

**NARF**

Native American Rights Fund

**LEGAL  
REVIEW**

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# CHIPPEWA-CREE TRIBE, STATE OF MONTANA SIGN HISTORIC COMPACT

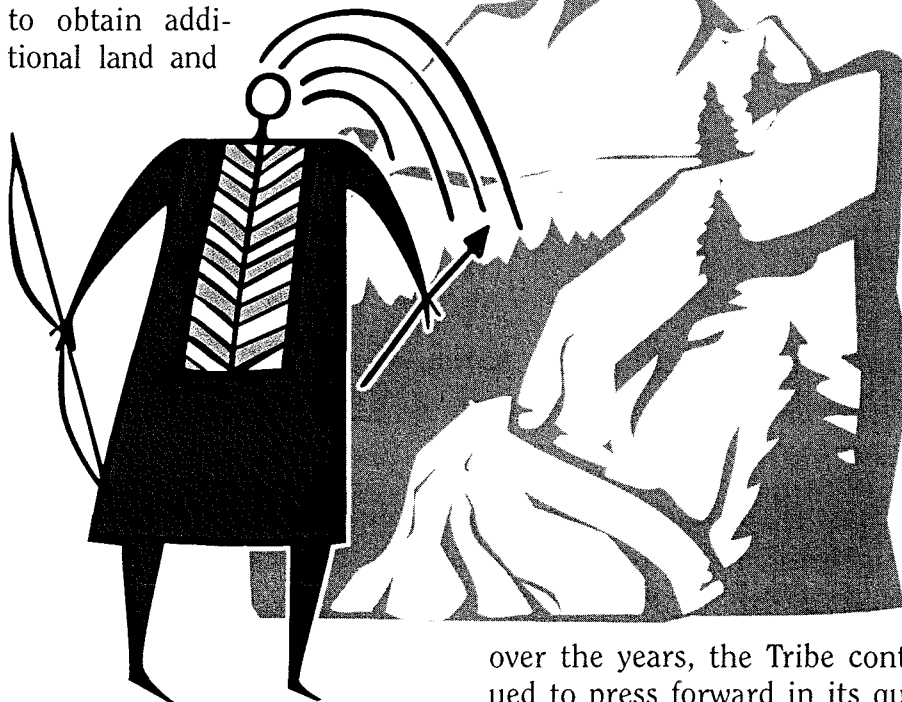
## I. Introduction

In 1916, the United States set aside the Rocky Boys Reservation for the Chippewa Cree Tribe. However, the United States recognized that the 1916 Reservation lacked sufficient land and water to make the Reservation a viable homeland for the Chippewa Cree Tribe. During subsequent years, various Federal efforts to obtain additional land and

water for the Tribe and to develop the Tribe's agricultural projects were undertaken. However, these largely failed because of poor planning and implementation by the Federal Government, and because of the legal uncertainty over the nature and scope of the Tribe's water rights. While the Federal Government's efforts to secure land and water for the Tribe declined

A critical part of this quest was to secure rights to sufficient water for its people and its economy. The Native American Rights Fund has represented the Tribe in this quest since 1987.

The Tribe's opportunity to obtain an adequate water supply for its future began in 1982 when the United States filed water rights claims for the Tribe in state water court. Subsequently, the United States, the Tribe and the State of Montana entered into negotiations to settle the Tribe's water rights claims. The Tribe fashioned a water rights settlement plan to further the ultimate goal of making the Rocky Boy's Reservation a self sustaining homeland. The settlement plan consists of four main elements: (1) quantification of on-Reservation water and establishment of an administration program; (2) supplementation of the on-Reservation drinking water supply to meet future population needs; (3) construction of on-Reservation facilities to deliver drinking and irrigation water; and



over the years, the Tribe continued to press forward in its quest for a viable permanent homeland.

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(4) compensation for federal failure to protect the Tribe's water rights and Tribal release of claims against the federal government for such breach of trust. The Tribe's settlement plan is to be carried out through a Compact with the State of Montana settling issues of quantification and administration of on-Reservation water supplies, and through congressional legislation ratifying the Compact, providing a source of water to supplement the short water supply on the Reservation, authorizing the construction of an on-Reservation distribution and irrigation system, and providing an economic development fund. This article tells the story of the century-long struggle of the Chippewa Cree Tribe to secure a viable homeland, and in particular the on-going struggle to secure rights to water for drinking and for sustaining the Tribe's agricultural economy.

### II. Historical Background

Federal assistance to the Tribe in achieving the Tribe's water rights settlement goals has fallen far short of Tribal expectations. Unfortunately, as shown by the history of the Rocky Boy's Reservation, this situation is consistent with previous conduct of the United States in carrying out its trust responsibilities to the Chippewa Cree Tribe.

#### A. The Establishment of the Rocky Boy's Reservation.

The Rocky Boy's Reservation is located in north-central Montana on several tributaries of the Milk River. The present Reservation encompasses approximately 108,000 acres. The original Reservation was established in 1916 by executive order setting aside a portion of the abandoned Fort Assiniboine Military Reservation. The Rocky Boy's Reservation was created as a homeland for a band of Chippewa people led by "Stone Man," also known as "Rocky Boy," and a band of Cree people led by "Little Bear."

Rocky Boy's band and Little Bear's band customarily migrated on a seasonal basis throughout the Milk and Marias River areas irrespective of the United States-

Canadian boundary. The fact that the white man had created a boundary between the United States and Canada held no meaning for the bands. However, the unfortunate result of their seasonal migrations in disregard of the United States-Canadian boundary was that the United States, during the years in which reservations were being established for other Indian groups, regarded the two bands as Canadian Indians not entitled to federal benefits provided to American Indians. Hence, from about 1888 to 1916, the ancestors of the Chippewa Cree Tribe wandered throughout northern Montana homeless and struggling for existence under the most severe conditions. During this time, the Chippewa Cree pressed the United States for a permanent home for the bands. The bands



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were joined by certain influential citizens of Montana motivated by the desire to transfer the burden of providing assistance to the poverty-stricken bands to the United States.

Early efforts to locate lands on which to place the Chippewa Cree failed, due to opposition by non-Indians adjacent to the lands under consideration. Even the decision of the United States to place them on the old abandoned Fort Assiniboine Military Reserve was strenuously opposed. The citizens of Havre wanted Congress to grant them the choicest part of the old military reservation - the Beaver Creek valley with an ample supply of water - as a public park and playground. A War Department memorandum, dated October 1, 1891, illustrates the importance of the Beaver Creek valley to the viability of the Military Reservation:

[T]he post depended for its water supply solely upon the Beaver Creek...and...it was essential that not only the stream to its source but the whole valley of the same be retained under the control of

the post authorities.... [I]f the control of any part of the Creek should be given up, the post might as well be abandoned.

