

## “ALL WE EVER WANTED WAS TO CATCH FISH”

On April 20, 1995, the Ninth Circuit Court of Appeals ruled in favor of two Athabaskan elders who are long time Native American Rights Fund (NARF) clients, who were denied their right to subsistence fishing by the State of Alaska and the federal government. The Ninth Circuit held that the federal government has the obligation to provide subsistence fishing priority on all navigable waters in Alaska in which the United States has a federally reserved water right.<sup>1</sup> The Court instructed the Departments of Interior and Agriculture to identify those waters for the purpose of implementing federal, rather than state regulation of subsistence activities.<sup>2</sup>

*Katie John*, more than any other subsistence case currently pending before State or Federal court in Alaska, exemplifies the



contentious battle being waged between federal, tribal and state interests over jurisdiction of Native fishing rights. For a decade now, NARF has been at the forefront of this battle.

In 1984, NARF attorneys Lawrence Aschenbrenner and Robert Anderson were sent to Alaska to open a new office. Their work for the most part would be consumed by advocating for and protecting the tribal sovereignty and subsistence rights of Alaska Natives. “The word ‘subsistence’ reminds most Americans of dirt-

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## CALL TO ACTION TO STOP CUTS IN FEDERAL FUND- ING FOR NATIVE AMERICAN PROGRAMS

When Congress convened last January, there was great hope that Native American program funding would be spared in the federal budget-cutting process. Even at current levels, Indian program funding is woefully inadequate. Federal neglect of promises and commitments made to Native American people is the primary cause of poor social and economic conditions prevalent in many parts of Indian country today.

Through primary Congressional action thus far, it has become clear that Native American program funding may not be maintained at existing levels and cutbacks will be attempted. Such cuts violate the trust relationship between the federal government and tribal governments inherent in treaties and agreements. The United States has made legal and moral commitments to protect

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### Catch Fish

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poor farmers, scratching a hard living from marginal land. In Alaska, however, subsistence means hunting, fishing, and gathering. More than that, it means a way of life that — far from being marginal — fulfills spiritual as well as economic needs.”<sup>3</sup>

The subsistence way of life is essential for the physical and cultural survival of Alaska Natives. Most of the two hundred small Native villages in Alaska are located on or near the shores of a river or a lake, or located on the coast of the North Pacific or Arctic Ocean. The proximity to water is no accident and reflects the dependence of Natives on the harvest of fish stocks for sustenance and the basis of their traditional way of life. “In many Native villages fresh meat, fish and produce are unavailable except through the subsistence harvest.”<sup>4</sup> Consequently, rural residents harvest 34 - 40 million pounds of food annually for subsistence uses and most of that harvest is fish — approximately 60% according to Alaska Department of Fish and Game statistics.

As important as Native hunting and fishing rights are to Alaska Natives’ physical, economic, traditional, and cultural existence, the State of Alaska has been and continues to be reluc-

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*“The word ‘subsistence’ reminds most Americans of dirt-poor farmers, scratching a hard living from marginal land. In Alaska, however, subsistence means hunting, fishing, and gathering.”*

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tant to recognize the importance of the subsistence way of life. The State views subsistence as nothing more than a taking of a natural resource, and as something that all citizens of the state should be entitled to engage in on an equal opportunity basis with little distinction between sport and trophy hunting and subsistence needs.

Unlike tribes in the contiguous 48 states, Native hunting

and fishing rights in Alaska were never recognized through treaty. The treaty making period ended in 1871<sup>5</sup> and thus had long since passed by the time Congress finally got around to dealing with the aboriginal claims of Alaska Natives. It wasn’t until 1971 that Congress extinguished aboriginal claims to lands in Alaska through the Alaska Native Land Claims Settlement Act (ANCSA).<sup>6</sup> ANCSA set aside 44 million acres of land



## NARF LEGAL REVIEW

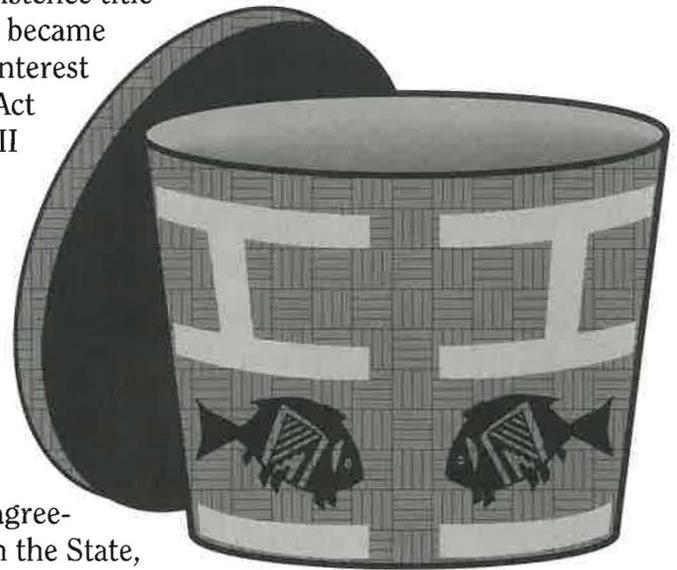
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## Subsistence Fishing

to be deeded in fee title to newly created Native corporations, and provided for a cash settlement of nearly \$1 billion dollars. ANCSA also extinguished aboriginal hunting and fishing rights. Section 4(b) provided: "All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, . . . including any aboriginal hunting and fishing rights that may exist, are hereby extinguished."<sup>7</sup> Despite this extinguishment, Congress made clear its intent to continue federal protection of Native hunting and fishing rights. The ANCSA Conference Report states: "The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives."<sup>8</sup>

By the late 1970s, however, it was clear that the State and Secretary were not living up to the expectations of Congress. "At least until 1983, it was a fact of Alaska political life that the State's Department of Fish and Game was dominated by non-Native urban, sports and commercial hunting [and] fishing interests."<sup>9</sup> Work

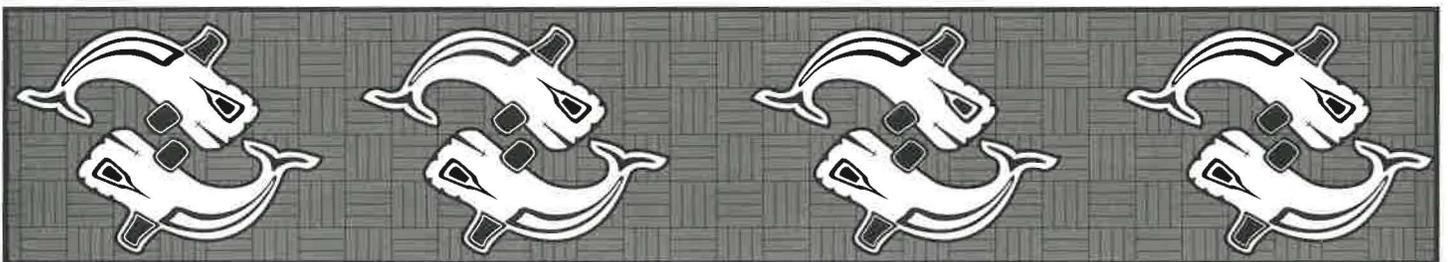
thus began on a subsistence title for inclusion in what became the Alaska National Interest Lands Conservation Act (ANILCA).<sup>10</sup> Title VIII of ANILCA granted rural subsistence users a priority to harvest fish and game on public lands whenever the resource was insufficient to accommodate all other consumptive users. An agreement was struck with the State, allowing the State to regulate fish and game on public lands as long as the State likewise adopted a preference for subsistence users analogous to ANILCA. In anticipation of ANILCA's passage, Alaska enacted its first subsistence law in 1978. At the State's insistence, Congress elected to adopt a rural, rather than purely Native, priority.<sup>11</sup> Congress was advised and believed that "because of restrictions imposed on State action by the Alaska Constitution . . . it would have been impossible for the State of Alaska to have devel-



oped a subsistence management program which provided a priority for Alaska Natives."<sup>12</sup>

