The
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Native American Rights Fund
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TRIBAL WATER RIGHTS: 1986

By Scott McElroy

Although the special nature of tribal water rights has been recognized since at least 1908, it is only recently that States and non-Indian water users have acknowledged the Tribes as equal partners in the decision-making process surrounding the utilization and development of water resources in the Western United States. With increasing frequency, tribes are being asked to participate in the multitude of activities ranging from litigation to planning joint development projects. Certainly, tribal rights, for the most part undefined and generally under-utilized, are under continuous scrutiny by states and non-Indian water users. In many instances, non-Indian farmers and communities now depend on water sources which are subject to large tribal claims. In other areas, non-Indian development is stymied because of the uncertainty surrounding potential tribal claims to scarce water supplies. The tribes themselves are increasingly aware of the need to protect their water resources from illegal appropriation and to put those rights to use for the benefit of tribal members. Until tribal rights are quantified and protected by court decrees, statutes or other binding agreements, non-Indians will continue to benefit from valuable and scarce water which rightfully should be used for the tribes' advantage. As a result, NARF continues to play an active role in assisting tribes in protecting and developing their rights.

The *Winters* Doctrine

The *Winters*, or reserved rights doctrine, which provides that tribes are entitled to sufficient water to develop their reservations as a permanent homeland, was first articulated by the Supreme Court in the landmark case of *Winters v. United States, 207 U.S. 564* (1908). In *Winters*, the United States brought suit on behalf of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation to halt upstream diversions by non-Indians who had been using water since 1900. The Fort Belknap Reservation was established under the terms of an 1888 agreement which generally described the purpose of the Reservation as to provide a permanent home for the Tribes and to encourage members to engage in agricultural pursuits. The agreement did not mention water rights. The non-Indian diverters contended that their diversions — which were valid under state law — gave them a right superior to that of the Tribes. That argument was rejected by the Court, which stated:

> **The case, as we view it, turns on the agreement of May 1888, resulting in the creation of Fort Belknap Reservation. . . . The reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such, the original tract was too extensive, but a smaller tract would be inadequate without a change of conditions. The lands were arid, and, without irrigation, were practically valueless. And yet, it is contended; the means of irrigation were deliberately given up by the Indians and deliberately accepted by the Government. . . . The power of the Government to reserve the waters and exempt them from appropriation under state law is not denied, and could not be. . . .**

The principle of impliedly reserving water rights has been held to be applicable to all Indian reservations whether such reservations were created by treaty, statute,

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Several tribes are actively involved in discussions concerning the use of water resources in the Western United States.

executive order, or other agreement. The reservation of waters is authorized under the property and commerce clauses of the Constitution. In 1963, the Supreme Court extended the doctrine to other federal establishments in addition to Indian reservations in *Arizona v. California,* 373 U.S. 546 (1963).

The contrast between Indian reserved rights and usual western water law is great. Western states generally rely on the law of prior appropriation, *i.e.,* first in time, first in right, to allocate water among their inhabitants. That doctrine, stemming from early mining practices, focused on the actual use of water. Those who first put water to a "beneficial" use had first call on the water in times of shortage. Reserved rights, on the other hand, are premised on the need for water whether or not it has been put to use.

Although the doctrine has been recognized since 1908, the Supreme Court has provided little guidance concerning the extent and nature of Indian reserved water rights. In *Arizona v. California*, Justice Black concluded that water rights were reserved for five tribes along the lower Colorado River when their reservations were created. The water so reserved "was intended to satisfy the future as well as the present needs of the Indian Reservations." Stated another way, the water was reserved "to make the Reservations livable." Those pronouncements do not establish a precise standard by which the tribal rights may be measured. The Court has so far left that difficult task to the discretion of the trial judge or special master charged in the first instance with allocating scarce natural resources between Indians and non-Indians.

