzan Shown Harjo, Cheyenne and Creek and a member of the Cheyenne and Arapaho Tribes of Oklahoma, has served as Legislative Liaison in NARF's Washington office since October 1979. Ms. Harjo previously directed NARF's legislative efforts from March of 1977 to March of 1978. She resigned to accept a political appointment in the Office of the Secretary of Interior.

During her nineteen months as Special Assistant to the Assistant Secretary for Indian Affairs, she also served as Member Alternate to the Board of Trustees, American Folklife Center, and Coordinator of the President's Task Force on American Religious Freedom.

Since rejoining the NARF staff, she has participated in successful efforts to achieve passage of the Maine Indian Land Claims Settlement Act of 1980; to extend for a third time the statute of limitations (28 U.S.C. 2415) on damage claims; to exempt oil owned by tribes and individual Indians from the Windfall Profit Tax Act of 1980; and to protect Indian fishing, water, land and cultural interests in general legislation and administrative proceedings. During 1980, she was selected as a member of the U.S. Delegation to the VIII Congress of the Inter-American Indian Institute, and participated in the international treaty organization's 40th Anniversary session in Merida, Mexico. Ms. Harjo is also a member of the Board of Directors of the Minority Legislative Education Program, as well as a member of the Editorial Board of The Nations Project and the Advisory Board of the Environmental Action Foundation.

Prior to her work with NARF, Ms. Harjo was Communications Director and Legislative Assistant with the National Congress of American Indians, as well as Coordinator of the National Indian Litigation Committee. A former John Hay Whitney Fellow, she has also served as News Director, American Indian Press Association; faculty coordinator for six semesters of a lecture series on contemporary Indian issues, School of Continuing Education, New York University; and Director of the Drama and Literature Department, WBAI-fm Radio Station, where she also co-produced a biweekly program on current Indian issues, "Seeing Red." Ms. Harjo's poetry has been included in numerous publications, anthologies and textbooks. Since 1970, she has been listed in the Directory of American Poets, and is a Fellow of the International Academy of Poets, with listings in ten volumes of the International Who's Who of Poetry. Her listing also appears in the Directory of Significant Minority Women of the 20th Century.

#### 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 job placement director and a museum technician in Niagra Falls previous to the NARF position. He resigned in 1980.

Lorraine P. Edmo, a member of the Shoshone-Bannock Tribe of Idaho, was Development Officer until her resignation in December 1980. She first joined NARF in August 1976 as Technical Writer and Corporate Secretary. Prior to joining 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.

In October 1980, she was named an Outstanding Young Woman of America in recognition for her work on behalf of Native Americans. She left to pursue a Masters in Public Administration at the University of New Mexico in Albuquerque.

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.

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 the 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.

Don Holman was the Regional Coordinator for the Great Lakes region of the Indian Corrections Project. Mr. Holman was responsible for conducting the needs assessment survey in the Great Lakes area for the Project. Mr. Holman is an enrolled member of the Sisseton-Wahpeton Sioux Tribe of South Dakota. He previously served as Chief of Police for that Tribe. Mr. Holman has also served as a member of the South Dakota Criminal Justice Commission and LEAA's National Indian Justice Advisory Council. Most recently he was Programs Director for the Cheyenne River Swift Bird Project.

Michael L. Kitchkommie, a member of the Pottawatomie Tribe of Kansas, was research assistant for the National Indian Law Library from March until his tragic death in August 1980.

He had completed the Legal Advocates Training Program at Navajo Community College, Tsaile, Arizona and received his A.A. degree in law in 1979. He also attended Haskell Indian Junior College in Lawrence, Kansas. While at Navajo Community College, he authored a paper titled "Indian Affairs and Taxation."

Oran LaPointe, a member of the Rosebud Sioux Tribe of South Dakota, is a graduate of the University of Kansas. He rejoined NARF 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 NARF in 1972 and 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 Chicana from Utah and is pursuing studies with the University of Colorado to obtain her B.A. in business administration.

Bryce M. Wildcat, a Pawnee-Euchee Indian from Oklahoma, joined NARF in September of 1980 as a research assistant for the National Indian Law Library. He previously worked as an alcohol and drug counselor; worked for the U.S. Forest Service; was a juvenile counselor with the Southwest Indian Youth Center in Tucson; and worked previously for NARF in 1974-76.

In 1969, he was the principal appointee from Oklahoma for the United States Naval Academy but declined the appointment. He attended Cambridge University in England on an English literature scholarship, and in 1979, he received a B.A. degree from the University of Montana.

Richard B. Williams was the director of NARF's Indian Corrections Project in 1980. This project was a one-year project funded by the Law Enforcement Assistance Administration of the U.S. Department of Justice. Mr. Williams is an enrolled member of the Oglala Sioux Tribe of South Dakota and a 1975 graduate of the University of Nebraska. He also completed a special correctional training program conducted in 1975 by the Arizona Department of Corrections, and later served as a paralegal on the NARF Prison Project from 1975 to 1977. Before returning to NARF, Mr. Williams held the position of Executive Director of the Cheyenne River Swift Bird Project, an Indian-run, minimum security correctional facility located on the Cheyenne River Sioux Reservation in South Dakota.

**"It may be hard for us to understand why these Indians cling so tenaciously to their lands and traditional tribal way of life. The record does not leave the impression that the lands of their reservation are the most fertile, the landscape the most beautiful or their homes the most splendid specimens of architecture. But this is their home — their ancestral home. There, they, their children, and their forebears were born. They, too, have their memories and their loves. Some things are worth more than money and the costs of a new enterprise ... I regret that this Court is to be the governmental agency that breaks faith with this dependent people. Great nations, like great men, should keep their word."**

**Supreme Court Justice Hugo Black dissenting  
in F.P.C. v. Tuscarora Indian Nation (1960)**



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