Consistent with this view, the federal agent charged with supervision of Rocky Boy's band, said:

If they should pass the bill giving only the two south townships [not including the Beaver Creek valley] we will still have the Rocky Boy problem, as they will still have no home.

Nevertheless, buckling under political pressure, Congress gave the City of Havre the majority of the Beaver Creek valley even though it was located some distance away from the city boundaries. Congress gave the Indians just two townships and a portion of a third.

The Chippewa Cree tried to farm their Reservation - described in Annual Reports as a "rough, dry unsettled section of old military reserve" and "not suited to farming". These reports, from 1918 through the 1930's, were replete with statements that the Reservation was not suited to

farming, that irrigation was difficult if not impossible, and that more water was needed. The reports indicated that farming would not lead to self-sufficiency; stock raising was felt to be the only feasible activity, provided enough winter feed was available. These reports provide a litany of crop failures due to drought, a short growing season, lack of equipment and horses, and a picture of dogged perseverance against these formidable odds.

Irrigation was essential to stock-raising as well. A 1937 Federal Report related that 1937 marked the sixth consecutive year of near complete crop failure, and, that:

[t]he cattle industry received a severe blow this year when no feed was produced to carry the stock through the winter. The breeding stock was culled very closely and approximately fifty percent of them were put on the market. Three hundred fifty-six selected cows and one hundred thirty-eight steer calves

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were shipped to Dixon, Montana, for winter feeding. Thirty bulls and three milk cows are the only Indian cattle remaining on the reservation. The livestock men were very discouraged.

The Commissioner of Indian Affairs lamented that the Reservation was "entirely inadequate for the needs of the Indians for whose benefit it was set aside....." Due to the prevailing unfavorable crop and livestock conditions, and the lack of irrigable land and water, the Tribe and the United States began to look for ways to enlarge the Reservation.

#### **B. Federal Failure to Provide Adequate Water and Water Development Facilities on the Reservation**

Unfortunately, the United States' efforts to acquire additional land and water for the Tribe were far from adequate. The Federal supervising engineer investigated Chippewa Cree water rights and reported in 1926 that Indian rights were doubtful, and that diversions by the Chippewa Cree from Reservation creeks should not be encouraged. The United States did not make an official determination as to whether this was legally correct; instead the United States deferred continually to non-Indian

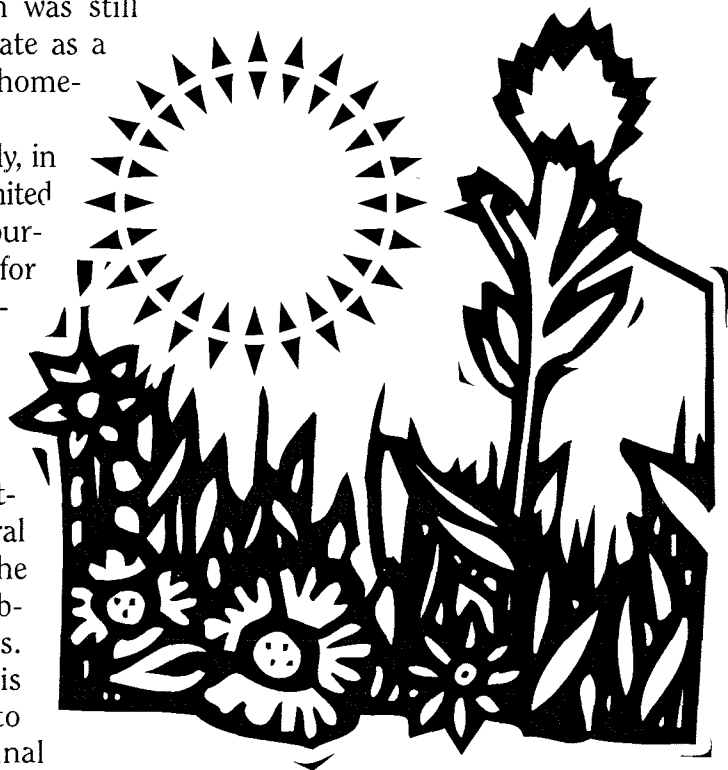
interests. Thus, an irrigation project for the Rocky Boy's Reservation was not a priority for the federal government.

In the 1930s and 1940s, the United States purchased land for the Rocky Boys Reservation, adding approximately 45,000 acres to the Reservation. Unfortunately, the additional lands did little to alleviate the Reservation's water supply problems. The lands acquired were scattered, of poor quality, and were without significant water resources. The Chippewa Cree Tribe still could not raise enough crops for livestock feed to meaningfully improve reservation conditions. The United States recognized that the Reservation was still

wholly inadequate as a self-sustaining homeland.

Accordingly, in the 1930s, the United States took purchase options for the Chippewa-Cree Indians on approximately 30,000 acres, utilizing funds appropriated from a Federal program for the purchase of submarginal lands. The intent of this program was to take submarginal

land out of commercial farm production forever. The program was ill-suited to the Chippewa Cree's needs. The government's decision to utilize the program as a way to obtain more lands for Indians was made worse by the poor land selections made, when better lands were available. The government planned to carve up the submarginal lands into subsistence farms for the Indians. But without water or sufficient irrigable land, even subsistence farming was doomed at the outset to failure. Before the options could be exercised and the purchases completed, however, funding for the submarginal land program failed. The federal government then attempted to exer-



cise the purchase options under the Indian Reorganization Act, which allowed for lands to be purchased and added to reservations.

The Indian Reorganization Act did not require the purchase of submarginal lands. Nevertheless, rather than foregoing the submarginal purchase options and identifying lands for purchase better suited to the Indian's needs, the Indian Office exercised the ill-advised options taken under the submarginal land program. This decision was made against the recommendations of the Reservation Superintendent, and over the objections of the Indians and government personnel.

Subsequent purchases were made to consolidate the scattered submarginal lands in order to simplify fencing and alleviate jurisdictional problems. Very little attention was given to obtaining irrigable lands with water rights. In fact, good sources of water were sold or traded away in efforts to consolidate purchased land through land and lease exchanges.

In 1937, the United States developed a detailed land purchase plan, which involved collaboration of all units of the Indian Service. Even without consideration for a normal population increase of two percent per annum, the plan called for the purchase of an additional 660,000 acres, including 16,000 acres of irrigated land, at a cost of

\$5,040,000, to serve the then-existing Reservation population of 150 families and 400 eligible homeless families. The purchase area took in part of, and was intended to benefit from, the Milk River Irrigation System. While never followed, this plan has apparently never been discarded.