In fulfilling this obligation, Special Master Rifkind, in *Arizona v. California*, concluded that the five tribes were entitled to water to meet their agricultural needs and that such a purpose would be fulfilled by providing sufficient water to develop all the "practicably irrigable acreage" on their reservations. Other concepts had been advanced. California had urged that rights should be granted only for existing uses. Arizona had advocated a standard of "reasonably foreseeable needs." The Master was not convinced, however, and so he accepted the irrigability standard advanced by the United States. The Supreme Court accepted the Master's standard as well as the resulting quantities of water, at least for the Reservations involved.

Unfortunately, however, neither the Special Master nor the Court defined what was meant by "practicably irrigable." The Tribes subsequently sought to reopen *Arizona v. California* because of the omission of lands satisfying that standard. Special Master Tuttle concluded the "practicably irrigable," as used by the parties and Court in the prior proceedings, very nearly means "economically feasible." In the state court litigation over the water rights of the Shoshone and Arapaho Tribes of the Wind River Reservation, Special Master Roncalco defined practicably irrigable as "those acres susceptible to sustained irrigation at reasonable costs." Neither definition, however, has been approved by the Supreme Court.

Even more uncertainty exists over the extent of water, if any, which was reserved for "the arts of civilization," a use recognized in *Winters*. Neither the Supreme Court nor any lower federal court has addressed the question of water rights for industrial development for the tribes, although a number of lower federal courts have recognized that tribes are entitled to sufficient water to further their fishing and hunting rights.

THE THRESHOLD QUESTIONS

The Supreme Court's affirmation of the *Winters* doctrine in *Arizona v. California*, in 1963, and the increasing competition for the scarce water resources has triggered widespread concern over the impact of tribal water rights on existing water users, as well as the extent to which such rights might limit further non-Indian development in the west. The National Water Commission in 1973 stated in its *Water Policies for the Future:*

> **In the water short west, billions of dollars have been invested, much of it by the federal government, and water resource projects benefitting non-Indians but using water in which the Indians have a priority of right if they choose to develop projects of their own in the future. In short, the nation faces a conflict between the rights of Indians to develop their long-neglected water resources and the impairment of enormous capital investments already made by non-Indians in the same water supply. To resolve that conflict is not an easy task. . . .**

Those conflicts triggered numerous lawsuits, some filed by states, some by tribes and some by the United States. Given the valuable resources involved, it is not surprising that considerable attention was devoted by the affected

parties to the question of the proper forum for the resolution of tribal rights, as well as the role which the United States would play in adjudicating such rights.

In 1983, the Supreme Court issued three decisions which clarifies each of these two issues and mandate intense tribal participation in any effort to adjudicate tribal water rights. *Arizona v. San Carlos Apache Tribe, 463 U.S. 545* (1983) involved the question of whether tribal water rights in Arizona and Montana should be adjudicated in state or federal court. Arizona and Montana, like most western states, were admitted to the union subject to federal legislation that reserved "absolute jurisdiction and control" over Indian lands in the United States. The affected tribes had argued that these disclaimer clauses precluded adjudication of tribal water rights in state court. The Supreme Court disagreed, holding that those limitations were removed by the 1953 McCarran Amendment which gave state courts concurrent jurisdiction with federal courts over the adjudication of federal water rights. The court strongly reiterated its view that the McCarran Amendment demonstrated a strong congressional policy that federal water rights be adjudicated in comprehensive state court proceedings, including Indian water rights.

In two other Indian water rights cases decided during the same term, the Supreme Court addressed the question of whether the federal government's representation of tribal interests in water rights cases was sufficient to bind the affected tribes in the absence of tribal participation. In *Arizona v. California,* 460 U.S. 605 (1983), the Court refused to increase water rights for tribes along the lower Colorado River, although the tribes alleged inadequate representation by the federal government in the initial stages of the case when the tribal rights were first quantified. The Court stated:

> **[T]he absence of the Indian Tribes in prior proceedings in this case does not dictate or authorize relitigation of their reserved rights. As a fiduciary, the United States had full authority to bring the Winters rights claim for the Indians and bind them in the litigation. . . . We find no merit in the Tribes' contention that the United States' representation of their interests was inadequate whether because of a claimed conflict of interests arising from the Government's interest in securing water rights for other federal property, or otherwise. The United States often represents varied interests in litigation involving water rights, particularly given the large extent and variety of federal land holdings in the West. . . . The Government's representation of these varied interests does not deprive our decisions of finality.**

