

NARF

Native American Rights Fund

LEGAL REVIEW

CATAWBA TRIBE APPROVES SETTLEMENT WITH SOUTH CAROLINA

I feel like we're on the edge of a new day for the Catawba people. Nothing will replace the loss of our lands but this settlement is a tool that will allow us to create a better way of life for our children.

Chief Gilbert Blue,
Catawba Tribe

On February 20, 1993, the Catawba Indian Tribe of South Carolina met and approved by a vote of 289 to 42, an Agreement in Principle to settle the Tribe's 150-year old land claim. If the proposed settlement is enacted into law, the Tribe will be restored as a federally-recognized Indian tribe; the existing state reservation may be expanded to a 4,200-acre federal reservation; economic development and other trust funds will be created; and per capita payments totalling \$7.5 million will be made. The Tribe and its members will become eligible for Federal Indian services, including education, health, social services and housing. The settlement is modeled after the Maine Indian Land Claims Settlement Act that settled the land claims of the Passamaquoddy and Penobscot Tribes in 1980.

The total value of the proposed settlement is estimated to be between \$80 and \$90 million dollars: \$50 million of which will be paid over a period of 5 years by the Federal Government (\$32 million) and state, local, and private sources (\$18 million). The remainder of the \$80 to \$90 million lies in the estimated value of services and in-kind contributions from Federal agencies and state and local governments over a long period of years. In exchange, the Tribe agrees that its land claim arising out of the

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TRIBAL SOVEREIGNTY

"I believe that the rights of tribes . . . are inherent, and that when we talk about our rights as tribal people, we should be talking about the rights we have had since time immemorial . . ."

Wilma Mankiller, Principle Chief,
Cherokee Nation, 1991

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LEGAL REVIEW

1840 Treaty of Nation Ford will be forever extinguished, together with any other rights arising out of the 1760 and 1763 Treaties or aboriginal title.

While the proposed settlement has the support of the South Carolina Congressional delegation, the Governor and local governments, it must still be enacted into law by Congress and the State of South Carolina. If the settlement is not approved by Congress, the Tribe will be forced to sue 61,767 persons individually who presently claim ownership of the Tribe's 144,000-acre Treaty Reservation.

SUMMARY OF THE AGREEMENT IN PRINCIPLE TO SETTLE THE LAND CLAIM OF THE CATAWBA TRIBE OF SOUTH CAROLINA

Restoration. The trust relationship between the Tribe and the United States will be restored; the Tribe will become a federally-recognized Indian Tribe and it and its members will be eligible for Federal Indian services, including education, health, social services, and housing. The 1959 Termination Act will be repealed.

Tribal Trust Funds.

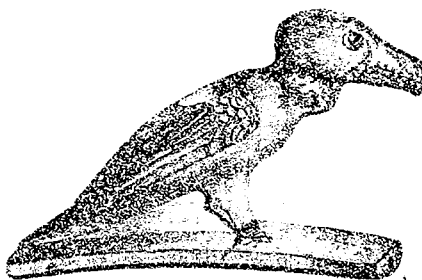
Over a five-year period, the Federal Government and State of South Carolina will contribute \$50 million to be placed into five trust funds: a Land Acquisition Trust, an Economic Development Trust, a Social Services and Elderly Assistance Trust, an Education Trust, and a Per Capita Payment Trust. The Secretary of the Interior will manage and invest the trust funds unless the Tribe chooses to use private sector investment managers with proven competence and experience.

rience. Generally, the Tribe will determine how much money will be placed in each trust fund, except that the Agreement requires \$7.5 million to go to the per capita payment fund and \$6 million to go to the Education Trust. Except for the per capita payment fund, the trust funds are set up to be permanent funds. With some limitations, the Tribe may transfer money among trust funds and the Secretary or private investment manager is required to provide the Tribe an accounting at least annually.

Expanded Reservation. The existing reservation may be expanded to 3,000 acres, plus an additional 600 acres of undevelopable land (flood plains or wetlands, for example). Another 600 acres could be added to the reservation with the approval of the Secretary of the Interior, county councils and the State Legislature, bringing the maximum reservation size to 4,200 acres.

The additional land must be purchased from willing sellers within two defined areas close to the existing reservation, and will be bought by the Tribe from money in the Land Acquisition Trust. The Secretary of the Interior and a professional land planning firm will assist the Tribe in developing a reservation development and land acquisition plan. The Tribe is required to make every effort to buy land that borders the existing reservation, but if that is not possible, the Tribe may buy lands in up to three non-contiguous tracts if they are reasonably close to the existing reservation, within the two defined zones, and the county councils and the Governor approve the Tribe's plan for such a configuration. If land cannot be purchased within the two defined zones, the Tribe may buy reservation land in an undefined third zone to be proposed by the Tribe if the Secretary and the State and local governments approve.

The Tribe will coordinate its planning activities with the City of Rock Hill, York and Lancaster Counties, and the State of South Carolina to ensure that the expanded reservation has access to roads and sewage treatment. Major land purchases for the reservation must be completed within 10 years of the final settlement payment; some minor purchases to round out or connect non-contiguous reservation tracts may be made for 20



years after the final settlement payment. The Tribe may buy and sell non-reservation land without restriction. Such land would have the same tax and legal status as any other land in the State, but would be eligible for federal grants and other Indian services and benefits.

Tribal Government, Jurisdiction and Governance.

The Tribe may organize its government under the Indian Reorganization Act if it chooses and the Indian Civil Rights Act will apply. The governmental powers of the Tribe will be those that are expressly set out in the Agreement in Principle, and powers not set out for the Tribe will reside in the State. The Tribe will have jurisdiction over internal tribal matters, including the powers: 1) to zone and regulate the use and disposition of tribal property; 2) to define laws, petty crimes and rules of conduct applicable to members of the Tribe while on the reservation, supplementing but not supplanting criminal laws of the State of South Carolina; 3) to regulate the conduct of businesses located on the reservation; 4) to levy taxes; 5) to grant exemptions or waivers from any tribal laws, tribal regulations or tribal taxes, except the Tribal Sales and Use Taxes, otherwise applicable on the reservation, including waivers of the jurisdiction of any tribal court; 6) to adopt its own form of government; 7) to determine its own membership; 8) to charter tribally-owned economic development corporations and enterprises; and 9) to exclude non-members from its membership rolls and from the reservation, except on public roads, the Catawba River, and public or private easements. The Tribe will possess the same immunity from suit as cities and counties possess in South Carolina and will be required to carry the same level of liability insurance as cities and counties are required to carry.

The State will continue to exercise criminal jurisdiction over Indians and non-Indians on the Tribe's reservation. If the Tribe desires, it may provide in its Constitution for a tribal court with concurrent criminal jurisdiction over tribal members only that is limited to the same jurisdiction exercised by a state magistrate's court over misdemeanors and petty offenses that would be specified in ordinances adopted by the Tribe. The Tribe has the option of employing tribal police officers if they receive the same training as Sheriff's deputies and are cross-deputized by the York and Lancaster County Sheriffs Departments.

The Tribe may also elect to establish a civil court. The tribal court's civil jurisdiction would be limited to matters arising on the reservation and would be concurrent with the civil jurisdiction of the State in most circumstances. With some limitations, the tribal court would have jurisdiction over cases involving the Tribe or its members in the following areas: 1) contracts made or to be performed on the reservation; 2) cases involving injury caused by negligence (non-Indians could have their cases removed to State court); 3) internal matters of the Tribe; 4) domestic relations where both spouses to the marriage are tribal members; 5) enforcement of tribal laws regulating conduct on the reservation; and 6) cases arising under the Indian Child Welfare Act. Most tribal court cases would be appealable to state court and the Tribe would have the ability to waive the authority of the tribal court.

The State will have environmental regulatory jurisdiction and state health codes will apply on the new reservation. The Tribe agrees to adopt local building codes and hunting, fishing, and water rights will be subject to state regulation.

Taxation. The Tribe, the tribal trust funds and tribally owned enterprises will be non-taxable for federal income tax purposes like other federal tribes and its income will be non-taxable by the State for 99 years. Federal trust lands will be exempt from real property taxes, and improvements on the land will be exempt from real property taxes for 99 years. The Tribe will make substitute payments to support its children in the public schools. The State will

not tax any sales occurring on the reservation, but the Tribe agrees to impose and collect a sales tax equal to the State's sales tax. Purchases by the Tribe in its governmental capacity will be exempt from State sales and use taxes for 99 years. The Tribe will have the same Federal tax treatment as other Federal tribes under the Indian Tribal Government Tax Status Act and will be able to issue bonds to finance certain projects.