Four years after ANILCA was signed into law, the State Board of Fisheries refused the request of two Ahtna elders, Katie John and Doris Charles, to reopen a historic subsistence fishery at Batzulnetas. NARF heard about the plight of the two women and filed suit on their behalf. Katie John is a seventy-nine year old Ahtna Athabaskan Indian and the

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### Catch Fish

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daughter of the last chief of Batzulnetas. Doris Charles is a ninety-three year old upper Ahtna Athabaskan Indian who was born in Batzulnetas in 1902 and continued to live there on a permanent basis until the early 1930s.

Batzulnetas, which means "Roasted Salmon Place," is a historic upper Ahtna village and fish camp and is located at the confluence

of Tanada Creek and Copper River within the Wrangell-St. Elias Park. Both Katie John and Doris Charles own Native allotments at Batzulnetas.

Batzulnetas is a revered spot among the upper Ahtna who have fiercely protected this site for

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*"In 1964, the State used its authority to close down the subsistence fishery at Batzulnetas and nearly all the other traditional fishing sites in the upper Copper River and its tributaries."*

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generations. Oral history and early written accounts tell of a massacre of Russians by the upper Ahtna at Batzulnetas around 1794, provoked by the abduction of women and driving out the men in the winter without adequate clothing.<sup>13</sup> In 1885, nearly one hundred years later, Lt. Henry T. Allen arrived in Batzulnetas. With the Ahtna's help, he became the first non-Native explorer to cross one of the passes from the Copper River to the Tanana River in Alaska's interior.

Batzulnetas was occupied by the upper Ahtna on a year-round basis until the mid-1940s when the villagers were relocated to Mentasta so that their children could attend school. Batzulnetas continued to remain an important summer fish camp.

Alaska achieved Statehood in 1958 and assumed management of fish and game in 1960. In 1964, the State used its authority to close down the subsistence fishery at Batzulnetas and

nearly all the other traditional fishing sites in the upper Copper River and its tributaries. Closure of Batzulnetas to subsistence fishing ended its regular use as a fish camp. Nevertheless, Katie John, Doris Charles, other residents of Mentasta village and former residents of Batzulnetas returned regularly to visit grave sites and to experience the spiritual and cultural satisfaction derived from being present at the place where they grew up.

In 1984, Katie John and Doris Charles submitted a proposal requesting the Alaska State Board of Fisheries to open Batzulnetas to subsistence fishing. Their request was denied, despite the fact that downstream users were permitted to take hundreds of thousands of salmon for sport and commercial uses. NARF filed suit against the State in late 1985 pursuant to Title VIII of ANILCA to compel the State to re-open the historic Batzulnetas fishery.<sup>14</sup> The State subsequently adopted regulations providing for a limited

fishery.<sup>15</sup> In 1990, the district court set aside this state regulation as too restrictive and remanded the case to the Board of Fisheries for further proceedings consistent with applicable state and federal law.<sup>16</sup> Before further action could be taken by the Alaska Board of Fisheries, the Alaska Supreme Court's decision in *McDowell v. Alaska*, 785 P.2d 1 (Alaska 1989), struck down the "rural" definition from the State's subsistence preference law as unconstitutional, and the Board of Fisheries refused to act on any new regulatory proposals. The effect of *McDowell* was to divide subsistence management into two distinct legal regimes — one governed by state law and the other by federal law.

In the hope that the State would amend its Constitution, or otherwise bring its program into compliance with ANILCA, the *McDowell* decision was stayed until July 1, 1990. After the Legislature failed to take action, the Secretaries of Interior and Agriculture announced their intent to take over the manage-

ment of subsistence uses on public lands effective July 1, 1990.<sup>17</sup>

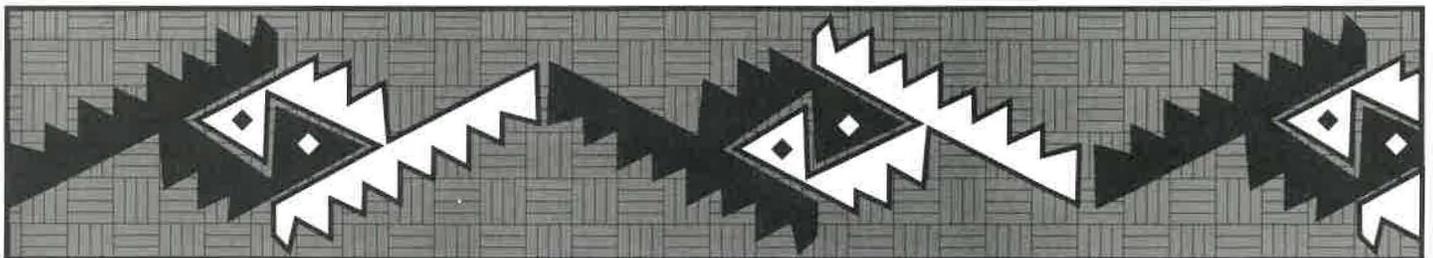
From the outset of the federal takeover, the federal agencies adopted a "minimal intrusion rationale" to "minimize disruption to traditional state regulation and management of fish and wildlife."<sup>18</sup> Pursuant to this policy, the Secretaries adopted a regulation providing for a subsistence fishery at Batzulnetas which was identical to the state regulation the federal court ruled invalid in *John, et al. v. Alaska*, No. A85-698 (HRH) (D. Alaska). Since that regulation infringed on Katie John and Doris Charles' traditional fishing practices, NARF petitioned for reconsideration of the Secretaries' regulation. Instead of ruling on the merits of this request, the federal agencies responded that Tanada Creek and the Copper River were navigable waters and that navigable waters did not constitute "public lands" subject to Title VIII's subsistence priority for rural residents. The federal government's explanation was that although ANILCA expressly encompasses *interests in*



*waters* within the definition of "public lands," its temporary regulations excluded navigable waters from the "public lands" definition because "[t]he United States generally does not hold title to navigable water."<sup>19</sup>

NARF filed suit against the Secretaries claiming that their construction of the "public lands" definition was unlawfully narrow. Section 102 of ANILCA defines "public lands" as "federal lands."<sup>20</sup> Federal lands "means lands, the title to which is in the United States after Dec. 2, 1980."<sup>21</sup> Finally, "the term 'land' means lands, waters and interests therein."<sup>22</sup> The United

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States Supreme Court has melded this tripartite definition, concluding that Congress defined “public lands” as “lands, waters and interests therein” the title to which is in the United States.”<sup>23</sup> In construing the definition of “public lands” in *Village of Gambell*, the Supreme Court rejected the notion that “title” to an interest refers to fee title, or some other technical record or deed title; rather, it is simply the right to control or dispose of an interest. Accordingly, NARF argued that fee title was unnecessary for ANILCA’s priority to attach to navigable waters because such waters are “public lands” by virtue of the federal government’s “interest” in navigable waters under the navigational servitude and the reserved rights doctrine.