### **C. Federal Mismanagement of Tribal Resources**

Having failed to provide the Chippewa Cree Tribe with a Reservation with adequate land and water, the United States proceeded to mismanage the limited tribal resources on the Reservation at great expense to the Tribe. An example is Bonneau Dam on the Reservation which originally could have been designed and constructed, easily and at minor additional cost, to provide irrigation to the Tribe's croplands thereby enhancing the Tribe's self-sufficiency. Yet another example is the chronic under-performance of the Tribe's agricultural lands due, among other things, to lack of training, equipment, and water for irrigation. These same reasons underlay the failure to develop hundreds of acres of purchased lands for farming. The Tribe has suffered and continues to suffer, financially and otherwise, from the United States' mismanagement of its resources.

### **III. The Compact**

In 1982, pursuant to state law, the Federal Government filed water rights claims in Montana water court for the Chippewa Cree/Montana Tribe. The Tribe then notified the State of Montana that the Tribe wished to negotiate a settlement of its water rights claims. At that point, the State water court stayed proceedings on the Tribe's claims pending settlement negotiations involving the Tribe, the State and the United States. The Tribe then commenced the formidable task of negotiating a compact with the State of Montana and the United States which settles its water rights claims.

On April 11, 1997, after ten years of extensive technical studies, and five years of intensive negotiations, the Chairman of the Chippewa-Cree Tribe and the Governor of Montana signed an historic water rights compact between the two governments. The Chippewa Cree/Montana Compact accomplished the first element of the Tribe's settlement plan - it quantifies the Tribe's water rights and establishes a joint Tribe/State water administration system. The Compact was ratified by the Tribe on February 21, 1997 and was approved by the Montana Legislature on April 10, 1997. The

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Chippewa-Cree Tribe thus became the third tribe in Montana, after the Northern Cheyenne Tribe and the Assiniboiné & Sioux Tribes of the Fort Peck Reservation, to agree to a water rights compact with the State. However, with few exceptions, all provisions of the Compact are subject to approval by the United States Congress.

The Compact establishes the Tribe's water rights to the Big Sandy, Box Elder, and Beaver Creeks on the Reservation, and contemplates tribal rights to supplemental water for drinking. The Compact provides for 9260 acre-feet of water per year from the Big Sandy Creek and its tributaries, and 740 acre-feet per year from Beaver Creek. The Tribe reserves the right to divert from surface water flows for irrigation and other uses from the Lower Big Sandy Creek, Gravel Coulee, and from Box Elder Creek. On Beaver Creek, the Tribe reserves the right to divert from surface water flows for recreational uses, subject to a requirement that 280 acre-feet be returned to the stream.

The Compact also calls for Tribal administration of its water rights. The Compact specifies that any change in water use must be without adverse effect on other water users. To resolve disputes concerning water use between Tribal and non-tribal water users

under the Compact, a pre-adjudication Tribal/State administrative process is established, and an adjudicatory process is established consisting of a Compact Board made up of three members: one Tribal, one local off-Reservation, and one chosen by the other two.

The Department of the Interior ("Interior"), while supportive of the quantification aspects of the Compact, declined to sign the Compact for the United States primarily because the issue of a supplemental water supply for the Tribe had not been resolved. With the signing of the Compact, Congressional legislation becomes the next step. This will necessarily involve continuing negotiations with Interior to obtain its support.

#### **IV. Congressional Action Sought to Ratify Compact and Provide Other Elements of Tribe's Settlement Plan**

The Compact settles the quantification/administration element of the Tribe's settlement plan. The remaining three elements of the plan can only be resolved by congressional action. However, the Compact does contain provisions by which the State agrees to support federal legislation that will ratify the Compact, and authorize and appropriate funds to implement all elements of the Tribe's settlement plan, including facilities needed to implement

the Compact, a federally funded project to supplement the drinking water supplies on the Reservation, a domestic water delivery system, and an economic development fund. The settlement plan element that has proven to be the most problematical is that calling for supplementation of the Tribe's drinking water supply. The Tribe's technical analysis indicated that planning for a drinking water supplementation project would need to commence immediately and would need to involve the importation of water to the Reservation from an off-Reservation source. The Tribe's analysis also led to the conclusion that the importation project should utilize water from the Tiber Dam and Reservoir. Accordingly, the Compact contemplates an allocation of 10,000 acre-feet of water to the Tribe from the Tiber Reservoir and the construction of a pipeline from the Reservoir to the Reservation. The Tribe considers a drinking water supplementation project so important that, in the Compact, the Tribe reserved the option to withdraw from the Compact if such a project is not constructed within a designated period of time.

The federal government initially indicated to the Tribe that Interior could not support a pipeline project in the immediate future. The federal government reasoned that the Tribe's future



drinking water needs could be served by retiring the Tribe's irrigated lands and using the saved water for drinking. The federal notion of using all available on-Reservation water resources for domestic purposes, leaving the Tribe with no water for agricultural purposes, was immediately rejected by the Tribe. It flew in the face of the Tribe's past and ongoing efforts to develop on-Reservation agriculture enterprises in accordance with long-standing Federal and Tribal Reservation policies. It also threatened termination of jobs and products produced by the Tribal agricultural enterprises and relied upon by Tribal members.

Interior responded by offering to purchase land for the Tribe to replace the land retired to provide drinking water and to agree to a study of Tribal drinking water needs after a period of about forty years. After a joint Federal/Tribal evaluation of this proposed approach, the Tribe rejected it because the evaluation showed that the proposal to purchase replacement arable lands for the Tribe was not cost effective, would

likely involve lands separated from the Reservation thereby creating use problems, and threatened to raise significant political resistance from the State of Montana and other non-tribal interests. Furthermore, the Tribe rejected the Federal proposal that contemplated a future study of water needs because the government could not guarantee that the needs identified by the study would be addressed.

In the Compact, the State of Montana pledged its support of the Tribe's settlement plan, including a project to supplement the Tribe's drinking water supply. The construction of a pipeline project to deliver water to the Reservation from Tiber Dam and Reservoir, an off-Reservation source, is the option identified by the Tribe's technical analysis as the best means of supplementing the Tribe's drinking water supply. In the course of discussing this option with the State and the Federal Government, it became apparent that many non-tribal communities with drinking water problems might be able to resolve their problems cost effectively by

tying into the Tribe's pipeline. These communities expressed an interest in participating in the Tribe's proposed pipeline project. With the State acting as facilitator, the Tribe and representatives of the non-Indian communities formed an Ad Hoc Committee composed of three Tribal and three non-Indian members to evaluate and advance the concept of a regional pipeline project. Congress appropriated \$300,000 for the preparation of a feasibility study of the proposed pipeline project and other possible alternatives. The State of Montana appropriated funds for the completion of this study. The study is expected to be completed in the fall of 1997.

