

# NARF

# Review

Native American Rights Fund

## Washington Tribes Prepare For Trial To Protect Water and Land Claims

The United States Federal District Court for the Western District of Washington will be hearing two significant Indian law cases for the Muckleshoot and Swinomish Tribes. NARF represents the Tribes in these two cases scheduled for trial within the coming year.

In *Muckleshoot Tribe v. Puget Sound Power and Light Company*, scheduled for trial November 1986, the Court will determine the amount of water the Tribe is entitled to receive from the White River and Coal Creek. In 1911, Puget Sound Power and Light Company built a hydroelectric plant on the White River which has been diverting the river's flow away from the Muckleshoot reservation. The diversion has essentially destroyed the Tribe's on-reservation fishery.

In *Swinomish Tribal Community v. Burlington Northern Inc.*, scheduled for trial in May 1987, the Court will determine the ownership of tidelands and other submerged lands surrounding the boundaries of the Swinomish Reservation. The Tribe claims that Burlington Northern Railroad, Inc., Trans Mountain Oil Pipeline Corporation and Cascade Natural Gas Corporation have been trespassing on tribal lands.

### Muckleshoot Tribe v. Puget Sound Power & Light Company

In this case, the Tribe is seeking damages for the diversion of water away from its reservation and fishery. In addition, the Tribe seeks a declaration of its water rights. The power company claims that it is entitled to the water from a condemnation judgment obtained by Puget Power in state court against individual Muckleshoot Indians. The City of Auburn bases its claim to water on the purchase of Muckleshoot trust allotments.

Specifically, the federal court will review: 1) whether the United States intended to reserve water from the White River and Coal Creek for the Muckleshoot Reservation; 2) whether one of the primary purposes in creating the Reservation was to establish an on-reservation fishery; 3) whether the treaty fishing rights granted to the Tribe in *United States v. Washington*, 384 F.Supp. 312 (W.D. Wash. 1974) carry an implied water right; and (4) whether the Tribe is entitled to damages for interference with its federally protected rights.

In its case against Puget Power, the Tribe first asserts that its water rights are based upon the doctrine established in *Winters v. United States*, 207 U.S. 564 (1908). Under the "Winters Doctrine" when a reservation is created, it impliedly reserves the water required to accomplish the purposes for which it was created. The Winters Doctrine is described in *Capperert v. United States*, 426 U.S. 128 (1976).

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*The Muckleshoot Tribe is seeking damages for the diversion of water away from its reservation*

*This Court has long held that when the federal government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right which vests on the date of the reservation and is superior to the rights of future appropriators. Reservation of water rights is empowered by the Commerce Clause, Art. I, Section 8, which permits federal regulation of navigable streams, and the Property Clause, Art. IV, Section 3, which permits federal regulation of federal lands. The doctrine applies to Indian reservations and other federal enclaves, encompassing water rights in navigable and non-navigable streams.*

*In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purposes for which the reservation was created.*

The Muckleshoot Tribe has been dependent on fish for its economic and subsistence needs since time immemorial. The historical facts concerning the background and history of the Tribe, and the

intent and circumstances of the Tribe's treaty have already been determined in *United States v. Washington*. In *United States v. Washington*, the Supreme Court upheld certain Indian tribes', including the Muckleshoot's, off-reservation treaty fishing rights.

The Muckleshoot Indian Reservation is located near the City of Auburn, Washington. The reservation was established in 1857 by Executive Order and was enlarged in 1874 by another Executive Order to include the White River and its tributary, Coal Creek. By granting the Tribe a reservation between the White and Green Rivers, the United States recognized that fishing was an important economic and cultural activity.

Retention of its fishing rights has always been a major concern to the Muckleshoot Tribe. The ancestors of today's tribal members signed two treaties with the United States, the Medicine Creek Treaty of 1854 and the Elliot Treaty of 1859. The treaties are also known as the "Stevens Treaties" because Indian Agent Isaac Stevens negotiated the treaties on behalf of the United States. In the two treaties, the Tribe ceded certain lands in the territory of Washington in exchange for certain religious,

cultural and economic rights. Those rights included the taking of anadromous fish from the White and Stuck River and its tributaries, including Coal Creek. In the Medicine Creek Treaty, The Tribe's ancestors specifically reserved on-reservation and off-reservation fishing rights at their usual and accustomed fishing places.