The question of whether navigable waters and federally reserved waters constitute “public lands” was first argued in December 1991. Before the issue was decided on the merits, however, the *Katie John* case was consolidated with *State v. Babbitt*,<sup>24</sup> a case filed by the State to challenge the Secretaries’ day-to-day management authority to regulate fish and game on public lands when state law has been found to be out of compliance with ANILCA.

The question of whether navigable waters and federally reserved waters constitute “public lands” was argued again on March 18, 1994. The federal government changed its position on the reserved waters issue, now agreeing with Katie John and Doris Charles that all waters in Alaska subject to federally reserved water rights constitute “public lands” as defined by ANILCA. However, the federal government continued to assert that the navigational servitude is not a sufficient interest to allow navigable waters to be encompassed within the definition of “public lands.”

On March 30, 1994, the district court issued a 42-page decision in these consolidated cases. First, the court concluded that the federal government, and not the State, has the authority to regulate the taking of fish and wildlife for subsistence purposes on the public lands. The court then ruled that, “for purposes of Title VIII of ANILCA, the United States holds title to an interest in navigable waters in Alaska.”<sup>25</sup> The court did not reject the notion that the reserved water rights doctrine could have some application, rather, it concluded that “the geographic scope of Title VIII is better determined by use of the navigational servitude, as being compatible with the findings and policies of Title VIII of ANILCA.”<sup>26</sup> The order was stayed, allowing the

parties sixty days to file an interlocutory appeal to the Ninth Circuit.

After the November 1994 elections, Alaska’s new Democratic Governor filed a stipulation to withdraw the State’s appeal of the District Court’s finding in *State v. Babbitt*. The Republican dominated Alaska Legislature and the Alaska Outdoor Council (AOC), a state-wide umbrella organization composed of forty-five member organizations representing sport hunting interests, unsuccessfully attempted to intervene to continue the appeal. The Legislature and AOC currently have petitions pending before the United States Supreme Court on *writs of certiorari* over their denial of intervention.<sup>27</sup> Oral argument on *Katie John* was heard before the Ninth Circuit Court of Appeals on February 7, 1995.

On April 20, 1995, the Ninth Circuit issued its opinion rejecting the district court’s “highly expansive definition of public lands, holding that the subsistence priority applies to all Alaskan waters subject to the federal navigational servitude.”<sup>28</sup> Instead, the Court ruled in Katie’s favor on the narrower theory that the subsistence priority applies to navigable waters in which the United States has reserved water rights. The federal agencies must now determine the geographic scope of reserved waters in Alaska.

The Departments' determination of the scope of reserved waters may well alter the scope of federal protection over subsistence fisheries in Alaska. If the Departments conclude that only those waters within conservation units are public lands for purposes of the federal subsistence priority, villages outside the reserves will not be entitled to ANILCA's subsistence priority and in fact will be constrained in their fisheries to the extent necessary to guarantee that villages within federal enclaves meet their subsistence needs. However, if the Departments conclude that the federal government has a property interest to off-reservation navigable waters to fulfill the express and implied purposes of the federal enclaves, the subsistence priority will extend to most of the major navigable waterways in Alaska. NARF is currently working to ensure that the expansive interpretation prevails. The State of Alaska has requested a rehearing before the Ninth Circuit Court of Appeals. Once the rehearing is denied, the State has indicated that it will appeal the decision to the United States Supreme Court.

Early in 1995, before NARF attorney Bob Anderson assumed the position of Associate Solicitor for Indian Affairs in the Department of the Interior in Washington, D.C., he traveled to Mentasta to say farewell to his friends Katie

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### *The Departments' determination of the scope of reserved waters may well alter the scope of federal protection over subsistence fisheries in Alaska.*

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John and Doris Charles. When Katie was told that her name was now familiar to the power brokers in Washington, D.C., she shrugged her shoulders and said, "all we ever wanted was to catch fish."

#### Endnotes:

1. *State of Alaska v. Babbitt*, \_F.3d\_, (9th Cir. 1994); 1994 WL 231341 (9th Cir. (Alaska)).
2. *Id.*
3. T. Berger, *Village Journey* 5 (1985).
4. H. Rep. No. 1045, Part I, 95th Cong., 2d Sess. at 182 (1978).
5. 25 U.S.C. § 71.
6. Pub. L. No. 92-203 (85 Stat. 688), 43 U.S.C. §§ 1601 - 1629a.
7. 43 U.S.C. § 1601(b).
8. H. Conf. Rep. No. 92-476, 92 Cong. 1st Sess. 37, reprinted in 1971 U.S. Code Cong. & Ad. News 2247, 2250.
9. Case, *Alaska Natives And American Laws* 296-97 (1984).
10. Act of Dec. 2, 1980, Title VIII, Pub. Law No. 96-487, 94 Stat. 2371.
11. 125 Cong. Rec. 9904 (May 4, 1979) (Cong. Udall).
12. *Id.*
13. J. Kari, *Tat'l'ahwt'aenn Nenn'*, *The Headwaters People's Country*, 75 (1986).
14. *John, et al v. State of Alaska*, No. A85-698 Civil (HRH) (D. Alaska).
15. 5 AAC § 01.647(i).
16. *John, et al. v. State of Alaska*, No. A85-698 Civ. (HRH) (Order on Summary Judgment (January 19, 1990, D. Alaska)).
17. 55 Fed. Reg. 23,522 (April 13, 1990).
18. 55 Fed. Reg. 23,522 (June 8, 1990).
19. 55 Fed. Reg. 27,115 (June 29, 1990).
20. 16 U.S.C. § 3102(3).
21. 16 U.S.C. § 3102(2).
22. 16 U.S.C. § 3102(1).
23. *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 548, n.15 (1987).
24. No. A92-264 (HRH) (D. Alaska).
25. *Slip op.* at 20-21.
26. *Id.* at 32-33.
27. *Alaska Fish and Wildlife Federation, et al. v. State of Alaska, et al.*, S.Ct. No. 94-1829; *Legislature of the State of Alaska v. State of Alaska, et al.*, S.Ct. No. 94-1976.
28. *State v. Babbitt*, Nos. 94-35480, 35481, 1995 WL 231341 (9th Cir. (Alaska)).

## Federal Funding

### Call to Action

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and assist tribes in return for the tribes relinquishing the vast amounts of land which now comprise this nation. The tribes expect these commitments to be continually honored and for the federal government to act in the best interest of Indian people as required by the federal trust responsibility.