Meanwhile, the Tribe and the State are continuing to work with Interior to find mutually acceptable ways of resolving Interior's concerns about the Compact and other issues related to the Tribe's larger settlement plan. Recently, Interior agreed to participate in the regional pipeline feasibility study and proposed to expand the number of water supply alterna-

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tives selected by the Ad Hoc Committee from the three originally chosen for final analysis proceeding selection of the preferred alternative. To expedite the process of responding to Interior's proposal, the Tribe and the State urged Interior to 1) conduct a rapid review of existing information on the alternative involving utilizing an enlarged on-Reservation reservoir as a source for supplemental drinking water, and indicate whether Interior agrees with the Tribe that this is not a feasible option; 2) agree to the formation of a joint working group, composed of representatives the Tribe, the State, Interior and the Department of Justice, to discuss pending federal issues other than those associated with the importation issue; 3) agree to discuss alternative approaches to federal legislation, including combining or separating a regional drinking water system from the Compact, and alternative sources of funding, and 4) continue, on a timely basis, substantive discussions with the Tribe on a settlement fund.

### V. Conclusion

In the early years of this century, federal policy resulted in the opening of vast acres of former Indian reservations in the West, and encouraged non-Indian settlement and irrigation by constructing dams

and reservoirs at Federal expense to deliver, again largely at federal expense, water to non-Indian irrigators. During that era, the tribal water rights and tribal needs for facilities to utilize water were ignored by the federal trustee while non-Indians obtained cheap water for irrigation, including Indian water. Only after 1976 when the McCarran Amendment was held by the United States Supreme Court to subject tribal water rights to state adjudications for quantification, did the federal trustee formulate policies for the settlement of tribal water rights. Several such settlements have been completed. However, none have been completed during the tenure of the Clinton Administration.

In addition, at odds with federal policy to settle tribal water rights is the federal policy to balance the budget — with tribal programs and projects expected to absorb an uneven and unequal share of budget cuts while the disparity between the majority society and Indian societies continues to widen. This is but another example of the conflict of interest that has historically compromised the federal trustee's duty to provide for the best interests of Indian tribes. Non-Indian interests received their share of funds to put western water to use in an era of federal reclamation projects. Tribal needs for water and water facilities were ignored during those years. The federal govern-

ment should not use the current budget policy as yet another excuse to ignore tribal water needs. The federal trust duty to protect tribal water rights should be given top priority under federal budgetary guidelines.

The Chippewa-Cree/Montana Water Rights Compact, intended to permanently settle all existing water rights claims of the Chippewa Cree/Montana Tribe in the State of Montana, accomplishes one important element of the Tribe's settlement plan. The remaining three elements must be obtained through Congressional action. Because of the permanence of the settlement once secured by congressional legislation, the Tribe seeks a settlement that provides not merely for its present water needs, but also for its future water needs.

The Native American Rights Fund believes that the history of the United States' poor land choice decisions, poor land management, and failure to obtain water for the Rocky Boys Reservation justifies a substantial federal contribution to the Chippewa-Cree water settlement in the form of authorization of federal projects and an economic development fund. By agreeing to the Tribe's settlement plan, the United States would finally fulfill its trust responsibility to the Tribe to provide sufficient water to support the Rocky Boy's Reservation as a viable, self-sustaining homeland for the Chippewa-Cree Tribe. ☉



# NARF UPDATES



## U.S. Supreme Court will hear Alaska Tribal Sovereignty Case

~ Alaska State Legislature appropriates \$1 million to fight village ~

The United States Supreme Court decided on June 23, 1997 to hear the case, *State of Alaska v. Native Village of Venetie* — a Ninth Circuit Court of Appeals decision which upheld Venetie's "Indian country" status under federal law and thus its right to govern its own affairs.

"The State appropriated an unprecedented amount of money to fight this small 350 member tribe. It is unfortunate that the State of Alaska is obsessed with stifling tribal sovereignty even though it will benefit all Alaska residents," says Heather Kendall-Miller (Denaina Athabaskan and member of the Native Village of Dillingham), attorney for the Native American Rights Fund which represents Venetie in the case. She explains, "Native Americans everywhere are watching this case since it underscores the vital nature of self-determination and the steep climb we face to get there."

The Ninth Circuit ruling affirmed that Venetie — a tribe situated in remote wilderness Alaska and accessible year-round only by plane — possesses the same rights as Indian tribes of the contiguous United States.



The Supreme Court will now definitively address for the first time the powers of Alaska Native villages, most of which have governed themselves for ages with no challenges from the State.

The Alaska Native Commission, a study group charged with examining and suggesting resolutions for problems plaguing Native villages, recently concluded that tribal sovereignty is the key to the survival of Native peoples. Yet, fearing loss of political control, the Governor and State Legislature appropriated a \$1 million warchest to finance an appeal to the Supreme Court.

Senator Ted Stevens (R-AK) and twenty state attorneys general filed *amicus* briefs on behalf of the State of Alaska urging the Court to overturn the "Indian country" decision.

Oral arguments on the case will be heard when the Supreme Court returns from its summer recess. ☉

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# The Cheyenne and Arapaho Tribes of Oklahoma Claim Victory in Tax Case

~United States Supreme Court denies oil companies' appeal ~

On March 17, 1997, the United States Supreme Court denied the request to hear *Mustang Production Company v. Harrison*. The rejection means that the August 23, 1996 ruling by the United States Court of Appeals for the Tenth Circuit will stand — thus affirming the right of the Cheyenne and Arapaho Tribes of Oklahoma to tax oil/gas production on allotments. The allotments, 160 acre land parcels held in trust by the federal government for members of the Tribes, are scattered throughout nine counties in western Oklahoma. The allotments are virtually all that remains of the Cheyenne and Arapaho's 4.5 million acre reservation which the federal government took back in 1890.

The Tribes had already won their case in tribal court and in the lower federal courts. The oil companies looked to the U.S. Supreme Court, but were turned down. The oil companies now concede that the case is over and that they must pay taxes on their activities on allotments to the Tribes. The tax money that has been at issue in this case — about \$5 million—will be released to the Tribes.