Members of the Tribe, like members of other Federal tribes, will pay Federal tax on income earned on the reservation. Unlike members of other Federal tribes, they will also pay state income taxes on income earned on the reservation, unless they work for the Tribe performing governmental functions, in which case they will not pay state income taxes for 99 years. Per capita payments will be exempt from state and federal income taxes. Income from the sale of pottery and artifacts made by members of the Tribe on or off the reservation will be exempt from Federal, state and local income taxes, and the sale itself will be exempt from sales and use taxes. Members' homes will be exempt from property taxes for 99 years. Members' personal property, such as cars and boats, will be subject to state tax.

Games of Chance.

The Agreement in Principle gives the Tribe the option of having bingo and video machines. Generally, state law would govern any gaming on the reservation and only those gaming activities that are permitted by State law would be permitted on the Reservation. However, the Tribe would be permitted to sponsor much higher stakes bingo games (\$100,000 more frequently (unlimited number of games, six days a week) than is permitted other bingo operators in the State. The State would tax tribal bingo proceeds at a rate of 10% of gross — a tax rate slightly lower than that paid by other bingo operators in the State. The Indian Gaming Regulatory Act would not apply on the Catawba Reservation.

Tribal Membership.

The Tribe's membership will be determined by the Tribe, and the settlement legislation will incorporate the Tribe's own membership requirements, that is, descendancy from someone listed on the 1961 Federal



roll. The minimal state services and tax exemptions for individuals and the Tribe that will cease after 99 years will have no effect on the Tribe's membership, its federal relationship, or its eligibility for federal services.

CATAWBA TRIBE V. SOUTH CAROLINA

A History of Perseverance

by Don B. Miller

Too often we neglect the past. Even more than other domains of law, the intricacies and peculiarities of Indian law demand an appreciation of history. Justice Harry A. Blackmun, dissenting from the Supreme Court majority's opinion in *South Carolina v. Catawba Indian Tribe*, June 2, 1986; quoting Justice Felix Frankfurter

On November 10, 1763, in a Treaty at Augusta, Georgia, the Catawba Tribe sought and was guaranteed protection from the onslaught of white settlement. In return for a solemn agreement by the King of England and the Governors of the Southern Colonies that the Tribe would be forever protected in possession of its lands, the Tribe reserved a 144,000-acre tract and ceded its aboriginal territory (comprising much of the present state of North and South Carolina) to the King. But in 1840, the State of South Carolina took the Tribe's lands, attempting to extinguish forever the Catawba Tribe's title to the 144,000-acre Reservation through a "treaty" in which the United States did not participate. The State did not

honor the terms of the "treaty." And because federal law has, since 1790, plainly stated that only Congress may extinguish Indian title to land, the Tribe's dispossession by the State of South Carolina has precipitated a political and legal struggle that has spanned a century and a half.

Lately, that struggle has been waged in the federal courts, in the halls of Congress and the South Carolina Legislature and in several federal agencies. Over the last decade, it has escalated into an expensive high-stakes struggle for all concerned. In 1980, following the failure of a four-year effort to settle the claim without resorting to litigation, the Catawba Tribe sued 76 individuals and corporations seeking a return of the Treaty Reservation and trespass damages. The defendants were sued as representatives of the tens of thousands of non-Indians who currently occupied the Tribe's Treaty Reservation. At the time of this writing, the case has been heard once by the United States Supreme Court and five times by the United States Court of Appeals for the Fourth Circuit. On two other occasions, the Supreme Court has been asked to hear an appeal in the case and has declined. Later this month, the Supreme Court will be asked to hear a related claim by the Tribe against the United States which was dismissed by the Court of Appeals for the Federal Circuit on statute of limitations grounds.

The recent progress toward settlement was generated by the threat of a dramatic escalation in the scope and impact of the litigation. While resumed settlement talks had been ongoing since early 1990, progress had been slow and the extent of state and local support for a legislative (political) resolution was unclear. But in 1992, the federal courts refused to allow the case to proceed as a class action. This refusal started the running of a statute of limitations and left the Tribe no choice but to sue each occupant of the Treaty Reservation individually. In the Spring and Summer of 1992, as the Tribe finalized its preparations to sue 61,767 individuals for possession of the land they occupied before the October 18, 1992 deadline, the need for a legislative solution became more apparent to both the Indian and non-Indian communities

in and around Rock Hill. The filing of such a massive lawsuit would have placed a cloud on virtually all land titles in the area and would have devastated the regional economy. It would have paralyzed the federal courts and would likely have created substantial social unrest. To give the settlement process more time, Congress, in July, 1992, extended the statute of limitations until October 1, 1993. In August, 1992, the Tribe, Congressman Spratt and state negotiators made substantial progress toward an agreement to settle the claim. Based on the hope that a just settlement might at last be possible, the Tribe voted unanimously to rely on the Congressional statute of limitations extension and postpone filing suit against the 61,767 occupants. Settlement talks aimed at finalizing the agreement continued, and in the early morning hours of January 12, the negotiators finalized an Agreement in Principle. On February 20, 1993, the Catawba Tribe met in General Council and overwhelmingly approved the proposed agreement.

This protracted and expensive legal war is the modern legacy of official refusal, over the course of more than two centuries, to heed Catawba complaints and to enforce applicable laws protecting Indian lands — laws that predate even this Nation's existence. At least nine generations of tribal leaders have sought to obtain a settlement of the Tribe's claim that would restore at least some measure of the promise of self-sufficiency held out by the 1763 Treaty. Their appeals have, until recently, met with little success. This article is a history of the Tribe's centuries-long battle to regain possession of its lands.

The Colonial Period: The Reservation Established

The Catawbas' struggle to protect their lands from white settlers began well before the Treaty between the King and the Tribe at Augusta in 1763. Prompted largely by Catawba complaints of invading whites, the Provincial Council of the Royal Colony of South Carolina in 1739 passed "An Act to Restrain the Purchasing of Lands from Indians." Because of the Catawbas' importance to the Colony of South Carolina as a buffer from hostile tribes to the West, South Carolina actively sought to protect the

Tribe's lands throughout most of the eighteenth century. North Carolina, however, repeatedly ignored South Carolina's warnings and protests and refused to restrain its surveyors and settlers from entering Catawba lands, leading South Carolina in 1754 to recognize all lands within a 30-mile radius of the Catawba towns as Catawba lands. North Carolina and her settlers persisted, however, and the resulting dispute between North and South Carolina, coupled with a severe smallpox epidemic in 1759 that greatly weakened the Tribe, led to a major cession of tribal land in 1760.

Wee understand that ye Indians have made Complaints that some of or People incroach upon them. wee hope yu Adjusted that Business to there Satisfaction . . . if it bee not already done pray come to an agreement with ye Indians to there Satisfaction about there bounds and Lett none of or People Incroach upon you for ye future. . . .

British Lord Proprietors to the Governor and Council at Ashley River April 10 1677.

In that year, the King's Indian Agent met with the Catawbas and negotiated the Treaty of Pine Tree Hill, in which the Catawba Nation agreed to cede to the King its 60-mile diameter tract (2,826 square miles) in return for being permanently settled on a tract 15 miles square (225 square miles). Although the Treaty promised that the tract would be surveyed, a fort would be built for the Indians' protection, and white incursion would not be permitted, North Carolina predictably refused to abide by the Treaty and the Crown did little to fulfill its obligations.

Following the end of the French and Indian War in 1763, the Crown sought to ensure that peace would, in fact, come to the southern frontier. To this end it arranged a treaty with the five major southeastern tribes, all of which, except the Catawba, had been allied with the French. The governors of the southern colonies were directed to invite the chiefs of the Creeks, Choctaws, Cherokees, Chickasaws, and Catawbas to Augusta, and "to use every Means to

quiet their Apprehensions and gain their good Opinion." To further assure the Indians of the Crown's good intentions, King George III issued the Proclamation of 1763, forbidding any purchase of Indian lands without the Crown's consent. This predecessor of the federal Indian Nonintercourse Act formed the backdrop for the negotiations in Augusta later that year.

He informed the Governors his Land was spoiled, he had lost a great deal both by Scarcity of Buffalos and Deers, they have spoiled him 100 Miles every way, and never paid him, His Hunting Lands formerly extended to Pedee, Broad River etc. but now is driven quite to the Catawba Nation. If he could kill any deer he would carry the meat to his Family and the Skins to the White People but no Deer are now to be had, he wants 15 Miles on each side his Town free from any encroachments of the White People who will not suffer him to cut Trees to build withal but keep all to themselves.

Col. Ayres, Catawba Chief at Augusta, Nov. 9, 1763.

At Augusta, the Catawbas renewed their claim to the larger 60-mile diameter tract, but were told by the governors:

If you stand by your former Agreement your lands shall be immediately surveyed and marked out for your use but if you do not your claim must be undecided till our Great King's Pleasure is known on the other side of the Waters.