We urge you to call, write or fax your Congressman and Senators and tell them to stop cutting back on federal assistance owed to and needed by Native

American people. In addition, there are three specific programs needed by tribes and individual Indian people represented by the Native American Rights Fund that we need your help on to save from cutbacks.

(1) Administration for Native Americans — The Administration for Native Americans in the Department of Health and Human Services funds social and economic development projects of great importance to Native American people that need to be continued. In addition to call-

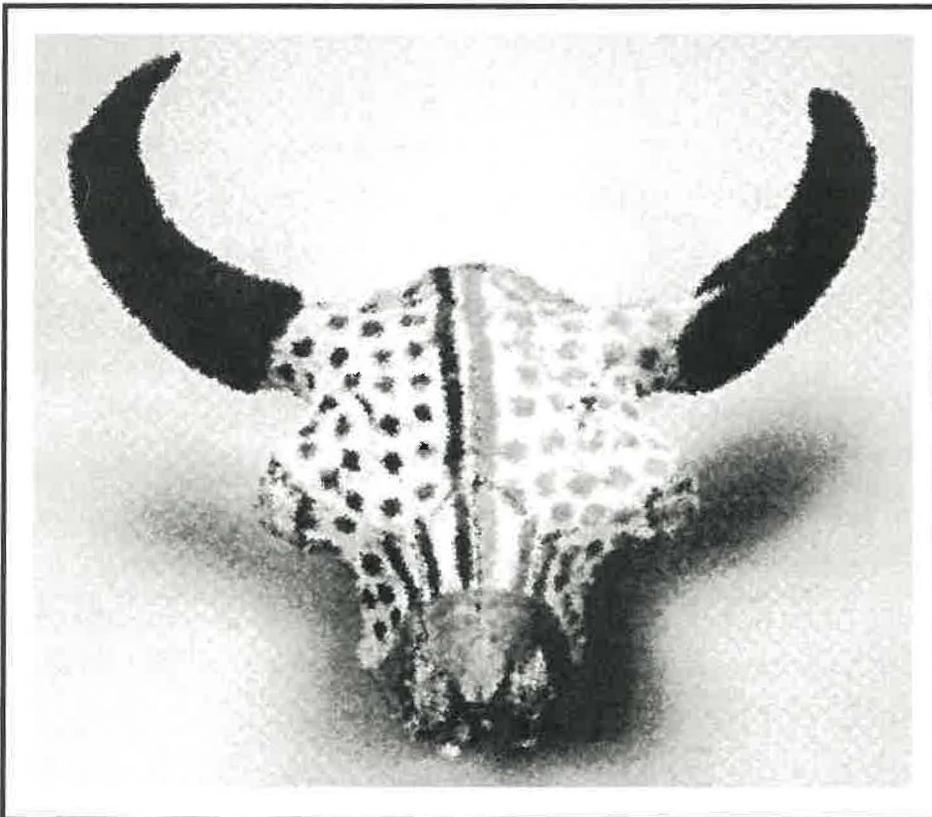
ing, writing or faxing your Congressman and Senators about saving the Administration for Native Americans from cutbacks, also express your support to:

**Senator Mark Hatfield**, Chairman  
Senate Appropriations Committee  
711 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-3753  
fax (202) 224-0276

**Senator Arlen Specter**, Chairman  
Labor, HHS, Education  
Appropriation Subcommittee  
530 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-4254  
fax (202) 224-1893

**Rep. Bob Livingston**, Chairman  
House Appropriations Committee  
2406 Rayburn House Office  
Building  
Washington, D.C. 20515  
(202) 225-3015  
fax (202) 225-0739

**Rep. William F. Goodling**,  
Chairman  
Economic & Educational  
Opportunities Committee  
2263 Rayburn House Office  
Building  
Washington, D.C. 20515  
(202) 225-5836  
fax (202) 226-1000



(2) Bureau of Indian Affairs — The Bureau of Indian Affairs provides a number of programs and services of great significance to tribes and individual Native Americans. Of particular importance to Western tribes represented by the Native American Rights Fund is water rights negotiations funding. Without such support, most tribes cannot meaningfully participate in settlement negotiations with the federal and state governments to resolve their claims to reserved Indian water rights so critical to their future livelihood in the West. In addition to calling, writing or faxing your Congressman and Senators about saving Bureau of Indian Affairs' programs from cutbacks, particularly Indian water rights negotiation funding, also express your support to:

**Senator Mark Hatfield**, Chairman  
Senate Appropriations Committee  
711 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-3753  
fax (202) 224-0276

**Senator Slade Gorton**, Chairman  
Interior Appropriations  
Subcommittee  
730 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-3441  
fax (202) 224-9393

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*We urge you to call, ...tell them to stop cutting back on federal assistance owed to and needed by Native American people.*

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**Senator John McCain**, Chairman  
Senate Indian Affairs Committee  
111 Russell Senate Office Building  
Washington, D.C. 20510  
(202) 224-2235  
fax (202) 228-2862

(3) Legal Services Corporation — The Legal Services Corporation, a federally chartered corporation which receives federal appropriations, provides legal counsel and advice to financially underprivileged Americans, including Native Americans living below the poverty line both on and off-reservation. Only about two and one-half percent (2.5%) of LSC's current budget of \$400 million is allocated to serve Native Americans, or about \$10 million. The Congressional leadership proposes a 35% cut in funding for LSC for 1996, and possible elimination in funding beyond 1996. In addition, one of NARF's central projects since the early 1970's, the Indian Law Support Center, faces elimination in funding in 1996. Severe budget cutbacks or elimination in funding would return us to an era of the pre-1960's, when Indian people living in poverty simply

had no access to legal counsel for advice or assistance. Please call, write or fax your support for continued full funding of the Legal Services Corporation, and especially Indian Legal Services and the Indian Law support Center, to:

**Senator Mark Hatfield**, Chairman  
Senate Appropriations Committee  
711 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-3753  
fax (202) 224-0276

**Senator Phil Gramm**, Chairman  
Subcommittee on Commerce,  
Justice, State, and Judiciary  
United States Senate Appropriations Committee  
370 Russell Senate Office Building  
Washington, D.C. 20510  
(202) 224-2934

**Senator Pete Domenici**, Member  
Subcommittee on Commerce,  
Justice, State, and Judiciary  
United States Senate Appropriations Committee  
328 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-662



# CASE UPDATES

## FEDERAL COURT AFFIRMS TRIBAL COURT DECISION

The Native American Rights Fund is defending the Cheyenne and Arapaho Tribes' right to generate needed tribal government revenues by taxing production and severance of oil and gas on allotted lands held in trust for tribal members in Oklahoma. Several affected oil companies filed a lawsuit challenging the Tribes' right to tax them. The oil companies filed suit in an Oklahoma federal district court, but then agreed that federal law required them to bring the action first in tribal court.

During 1994, the Supreme Court of the Cheyenne and Arapaho Tribes affirmed a tribal district court decision upholding the authority of the Tribes to impose a severance tax on oil and gas development activities on allotted Indian lands. The oil companies appealed and, in February 1995, in *Mustang Fuel Corporation v. Hatch* the federal district court heard oral arguments on the legal issues by the oil companies, the Tribes, and the United States as *amicus curiae* in support of the Tribes. This was the first time that a federal court reviewed a decision of a tribal court on the merits of tribal taxing authority.