The Cheyenne and Arapaho Tribes first enacted the tax in 1988 to raise \$1 million annually for roads, schools, and health care for their 10,000 members, many of whom live in poverty. Nineteen oil companies, who for decades have been extracting oil and natural gas from the allotments, immediately challenged the tax. The Tribes retained the Native American Rights Fund (NARF) to defend their rights, and *Mustang* became the first major tribal tax case to be heard in Tribal Court. As the case proceeded through the tribal court system and then into federal court,

the federal government entered the case as *amicus curiae* (friend of the court) in support of the Tribes' right to tax.

Melody McCoy, NARF attorney and lead counsel says, "one hundred years ago the government took away most of the Tribes' land. But it didn't take away the Tribes' sovereignty, and now it is clear the Tribes can exercise their sovereignty on what little land they have left." ☼



## Pentagon Interim Rules Would OK Peyote for Religious Use

*~ Native American soldiers would be allowed to use peyote for religious sacrament ~*

The Pentagon issued interim rules that recognize and control the sacramental use of peyote by Native Americans in the military who are members of federally recognized tribes. NARF and the Native American Church of North America have been working with Pentagon officials for over a year to draw up the new rules. The final rules will be released later this summer.

The following limitations will be included in the interim rules:

- Peyote shall not be used on duty or within 24 hours before scheduled military duty.
- Peyote may be possessed in amulet form (not for ingestion) and may be worn as an item of religious apparel subject to service uniform regulations. Otherwise, peyote shall not be used, possessed, distributed, or introduced aboard military vehicles, vessels, or aircraft except when permitted by the installation commander.
- A service member who has used peyote shall promptly notify his or her commander upon return to duty. The

military departments may require pre-use notification for service members performing designated duties when it is in the interest of military readiness or safety to notify commanders of a member's intent to use peyote. Upon notification of use or intended use of peyote, the member's commander shall verify the member is an enrolled member of a federally-recognized Indian tribe.

- Peyote shall not be used, possessed, transported, or distributed when such action would violate the laws of other countries.

- The secretaries of the military departments may impose additional limitations with approval by the Assistant Secretary of Defense for Force Management Policy. Such limitations are subject to compliance with the Religious Freedom Restoration Act of 1993. Before approving any such limitations, the Assistant Secretary will consult with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

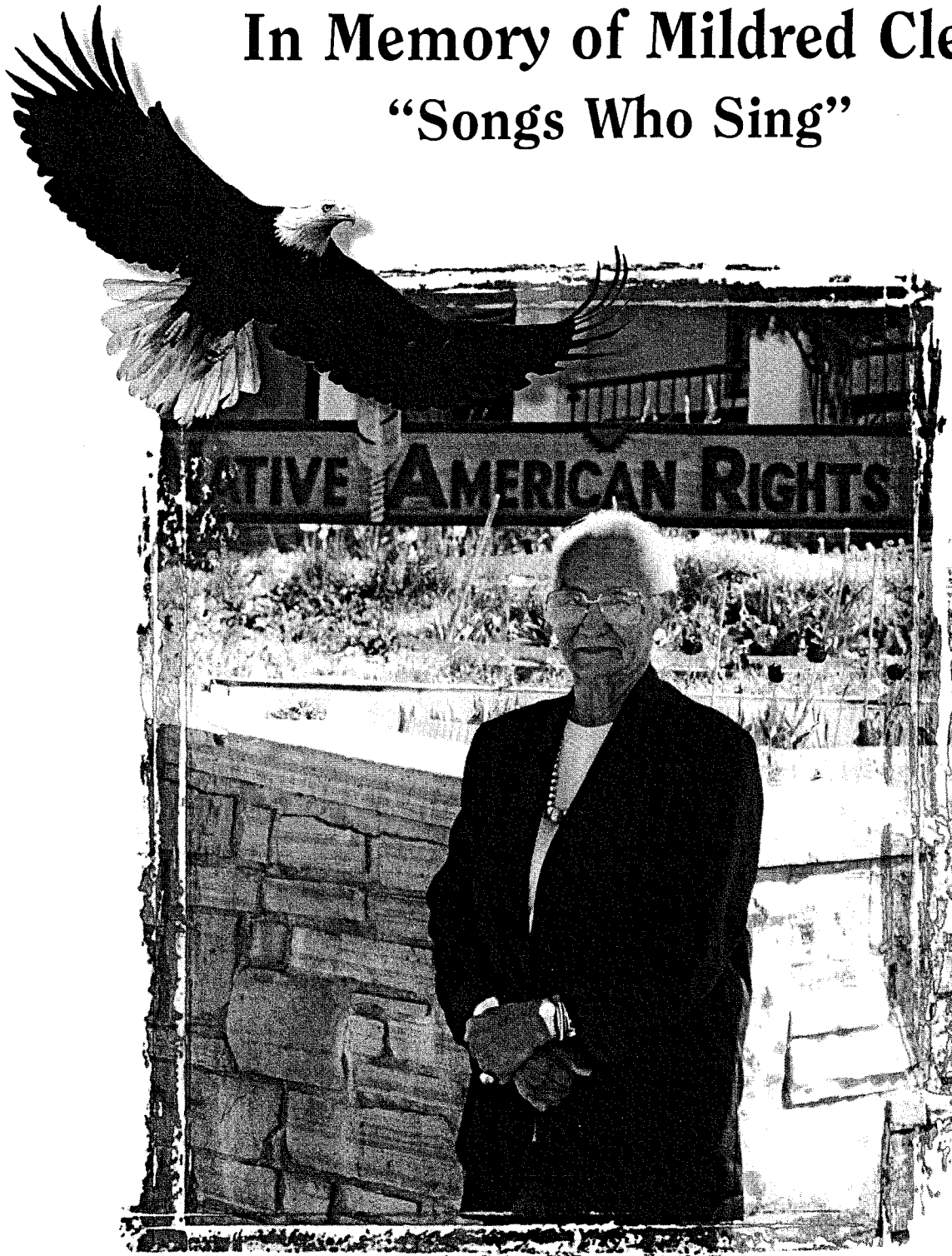
Peyote, the scientific name of which is *Lophophora williamsii*, is a small, spineless cactus that grows primarily in the Rio Grande


valley of southern Texas and in northern Mexico. Medical evidence, based on scientific studies and opinions of medical doctors, former directors of the Indian Health Service and anthropologists, demonstrates that peyote is not injurious to the Indian religious user, and, in fact, is often helpful in controlling alcoholism and alcohol abuse among Indian people. Ingested as a solid or tea in strictly prescribed religious ceremonies, the sacrament is neither addictive nor habit forming. Courts which have made factual findings regarding the religious use of peyote by Indians have correctly concluded that such is not harmful.