The Tribe also maintains that one of the purposes for the creation of its reservation was to secure an on-reservation fishery. The two legal bases for this position are defined in the cases, *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983), and *Colville Confederated Tribes v. Walton*, 752 F.2d 397 (9th Cir. 1985). In *Adair*, the Court set up guidelines to determine the purpose of a reservation. The factors that must be examined are: 1) the intent of the parties and surrounding circumstances of the treaties and 2) the rights guaranteed by treaty. Under *Adair*, the Tribe argues that the treaties specifically reserved the right to continue fishing as an economic and cultural lifestyle and that they reserved to the Tribe on-reservation fishing rights as well as off-reservation fishing rights at the Tribe's usual and accustomed fishing places.

The Tribe argues that the 1874 Executive Order also defines the purpose of the reservation to include a fishery. This is because the Executive Order set aside lands containing Coal Creek and portions of the White River "for the exclusive use" of Muckleshoot Indians. In *Muckleshoot Indian Tribe v. Trans-Canada Enterprises, Inc.*, 713 F.2d 455 (9th Cir. 1983), the Court found that the Executive Order conveyed the bed of the White River and its waters to the Tribe for communal fishing purposes.

Finally, the Tribe argues that the treaty fishing rights adjudicated in *United States v. Washington* carry an implied reservation of water rights. Thus, in order to fulfill the purpose of the Treaty, water is essential. This reasoning is based on *Walton*, a case in which the Court found that salmon and trout were traditional food for Colville Indians and therefore water was impliedly reserved for fishing, and in *Adair* the Court found that water was necessary to fulfill treaty fishing rights. Support for the implied reservation argument can also be found in *United States v. Washington* in which the Court upheld the Muckleshoot Tribe's treaty right to fish from the White River and its tributaries. The Court further stated that without sufficient water essential to the survival of fish, the treaty right would be meaningless.

Thus, there are many past cases in which the courts have not hesitated to imply essential rights that are necessary to give effect to express treaty rights. The Muckleshoots are following a long-standing tradition whereby tribes seek judicial enforcement of their reserved treaty rights; the

importance of which were recognized long ago by the Supreme Court in *Winters v. United States* and *United States v. Winans*, 198 U.S. 371 (1905). In *Winans*, the Court held that an off-reservation usual and accustomed treaty fishing right carried with it an implied right of access across off-reservation lands to the extent necessary to give effect to treaty rights.