Nevada v. United States, 463 U.S. 110 (1983), involved the Pyramid Lake Paiute Tribe's effort to reopen a 1944 water rights decree for the purpose of making a claim to water for fishery purposes, a claim which had not been made by the federal government in the prior litigation leading to the decree. In the Pyramid Lake case, the government's conflict of interest and inadequate representation seemed clear. The federal government, in the earlier litigation, decided that it would not make a fishery claim for the Tribe, at least in part because it would conflict with the water rights for a federal reclamation project. The "primary purpose of the Government in bringing the *Orr Ditch* suit in 1913 was to secure water rights for the irrigation of land that would be contained in the Newlands Project."

Concerning the Pyramid Lake Paiute Tribe's claim that it was not bound by the 1944 Decree because of the government's conflict of interest, the Court said:

> **Today, particularly from our vantage point nearly half a century after the enactment of the Indian Reorganization Act of 1934 . . . it may well appear that Congress was requiring the Secretary of the Interior to carry water on at least two shoulders when it delegated to him both the responsibility for the supervision of the Indian tribes and the commencement of reclamation projects in areas adjacent to reservation lands. But Congress chose to do this, and it is simply unrealistic to suggest that the Government may not perform its obligation to represent Indian tribes in litigation when Congress has obliged it to represent other interests as well. In this regard, the Government cannot follow the fastidious standards of a private fiduciary, who would breach his duties to his single beneficiary solely by representing potentially conflicting interests without the beneficiary's consent. The Government does not "compromise" its obligation to one interest that Congress obliges it to represent by the mere fact that it simultaneously performs another task for another interest that Congress has ogligated it by statute to do.**

The Supreme Court characterized the events and decisions leading to the decision not to bring a fishery claim in the *Orr Ditch* litigation as simply reflecting:

> **. . . the nature of a democratic government that is charged with more than one responsibility; it does not describe conduct that would deprive the United States of the authority to conduct litigation on behalf of diverse interests.**

These three cases thus mandate active tribal participation in any suit — whether in state or federal court — in which tribal water rights are at issue. It is now clear that federal representation of tribal water rights when the tribe does not participate will effectively foreclose the tribe from making claims not advanced by the United States in a later suit. Even when the United States represents plainly conflicting interests, federal representation binds the Tribes when they do not participate. Under such circumstances, it is foolish for tribes to rely on federal representation. Tribes must become actively involved in the litigation and assert all of their claims for the court to decide, even though they may not be supported by the federal government.

CURRENT ACTIVITIES

Since the protection of tribal natural resources is one of NARF's priorities, Indian water rights cases have always made up a large part of NARF's program. NARF's active role in water matters continues. With increasing frequency, tribes are now exploring the possibility of negotiated settlements to resolve their water right claims. Other parties to these Indian water rights cases, dismayed at the cost and time-consuming nature of such litigation, are also looking at negotiations as a viable method to answer the multitude of questions which surround tribal water rights.

Nearly 95 percent of all civil litigation is settled rather than resolved through trial. In many respects, the present focus on the settlement of tribal water claims results from the same pressures that lead to the high percentage of settlement in non-Indian cases. Settlement provides a method for the tribes to obtain benefits which are not available in the usual water rights adjudication. In addition, settlement, because it provides certainty, allows the tribal leadership to better evaluate the consequences of the resolution of their claims and to obtain a resolution that meets tribal needs. Needless to say, such decisions can only be made if the leadership has the information necessary to evaluate the full range of options. Perhaps most importantly, in many instances settlement provides a mechanism by which tribes can obtain water rights *and* the means to put those rights to use. In contrast, litigation only provides "paper" rights. Most tribes lack the financial capability to put those rights to use at least in the near term.