NARF attorney Bob Peregoy estimated that there are approximately 9,600 Native Americans in the U.S. military. However, only 100 to 500 are members of the Native American Church. Peregoy went on to explain that peyote is viewed as a natural gift from the Creator and the Church believes in strong family values, personal responsibility, and abstinence from drugs and alcohol at all times. ☉

*NARF Updates continued on page 14*

**In Memory of Mildred Cleghorn**  
**“Songs Who Sing”**





there are Songs Who Sing themselves  
they start in the heartbeat of Creation  
Thunder Medicine echoing  
echoing  
echoing through canyons of time

the Songs Who Sing themselves scale mountains  
then fly from world to world  
Fire Medicine sounding  
breathing  
flying through lightening and shooting stars

the Songs Who Sing themselves swim oceans  
then come, then come down with the gentle night rain  
with the morning dew  
with mist on clear blue streams

the Songs Who Sing paint warriors  
warriors on watch  
on watch for blood  
for blood at dawn

the Songs Who Sing wail like mourners  
wail like mourners  
mourners laying their children down  
laying their children down  
down in the sunset

the Songs Who Sing heal Mother Earth  
in the joy of birth  
and skip beats  
and skip beats  
with rattles and sighs  
and sighs

the Songs sing the evening prayers  
for Grandfather Cedars who talk in the night

the Songs sing the mid-day prayers  
for Grandmother Moon and her circles of life

the Songs sing themselves  
for the Butterflies to hide in the teal blue sky

the Songs sing themselves  
for the Buffalo to roam through the passages of time

the Songs sing themselves  
for the Buffalo to dance  
for the Buffalo to dance  
for the Buffalo to dance with the Sunflowers again


the Buffalo are dancing again  
the Buffalo are dancing again

and the Songs are still singing  
the Songs are still singing  
the Songs are still singing  
the Songs are still singing  
for  
you

*suzan shown barjo*

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The Board of Directors and staff of NARF give thanks to the Creator for giving us the opportunity to share some of Mildred's life with her. She will be deeply missed. Her life and her contributions will always be honored.



# United States Supreme Court Rules Against Tribal Courts

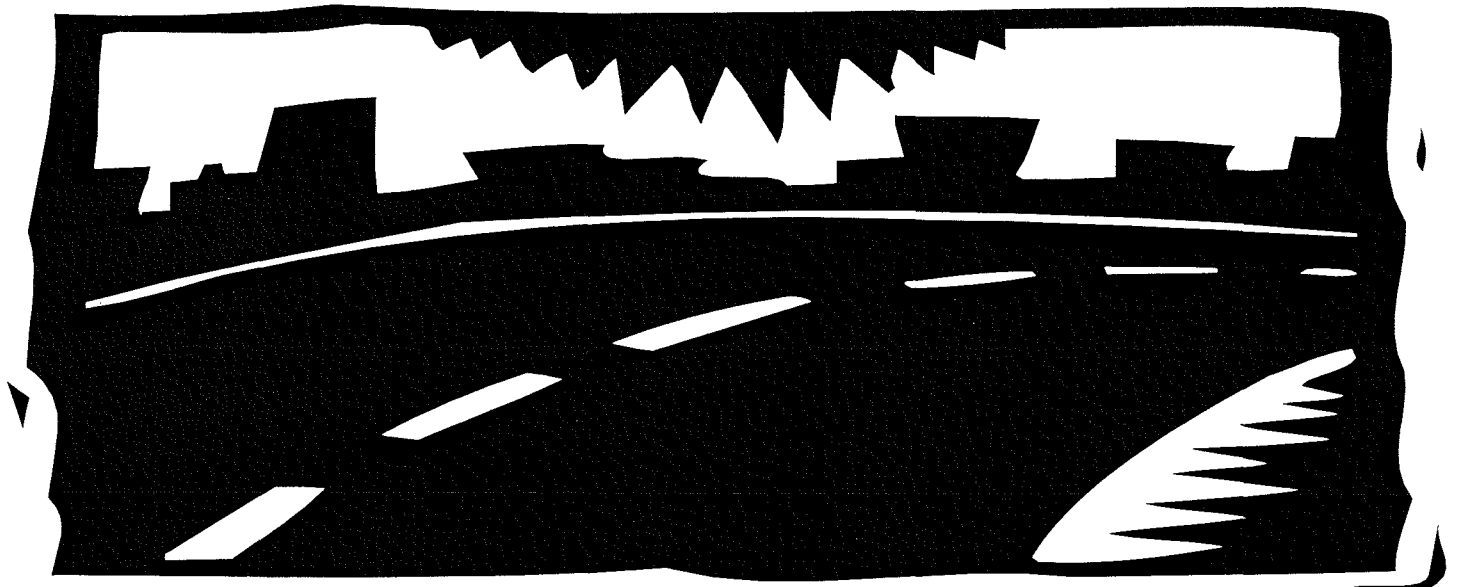
~ Tribal courts lack jurisdiction over tort cases between non-Indians ~

In *Strate v. A-1 Contractors*, the United States Supreme Court agreed to review a decision by the United States Court of Appeals for the Eighth Circuit. The case involved the jurisdiction of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota to decide a personal injury case between two non-Indians on the reservation. A non-Indian resident of the reservation was involved in an automobile collision on a state highway within the tribal reservation with a non-

Indian owner/employee of a landscape construction company located off the reservation but conducting business on the reservation under a subcontract with the Tribe. The Court of Appeals, in an 8 to 4 ruling, held that the tribal court did not have jurisdiction over the case, reversing a previous federal district court ruling that favored the tribal court's jurisdiction.