### **Swinomish Tribal Community v. Burlington Northern, Inc.**

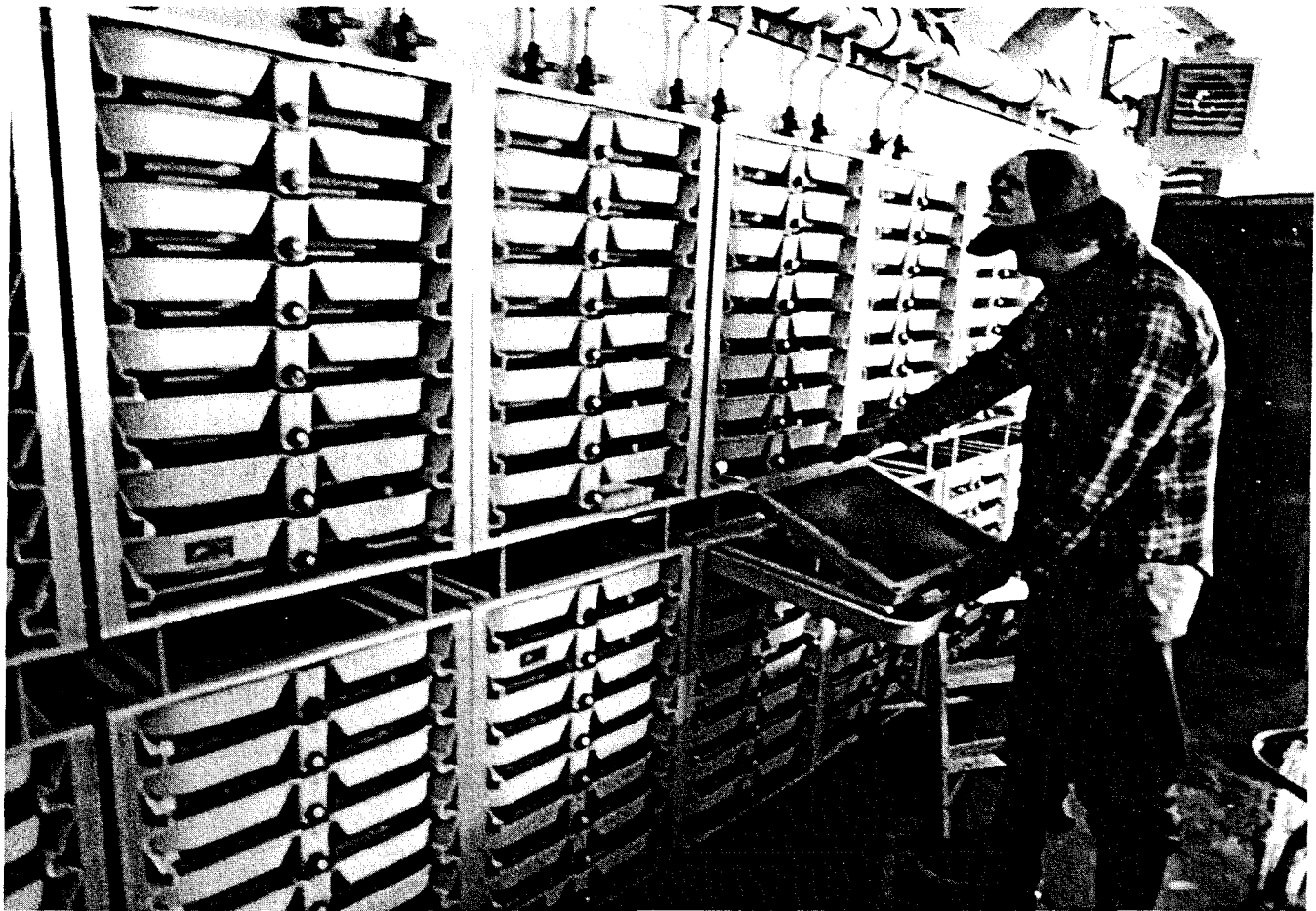
The Swinomish Reservation is located in northwest Washington about 60 miles north of Seattle, near the towns of Anacortes, LaConner and Mount Vernon. It was established by the Treaty of Point Elliott which was signed on January 22, 1855 and ratified and proclaimed by the President in 1859. The Reservation is fronted by Padilla Bay on the North, Similk Bay on the West, Skagit Bay on the South and Swinomish Slough on the East.

The Tribe is suing Burlington Northern Railroad, Inc., Trans Mountain Oil Pipeline Corporation and Cascade Natural Gas Corporation for trespass on lands that the Tribe claims are held in trust for the benefit of the Tribe. The Tribe claims that since the construction of the Railroad in 1890 it has been in trespass over the western half of Swinomish Slough and the tidelands located at the northern end of the Reservation. The Tribe also claims that since construction of the pipeline in 1954, Trans Mountain has been in trespass over the western half of Swinomish Slough and the areas of land known as Big Slough and Old Slough. The Tribe also claims that Trans Mountain trespassed on the former Ite allotment from 1974 to 1976. The allotment has been owned by the Tribe since 1971. Finally, the Tribe claims that Cascade has been in trespass over the western half of Swinomish Slough, Big Slough and Old Slough since 1976.

The two legal issues raised by the trespass claims are: 1) whether the lands at issue were reserved to or by the Tribe in the Treaty of Point Elliott and 1873 Executive Order, and 2) if the lands at issue were reserved to or by the Tribe, whether the Tribe has subsequently been divested of its title to those lands.

The tidelands and the beds and banks of the tidal sloughs at issue here are, or were, submerged lands. They were exclusively used and occupied by predecessors of the Tribe prior to 1855. It is the Tribe's position that these submerged lands were reserved to the Tribe by the 1855 Treaty of Point Elliott and the 1873 Executive Order and did not pass to Washington when it was admitted to the Union in 1889.