Finally, the focal point of many settlement discussions has been the need for a substantial federal contribution. In short, it is the federal government which neglected its role as trustee for the tribes and permitted extensive non-Indian development throughout the west in reliance on water supplies to which the tribes are entitled. For tribes to now obtain the water they need and to which they are legally entitled will disrupt many long-standing non-Indian economies. Only through additional storage facilities and costly improvements in efficiencies can such consequences be avoided. Given the historic neglect of the federal government, tribes and their non-Indian neighbors are increasingly looking to the United States to fund a major part of such improvements. Such settlements are jeopardized, however, by the reluctance of the federal government to provide these funds in light of the growing federal deficit.

Southern Ute Water Rights

NARF represents the Southern Ute Indian Tribe in ongoing state court litigation in Water Division 7. The Tribe has recently intervened in the state court litigation. Last spring the Governor and Attorney General of the State of Colorado invited the Tribe, along with the Ute Mountain Ute Tribe, to participate in settlement discussions with the State, the United States, and non-Indian water users in southwest Colorado. The Tribe agreed to participate and seeks a comprehensive resolution of its water rights claims. The focal point for the discussions is the Animas-La Plata Project, a congressionally authorized federal reclamation project, which would provide agricultural, municipal, and industrial supplies to cities and farmers in southwest Colorado, as well as to the Southern Ute Tribe and the Ute Mountain Ute Tribe. In addition, the Tribe seeks a substantial development fund to ensure that it can actually put its water to use, as well as the quantification of its claims from the streams not included within the Animas-La Plata Project. Intensive negotiations between the State, the United States, the Southern Ute Tribe and non-Indian water users in the area, have occurred and the parties hope to obtain a final settlement by the end of the summer.

Walker River Paiute Water Rights

The Walker River Paiute Tribe has retained NARF to investigate methods for it to obtain additional water rights needed for agricultural development on its Reservation. In 1939, a final decree was issued by the Federal District Court in Nevada quantifying reserved rights for the Reservation. The United States had initiated the lawsuit on behalf of the Tribe and sought sufficient water to irrigate 10,000 acres of allotments on the Reservation. The Tribe had ceded large portions of its Reservation based on the government's promise to provide irrigated allotments to tribal members. The Ninth Circuit Court of Appeals recognized that the Tribe was entitled to a reserved right, but only awarded the Tribe sufficient water to irrigate 2,100 acres of land then under irrigation.

In addition to the 7,900 acres of allotments without water rights, the Tribe has an additional arable land base in excess of 15,000 acres, which could be irrigated if water were available. NARF has been engaged in an extensive study of the water availability in the area. This investigation addresses the use of water upstream by non-Indian water users, as well as identifying lands suitable for irrigation on the Reservation. Upon completion of our investigation, we hope to file suit to obtain additional water for the Tribe and to limit excessive use of water upstream.

Northern Cheyenne Water Rights

In 1975, concerned about several court developments that seemed to be leading toward adjudication of Indian water rights in state courts, the Northern Cheyenne Tribe of Montana filed suit in the federal district court in Montana, and soon thereafter retained NARF to represent them. This case, *Northern Cheyenne Tribe v. Adsit,*

Tribes use water for industrial, agricultural and fishery development.

sought 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 involved the adjudication of rights of numerous defendants to the water of the Tongue River, Rosebud Creek and their tributaries. The United States also filed suit on behalf of the Tribe, and the two cases were consolidated by the court. Various motions to dismiss the suit were filed in 1975 and 1976, and in *San Carlos* the Supreme Court held that the state court was the preferred forum to resolve these claims.

In the meantime, the Tribe has begun settlement discussions with the Montana Reserved Water Rights Compact Commission. The Compact Commission was established by Montana in 1979 specifically to negotiate water rights compacts with Indian tribes. NARF is hopeful that these discussions may lead to a settlement of some of the issues. These discussions initially focused on the need for a new Tongue River Dam which would resolve safety problems with the present dam and provide additional water storage. The possibilities of increased storage capacity would enhance the possibilities of settlement. The Tribe and the Commission are also exploring a variety of other settlement possibilities.