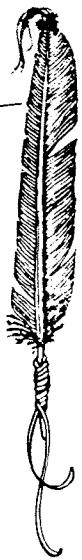
NARF argued that tribal courts should have jurisdiction along with state courts over motor vehicle torts that threaten the reservation community, even if they occur on state highways. However, on April 28, 1997 the U.S. Supreme Court ruled that tribal courts generally lack juris-

diction over tort cases between non-Indians involved in traffic accidents on state highways within Indian reservations. In its opinion, the Court relied on a previous case, *Montana v. United States*, which ruled that absent congressional action, Indian tribes generally lack civil authority over non-Indians within reservations but on non-Indian land, unless the non-Indians enter consensual relationships with the tribe or its members, or their activities threaten or directly affect the tribe's political integrity, economic security, health or welfare. ☉

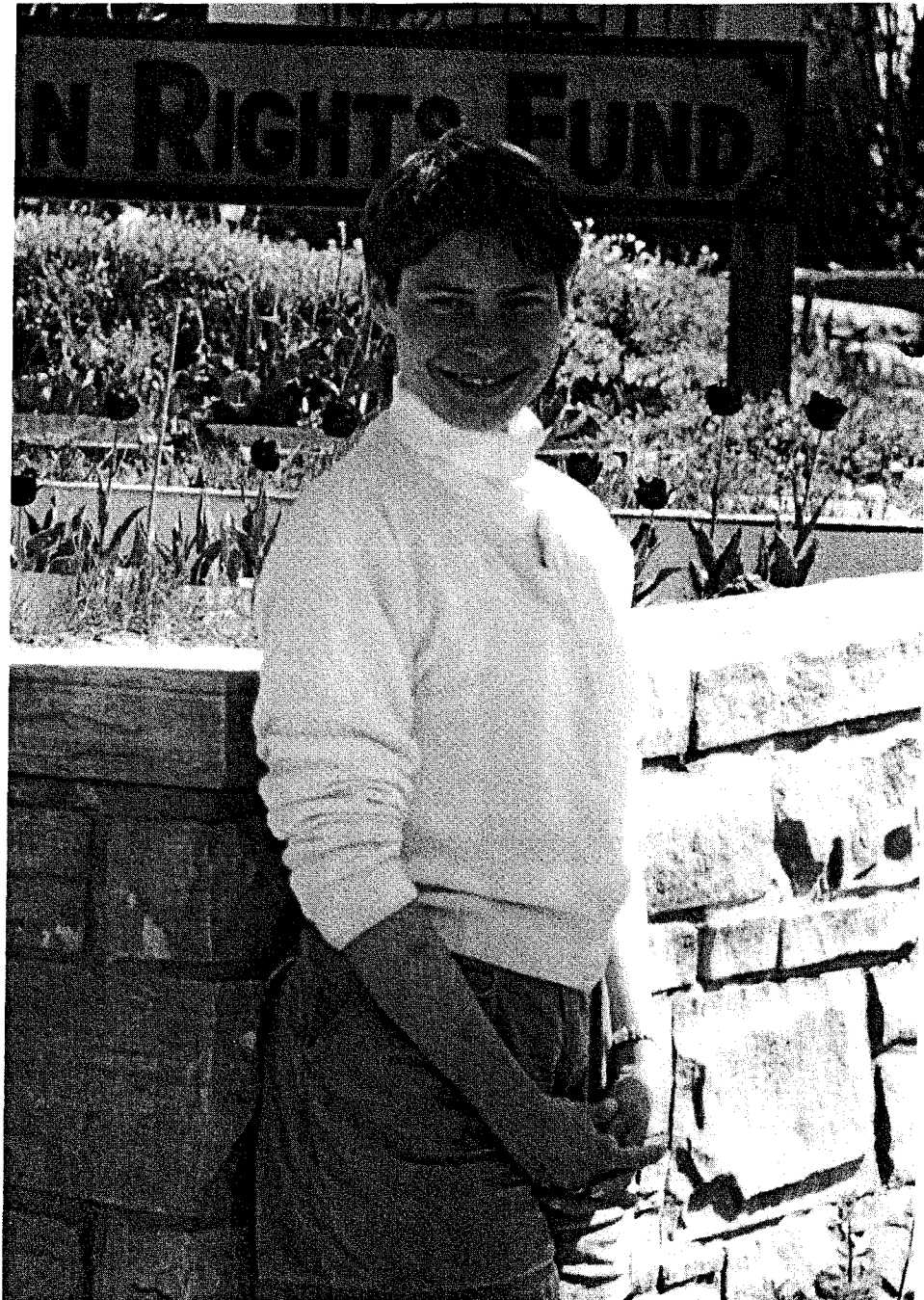


# NARF ATTORNEY

## Heather Kendall-Miller



**Heather Kendall-Miller** is Denaina Athabaskan and is a tribal member of the Native Village of Dillingham. She received her Bachelors degree from the University of Alaska-Fairbanks in 1988 and her J.D. from Harvard Law School in 1991. After clerking with Justice Rabinowitz of the Alaska Supreme Court, Heather received a two-year Skadden Fellowship to work for Alaska Legal Services and the Native American Rights Fund in the area of Alaska Native Rights. Heather became a staff attorney with the Native American Rights Fund in 1993 and received senior attorney status in 1997. Heather practices exclusively in the area of tribal rights and subsistence where she has been successful in arguing for Indian country status for Alaska tribes and in affirming subsistence hunting and fishing rights for Alaska Natives. ☼







# NEW NARF BOARD MEMBER

## Wallace E. Coffey

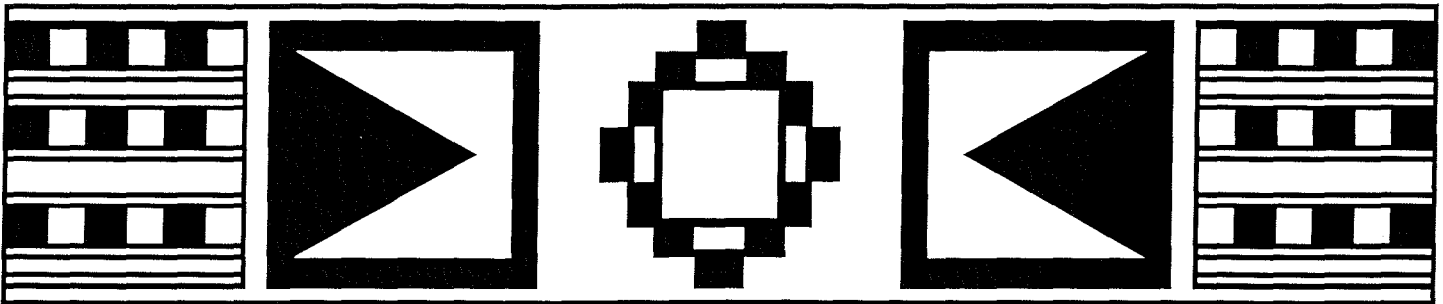
Wallace E. Coffey, Comanche, was elected to the Native American Rights Fund Board of Directors, replacing Mildred Cleghorn who passed away before the completion of her term on the Board. Wallace was elected Chairman of the Comanche Indian Tribe in 1991 and reelected in 1994 to a second three-year term. Prior to being elected as Chairman, he was the Executive Director of the Denver Indian Center, Denver, Colorado. He has served in a variety of professional positions, including Dean of Students of the Nebraska Indian

Community College, and as Executive Director for the Nebraska Indian Commission.