The next day the Catawbas and the King formally renewed the agreement reached at Pine Tree Hill three years earlier.

Despite the 1763 Treaty of Augusta, white encroachment continued. During the years that followed, South Carolina became less protective of the Tribe's lands and settlers began taking long-term leases from the Indians in violation of the Treaty and the Proclamation of 1763. Re-

newed Catawba complaints resulted in official proclamations, but no action was taken to remove the intruders.

The Treaty of Nation Ford: Possession Lost

Following the Revolutionary War, in which the Tribe fought on the side of the Colonies, the Catawbas appealed to the Continental Congress and, on at least two occasions, directly to President Washington to ask that the 1763 Treaty be enforced and their lands protected. In 1790, the First Congress enacted the Indian Nonintercourse Act, continuing the policy of the English Crown by strictly prohibiting purchases or leases of Indian lands without the consent and participation of the government. Nonetheless, neither Congress nor the President took any steps to protect the Tribe's lands.

At Majr. Crawford's I was met by some of the Chiefs of the Catawba nation who seemed to be under apprehension that some attempts were making, or would be made to deprive them of part of the 40 000 Acres wch was secured them by Treaty and wch. is bounded by this Road

Washington diary, Feb 27, 1791.

Beginning in the early nineteenth century, South Carolina enacted a series of laws purporting to legalize and regulate the leasing of Catawba lands to non-Indians. By the 1830's virtually the entire Reservation had been leased to non-Indians under the state system and several state commissions were appointed to negotiate a cession of the Reservation. These early commissions were unsuccessful due to tribal opposition, but at the Treaty of Nation Ford in 1840, the Tribe agreed to cede its lands in return for promises by the State to purchase a new reservation for the Tribe either close to the Cherokees in North Carolina or in an unpopulated area of South Carolina.

The State, however, failed to abide by the Treaty of Nation Ford and did not purchase a new reservation for the Tribe. Instead in 1843, it purchased a one-square-mile tract of

land located squarely in the middle of the 1763 Treaty Reservation that the Tribe had ceded almost three years earlier. It was not until 1853-54 that one of the commissioners who had negotiated the 1840 Treaty convinced the majority of the Tribe to settle on the tract.

In 1848 and again in 1854, Congress appropriated funds for the removal of the Catawba Tribe to the Indian territory west of the Mississippi, but the funds were not used due in part to Catawba opposition and in part to inability to find a host reservation.

They were then strong and felt themselves in their own greatness, governed by their own laws, working the best spots of their lands and leasing out the poorer portions to the white men. This state of things went on til the whites got King's Bottom, the last spot of the reservation. The poor Indians then felt their distress beginning, and run from house to house for the rents of their lands which they had leased out to the white people, which was generally paid in old horses, old cows or bed quilts and clothes at prices that the whites set on the articles taken. This brought on a state of starvation and distress.

Under this state of things, they wandered from place to place begging til 1839 when they proposed a treaty with the State, and relinquished all their rights and interest of this domain to the State of South Carolina. There were many efforts made previous to this by former Governors, to effect a treaty with the Catawba Indians, but always failed. They were then driven to it by being surrounded by white men cheating them out of their rights, and partaking of the vices of the whites and but few of their virtues, which is a distress to me.

Report to the Governor of South Carolina on the Catawba Indians by B. S. Massey Indian Agent December 12, 1853.

Early Efforts to Regain the Land

By the 1880's the Tribe had retained lawyers to investigate its claims and in 1905, represented by Washington D.C. lawyer, Chester Howe, it submitted a formal request for assistance to the Bureau of Indian Affairs (BIA). Basing its claim on the Indian Nonintercourse Act, the Tribe argued that the 1840 State Treaty was void and that it was entitled to rentals from the 1763 Treaty Reservation or to a recovery of possession of the land. Relying on the theory that the Catawbas were "State Indians" and thus not subject to the protection of federal law, the BIA rejected the Tribe's request and referred it to the State.

The Tribe then petitioned the South Carolina Legislature, which referred the matter to the State Attorney General for investigation. In a 1908 opinion, the Attorney General concluded that the 1840 Treaty was valid and that its terms had been fulfilled. The Tribe then renewed its request to the Interior Department which denied it again in 1909 for the same reason.

Once again the Tribe petitioned the State and in 1910, a State commission was formed to investigate the Catawbas and make recommendations to the legislature regarding what additional lands were needed. The Commission submitted its report to the Governor in January 1911 recommending, among other things, the purchase of an additional 1800 acres of land. The State took no action on this recommendation and newspaper accounts from 1916 reveal that at that time the Tribe was still seeking relief through lawyers and the courts.

This situation led to the establishment by the Legislature of yet another commission, appointed by the Governor, to confer with the Tribe on terms of a full and final settlement of all their claims against the State. On January 11, 1921 the Commission's report was submitted to the South Carolina House of Representatives by the Governor. Like the 1910 Commission, it recommended the purchase of additional lands for the Tribe.

The Legislature took no action on the Commission's report, but the Business Men's Evangelical

Club of Rock Hill took over the work of the Commission and developed a bill which would have, if enacted, provided for the purchase of farmland and a house for each Catawba family plus small per capita payments. On February 19, 1924, Governor McLeod endorsed the proposal, noting that "[a] proper and satisfactory settlement of our relationship with the Catawba Indians has long been a problem in South Carolina." Once again the Legislature failed to act.

Two Washington lawyers who were conducting the case died shortly after taking charge of it. A lawyer in Hamlet met the same fate while investigating the possibilities of the suit. A R. McPhall, of Charlotte, succumbed six months after taking the case. Now comes Oscar M. Abernethy, a young lawyer with no superstition in his hard-boiled make-up, who declares he will push the matter on to the supreme court of the United States in an effort to secure justice for these "vanishing Americans," who have been the consistent friend of the whites and will have been mistreated by the people they befriended.

The Charlotte Observer. "Last Appeal for Justice for Vanishing Catawba Indians: Charlotte Lawyer to Take Case to Highest Court and to Halls of Congress." August 12 1928.

The following year, Catawba Chief, David A. Harris, appeared before the South Carolina Legislature, without counsel, and asked that his people be given farms, homes, and citizenship. The General Assembly took no action on the Chief's appeal and by the late 1920's the Catawba Tribe was again looking to the courts and the United States for relief. This effort, as well as two subsequent appeals in 1929, were unsuccessful.

The Federal Period

South Carolina's persistent refusal to deal with the 1840 Treaty issue, together with the severe poverty of the Tribe, led to increased efforts to secure federal assistance. On March 28, 1930, a subcommittee of the Senate Committee on Indian Affairs

held hearings in Rock Hill to investigate the conditions of the Catawba Indians. In its 1934 session, the South Carolina Assembly enacted a concurrent resolution which resolved that the Catawba Reservation and the care and maintenance of the Catawba Indians should be transferred to the Federal Government upon proper legislation being enacted by Congress. Investigation into the needs of the Catawba Indians was undertaken by the BIA and other federal agencies in 1935 in an attempt to establish a rehabilitation program in cooperation with the State of South Carolina.

These efforts at securing federal assistance through administrative action were unsuccessful. Thus, in 1937, legislation was introduced that would have provided authority for the Secretary of the Interior to enter into contracts with the State for the welfare of the Catawba Tribe, provided that the State purchased lands which would be conveyed to the Federal Government in trust as an Indian Reservation.

During this period, the State was attempting to convince the Tribe to settle its reservation claim for \$250,000, to be distributed among the Tribe on a per capita basis. As the State had not informed the BIA that it desired a final settlement of the land claim as a condition to its participa-

tion in the rehabilitation program, the BIA acted quickly to forestall further action on the State's proposal until it could investigate the matter.

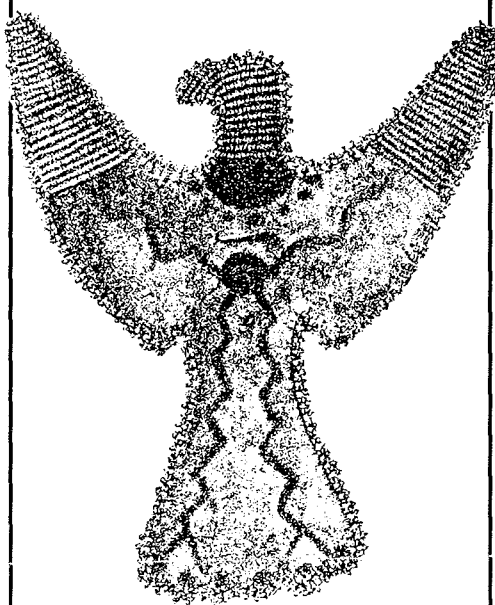
In February 1937, the BIA sent Administrative Assistant, D'Arcy McNickle, to South Carolina to investigate the "final settlement" issue. He discovered that the amount the State was discussing was \$100,000 rather than \$250,000 and conducted a thorough investigation of the history of the Tribe's 1763 Treaty Reservation. Noting that "the State carried out the terms of the [1840] Treaty pretty much as it pleased," McNickle made no recommendation regarding the "final settlement" question.