Klamath Water Rights

The Klamath Indians have lived for more than a thousand years in south central Oregon, just east of the Cascade Mountains. The largest Klamath settlement was located along the Williamson River in the vicinity of an extensive marsh area abundant with game. Historically, the Klamath Indians depended on the marsh and its surrounding rivers, lakes, and forests for food. There they fished, hunted waterfowl and game, and gathered edible plants. They also depended on the area for clothing and building materials. Even now, hunting, fishing, and gathering in the area are important to the Klamath Indians.

In 1864, the Klamath Indians entered into a treaty with the United States, under which they ceded their rights to more than 12 million acres of land to the United States. In return, the federal government reserved 780,000 acres from the public domain and created the Klamath Reservation for exclusive occupation by the Tribe. Article I of the Treaty reserved to the Indians "the exclusive right of taking fish in the streams and lakes (of the Reservation), and gathering edible roots, seeds, and berries within its limits." Nearly a century later, the United States terminated its special federal trusteeship with the Tribe, but the hunting and fishing rights of the Tribe were again guaranteed in the termination act.

United States v. Adair is a water rights action filed by the United States seeking a declaration that it is entitled to sufficient water for the Klamath Forest Wildlife Refuge and the national forest lands within the area of adjudication. NARF is representing the Klamath Tribe which has intervened to protect the water rights associated with its treaty hunting and fishing rights. The Tribe is seeking a declaration that it is entitled to a minimum stream flow in the Williamson River essential to preserving the habitat of the wildlife that is the subject of its hunting and fishing rights. Whether Indian hunting and fishing rights, guaranteed by treaty, carry with them a guarantee of water rights to preserve the wildlife has never been previously decided.

The United States Court of Appeals for the Ninth Circuit handed down a decision in the case of *United States Adair and Oregon, 723 F. 2d 1394* (1984), which confirmed the Tribe's right to use as much water from the Williamson River as necessary to protect its hunting and fishing treaty rights. In interpreting the 1864 treaty between the Tribe and the United States which established the Reservation, and the congressional termination of the Klamath Tribe in 1961, the court declared that the Tribe retained its reserved rights insofar as they are necessary for the preservation of its treaty-protected hunting and fishing rights.

However, despite the favorable decision in *Adair,* the Klamath Tribe must now quantify its water rights. Experts, such as hydrologists and wildlife biologists, are needed to conduct the necessary studies. Since the Tribe was terminated, the Bureau of Indian Affairs has taken the position that it need not represent the Tribe in protecting its treaty rights nor render any financial assistance. Additionally, the decision in *Adair* did not decide whether the United States had any federal reserved water rights to accomplish the governmental purposes of the protection of fish and wildlife on the forest lands and in the Klamath National Wildlife Refuge. Consequently, if the Tribe's treaty hunting and fishing rights are to be preserved at all, it is up to the Tribe alone to officially quantify the necessary amount of water for that purpose.

Muckleshoot Water Rights

NARF represents Washington's Muckleshoot Tribe in two cases in the Tribe's efforts to secure its water rights, the loss of which has destroyed the Tribe's fisheries.

In 1911, a hydroelectric plant was constructed on the White River which flows through the middle of the Muckleshoot Reservation. The plant diverted substantially all of the river's flow away from the Reservation to the power plant. The water was returned to the River *below* the Reservation. Consequently, the Tribe's treaty-secured fishing rights were effectively destroyed. Puget Sound Power & Light (successor to the original 1911 operators of the power project) has maintained that the federal government does not have licensing jurisdiction over its project because the White River is not a navigable stream.