On July 7, 1995, the federal district court affirmed the Tribal Supreme Court's decision that the Tribes retain inherent authority to tax activities on trust allotments, notwithstanding the allotment and cession of other lands by the Tribes in 1890. It is expected that the oil companies will appeal the district court's decision to the United States Court of Appeals for the Tenth Circuit.



## PAWNEE TRIBE LAYS ANCESTORS TO REST

On June 7, 1995, the Pawnee Tribe (together with the Arikara Tribe and Wichita Tribe representatives) reburied the remains of 300 of their ancestors and associated funerary objects in Genoa, Nebraska, complete with tribal rights and ceremonies. The ceremony concluded precedent setting Native American Rights Fund representation of the Pawnee Tribe on repatriation claims against the Nebraska State Historical Society. Since 1989, the Pawnee Tribe has reburied over 1,000 tribal ancestors in Kansas and Nebraska as a

result of NARF's representation.

The Nebraska State Historical Society had sought to block the Pawnee Tribe's access to Historical Society records under the public records law. The Tribe, under the Native American Graves Protection and Repatriation Act, sought the records to support additional tribal repatriation claims to Pawnee human remains and burial goods held illegally by the Historical Society. The Historical Society had appealed a state court decision that ordered them to provide the museum records

to the Tribe. The case was pending before the Nebraska Supreme Court when a comprehensive settlement was reached in 1994. The settlement called for the Historical Society to comply with the state public records law and for the repatriation of the remains and burial goods that the Historical Society still had in its possession.



## **CHEYENNE-ARAPAHO TRIBES V. UNITED STATES**

On May 22, 1995, the United States Court of Federal Claims affirmed earlier decisions rendered by the district court and the Court of Appeals for the Tenth Circuit establishing that the Bureau of Indian Affairs illegally extended the term of three oil-and-gas leases in Oklahoma at below market value rates without tribal consent. The Cheyenne-Arapaho Tribes of Oklahoma were seeking monetary damages from the United States Department of the Interior (DOI) for DOI's breach of its trust responsibilities with respect to tribal lands. In filing a motion for partial summary judgment, NARF contended that

the Secretary of the Interior breached his fiduciary obligations to the Tribes when he approved, over the Tribes' objections, certain communitization agreements.

The Tribes alleged that the Secretary and his delegates failed to act in a manner consistent with their fiduciary obligations. By approving the extension of the leases beyond their primary terms without adequate analysis of the Tribes' option to negotiate new and more favorable leases, and especially without an appraisal of the fair market value of the minerals sought to be conveyed, the Secretary and his delegatee breached their trust duties under

the Mineral Leasing Act of 1938. The Courts agreed that the trust responsibilities to the Tribes were uncontrovertedly breached when DOI failed to examine the contemporary conditions for mineral leases on the reservation lands.

The Court also denied the United States' cross-motion for summary judgment. NARF is now examining the damages aspect of the case.



## **OKLAHOMA TAX COMMISSION V. CHICKASAW**

In March, 1995, NARF filed an *amicus* brief on behalf of nine tribes and the National Congress of American Indians supporting the Chickasaw Nation before the United States Supreme Court. There were two issues before the Court: (1) whether the State of Oklahoma had jurisdiction to tax sales of motor fuels where the Tribe was the retailer and sold the fuel on tribal trust land; and (2) whether the State could tax the income of tribal members where those members worked for the Tribe on tribal trust land but resided outside of Indian country.

The Supreme Court issued an opinion on June 15, 1995. Justice Ginsburg delivered the opinion for a unanimous Court in favor of the Tribe on the issue of the motor fuel tax, and 5-4 against the Tribe on the income tax issue.

With respect to the motor fuel tax, the Court reaffirmed longstanding principles of federal Indian law and held that absent clear congressional authorization, a state tax is unenforceable where the tax falls on a tribe or its members for activities taking place within Indian country. The Court upheld the Tenth Circuit's finding that

under the Oklahoma tax code the legal incidence of the motor fuel tax falls on the tribal retailer and thus found the tax unenforceable.

Regarding the income tax, the Court considered whether a treaty between the Tribe and the United States prevented the State from imposing its income tax on members living outside of Indian country and found that it did not. Thus, the Court found that the State had jurisdiction to impose the tax, noting that generally states have jurisdiction to tax the income of their residents even if the income is earned outside of the taxing jurisdiction.

# NEW NARF BOARD MEMBERS

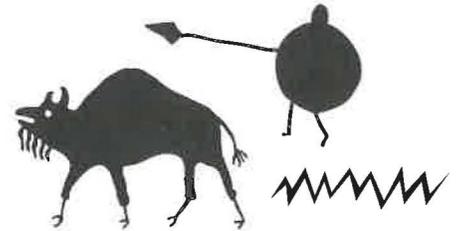
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**David L. Archambault**, Standing Rock Sioux, President of Standing Rock College in Fort Yates, North Dakota, was elected to the Native American Rights Fund Board of Directors, replacing Lionel Bordeaux who

completed his six year term on the Board. David Archambault has spent his career helping to improve the educational opportunities and achievements of Indian students through his involvement in Indian education programs both locally and nationally. David received his B.A. in Education from Black Hills State College and

his Masters Degree in Educational Administration from Penn State University.



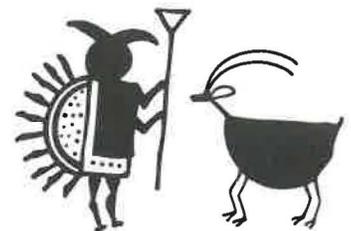
**Roy Bernal**, a member of Taos Pueblo and Vice-Chairman of the All Indian Pueblo Council, was elected to the Native American Rights Fund Board of Directors replacing Theresa Gomez, who resigned. Roy previously served four terms as Tribal Secretary for Taos Pueblo and is a owner of two successful businesses in Taos, New

Mexico. Roy lends his expertise in tribal government and business in assisting the nineteen Pueblos of New Mexico through his work with the All Indian Pueblo Council. As Vice-Chairman, he is called upon to represent all of the Pueblos in matters with the state and federal governments.

**Judy Knight-Frank**, Ute Mountain Ute, was the first woman to be elected as Chairman for the Ute Mountain Ute Tribe, a position she held from 1979-1981 and from 1989 to the present. Judy replaces Twila Martin Kekahbah who completed her six year term on the Board. She has spent the past seventeen years helping to insure that the tribal rights and treaties of the Ute

Mountain Ute Tribe are upheld and has worked to create training and educational opportunities for tribal members. She has been directly involved in the development and implementation of the Colorado Ute Water Settlement; the Farm and Ranch Enterprises; the Tribal Commercial Park; reorganization of the Sleeping Ute Pottery; a convenience store; Weeminuche Construction Au-

thority; and Ute Mountain RV Park. Judy also has experience in natural resources, social services and administration of the Bureau of Indian Affairs.