The 1937 legislation was not reported out of Committee because of disagreement in the Interior Department over whether the Government should "adopt any more Indians." On June 9, 1938, the Interior Department reported unfavorably on the bill, but noted that the "State did not procure for the Tribe a reservation in . . . North Carolina but reserved 652 acres of the lands they had surrendered by the treaty of 1840 . . ."

In the next Congress, similar legislation was introduced and in 1939 the South Carolina Legislature adopted a concurrent resolution again requesting the federal government to provide aid for the Catawba Indians. The State's 1939 General Appropriations Bill reauthorized the State Budget Commission to negotiate and enter into an agreement "having as its objective the rehabilitation of the Catawba Indians and a final settlement with them so that the State may be relieved of their support."

On April 29, 1940, the Interior Department again submitted an unfavorable report on the Catawba legislation. With the failure of the legislative approach, the State and the BIA began anew to devise a relief program which could be implemented without legislation. This effort first centered around a program through the Farm Security Administration with the BIA providing limited technical assistance. The State of South Carolina would provide up to \$75,000 for the purchase of lands, provided that the agreement between the federal agencies and the State

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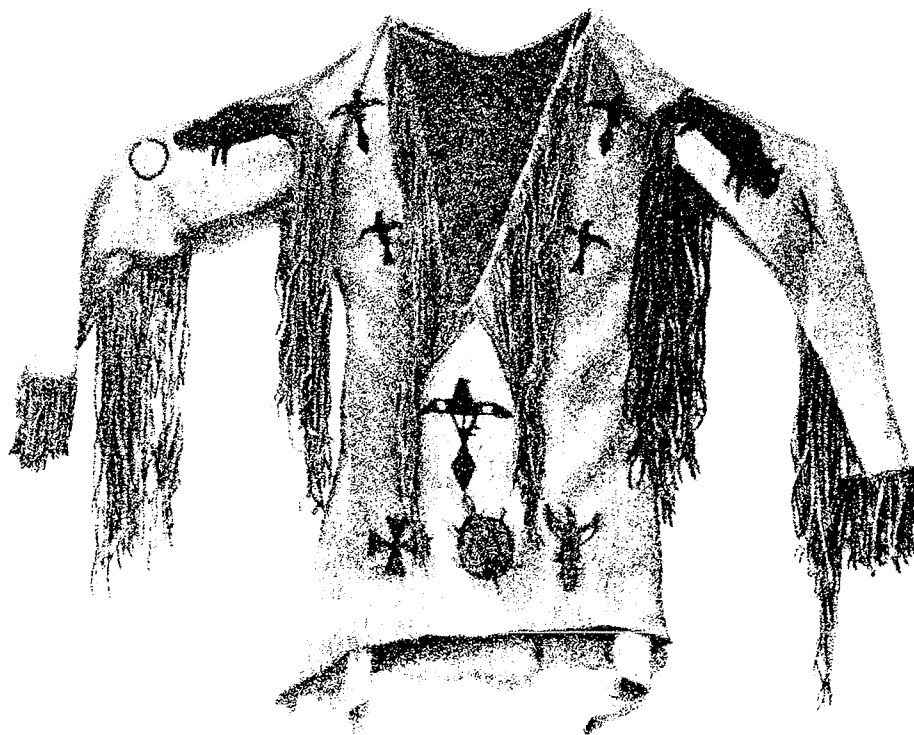


They occupy 652 acres which were allotted to them by the State of South Carolina. There are 172 souls living on that reservation. The condition of their houses is such that I would say, not over three or four of them afford even proper shelter. They are just roughly built with no ceiling lumber on the ceiling or the sides inside, and they are mostly 1-room houses with nothing above them except a shingle roof, with holes in the roof, sometimes with a family of six or eight living in the one little room. They cook on the fireplace in that room and they all sleep in that one little room. They depend almost entirely on what they get from the State. The State has been appropriating \$9,000 for their support.

The Chairman. Annually?

Mr. Flowers. Yes, sir. Well, the appropriation is \$9,450. The \$450 goes to the agent and they get \$9,000. Of this \$9,000 there is \$1,500 set aside to run the school. They set aside so much for doctors' fees, funeral expenses, and so on, because they haven't any other way to pay a doctor or pay funeral expenses when one dies. That reduces the amount of the \$9,000 appropriation considerably. Then what is left of that is apportioned pro rata among the Indians of the tribe. This last year they got \$38.17, I believe, per capita. They have to depend on that almost entirely, for the reason that it is very hard for them to get work from the white people. Unfortunately, white people can't control them just like they would like to control a laborer because the Indian considers himself the equal of the white man and a white man is likely to get into trouble if he curses an Indian. Therefore a white man, rather than take that chance of getting into trouble, will seldom hire an Indian. That is an unfortunate condition, of course. Then the only other thing open to him is his farm on the 652 acres, and if there is any poorer land left in the county I wouldn't know where to go to find it. We are going to leave that to you Senators to determine when you go over there to see it. Most of them are not even able to have gardens. Now, you might say that they are indolent and won't work, but the fact is they haven't anything to work with and no place to make a garden."

Statement of Mr. Flowers, South Carolina Indian Financial Agent, before a sub-committee of the Senate Committee on Indian Affairs, March 28, 1930.



would "provide for the extinguishment of any existing claims for support which the Indians may have against the State of South Carolina."

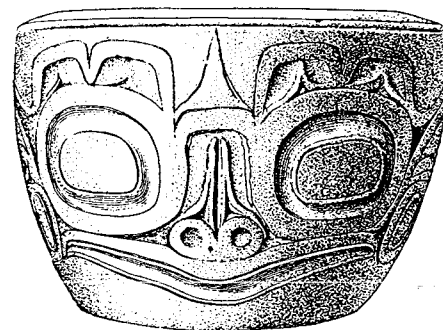
In 1941, however, the Interior Department formally refused to permit the rehabilitation program to be used as a means for extinguishing the Reservation claim. The State agreed and, in 1943, the Secretary of the Interior approved a Memorandum of Understanding between the Tribe, the State, and the Department of the Interior. It contained no language concerning extinguishment of the Tribe's claim.

Pursuant to the Memorandum, the State of South Carolina acquired 3,434 acres of farmland close to the existing 630-acre State Reservation at a cost of \$70,000 and conveyed it in trust to the Secretary of the Interior. However, the 630-acre Reservation was not conveyed to the Secretary. The Tribe adopted a constitution under the Indian Reorganization Act and the BIA administered Catawba affairs out of the Cherokee Agency in North Carolina.

The Termination Period

The hope created by the purchase of the new lands and eligibility for federal services soon turned to frustration as federal Indian policy took an abrupt about-face. In the early 1950s, Congress directed that the trust relationship between all Indian tribes and the United States should end as soon as possible.

The Bureau of Indian Affairs was directed to identify tribes that could be "terminated," and during the period from 1954 to 1962, Congress passed into law 13 termination acts. Under these acts, federal restrictions



on tribal lands were removed and the land was either distributed to individual members or sold with the proceeds being distributed to tribal members. Federal services were cut off and the state law was declared to apply to tribal members as it did to other citizens.

For the Catawba Tribe, the termination era meant that their new reservation lands could not be used productively. Congress made fewer funds available to tribes generally and, in the mid-1950s, federal services for the entire Catawba Tribe amounted to only about \$5,000 per year. Tribal members were poor and there was no federal assistance for either housing or farming operations. And because of its federally restricted status, the Reservation lands could not be used for security to borrow money. The Tribe complained to the State and the Federal Government.

In response, the BIA and the State approached the Tribe in 1958 with a proposal for termination. Federal restrictions could be removed from the land by an act of Congress and the land acquired in 1943 could be distributed to individual members or sold to provide a small cash payment to Tribal members.

The Tribe, which had no lawyer, resisted telling the BIA agent that its claim against the State would have to be resolved before it would agree to a distribution of the new federal Reservation. However, the BIA assured the Tribe that its long-standing claim would be unaffected by the distribution. Relying on that assurance, the Tribe agreed to the distribution, conditioning its consent on its understanding that its land claim would be protected. The BIA drafted a resolution for the Tribe consenting to division of the federal assets and, consistent with its assurances, included a provision conditioning tribal consent on leaving the treaty claim unaffected.