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*The Mucklesboot Tribe has been historically dependent on fish for its economic and subsistence needs*

The Supreme Court in *Montana v. United States*, 450 U.S. 544 (1981), reiterated the principles that are to guide courts in deciding when lands under navigable waters have been conveyed by the United States before statehood. In *Montana*, at issue before the Court was whether an 1868 treaty had conveyed title to the Big Horn River to the Crow Tribe. The Court held that because there was no apparent reason for the United States to convey the riverbed and because the treaty did not show that the United States had intended to convey the riverbed, it had not been conveyed and so had passed to Montana upon that state's admission to the Union. The Swinomish Tribe must apply the facts of their situation to the principles of *Montana*, and show that there were and are very apparent reasons for conveying these lands to the Swinomish Tribe, and the Treaty of Point Elliott shows that the United States did intend to do so.

The Treaty of Point Elliott was one of several treaties negotiated in western Washington Territory. The treaty was negotiated for the United States by a Treaty Commission. The Commission was directed to make agreements with tribes in order to ex-

tinguish their claims to land so they would not interfere with existing claims or the progress of settlement. The land reserved was to be suited for and acceptable to the Tribe. The reservation was to be set in an area of traditional fishing and shellfish gathering to provide an exclusive on-reservation fishery so that the Indians would be self-sustaining.

In acting to fulfill this public purpose, the United States had the authority to include within the reservation adjacent waters and submerged lands. The Treaty of Point Elliott and the 1873 Executive Order became law before Washington was admitted to the Union in 1889. The lands at issue were, at the time of the Treaty and Executive Order, the property of and under the domain and sovereignty of the United States, subject to the Indians' preexisting right of use and occupancy. Under these circumstances, it is clear the federal government had the power to include the lands at issue within the Reservation.

Historical evidence shows that the uplands of the Reservation were, and are, heavily wooded, and that the Swinomish Indians could not sustain themselves from the use of the uplands alone. The uplands

provided a place for the members of the Tribe to build homes and villages while the waters within and adjacent to the Reservation provided the means by which the tribal members could sustain themselves.

The tidelands of Padilla Bay and slough network at the northern end of the Reservation were part of one of the richest resource areas, in terms of native economy, in Puget Sound. The tidelands were a rich source of fish and shellfish for the Swinomish Indians. The slough network was also a prime source of fish for the Indians. In Swinomish Slough, the Indians constructed weirs and fish traps which were especially adapted to the conditions of the Slough and required, in most cases, the use of its eastern and western banks for streams. The Slough network was also an important avenue of transportation for the Indians. In addition, both the Padilla Bay tidelands and the slough network were abundant sources of waterfowl, small marine animals and useful plants for the Indians. The Tribe claims that the waters and submerged lands within the Reservation and adjacent of the uplands gave the Reservation a value for settlement and inhabitation which otherwise it would not have.

The lifestyle and main means of subsistence of the Swinomish Indians centered on fishing. For these reasons, exclusive use of the marine areas of the Reservation was vital. As noted, they had several villages on the northern slough network. The Tribe's ancestors expected that they would be located in an area where they could be self-sustaining. They looked on the Reservation "as a suitable location" because of the fisheries adjacent to the uplands of the Reservation, and they understood that those fisheries were included as part of the Reservation.

These policies were followed when the Swinomish Reservation was set aside. The Treaty Commissioners were aware of the lifestyle and diet of the Swinomish Indians, and the fact that the waters and submerged lands adjacent uplands of the Reservation would provide a perfect opportunity for Indians to sustain themselves from their rich marine resources. One of the Commissioners had actually traveled through Swinomish Slough before the negotiation for the Treaty of Point Elliott. Another Treaty Commissioner, George Gibbs, was a lawyer and ethnologist who had studied the Indians of western Washington Territory, and Michael Simmons and Benjamin Shaw were long-time residents of the area who had held positions in the Indian Service.

Given the fact that the purpose of the Treaty of Point Elliott was to prepare for the white settlement of Washington Territory while reserving areas that were suitable to the Indians, where they could remain self-sustaining, and given the situation and

needs of the Indians, it is inconceivable that the United States would reserve only the uplands of the Reservation to the Tribe. The Indians could not sustain themselves from the use of the uplands alone; the adjacent fishing grounds were equally essential.