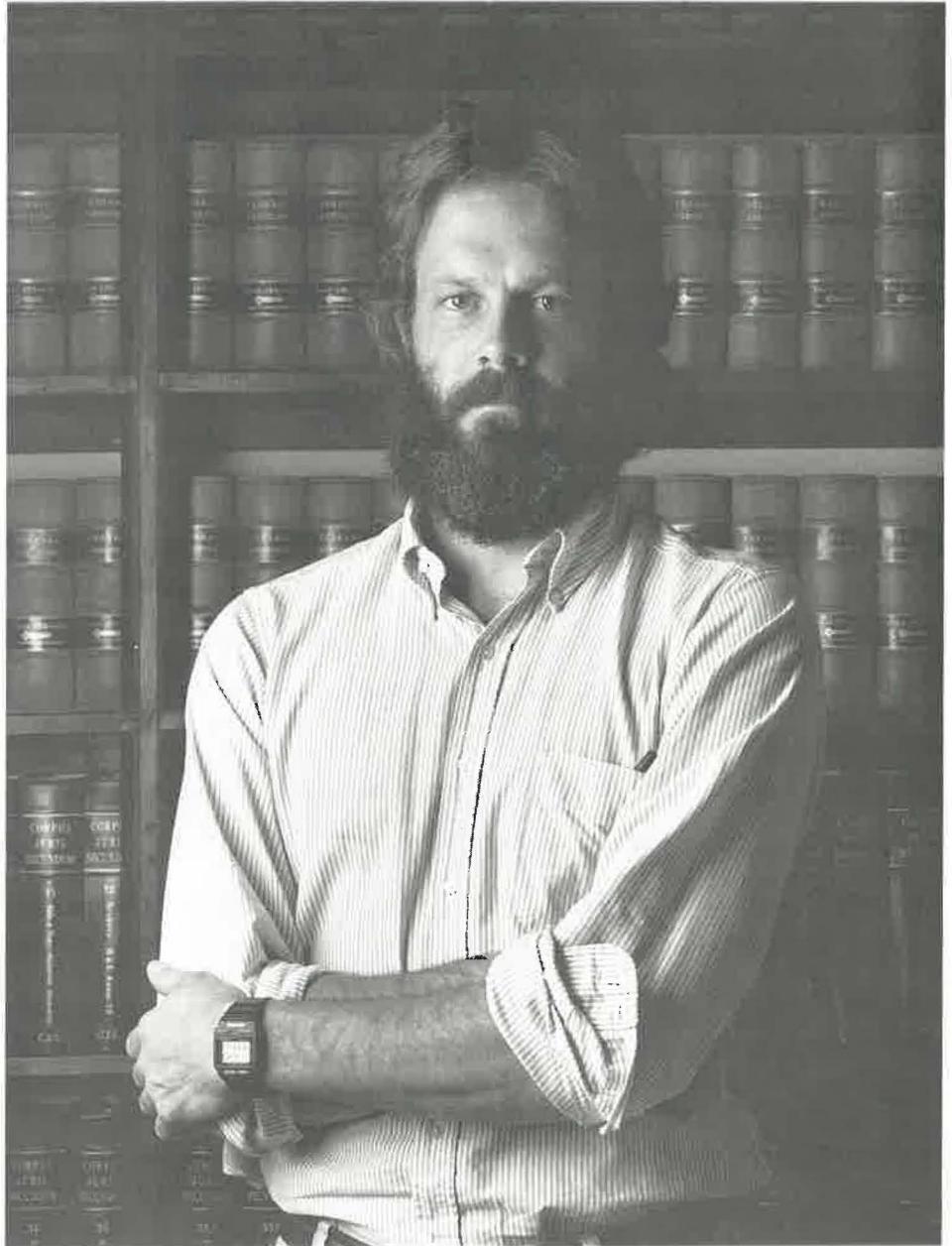


# NARF ATTORNEY

## Steven C. Moore

Steven C. Moore joined NARF in June of 1983 as the Director of the Indian Law Support Center and as a NARF staff attorney. He worked as both staff attorney and managing attorney of the Indian

Law Unit of Idaho Legal Aid Services, from 1979 to 1983. Steve was also employed on a part-time basis in 1982 and 1983 by the Tribal Attorney's Office of the Confederated Salish and Kootenai Tribes of Montana. As Director of NARF's Indian Law Support Center, Steve has worked closely with attorneys from the 33 Indian legal services programs around the United States, in litigation assistance, training and research projects. As a NARF staff attorney, his work has ranged from religious freedom and repatriation assignments, to oil and gas and trust responsibility litigation against the United States. He is admitted to practice law in Idaho, Colorado, Hawaii (pro hac vice), and Oklahoma (pro hac vice), and before the Ninth Circuit Court of Appeals, the United States Tax Court, and the United States Supreme Court. Steve received a B.S. degree from the University of Colorado in 1975 and his J.D. from the University of Colorado in 1979.



# 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.

### 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 currently the best of its kind 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).

### Also available from the National Indian Law Library

*Top Fifty, a Compilation of Significant Indian Cases*, \$75.00  
*Handbook of American Indian Religious Freedom*, edited by Christopher Vescey, 1991, \$15.00  
*American Indian Law: Cases and Materials*, Robert N. Clinton, Nell Jessup Newton, Monroe E. Price, Third Edition, 1991, \$45.00  
*American Indian Law: In a Nutshell*, William C. Canby, Jr., Second Edition, 1988, \$16.00  
*American Indians, Time and the Law*, Charles F. Wilkinson, 1986, \$13.00  
*Federal Indian Law: Cases and Materials*, David Getches and Charles Wilkinson, Third Edition, 1993, \$54.00

*Felix S. Cohen's Handbook of Federal Indian Law*, Felix S. Cohen, edited by Rennard Strickland, 1982 Edition, \$85.00  
*The Rights of Indians and Tribes*, Stephen L. Pevar, Second Edition, 1992, \$8.00

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## INDIAN LAW SUPPORT CENTER PUBLICATIONS

The following materials are available from the Indian Law Support Center (all prices include postage and handling). **Please send all requests for materials to: Indian Law Support Center, Attn: Debbie E. Thomas, 1506 Broadway, Boulder, Colorado 80302.**

**1988 Update to The Manual for Protecting Indian Natural Resources.** The Indian Law Support Center is pleased to announce the availability of the 1988 Update to its Manual for Protecting Indian Natural Resources. The Manual covers the developments in natural resource law over the past six years since the publication of the original manual in 1982.

**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. (Must be purchased with Update.)

The update is available for the price of \$30.00. The original manual and the update are available for \$50.00.

**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 economics 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 non-tribal entities. \$35.00

**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. (Must be purchased with update.)

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**A Manual On The Indian Child Welfare Act And Laws Affecting Indian Juveniles.** 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. (Must be purchased with Update.)

**1992 Update to the Indian Child Welfare Act and Laws Affecting Indian Juveniles Manual.** The 1992 Update provides a section-by-section legal analysis of the Act as well as the developments in Indian Child Welfare Act case law over the past eight years since the publication of the original manual in 1984. The 1992 Update and the original Manual comprise the most comprehensive examination of the Indian Child Welfare Act to date.