After securing the Tribe's resolution, the BIA and Congressman Hemphill assumed the role of speaking for the Tribe in the legislative process and throughout the entire legislative process, there was not another mention of the land claim. While the Congressmen and the BIA purported throughout the process to be acting only in accord with tribal wishes, the

legislation they drafted did not expressly preserve the claim. However, the BIA, which drafted the bill, repeatedly told the Tribe and emphasized to Congress that it had been drafted to conform to tribal desires as expressed in the resolution. No tribal officials appeared at the hearings on the bill nor did the Tribe submit written testimony.

Based largely on the BIA's and the sponsor's assurances of Tribal support, the bill breezed quickly through both Houses of Congress. On September 21, 1959, the Catawba Division of Assets Act became law. But apparently because the Tribe's initial approval of the termination/distribution had occurred at a hastily called and sparsely attended meeting, Congress had amended the Act to require a second Tribal vote of approval before the 1959 Act would become effective. Once again the BIA dispatched agents to the Reservation to collect signatures of approval and those federal agents again assured tribal members that their land claim was protected. By June, 1961, the BIA had collected the signatures of over half the tribal members and, on July 1, 1962, the Secretary of the Interior proclaimed the termination of the federal trust responsibility. Pursuant to the 1959 Act, the 3,434-acre federal Reservation acquired 18 years earlier was distributed among tribal members and all federal Indian services ceased. The 640-acre State Reservation acquired in 1842 had not been included in the federal Reservation and, thus, was unaffected by the 1959 Act. The State of South Carolina continues to hold that tract in trust for the Tribe to this day.

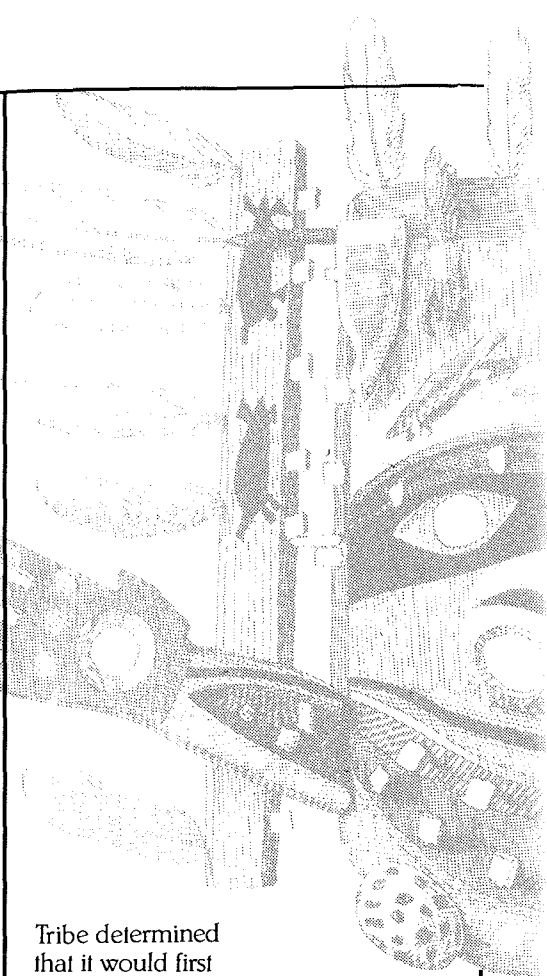
Settlement Efforts: 1975 - 1980

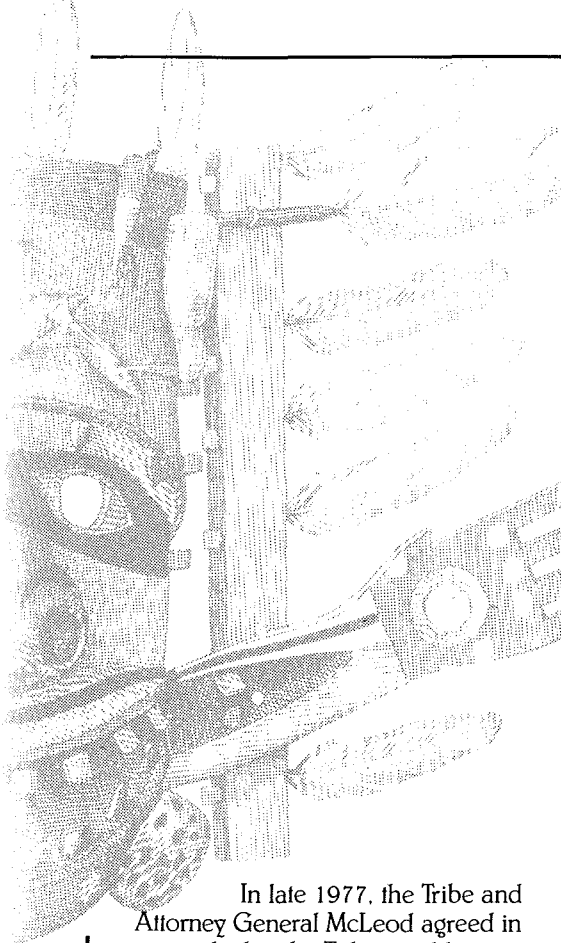
In 1975, encouraged by legal victories of other Eastern Indian tribes, the Catawba Tribe requested the Native American Rights Fund (NARF) to evaluate its claim. NARF attorneys conducted legal and historical research for more than a year and, in 1976, concluded that the Tribe possessed a strong claim. But because of the potentially disruptive effect of a lawsuit, as well as the belief that a claim of this magnitude would ultimately be settled by Congress, the

Tribe determined that it would first explore whether a satisfactory settlement of its claim could be achieved.

Hoping to establish the legal validity of the claim, the Tribe submitted a litigation request to the Department of the Interior in 1976 asking the United States to undertake legal action to recover the lands of the 1763 Treaty Reservation. The Interior Department Solicitor reviewed the request for more than one year, and on August 30, 1977, asked the Justice Department to institute litigation on the Tribe's behalf, but not before settlement options had been exhausted.

As a result, in 1977, a federal task force was formed comprised of the Assistant Attorney General for Lands and Natural Resources, the Solicitor of the Department of the Interior, and an Associate Director of the Office of Management and Budget. That same year South Carolina Governor James Edwards had directed the State's Attorney General Dan McLeod, to represent the State in discussions with the Tribe. The South Carolina congressional delegation determined that it would follow local Congressman Ken Holland's lead, and the complex process of attempting to fashion a satisfactory settlement had begun.





In late 1977, the Tribe and Attorney General McLeod agreed in principle that the Tribe would consent to a Congressional extinguishment of its claim in return for creation of a federal Indian reservation, eligibility for federal Indian services, and a tribal development fund. While they could not agree on the amount of land to be included in the proposed reservation, the apparent commitment of the State and Federal parties to a negotiated settlement was encouraging to the Tribe.

Any hope of a speedy resolution was dashed, however, by two events in December 1977. First, the local newspaper obtained and published tribal maps that identified the specific parcels of land the Tribe and the State had been considering. As a result, threatened landowners organized and formed the Tri-County Landowners' Association. Second, the increased publicity led to much wider participation by tribal members, many of whom no longer lived on the Reservation. As a result, it was necessary for the Tribe to reconsider its settlement position in order to accommodate those members who wished to participate in a settlement on an individual, or per capita, basis.

In 1978, the South Carolina General Assembly enacted legislation

The United States has never taken any action to fulfill its duty to help the Catawba recover the land. In fact, the Department of the Interior has twice refused, in 1906 and 1908, to take action when the Tribe's lawyers pointed out the Tribe's claims under the Non-Intercourse Act. But mere lapse of time and failure of the federal government to act cannot eradicate either the Catawba's rights to their land or the federal government's continuing duty to help them get it back. The Act of September 21, 1959, which terminated federal services to the Catawba and the applicability of federal Indian statutes similarly did not extinguish the 1840 Treaty claim or the government's duty of protection. The termination language in that 1959 statute is prospective and does not affect preexisting legal rights. Moreover, the Supreme Court in *Menominee Tribe v. U.S.*, 391 U.S. 404 (1969), and in many other Indian land cases, required clear evidence of Congressional intent before finding an abrogation of Indian rights. The legislative history of the 1959 Act shows that Congress, as well as the administering agent believed the Act was passed for one reason — to liquidate a 3400-acre reservation and to terminate limited federal benefits both of which were created by a 1943 agreement between the Tribe, the State of South Carolina, and the Department of the Interior. In short, the 1959 Act was a means of dissolving the legal relationship set up by that 1943 agreement. In fact, Congress was unaware of the status of the 1763 treaty reservation, of the Non-Intercourse claim pertaining to it, and finally of its own duty under the Non-Intercourse Act to protect the reservation. The Tribe itself certainly did not contemplate the 1959 Act as a means of cutting off their legal claims to the 1763 reservation because they stipulated in the petition which gave rise to the 1959 legislation, that those claims should not be affected.