Like the *Muckleshoot* case, the Tribe will rely on its treaties, historical and cultural record. Without extinguishment of Indian title to western Washington Territory and the placing of Indian tribes on small reservations, the imminent white settlement of the area would have been retarded. And, without the reservation of the waters and submerged lands adjacent to the Reservation, the Swinomish Indians would not have been able to sustain themselves. Given this set of circumstances and the fact that the Treaty Commissioners were aware of the Indians' condition, it is the Tribe's position that the submerged lands at issue were reserved for apparent reasons and with intent.

(Article prepared by  
Susan Arkeketa, editor and Anita Austin, law clerk)





# Indian Cases In The Supreme Court (1986 Term)

In the 1985-86 United States Supreme Court term, the Court decided six Indian law cases. The Indian law issues addressed by the Court included historic land claims, Indian religious freedom, treaty hunting rights, tribal sovereignty, and taxation.

## Catawba Land Claim

Justice Stevens wrote the majority opinion in *South Carolina et al. v. Catawba Indian Tribe of South Carolina*. In the case, the Catawba Tribe asserted claim to a 225-square-mile tract of land (144,000 acres) located in northern South Carolina, and trespass damages for the period of its dispossession. The Catawba Tribe based its claim to the land on a 1840 treaty between the Tribe and South Carolina in which the Tribe conveyed its interest in the land in return for lands to be purchased on their behalf by the state. The Tribe claimed the conveyance violated the Non-Intercourse Act which was passed by Congress in 1790. The Non-Intercourse Act prohibited any purchase, grant, lease or conveyance of tribal land without the consent of the United States. In 1840, the United States never consented to the conveyance of the land to the State of South Carolina. Accordingly, the Tribe's purported conveyance to South Carolina in 1840 was null and void.

In the 6-3 decision, the Court construed a 1959 Catawba Indian Tribe Division of Assets Act in which Congress authorized a distribution of certain tribal assets to tribal members. The Court interpreted the language in section 5 of the Act ("the laws of the several states shall apply to them in the same manner they apply to other persons or citizens within their jurisdiction.") as permission to apply all state laws including the statute of limitations to the Tribe and all its claims. The Court did not determine whether the statute of limitations bars the Tribe's claim. The case was remanded to the Court of Appeals for the Fourth Circuit.

## Allotment Action

In *United States v. Mottaz*, the Court unanimously held that an Indian heir's claim against the United States to land was barred by a twelve-year statute of limitations. Florence Mottaz, a member of the Leech Lake Chippewa Tribe in Minnesota, inherited a fractional interest in three Leech Lake allotments. In the early 1950's, other holders of the fractional interests in the three allotments petitioned the



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Department of Interior to permit them to sell the allotments. Mottaz was notified of the petition, but she did not consent to the sale. In 1954, the federal government sold the allotments to the United States Forest Service despite the lack of express consent from every person who had an interest in the land.

In 1981, Mottaz filed suit against the United States alleging that the sales of her three allotments made without her consent were illegal and therefore void. She sought to quiet title to the allotments and recover monetary damages equal to the current fair market value of each allotment.

The Supreme Court concluded that the Quiet Title Act provided the exclusive means by which Mottaz could challenge the government's title to the allotments. Accordingly, the Court held that the twelve-year statute of limitations in the Quiet Title Act barred the Mottaz claim. The Court ruled that Mottaz should have known that the United States had a claim to the allotments in 1967 when she contacted the Bureau of Indian Affairs. The fact that the United States did not recognize her interest in the allotments was sufficient to start the statute of limitations running.

## Abrogation Of Treaty Hunting Rights

The Court in *United States v. Dion*, held that the Bald Eagle Protection Act abrogated (abolished) an 1858 treaty right to hunt bald and golden eagles on the Yankton Sioux Reservation in South Dakota. Dwight Dion, Sr., a member of the Yankton Sioux Tribe, was convicted of shooting eagles on the Reservation, and selling parts of the eagles in

violation of the Endangered Species Act and the Bald Eagle Protection Act. The Court of Appeals for the Eighth Circuit affirmed the convictions except for those based on the Endangered Species Act, and the Eagle Protection Act. The Eighth Circuit held that tribal members have a treaty right to hunt eagles within the reservation for noncommercial purposes.