When the Federal Power Commission (FPC) held hearings to determine the navigability of the White River, the Muckleshoot Tribe, represented by NARF, intervened. An Administrative Law Judge (ALJ) found the stream not to be navigable. However, based primarily on new evidence submitted by the Tribe, the FPC reversed the ALJ decision and found the stream to be navigable and, therefore, under its jurisdiction. The company appealed the FPC decision to the Ninth Circuit Court of Appeals, and on May 4, 1981, the Ninth Circuit ruled in favor of the Tribe and found the project to be under the jurisdiction of the federal government. In November 1981, the U.S. Supreme Court denied the company's petition for review. The Tribe will now participate in the proceedings before the Federal Energy Regulatory Commission in efforts to assert its water rights to ensure a sufficient stream flow to protect tribal fishing and other treaty rights.

In addition, NARF represents the Tribe in federal court litigation seeking a declaration of the Tribe's water rights and monetary damages for the injury which Puget's actions have inflicted on the fishery.

Ft. McDowell Reservation Water Rights

NARF filed suit in federal court on behalf of the Fort McDowell Mohave-Apache Indian Community of Arizona in 1979 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 which passes through their Reservation. In addition, the Tribe is seeking damages for the wrongful diversion of water needed by the Tribe. Following the decision in *San Carlos,* NARF now is seeking to ensure that the claims filed by the federal government in the State proceedings represent the full extent of the tribal needs. With the construction of the Central Arizona Project, non-Indian water users have recognized the need to resolve the tribal claims in the near future and have initiated settlement talks with the Tribe.

Conclusion

Without water, Indian tribes will not be able to develop their reservations into the permanent homeland envisioned at their creation. Tribal agriculture, fisheries,and industries all depend on the availability of adequate water supplies. Although the principle of tribal reserved water rights is firmly established, tribes still face an incredible array of difficulties in quantifying and developing those rights.

The Muckleshoot Tribe's fishery depends on water from the White River

NARF Legal Developments

IRS Recognizes Pamunkey Tribe As A State

The Internal Revenue Service (IRS) has recognized the Pamunkey Tribe in Virginia as a state for purposes of the Tribal Governmental Tax Status Act. "Indian tribal government" is defined in the Act as a governing body of a tribe that is determined by the Secretary of Treasury to exercise governmental functions. Although the Pamunkeys did not appear in an initial published list of tribes exercising governmental functions, a revenue procedure in the Act allows tribes to request a ruling on their status. The Pamunkeys used this procedure, and the IRS determined in November 1985 that they qualified as an "Indian tribal government" because, based on the information submitted, it exercises governmental functions.

ICWA Decision Upheld By Federal Court

NARF along with Oklahoma Indian Legal Services, filed an *amicus curiae* (friend of the court) brief on behalf of nine tribes and the Association of Village Council Presidents of Alaska in *Kiowa Tribe of Oklahoma v. Lewis.* This case sought a federal court decision in an adoption case in which the Kansas state courts had refused to apply the Indian Child Welfare Act (ICWA). The Kiowa Tribe was denied intervention by the state court, and the court held that the ICWA was inapplicable. The ICWA is a federal law enacted in 1978 which is intended to promote the stability of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their families and the placement of Indian children in adoption or foster homes. The decision was ultimately affirmed by the Kansas Supreme Court. The Tribe then filed suit in federal district court under Section 1914 of the ICWA. The federal court, however, held that the Tribe's claim was precluded by res judicata and collateral estoppel (the case had already been decided and not subject to litigation again). The Tribe has filed a petition for rehearing.

(Photo: *Western History Collections, University of Oklahoma Library*)

Montana Supreme Court Rules On Indian Water Rights

On December 18, 1985, the Montana Supreme Court in *State of Montana et al. v. Confederated Salish and Kootenai Tribes et al.*, ruled that: 1) state courts are not prevented from exercising jurisdiction over Indian water rights by the state constitutional disclaimer provision; and 2) the state adjudication system is adequate to determine Indian water rights. The state decision took the opportunity to set out the legal principles which must be applied by the state courts in deciding Indian water rights. NARF represents the Northern Cheyenne Tribe in the case.