The action we hereby recommend is that the United States finally act upon its long-neglected duty under the Non-Intercourse Act to nullify the 1840 Treaty with South Carolina and restore possession of the 1763 Treaty reservation to the Catawba Tribe.

Leo Krulitz, Solicitor, United States Department of the Interior to Assistant Attorney General Moorman, August 30, 1977.

creating a commission to investigate the Catawba claim and make recommendations to the Legislature. The Commission, composed of four members of the state Legislature whose districts include the claim area, two non-Indian landowners and the President of a local bank, all appointed by Governor Edwards, had no Indian members.

In 1979, Congressman Ken Holland, frustrated by the parties' lack of progress and his constituents' lack of concern over the threat of litigation, introduced "settlement" legislation that did not have the support of the Tribe, the State, or the Administration. It was hoped that the bill would serve as a catalyst for intensified settlement efforts but instead the House Interior Committee's hearings only revealed

the seriousness of the obstacles to settlement. The Tri-County Landowners' Association and the State Commission urged Congress to simply extinguish the Tribe's claim to possession of its Reservation and substitute in its place a claim against the United States for money damages only — valued as of the time the Tribe lost possession in 1840. The State Commission, in arriving at its proposal, had simply adopted the proposal of the Tri-County Landowners' Association without consulting the Tribe and without holding public hearings.

Chester County land, as part of the claim is deleted, giving a suspicion that the ultimate aim [of the settlement bill] is the takeover of the Catawba

River Valley by the Interior Department.

Testimony of Tri-County Landowner Association Member Robert Yoder before the House Interior Committee, June 12, 1979.

The South Carolina Attorney General continued to support the modest settlement package he had endorsed earlier and believed the federal government should pay for it. The Administration favored settlement, but did not believe that the federal government should bear the cost. The Tribe proposed a new federal reservation of no less than 10,000 acres, plus federal services, a tribal development fund, and per capita payments.

The impasse continued through 1979, and in 1980, faced with decreasing interest in settlement and an approaching federal law deadline for filing the trespass damages portion of the claim, the Tribe notified the State and the Congressional delegation of its intention to file suit. Hoping to avoid litigation, South Carolina Governor Richard Riley and Congressman Holland asked the Tribe to participate in one last round of negotiation.

The Tribe agreed and Governor Riley formed an informal work group comprised of representatives from the offices of the Governor, the Attorney General, the Congressman, various units of local government, and the Tri-County Landowners' Association. Lengthy negotiations continued through much of 1980, resulting in a detailed draft of settlement legislation both State and Federal. The settlement proposal called for establishment of a federal reservation not to exceed 4,000 acres, with civil and criminal jurisdiction remaining in the State. The land was to be acquired voluntarily from willing sellers with numerous purchase and use restrictions to protect non-selling landowners in the area. The Tribe would become eligible for federal Indian services and the remainder of the settlement fund would be used for establishment of a tribal development fund and per capita payments to tribal members. An equally detailed proposal was developed setting forth a proposed State contribution of almost ten million dollars. The Tri-County Landowners' Association did not sup-

port the work group's proposal and filed a minority report.

However, before the work group's proposal could be submitted to the State Legislature, it had to be approved by the State Study Commission. After holding public hearings on the proposal, the Commission refused to endorse the establishment of a federal Indian reservation, no matter how small, and rejected the proposal.

The Litigation Period: 1980 - 1992

Having thus exhausted settlement possibilities, the Tribe filed suit in Federal District court seeking to recover possession of its 1763 Treaty Reservation, as well as historic trespass damages. The value of the Tribe's claim was estimated at the time of filing to be more than two billion dollars. The complaint named 76 defendants, including the State of South Carolina and a number of corporate and large private landowners, as representatives of a defendant class, then estimated to number 30,000 people who claimed title to the Reservation lands.

Presumably because of conflicts of interest, all of the Federal District Court judges for the District of South Carolina disqualified themselves. As a result, Senior Judge Joseph P. Willson of the Western District of Pennsylvania was appointed to hear the case.

The State and landowners decided to defend the suit initially on the grounds that the 1959 Division of Assets Act made state law statutes of limitations apply to the Tribe's claim and, in addition, destroyed whatever standing the Tribe may have had to bring the suit by extinguishing the Tribe's existence and terminating federal protection for the lands.

In June 1982 Judge Willson granted the State's motion to dismiss all the Tribe's claims by simply signing an order prepared by the defendants' lawyers. The Tribe appealed the decision to the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. In October 1983, a three-judge panel of that Court reversed the lower court. The Fourth Circuit ruled that the 1959 Act was intended only to permit distribution of the 1943 federal reservation, thereby returning the State and the Tribe to

their pre-1943 status and allowing the Tribe to pursue its claim to possession of the lands of its 1763 Reservation. The case was re-argued, and in 1984, the Court of Appeals affirmed its decision in the Tribe's favor.

The defendants sought and were granted review in the United States Supreme Court. Rejecting the earlier views expressed by the Interior Solicitor, the United States Department of Justice reversed the Government's position on the Catawba claim. It filed a friend of the court brief on behalf of the United States urging the Supreme Court to rule against the Tribe and hold that the Tribe's land claim, contrary to the Federal Agent's promises in 1960-61, had been affected by the 1959 Act. Following the Justice Department's recommendations, the Supreme Court refused to follow its earlier cases setting out the rules for interpreting statutes affecting Indians and on June 2, 1986, reversed the Court of Appeals. The Court held, in essence, that the Federal agents' assurances that the 1959 Act would not affect the Tribe's land claim and Congress' reliance on tribal consent were irrelevant to determining the intent of Congress. Because the 1959 Act said nothing about preserving the claim and because Congress had plainly said that State law was to apply to the Tribe, it simply did not matter what the Tribe had been promised. The Supreme Court, therefore, ruled that the 1959 Act requires the application of the state statute of limitations to the Tribe's claim. The Supreme Court did not decide whether application of state statute of limitations would defeat the Tribe's claim. Rather, it sent the case back to the Court of Appeals to decide what effect their application would have on the claim.



When an Indian Tribe has been assimilated and dispersed to this extent — and when, as the majority points out, thousands of people now claim interests in the Tribe's ancestral homeland, . . . the Tribe's claim to that land may seem ethereal, and the manner of the Tribe's dispossession may seem of no more than historical interest. But the demands of justice do not cease simply because a wronged people grow less distinctive, or because the rights of innocent third parties must be taken into account in fashioning a remedy. Today's decision seriously handicaps the Catawbas' effort to obtain even partial redress for the illegal expropriation of lands twice pledged to them, and it does so by attributing to Congress, in effect, an unarticulated intent to trick the Indians a century after the property changed hands. From any perspective, there is little to be proud of here.

Because I do not believe that Congress in 1959 expressed an unambiguous desire to encumber the Catawbas' claim to their 18th-century treaty lands, and because I agree with Justice Black that '[g]reat nations, like great men, should keep their word,' . . . I do not join the judgment of the Court.

Justice Blackmun, joined by Justices Marshall and O'Connor, dissenting in *South Carolina v. Catawba Indian Tribe*, 476 U.S. 498, 513.



In December 1986, attorneys again argued before the 4th Circuit Court of Appeals in Richmond on the statute of limitations issue. In 1987, the Court of Appeals asked the South Carolina Supreme Court to help interpret state law in the case. The State Supreme Court refused and sent the case back to the 4th Circuit. Finally, in January 1989, the 4th Circuit Court of Appeals ruled that South Carolina's statute of limitations did not completely bar the Catawbas' claim and sent the suit back to the Federal District Court in South Carolina.

On remand from the Court of Appeals, Judge Willson released 29 of the 76 defendants and tens of thousands of acres from the Catawba claim in July, 1990. Judge Willson released every defendant and every parcel of land that sought dismissal based on the state statute of limitations defense. Once again, the Tribe appealed Judge Willson's ruling to the Fourth Circuit Court of Appeals. In September, 1992, the Court of Appeals reversed Judge Willson on some issues and parcels of land, but affirmed his decision on many others. The Tribe petitioned the United States Supreme Court to review the Court of Appeals' decision, but in March 1993, the Supreme Court denied the Tribe's petition.

Following his dismissal of numerous tracts, Judge Willson finally agreed to consider for the first time the Tribe's Motion to Certify a Defendant Class. The Tribe had filed its motion for class action status with the complaint in 1980, but the named defendants had opposed a class action and, despite the Tribe's repeated efforts to get a ruling on its motion, Judge Willson had postponed consideration of the issue for eleven years. Once again, Judge Willson ruled against the Tribe and in 1991 adopted verbatim the defendants proposed order denying the class action. Orders denying class action are not appealable without the court's approval, and Judge Willson also refused to permit the Tribe to appeal the denial. The Tribe then attempted to secure review by the Court of Appeals through a seldom used device call a Writ of Mandamus. But because such a Writ calls into question the lower court's ability to properly handle a case such a Writ is

rarely issued. In 1992, the Court of Appeals denied the Tribe's petition. The Tribe did not seek review in the Supreme Court.