The Supreme Court reversed the circuit court and ruled that the treaty right could not be used as a defense to the criminal charges. The Court determined that Congress intended to abrogate Indian treaty rights to take eagles when it amended the Bald Eagle Protection Act in 1962. The Court noted that under the Act Indians are allowed to use eagles for religious purposes if a permit is first obtained from the Secretary of Interior. The Court declined to consider the issue of whether the Eagle Protection Act invades Indian religious freedom rights.

### **Tribal Sovereignty**

The Court, a second time, reviewed the jurisdictional conflict in *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering (Wold II)* case. The case involved an Indian Tribe suing a non-Indian contractor in state court for breach of a contract in connection for work done on the Reservation. The State of North Dakota Supreme Court dismissed the suit reasoning the court lacked jurisdiction because the Tribe had never consented to state court jurisdiction over the Reservation under a state statute. The State Court further held that the Tribe was barred from maintaining its suit in state court unless the Tribe waived its sovereign immunity and agreed to the application of state civil law in all state court civil actions to which it may be a party.

The Supreme Court reversed the North Dakota Supreme Court's decision. The Court held that the disclaimer of jurisdiction by North Dakota was inconsistent with federal law, particularly Public Law 280 which contemplated states extending state court jurisdiction over actions arising in Indian country. Additionally, the Court found the condition placed on Tribes to gain access to state courts was unduly intrusive on the Tribe's sovereign immunity and thus on its ability to govern itself.

### **Taxation of Cigarette Sales**

In *California State Board of Equalization v. Chemehuevi Indian Tribe*, the Court held the Chemehuevi Tribe was required to collect a California state tax on cigarette sales to non-Indian purchasers. In prior Indian law Supreme Court cases, the Court announced a standard to determine whether a tax applied to sales on Indian reservations. Under the standard, a state tax will be allowed on

smokeshop sales to non-Indian purchasers where the legal incidence of the tax falls upon the non-Indians and not the Tribe. In this case, the Court interpreted the California tax as falling on the purchasers rather than the tribal business.

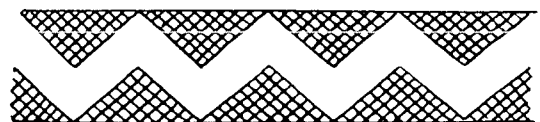
A troubling aspect of the case is the Court's decision to summarily dispose of the case on the state's petition of certiorari to have the Court review the case. The Tribe had no opportunity to brief or argue the state tax issue to the Supreme Court.

### **First Amendment Right**

The final case of the term did not raise an Indian law question per se, but involved an Indian individual. In *Bowen v. Roy*, the Supreme Court reviewed whether a Pennsylvania Department of Public Welfare eligibility requirement that an individual applicant provide a social security number was in violation of the Free Exercise Clause of the First Amendment. The Court found the requirement did not violate the individual's constitutional rights.

In this case, Stephen Roy, an Abenaki Indian contended that obtaining a social security number for his daughter, Little Bird of the Snow, would serve "to rob the spirit of his daughter and prevent her from obtaining greater spiritual power." The Court, however, found that the Free Exercise Clause "affords an individual protection from certain forms of governmental compulsion; it does not afford an individual a right to dictate the conduct of the government's internal procedures." Further, the Court concluded that the statutory requirement is wholly neutral in religious terms and uniformly applied. Therefore, an exemption would not be given to Roy who sought governmental benefits.

At the first blush, the one victory and five defeats in the five Indian cases decided by the Supreme Court this term, appears to be devastating. A closer look at the decisions, however, reveals that the decisions were certainly not surprising nor legally unreasonable. The *Dion* case received the most attention from Indian country and the Court's decision in abrogating a treaty right to hunt eagles will have significant ramifications in Indian country. The Court, however, did not determine that Indians are barred from taking eagles for religious purposes. The Court's decision in *Wold*, however, reaffirmed long-standing principles of sovereign immunity and tribal autonomy, and access to tribal courts. Overall, the cases were based on narrow legal grounds, and should not have broad implications in Indian country.