Oklahoma Has No Jurisdiction Over Creek Bingo

A federal district court in Oklahoma ruled on December 18, 1985, that the State of Oklahoma has no jurisdiction to regulate or tax the bingo operation of the Creek Nation. *In Indian Country U.S.A., Inc. and Muscogee (Creek) Nation v. The State of Oklahoma, et al.*, the court held that the area involved was "Indian country" over which the state has no jurisdiction. The court also balanced the interests of the state, federal and tribal governments and found that the tribal and federal interests far outweighed the state's interests. The court thus ruled that the State cannot tax, audit, monitor, regulate, control or otherwise interfere with the operations of tribal bingo, nor can it criminally or civilly prosecute those operating or participating in tribal bingo. NARF filed an *amicus curiae* (friend of the court) brief in the case on behalf of the Cheyenne-Arapaho Tribes of Oklahoma.

Nebraska Retrocedes Criminal Jurisdiction Over Winnebago Reservation

On January 17, 1986, the Nebraska Legislature voted 25-21 to retrocede criminal jurisdiction over the Winnebago Reservation. Retrocession gives the Tribe jurisdiction over misdemeanors committed by Indians; the federal courts would have jurisdiction over major crimes. The Tribe would not have criminal jurisdiction over non-Indians. Retrocession was approved despite intense lobbying by opponents.

(Photo: *Western History Collections, University of Oklahoma Library*)

NARF PUBLICATIONS AND RESOURCES

(Photo: *Western History Collections, University of Oklahoma Library*)

The National Indian Law Library

The National Indian Law Library (NILL) is a resource center and clearinghouse for Indian law materials. Founded in 1972, NILL fulfills the needs not only of NARF but of people throughout the country who are involved in Indian law. NILL's services to its constituents throughout the country comprise a major segment of meeting NARF's commitment to the development of Indian law.

The NILL Catalogue

NILL disseminates information on its holdings primarily through its National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources. The NILL Catalogue lists all of NILL's holdings and includes a subject index, an author-title table, a plaintiff-defendant table, and a numerical listing. It is supplemented periodically and is designed for those who want to know what is available in any particular area of Indian law (1,000+ pgs. Price: $75).

Bibliography on Indian Economic Development

Designed to provide aid for the development of essential legal tools for the protection and regulation of commercial activities on Indian reservations. Assembled l Anita Remerowski, formerly of NARF, and Ed Fagan of Karl Funke and Associates, this bibliography provides a listing of articles, books, memoranda, tribal codes, and other materials on Indian economic development. An update is in progress. (60 pgs. Price: $10)

Indian Claims Commission Decisions

This 43-volume set reports all of the Indian Claims Commission decisions. An index through volume 38 is also available, with an update through volume 43 in progress. The index contains subject, tribal, and docket number listings. (43 volumes. Price: $820) (Index price: $25).

Indian Rights Manuals

A Manual For Protecting Indian Natural Resources. Designed for lawyers who represent Indian tribes or tribal members in natural resource protection matters, the focus of this manual is on the protection of fish, game, water, timber, minerals, grazing lands, and archaeological and religious sites. Part I discusses the application of federal and common law to protect Indian natural resources. Pa II consists of practive pointers: questions to ask whe analyzing resource protection issues; strategy considerations; and the effective use of law advocates in resource protection (151 pgs. Price: $25).

A Manual On Tribal Regulatory Systems. Focusing on the unique problems faced by Indian tribes in designing civil regulatory ordinances which comport with federal and tribal law, this manual provides an introduction to the law of civil regulation and a checklist of general considerations in developing and implementing tribal regulatory schemes. It highlights those laws, legal principles, and unsettled issues which should be considered by tribes and their attorneys in developing civil ordinances, irrespective of the particular subject matter to be regulated (110 pgs. Price: $25).

A Self-Help Manual for Indian Economic Development. This manual is designed to help Indian tribes and organizations on approaches to economic development which can ensure participation, control, ownership, and benefits to Indians. Emphasizing the differences between tribal economic development and private business development, the manual discusses the task of developir reservation economies from the Indian perspective. It focuses on some of the major issues that need to be resolved in economic development and identifies options

available to tribes. The manual begins with a general economic development perspective for Indian reservations: how to identify opportunities, and how to organize the internal tribal structure to best plan and pursue economic development of the reservation. Other chapters deal with more specific issues that relate to the development of businesses undertaken by tribal government, tribal members, and by these groups with outsiders (Approx. 300 pgs. Price: $35).