The original manual and the 1992 Update are available for \$50.00. If you have the original manual and require only the Update, it is priced at \$35.00.

**Prison Law and the Rights of Native Prisoners.** This manual focuses on the first amendment religious free exercise rights of Indian prisoners in state and federal penal institutions, with an emphasis in legal forms and pleadings for use by prisoners in *pro se* litigation. \$20.00

**The Indian Law Support Center Reporter** is available to LSC funded programs free of charge. To non-LSC organizations there is a \$36.00 subscription fee for 1 year.

**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.

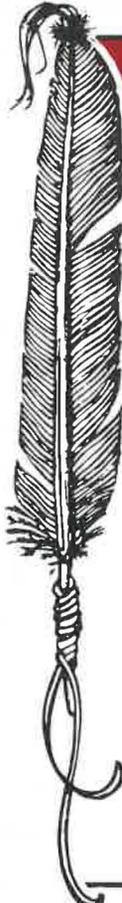
**THE NARF LEGAL REVIEW** is published biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor. There is no charge for subscriptions, but contributions are requested.

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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 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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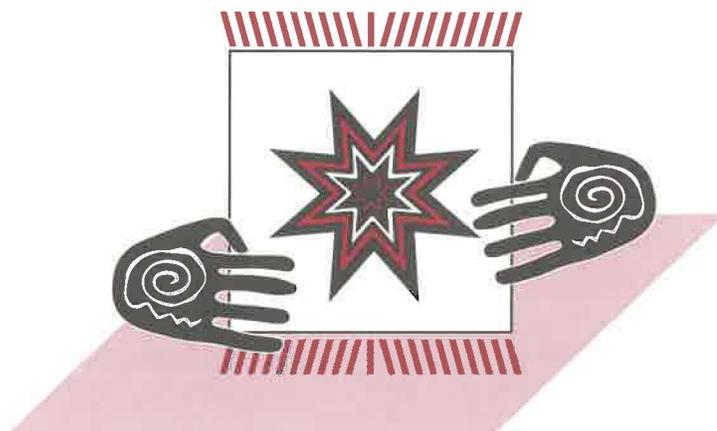
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Dagan Schrieber .....	Sysan & Larry Lesser
Philip Standing Bear .....	Rebecca Gardner
Mr. & Mrs. Milton Lederman .....	Mr. & Mrs. Ben J. Phelosof
My beloved daughter Katie .....	Donna L. Zamrin
My son Joe Curran .....	Mary Curran
Jen Schwartz .....	Ammiel Schwartz
Colleen L. Fraser .....	Joy R. Stella
Johanna Ezell .....	Lawrence Geller
Steward Smiley .....	Lawrence Geller
The Indian Nations .....	Julia A. Saslow, Ph.D.
Daughter Ana .....	Milanka Urosevich
Annetta Roach .....	Charles V. Vance
Luke Hinman, Jr. ....	Tudor Bogart
Margaret Collins .....	Lawrence Geller
Ana Mercedes Delgado .....	Lawrence Geller
Steve Sloss .....	Aliza S. Finley
Andrea Smith .....	Treva E. Calder
All Native Americans .....	Yvonne & James Cole
Deacon Marlon Leneauh .....	Ray Knight
Martha Ellen Brittain-Blessing .....	Ann B. Bray
Don S. Geiger .....	Scarlett S. Geiger
Hogan Geiger .....	Scarlett S. Geiger
All Who Suffer Injustice .....	J. Juskiewicz
Yvette Mendez .....	Dr. Mark A. Roy
Monika R. Forndran .....	Eva Forndran
Battle of Greasy Grass .....	Charley Cole
Marge Ferrierr .....	Ruth & Jan Sugerman
Pat Mailler-Golden .....	Sara Small
Mary Feuer .....	Sara Small
Jane Cronin .....	Sara Small
Yvonne Poulos .....	Terry Rainar
Sylvia Rainar .....	Terry Rainar
Rep. Henry B. Gonzales .....	John J. Murnin
Sparkle Parkle & Charlotte Andrus .....	Jerry Medol
Russell .....	Elisabeth Sherif
Billy Mills .....	Gladys K. Rodes
All Indians .....	Mr. R. H. Riker
Mrs. Dorothy I. Jones .....	Mr. & Mrs. Reuben O. Jones
Rich Broderick .....	Mary Theresa Streck & Jay Murnane
Daniel R. Glass .....	Barbara Glass
The Good Fight .....	Marcel M. Jeter
Mrs. Anny Pinkau .....	Dr. Irene Pinkau
Coffee Geiger .....	Scarlette S. Geiger
Linen Geiger .....	Scarlette S. Geiger
Foster Harding .....	Kathy Harding
Joe Segal .....	Fran Braverman
Zachery Robbins .....	Betsey Granda
Margo & Milton Rosenblitt .....	Florence Weisfeld
Leonard Archer .....	Marion Archer
Gigi Allison .....	John M. Behel
Wanda Oshiro .....	Stewart Lozano
Deborah Nieto .....	Stewart Lozano
Matthew Clinton .....	Jeanie Clinton

## DONORS HONOR NARF ON OUR 25TH ANNIVERSARY WITH AN OTU'HAN GIFT

From all of us here at the Native American Rights Fund, a special thank you to those donors listed below who chose to honor NARF's 25th anniversary with an Otu'han Gift in the first half of 1995. You can order an Otu'han gift coupon booklet by checking off the box and returning the enclosed business reply envelope.

### JANUARY - JUNE, 1995 25th ANNIVERSARY HONORING GIFTS

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# \*EYAPAHA



*\*Eyapaha - Lakota word meaning camp crier.*

Don Ragona, Director of Major Gifts

Summer is in full swing and the flood waters have receded here in the Rockies. We've been busy gearing up for our 25th Anniversary commemoration that was held on August 4th and 5th. Governor Roy Romer of Colorado issued a special proclamation declaring August 4th and 5th Native American Rights Fund days.

August 4th dawned with bright sunny skies for the opening of our Indian Law Symposium. The theme of the symposium, "Indian Law and Policy: The Next 25 Years" focused on sovereignty, natural resources, and human rights issues that affect Native Americans.

It's hard to put into words how proud I was to hear such speakers throughout the day as Wilma Mankiller, Principal Chief of the Cherokee Nation of Oklahoma; David Lester, Creek, Director of the Council of Energy Resource Tribes; Richard Hayward Chairman of the

Mashantucket Pequot Tribe of Connecticut; and our own Walter Echohawk, Pawnee, Senior staff Attorney of the Native American Rights Fund. Their messages were enlightening and inspirational. Native America is at the dawn of a new era and to paraphrase Mrs. Mankiller, we've survived everything that was thrown at us for 500 years, we will continue to not only survive but we will thrive as well.!

A 5K fun run was hosted on August 5th by National Support Committee member Billy Mills. Mr. Mills, an Oglala Lakota and a 1964 Gold medalist Olympian, is truly a role model and inspiration to not only our Indian youth but to the youth (and adults) of all races. We are truly fortunate to have this man on our National Support Committee.