# Case Updates

## Federal Court Approves Oil Settlement Agreement

In early July, the district court of Kansas approved a settlement agreement entered into by the parties in the case of *In Re: The Department of Energy Stripper Well Exemption Litigation (Stripper Well)*. The *Stripper Well* case involves the refunds of overcharge monies that were collected illegally by petroleum companies during the years 1973 to 1981. These refunds are due because of violations of petroleum price regulations that were in effect during that period. The settlement agreement includes a provision which would require states to fund tribal energy-related restitutionary programs. Under the agreement, all 50 states will receive a large percentage of a total escrow fund. Each state will receive a percentage of money based upon their consumption of stripper well products during the 1974-81 period. The tribes will be notified by the states and each tribe must submit a proposal regarding a tribal energy-related program, i.e., winterizing houses. NARF handled the intervention and settlement negotiations for the National Congress of American Indians.

## Certiorari Denied In St. Regis Mohawk Case

The Supreme Court declined to review the Second Circuit Court of Appeals' decision denying the St. Regis Mohawk Tribe's petition to review an administrative law judge's (ALJ) decision. The ALJ decision disallowed certain tribal expenditures under the Comprehensive Employment and Training Act (CETA) and directed repayment out of non-CETA funds. The Tribe argued that the Secretary of Labor was barred from seeking repayment of the disallowed costs because he failed to comply with the jurisdictional 120-day limitation period.

The Supreme Court declined to review the St. Regis Mohawk case following its decision in *Pierce County v. Brock*, which raised the same issue. In *Brock*, the Court held that the limitation period does not divest the Secretary of Labor of authority to act after 120 days have passed. NARF represented the Tribe.

## Secretary Approves Southern Ute Tribe's Water Rights Settlement

On June 30th, 1986, the Secretary of the Interior approved an agreement to resolve the Ute Mountain Ute Tribe's and the Southern Ute Tribe's rights to water in southwest Colorado. The keystone to the agreement is the construction of the Animas LaPlata Project. The agreement reflects a joint effort between the State of Colorado, the Tribes, and non-Indian users in their efforts to secure water for the area by construction of the federal water project.

The terms of the negotiated agreement stipulate that the two Tribes will (1) receive \$60.5 million for economic development, (2) that they will be guaranteed 87,000 acre feet of water to be stored and available to them from the Dolores and ALP Projects for industrial, agricultural and other beneficial purposes, and (3) that they will receive a settlement of their water claims on the other streams crossing the two, resulting in approximately 42,000 acre feet of water. NARF represented the Southern Ute Tribe in the negotiations.

## Trust Relationship Exists Between Tribe And State

On July 21, 1986, the federal district court in *Alabama-Coushatta Tribe v. Mattox, et al*, held that the State of Texas assumed the trust duties and responsibilities previously exercised by the United States upon the enactment of a 1954 Act which terminated the federal relationship with the Alabama-Coushatta Tribe. Additionally, the court ruled that the 1954 Act imposed upon the State the duty to accept and hold certain tracts of land in trust and the Act did not terminate the Tribe's existence as a tribal government. The Tribe is represented by NARF.

## Eighth Circuit Declares South Dakota Owns Bed Of Lake Andes

The Eighth Circuit Court of Appeals reversed the district court's decision that the Yankton Sioux Tribe owns the bed of Lake Andes located within the boundaries of the Yankton Sioux Tribe's Reservation. The Tribe argued that it held aboriginal title to the lakebed which was confirmed by the Treaty of 1858, and its title has never been extinguished. The Court, however, determined that in 1803 the United States acquired title under the Louisiana Purchase and held underlying navigable waters in trust for the future states. Thus, the State of



# Case Updates continued . . .

South Dakota acquired title to the land in 1889 under the equal footing doctrine. NARF represents the Tribe and has filed a motion for reconsideration.

## Gambling Casino Held In Violation Of Federal Law

On July 18, 1986, in *United States v. Dakota and Keweenaw Bay Indian Community*, the Sixth Circuit affirmed the decision of the district court finding members of the Keweenaw Bay Indian Tribe in violation of federal law. The Court held the Dakota's casino gambling operation, located on their reservation, violated the Organized Crime Control Act of 1970. The Act makes it a federal crime to run a gambling operation which is in violation of state law. In Michigan, state law prohibits commercial gambling with the exception of non-profit organizations who are allowed to carry on limited gambling activities for fundraising purposes. The Court found that the Dakota's operation was prohibited under state law and thus violated the Organized Crime Control Act. NARF filed an *amicus curiae* brief in the case on behalf of the Bay Mills Indian Community.