Handbook of Federal Indian Education Laws. This handbook discusses provisions of major federal Indian education programs in terms of the legislative history, historic problems in implementation, and current issues in this radically changing field (130 pgs. Price: $15).

A Manual on the Indian Child Welfare Act and Laws Affecting Indian Juveniles. This fifth Indian Law Support Center Manual is now available. This manual focuses on a section-by-section legal analysis of the Act, its applicability, policies, findings, interpretations and definitions. With additional sections on post-trial matters and the legislative history, this manual comprises the most comprehensive examination of the Indian Child Welfare Act to date (373 pgs. Price: $35).

Films and Reports

"Indian Rights, Indian Law." This is a film documentary, produced by the Ford Foundation, focusing on NARF, its staff, and certain NARF casework. The hour-long film is rented from: Karol Media, 625 From Rd., Paramus, New Jersey 07652 (201-262-4170).

ANNUAL REPORT. This is NARF's major report on its program and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request.

(Photo: *Western History Collections, University of Oklahoma Library*)

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(Photos: *John Youngblut Western History Collections University of Oklahoma Library*)

OF GIFTS AND GIVING

Otu'han—Lakota word literally translated as "give-away." The Otu'han is a custom of giving in honor or memory of a friend or loved one.

The Otu'han Memorial Program was developed at NARF in 1983. The number of gifts has increased substantially over the years; in 1985, 140 people made gifts through the Otu'han Program compared to 67 in 1984. In addition to memorial gifts, NARF has received honoring gifts to celebrate birthdays, anniversaries, Mother's Day and Father's Day, holidays, and simply to commemorate a friendship. Most of these gifts were given as cash contributions in the form of a check, but we've also received several non-cash gifts such as works of art and other valuables in memory of another.

We encourage our donors to continue this fine tradition by recognizing and honoring friends and loved ones on special occasions through a gift to the Native American Rights Fund. In the same spirit we encourage you to give in memory of the deceased. Your gift will enable NARF to continue to work toward equality and long overdue justi for the First Americans.

Jeanette Wolfley

Amado Peña

STAFF ANNOUNCEMENT

Jeanette Wolfley, Navajo/Shoshone-Bannock, was appointed NARF's Deputy Director in December 1985. Jeanette joined NARF in 1982 and has worked as a law clerk in the Washington, D.C. office. She replaces Jeanne S. Whiteing who had served as Deputy Director since May 1981. As deputy director, Jeanette is responsible for case intake and litigation coordination, in addition to her duties as staff attorney and director of NARF's Voting Rights Project. She received her J.D. degree from the University of New Mexico in 1982 and is admitted to practice law in Colorado. Jeanette has made conference presentations on voting rights, Indian political participation,and other Indian law issues. She has also written articles on Indian gaming, Indian civil rights and the Indian Religious Freedom Act.

NATIONAL SUPPORT COMMITTEE

Amado Peña is a Yaqui/Chicano artist whose work has been the subject of over 100 one-man exhibits across the country. For fifteen years Peña taught in the Texas public schools. Throughout these years he traveled the Texas arts and crafts circuit; the demand for his work became so great that Peña was forced to leave the classroom. His career in art has since grown from the small studio in Austin to the expansion of three prominent El Taller Galleries in Austin, Santa Fe, and Taos. Among the major public collections including work by Peña are: The White House, the Smithsonian Institute, California State University at Long Beach, the El Paso Museum of Art, The University of Texas Huntington Art Gallery, Nuevo Santander Museum, the Whitney Museum, and Tracor Corporation.

On behalf of the Steering Committee and staff, we would like to welcome Amado Peña to the National Support Committee of the Native American Rights Fund.

Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302

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