In a related lawsuit, the Tribe sued the United States in 1990, seeking damages for the Government's breach of its promise to protect the Tribe's land claim from the effects of the 1959 Termination Act. The Government had done nothing to protect the claim when it had promised that it would. In addition, the Tribe had not been represented by legal counsel and was wholly reliant on its trustee's assurances. Therefore, the Tribe sought to hold the Federal Government liable for that portion of its land claim that had been or would be in the future lost as a result of the Government's breach of promise. The Government asked that the Tribe's claim be dismissed because the Tribe had waited too long to sue the United States, arguing that the Tribe was required to sue the United States by 1951 or, alternatively, 1968. The United States Claims Court agreed with the Government and in 1991 dismissed the Tribe's claim. The Tribe appealed to the Court of Appeals for the Federal Circuit and in January 1993, the Court of Appeals upheld the dismissal. In April of 1993, the Tribe will ask the Supreme Court to review the case and reinstate its claim against the Government.

Settlement Efforts: 1990-1993

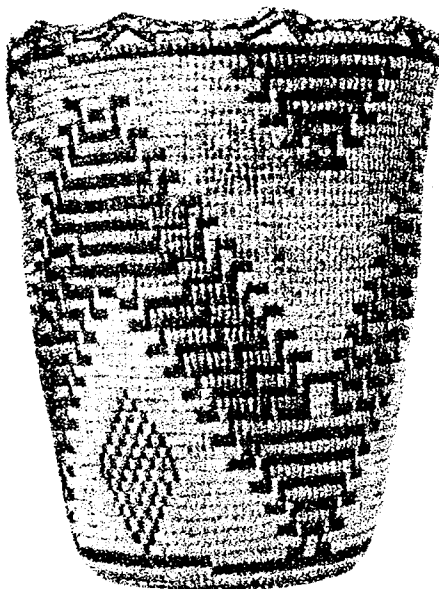
Following the 1989 Court of Appeals decision confirming that a substantial portion of the Tribe's claim remained alive despite the Supreme Court's decision that state statutes of limitations applied, State and local governments and private "land-owners" renewed their interest in a negotiated settlement. Congressman John Spratt and Governor Carol Campbell announced their preference for a legislative resolution and accepted Chief Blue's offer to resume negotiations. The Governor appointed an advisory task force on the claim and named State Tax Commissioner Crawford Clarkson to head the task force and participate in the settlement talks. Secretary of the Interior Manuel Lujan, at Governor Campbell's request, announced his support for a negotiated settlement and designated

his counsel, Timothy Glidden, as the Federal representative to the talks.

Talks began in February 1990 and continued sporadically through July, 1991. While considerable progress toward agreement was made on a number of issues, the parties remained far apart on other key issues such as the amount of self-governmental powers the Tribe would possess and the dollar amount required to settle the case. The urgency that underlay the parties' early efforts had dissipated somewhat with Judge Willson's ruling in July, 1990, that 29 defendants and thousands of acres would be dismissed from the Tribe's claim.

By July, 1991, when the Tribe conveyed a counter-offer to state negotiators, public support for any settlement that would require further concessions appeared to be minimal. Many landowners and local officials apparently felt they could prevail in court. The Tribe received no response to its July counter-offer. After waiting several months, attorneys for the Tribe inquired of the state negotiators whether a more modest counter-offer might generate greater interest in settlement. The Tribe was told that it would and prepared a reduced settlement offer that was submitted to state negotiators in February, 1992. Also in February, the Fourth Circuit Court of Appeals heard oral argument in the Tribe's appeal of Judge Willson's July, 1990 ruling. For the first time, all judges on the Court of Appeals appeared to be hostile to the Tribe's position. Predictably, the Tribe received no response to its modified counter-offer.

With hopes for a legislative settlement dimming, the Tribe and its attorneys were forced to turn their attention once again to the lawsuit. Judge Willson's ruling in February 1990, denying certification of a defendant class, had the effect of restarting the running of a 20-year statute of limitations "clock" that had been stopped when the Tribe filed its lawsuit in October 1980. Thus, when Judge Willson denied class action status in February 1991, the Tribe had approximately 20 months to either finally settle the claim or sue individually each of the tens of thousands of occupants of the claim area.



In April, 1992, with only six months left before the 20-month deadline, NARF attorneys began preparations for suing and serving process on the 61,767 occupants of the claim area individually before the statute of limitations expired on October 19, 1992. NARF retained the services of a major litigation support firm and assembled a team of computer and direct mail experts to work with the team of attorneys and paralegals. Using the Tax Assessors' computerized records from York, Lancaster and Chester Counties, the team prepared the list of names, addresses and property descriptions for 61,767 defendants. From that list, individualized summonses, complaints, lis pendens (notice of claim of title), and notices and acceptances of service by mail were printed. NARF kept the public apprised of the progress of preparation for suit.

These preparations had the effect of generating renewed interest in settlement. To give the parties additional time to reach a settlement, Congress, in July 1992, enacted legislation extending the statute of limitations until October 1, 1993. Meanwhile, the Tribe's preparations for filing one of the largest suits of its kind in Federal Court history continued. The Tribe set September 2, 1993 as the latest date it could file and complete service before the October 18 deadline. When the public learned of the full extent of the Tribe's preparations and saw the completed sum-

mons, complaint, lis pendens (documents 16 inches thick) and the 1.4 million pages of individualized pleadings ready for service by mail, the climate for settlement was better than it had been in 150 years. But whether an agreement could be reached before the September 2, 1993 filing date was doubtful.

In a last minute effort to avoid filing of the massive lawsuit, the parties resumed negotiations in late August. Day and night, from August 21 to August 29, the Tribe, represented by its full Executive Committee and its attorneys, bargained over the terms of a proposed agreement in principle. It was critical for the Tribe to determine whether enough progress toward settlement could be made to permit the Tribe to postpone filing suit against the 61,767 individuals. If it appeared likely that a settlement could become final before the Congressional extension expired on October 1, 1993, then the Tribe could rely on that extension and postpone suit. If, on the other hand, there appeared to be little chance that a settlement could be reached, there would be no point in delaying suit and thereby risking a possible future court ruling that the congressional extension was ineffective to suspend the running of the statute of limitations.

At 2:00 a.m. August 29, 1992, the negotiators for the Tribe concluded that settlement was likely. Later that day, they presented the outlines of the Agreement in Principle to the Tribe meeting in General Council. The Tribe voted unanimously to postpone filing suit and directed its negotiators to bring back any final agreement for its approval.

Negotiations continued and on January 12, 1993, the negotiators reached an agreement in principle to settle the claim. On February 20, 1993, following a series of educational workshops on the Reservation, the Tribe again met in General Council to consider the proposed Agreement in Principle. After three hours of discussion, the Tribe voted 289 to 42 to accept the settlement agreement. In the near future, settlement legislation will be introduced in the United States Congress and the South Carolina General Assembly.

Conclusion

Until the Tribe took its claim to court in 1980, the efforts at resolving this dispute had followed a predictable pattern established more than two centuries ago. Faced with either the impending loss of their lands or, later, the abject poverty resulting from its loss, the Catawbas appealed time after time to the State of South Carolina for protection and assistance. The State, somewhat sympathetic and somewhat aware of its past failures to abide by its promises, would "investigate" by commission and formulate recommendations, but ultimately would take no action. Subsequent appeals to the Federal Government would be answered by referring the Tribe back to the State on the premise that the Catawbas were "State Indians." Both State and Federal officials supported settlement but argued that the other party should bear the cost. The 1943 Memorandum of Understanding offered temporary hope that the pattern of passing the buck between State and Federal Governments had finally come to an end, but no sooner did the United States accept responsibility than it renounced it.