## Otu'han

**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.

### In the spirit of the Otu'han, the Native American Rights Fund has received recent gifts in memory of:

Edith Mae Miller by Sylvia Kenyon  
Ruth Kuhlman by Mr. & Mrs. David Dunatchik  
Kimberly Ann Kingsbury by Mary & Wm. Wilcox  
Wanahancee by Mrs. Sally C. Trippe  
Larry L. Keemer by Leland & Virginia Keemer  
Frances Rosales Bomar by Phyllis J. Senter  
Ethel Dupuis by Delphis J. Dupuis  
Mrs. Barbara Hottinger by Evelyn L. Hintze  
David Pointer by Elizabeth (Jo) Pfender  
Mother of Henry Cunningham by Joy Woodard  
Elizabeth Little Fawn Heterilla by Sidney Ravden  
Grete J. Hase by Elizabeth W. Kenaya  
Harry C. Wasasier by Lucile L. Wasasier  
George R. Randel by Mr. & Mrs. R. B. Randel  
Christopher M. Sosa by Pablo, Andrea & Aurora Lopez  
Adeline Bryan by Pauline S. Merrill  
Edwin Adelman by Anonymous  
Elsie Clews Parsons by Anonymous  
Frederick J. Schultz by Mrs. Jennie S. Schultz  
Blanche Marie Annetts by Paul W. Annetts  
Anna Mae Aquash by Michael Seeley  
Bernard Socolosky by Mr. & Mrs. Andy Beltramello  
Jack E. Engleman by John Engleman  
Homer G. Kellogg, Jr. by Winifred Kellogg  
Werner Kniepke by L. W. Guile III  
Verlin Carroll by Mrs. Zelma Gordon

Erwin R. Boynton by Margaret B. Boynton  
Bernice Peltzman by Donna F. Whiteman  
Wherry E. Zingg by Elizabeth Zingg  
Dale Reynolds Kindness by Mike Eakin  
Mary Ann by Zelma R. Gordon  
Ann Marie Thiesen by Veronica Heszman  
Mina Salter French by Ronald R. Brand  
Elvis Aron Presley by Gerri Pierce  
Wanda J. Adam by Julie Adams

For more information on the Otu'han program please write Marilyn E. Pourier, Planned Giving Coordinator, c/o NARF, using the envelope enclosed with this newsletter.

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 justice for the First Americans.



# **NARF Resources & Publications**



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## **The National Indian Law Library**

The National Indian Law Library (NILL) has developed a rich and unique collection of legal materials relating to Federal Indian law and the Native American. Since its founding in 1972, NILL continues to meet the needs of NARF attorneys and other practitioners of Indian law. The NILL collection consists of standard law library materials, such as law review materials, court opinions, legal treatises, that are available in well-stocked law libraries. The uniqueness and irreplaceable core of the NILL collection is comprised of trial holdings and appellate materials of important cases relating to the development of Indian law. Those materials in the public domain, that is non-copyrighted, are available from NILL on a per-page-copy cost plus postage. Through NILL's dissemination of information to its patrons, NARF continues to meet its commitment to the development of Indian law.

## **The NILL Catalogue**

One of NILL's major contributions to the field of Indian law is the creation of the *National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources*. The *NILL Catalog* lists all of NILL's holdings and includes a subject index, an author-title table, a plaintiff-defendant table, and a numerical listing. This reference tool is probably the best current reference tool in this subject area. 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 by 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: \$10.00) (NILL No. 005166)

## **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: \$25.00)

## **Indian Rights Manual**

**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. Part II consists of practice pointers: questions to ask when analyzing resource protection issues; strategy considerations; and the effective use of law advocates in resource protection (151 pgs. Price: \$25) (NILL No. 004620)

**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). (NILL No. 004621)

**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 difference between tribal economic development and private business development, the manual discusses the task of developing 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). (NILL No. 004623)

**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). (NILL No. 004622)

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### 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, 22 Riverview Drive, Wayne, NJ 07470 (201-628-9111).

**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.



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## Native American Rights Fund

The Native American Rights Fund is a nonprofit organization specializing in the protection of Indian rights. The priorities of NARF are: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law.

Our work on behalf of thousands of America's Indians throughout the country is supported in large part by your generous contributions. Your participation makes a big difference in our ability to continue to meet the ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance.

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