Following the run NARF hosted a traditional feast and pow-wow. It was good to see the many people

who came out to support and honor NARF. Some of our Peta Uha members pleasantly surprised us by joining us for the festivities. John Heller and Emily Rhys Davis came from New York by way of Santa Fe to help us celebrate, as well as National Support Committee and Peta Uha member Harvey Dennenberg.

Two more of our National Support Committee members, W. Rick West Jr., Northern Cheyenne and Director of the National Museum of the American Indian and Verna Teller, Isleta Pueblo, former Governor of the Isleta Pueblo were our Head Man and Head Lady Dancer respectively.

On behalf of the Board of Directors and the staff of NARF, I would like to say thank you to all of our friends who have supported our work over the past 25 years, and a special thank you to all those who helped make our 25th Anniversary a very special one.

## LETTER FROM THE EXECUTIVE DIRECTOR



As we commemorate the anniversary of the Native American Rights Fund (NARF), I would like to personally

thank you, our friends and contributors, for your continued support both in spirit and financially over the past 25 years.

When NARF was established in 1970, it was with the intention to bring competent and ethical legal representation to Native Americans who were unable to afford such representation. We believed that Indians — if given the opportunity — could receive justice from the American legal system.

Over the years, that belief has become reality as NARF has achieved hundreds of victories in courtrooms across the country.

We have experienced many successes on behalf of our clients. In some instances, despite our efforts, we have fallen short. These defeats, however, have not deterred us.

We sincerely hope you will continue to support us in our commitment to seek justice for Native Americans throughout the country. With your help, we can and will continue the fight for justice for our people.

## WELCOME!!



Photo by: CAROLA

Please join us in welcoming Debra Bassett, film producer, to NARF's National Support Committee. Debra first began working in the film industry in Northern California in 1978 when she established Complete Coordination Services providing full production services for national and international advertising agencies, major networks, cable specials, movies of the week and TV pilot productions filmed in the San Francisco area.

During this time Debra served on the Advisory Commission of the California State Motion Picture

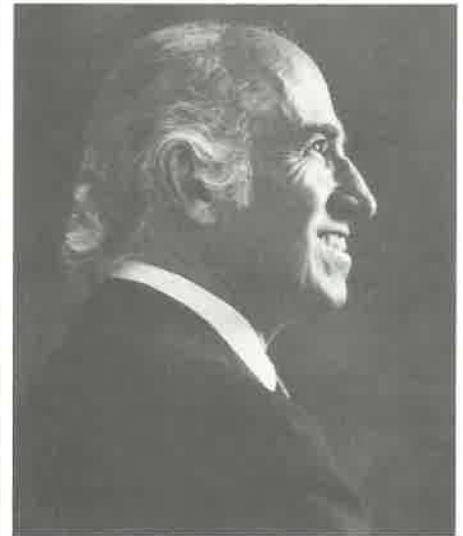
Council in Hollywood. She served two terms as Vice President of the San Francisco Bay Area Film/Tape Council, and nine years as a Director. In 1994 she again accepted a position on the organizations' Board of Directors.

In 1980 Debra founded Bassett Productions. To date she continues to produce award winning television commercials for premiere advertising agencies throughout the United States. In 1990, Debra financed a team of academy award winning filmmakers, to help her research and develop a theatrical film presentation, *Wisdom of the Elders*. The film is aimed toward educating future generations and the preservation of Grandmother Earth. She is currently assisting the Mashantucket Pequot Tribal Nation with a production depicting the 1637 Massacre of their Ancestors.

One of her immediate goals is to provide NARF with her continued support to help raise funds through her contacts in the film industry. NARF is extremely pleased to have Debra serve on our National Support Committee and look forward to working with her.

The Board and Staff members of the Native American Rights Fund would like to extend our sympathy to the families and friends of Dr. Danielle Chavy Cooper and Mr. Jeffery Shedd, NARF Peta Uha members and Franklin Folsom, longtime NARF donor, who have begun their journey on the *canku wakan* (holy road).

## DEDICATED TO:



This issue of the "Visions" insert to the NARF Legal Review is dedicated to the memory of **Dr. Jonas Salk**, National Support Committee (NSC) Member of the Native American Rights Fund (NARF). Dr. Salk served on the NSC from 1982 until his recent death. Besides Dr. Salk's support of NARF's national efforts to improve the lives of Native Americans through the American justice system, he was extensively involved in the field of medical research. Through his research, polio vaccine was developed in the 1950s. In more recent years, Dr. Salk was involved in research programs in immunology with emphasis on advancing the knowledge of multiple sclerosis and cancer. Dr. Jonas Salk, medical researcher and author and supporter of Indian rights, will be greatly missed.



NARF "Visions" is published by the Native American Rights Fund, 1506 Broadway, Boulder, CO 80302. Mary Lu Prosser, Editor.

# Native American Rights Fund

## Commemorates 25 Years

In 1995, the Native American Rights Fund enters its 25th year of "standing firm for justice." NARF has successfully represented Indian tribes and individuals in nearly every state in the nation. On behalf of Native Americans, whose lives are governed by hundreds of treaties, thousands of federal



statutes, regulations and administrative rulings, NARF has fought and won hundreds of cases concerning every area and issue in the field of Indian law. NARF's reputation as a national Indian law advocate is backed by its 25 years of successful legal representation to protect Native rights in today's society.

**NARF** is offering the following 25th Anniversary commemorative items for sale:

**A:)** Long sleeve and short sleeve shirts with NARF 25th Anniversary logo in front and list of tribes on the back; available in white, gray and black in sizes L, XL, XXL. (\$15 plus \$2 shipping & handling) (CO add 4.05% sales tax)

**B:)** Canvas bags (17"x12") with NARF 25th Anniversary logo in blue on a blue and white bag. (\$12 plus \$2 shipping & handling)

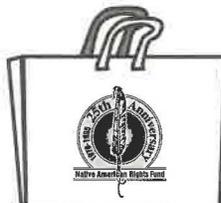
**C:)** NARF 25th Anniversary Blanket: Beautiful Indian design blanket made by Navajo Textile Mills with an embroidered 26" NARF Feather. Three to choose from. Red with Royal Blue with Blue NARF Feather; Light Beige with Black with Black NARF Feather; Black with Light Beige with White NARF Feather. Each blanket is 64"x80", 88% virgin wool and 12% cotton warp. A second shipment of blankets will be 100% virgin wool. (\$125 plus shipping & handling) (CO add 4.05% tax).

***All orders will include FREE of charge, a NARF 25th Anniversary button, bumper sticker and key chain, while they last.***

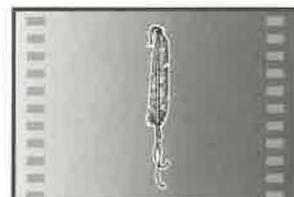
(front) **T-SHIRT** (back)



**CANVAS BAGS**



**BLANKET**



A:) Long Sleeve Shirt(s) Qty \_\_\_\_\_ Size(s) \_\_\_\_\_ Color(s) \_\_\_\_\_

B:) Canvas Bags(s) Qty \_\_\_\_\_ C:) Blanket(s) Qty \_\_\_\_\_ Feather color(s) \_\_\_\_\_

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