It is generally agreed that underlying all parties' reluctance to support a fair settlement was the suspicion that the Tribe had no real leverage; that is, it could not win its case in court. But for the Catawba Tribe there appeared to be few options. More than two centuries of relying on the good will and promises of the State and Federal Governments had resulted only in the loss of their ancestral lands and severe poverty among tribal members. It now appears that a just settlement is possible. And while the proposed settlement can never fully compensate the Tribe for the loss of its lands and economic self-sufficiency, it is hoped that the settlement will, as Chief Blue stated, provide the Tribe and its members with the tools to work toward a brighter future. (*Don B. Miller is a senior staff attorney at the NARF Boulder office and has represented the Catawba Tribe since 1975.*)



CASE UPDATES

Northern Cheyenne Tribe Water Rights

After years of research and negotiation, the Northern Cheyenne Tribe and the State of Montana entered into an important and historic Indian water rights compact. The Compact resolves all issues concerning the nature, extent and administration of the Tribe's water rights in Montana. The Northern Cheyenne-Montana Compact was passed in Congress and signed by President Bush on September 30, 1992. The Compact confirms tribal water rights to 12,500 acre-feet of direct flow water and 27,500 acre-feet of storage water from the Tongue River; 30,000 acre-feet from the Yellowtail Reservoir; and 1,800 acre-feet from Rosebud Creek, plus an additional 19,530 acre-feet provided certain water users upstream and downstream are not impacted. The Compact further provides that all Tribal water uses will be administered by the tribe and that the Tribe has the right to market water off the reservation. The legislation also provides for the establishment of a tribal development fund of \$21.5 million to be used for land and natural resource development. NARF represents the Tribe.

Fort McDowell Indian Community Water Rights

On January 15, 1993, the Secretary of the Interior signed an agreement implementing legislation to resolve the long standing dispute over the water rights of the Fort McDowell Indian Community in Arizona. In accordance with the Fort McDowell Indian Community Water Rights Settlement Act of 1990 the Tribe will receive a maximum annual diversion right of 36,500 acre-feet of water from the Verde River. The Community may lease a portion of its water, and the federal government will also provide the Community a development fund of \$31 million and a Small Reclamation Project Act loan of \$13 million for irrigation development on the reservation. NARF represented the Fort McDowell Indian Community.

Chippewa-Cree Water Rights

The Chippewa-Cree Tribe of the Rocky Boys Reservation in

Montana presented its water rights settlement proposal, in the form of a proposed compact between the Tribe and the State of Montana, to the Montana Reserved Water Rights Compact Commission and to the Federal Negotiating Team. The proposal calls for the construction of new or enlarged water supply facilities on the Reservation. The Tribe's proposal will provide for the administration of the Tribe's water rights by the Tribe and the right to unlimited use of all groundwater within the Reservation. It also provides for the establishment of a tribal economic development fund needed to finance the many improvements that are called for by the proposal. NARF and the Tribe will negotiate this proposal with the State and Federal governments and work towards finalizing a settlement agreement, having it ratified by Congress and ultimately having it incorporated in a final decree issued by the Montana Water Court.



NARF RESOURCES AND PUBLICATIONS

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, and legal treaties, 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 are non-copyrighted are available from NILL on a per-page-cost plus postage. Through NILL's dissemination of information to its patrons, NARF continues to meet its commitment to the development of Indian law.

continued

AVAILABLE FROM NILL

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) (1985 Supplement \$10; 1989 Supplement \$30).

Bibliography on Indian Economic Development

Designed to provide aid on the development of essential legal tools for the protection and regulation of commercial activities on Indian reservations, this bibliography provides a listing of articles, books, memoranda, tribal codes, and other materials on Indian economic development. 2nd edition (60 pgs. Price: \$30) (NILL No. 005166)

Indian Claims Commission Decisions

This 47-volume set reports all of the Indian Claims Commission decisions. An index through volume 38 is also available. The index contains subject, tribal and docket number listing (47 volumes. Price \$1,175) (Index priced separately at \$25)

PRICES SUBJECT TO CHANGE

AVAILABLE FROM THE INDIAN LAW SUPPORT CENTER

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)

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 difference between tribal economic development and private business development, this 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 governments, 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 \$20)

1986 Update to Federal Indian Education Law Manual. (\$30) Price for manual and update (\$45)

A Manual On the Indian Child Welfare Act and Law 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)

ANNUAL REPORT. This is NARF's major report on its programs 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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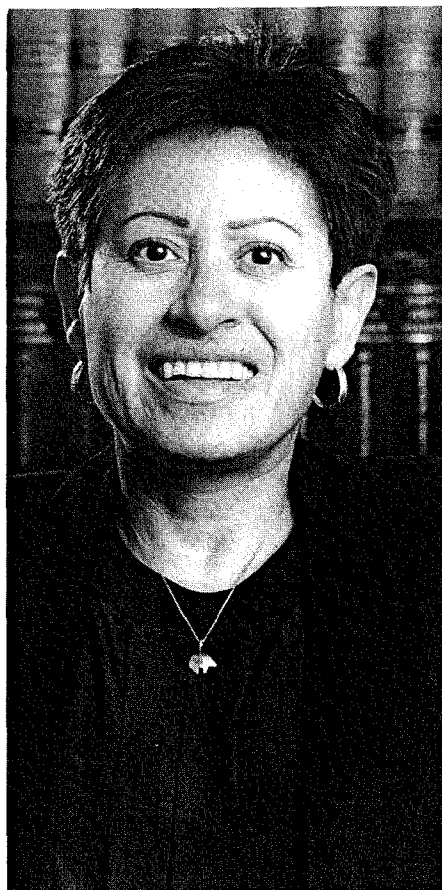
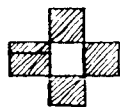
Main Office: Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760).

D.C. Office: Native American Rights Fund, 1712 N Street, N.W., Washington D.C. 20036 (202-785-4166).

Alaska Office: Native American Rights Fund, 310 K Street, Suite 708, Anchorage, Alaska 99501 (907-276-0680).

NARF RECEIVES HUMAN RIGHTS AWARD

The Native American Rights Fund was awarded the prestigious Carter-Menil Human Rights Foundation Prize on December 10, 1992, along with the Haitian Refugee Center of Miami. NARF was selected to receive this renowned award for their unswerving efforts to stand up for American Indian religious and cultural rights. The prize, awarded in Washington, D.C. on the 44th Anniversary of the adoption of the United Nations Universal Declaration of Human Rights, stated that "The Carter-Menil Human Rights Foundation recognizes the exceptional courage and leadership of individuals and groups who further the cause of human rights around the world." In recognition of the recipient's profound commitment to human decency and the protection of human rights, the Carter-Menil Human Rights Foundation was established in 1986 by Dominique de Menil and former President Jimmy Carter to promote the protection of human rights throughout the world.



Yvonne Knight
NARF Attorney

NARF ATTORNEY

Yvonne T. Knight, a staff attorney from NARF's Boulder office, is one of three members of NARF's Litigation Management Committee which is responsible for general management of the legal services provided by NARF. Yvonne is of Ponca-Creek descent and a member of the Ponca Tribe of Oklahoma. While in law school, she was a founding member of the American Indian Law Students Association (now the Native American Law Students Association) and served on the first board of directors of that organization. Yvonne was the first Indian woman law graduate from the University of New Mexico's Indian Law Scholarship Program. She joined NARF as a staff attorney in 1971 and has represented several tribes and individuals in cases involving a variety of Indian law issues. Yvonne served as a member of a task force of the American Indian Policy Review Commission responsible for recommending changes in federal statutes affecting Indians. She was actively involved in the passage of the Menominee Restoration Act. She has also had extensive lawyering experience in such areas of Indian law as drafting tribal constitutions; defining and enforcing the federal trust responsibility to Indians; litigating tribal claims to land, water, and other natural resources; enforcing Indian education rights; and defining and enforcing tribal court jurisdiction. Currently, Yvonne is concentrating much of her effort in the area of establishing tribal reserved water rights. B.S., University of Kansas (1965); J.D., University of New Mexico (1971); Reginald Heber Smith Fellow (August 1971 to July 1974); Native American Rights Fund (1971 to present); admitted to practice law in certain tribal courts, in the federal and state courts of Colorado, and in other federal court jurisdictions including several district courts, the Eighth, Ninth, and Tenth Circuit Courts of Appeals, the United States Claims Court, and the United States Supreme Court. (Photo credit: Thorney Lieberman)

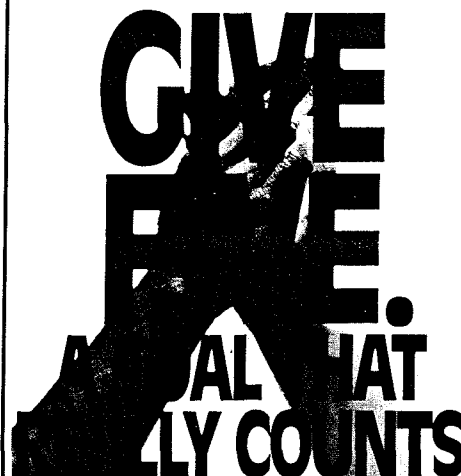
Native American Rights Fund

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 ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance. Requests for legal assistance, contributions or other inquiries regarding NARF's services may be addressed to NARF's main office: 1506 Broadway, Boulder, Colorado 80302. Telephone (303) 447-8760.

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