He has a professional background in public relations and public broadcasting. He was listed in Who's Who for his work in telecommunications in 1982-83 and most recently was named to Who's Who in American for 1995. He has received numerous awards and recognition for his work in Indian affairs including: Tributes from the State of Colorado and Nebraska; an Honorary Associates of Arts Degree in Humane Letters from Parks Junior College, Colorado; an Honorary Commission as "Colonel" in the Nebraska National Guard; and

the Distinguished Service Award from the University of Colorado during commencement exercises in May, 1990, the first American Indian to receive such a coveted award.

Wallace is active in American Indian cultural activities, and has served as Master of Ceremonies for pow-wows and other cultural events for over 27 years. ☉





# NEW NARF BOARD MEMBER

## Mary T. Wynne



Mary T. Wynne, Rosebud Sioux, was elected to the Native American Rights Fund Board of Directors, replacing Evelyn Stevenson who completed three terms on the Board. Mary is currently the Chief Judge of the Colville Tribal Court in Washington State and is a 1978 graduate of the University of Minnesota Law School.

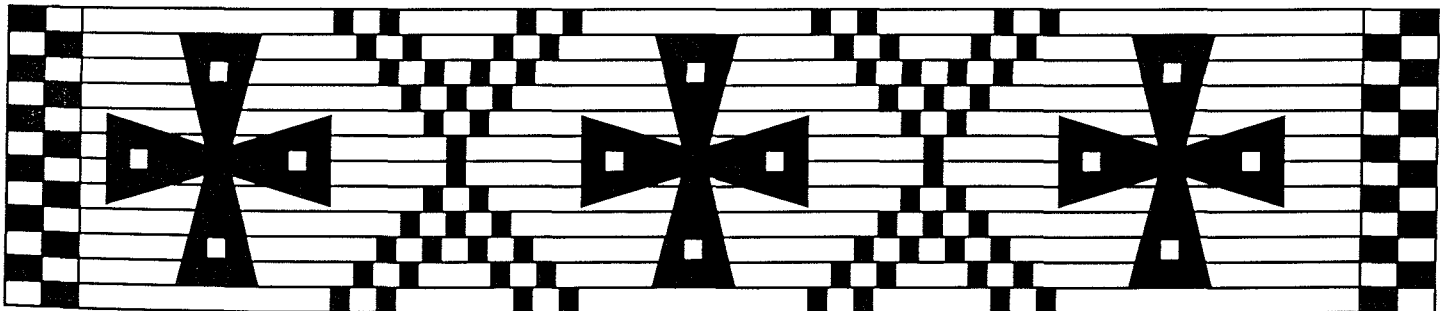
Mary has dedicated her life's work to the premise that the fundamental role of tribal courts today is to define and apply tribal custom and tradition within the mixed structure of today tribal courts: ranging from the mystical and tra-

ditional, to models of Anglo Saxon jurisprudence. Mary believes that towards that end, it becomes essential to communicate across cultural barriers in order that tribal court jurisprudence receives the recognition and validity it deserves. To promote this cross cultural understanding, she has made numerous presentations at tribal court and Indian law symposiums, and at judicial conferences.

Mary is a member of the North Dakota State Bar Association; the South Dakota State Bar Association; Washington State Bar Association; Federal District Court of South Dakota; Federal District Court of North Dakota; the Eighth Circuit Court of Appeals; the

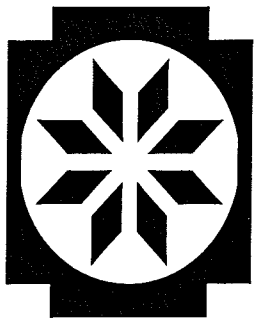
Sisseton-Wahpeton Sioux Tribal Court; Rosebud Sioux Tribal Court; Pine Ridge Tribal Court; Standing Rock Sioux Tribal Court; Lower Brule Tribal Court; and, the Crow Creek Tribal Court. She is also President of the Northwest Tribal Court Judge's Association, Vice Chair of the National Indian Court Judge's Association, and a member of numerous other national organizations. ☉

NARF welcomes both Wallace Coffey and Mary Wynne to the NARF Board of Directors. We look forward to working with them and learning from their years of experience and activism in Indian country.



# NARF RESOURCES AND PUBLICATIONS

## THE NATIONAL INDIAN LAW LIBRARY

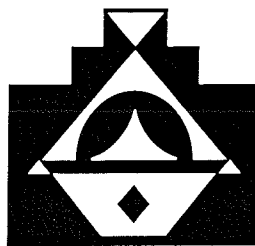


For the modern-day Indian, information is priceless in helping their fight to keep tribal homelands intact and traditional tribal ways alive. The National Indian Law Library has been providing Indian tribes and Indian law attorneys with a wealth of Indian law materials for the past 25 years. The materials are documents ranging from legal pleadings written in vital Indian law cases (from Tribal court to United States Supreme Court) to a collection of Tribal codes (there are about 510 federally recognized tribes in the United States.)

The National Indian Law Library began as a special library project of the Native American Rights Fund. It is designed to serve as a clearinghouse for materials on American Indian Law for tribes, private and tribal attorneys, legal service programs, law firms, federal and state governments and agencies, and for students. Essentially, it was intended to carry out one of the Native American Rights Fund's priorities, the systematic development of Indian law.

The National Indian Law Library has the largest collection of Indian law materials in the nation. The Library fulfills its function by collecting all available materials related to Indian law. These materials are catalogued on a customized library application software database and indexed for inclusion in the National Indian Law Library Catalogue.

### The National Indian Law Library Publications For Sale:



(Prices are subject to change, shipping and handling charges are additional)

*The Bibliography on Indian Economic Development, 2nd Edition.* Designed as a tool for the protection and regulation of commercial activities on Indian reservations. Included in the bibliography are articles, monographs, memoranda, Tribal codes, and miscellaneous materials on Indian economic development. Cost for this title is \$30.00.

*The National Indian Law Library Catalogue, Volume I.* One of The National Indian Law Library's major contributions to the development of Indian law is the creation of this catalogue. It is arranged by subject-matter index, author-title index, plaintiff-defendant index,

and NILL number listing. Cost for *The National Indian Law Library Catalogue, Volume I* is \$85.00; the *1985 Supplement* is \$10.00; the *1989 Supplement* is \$30.00.

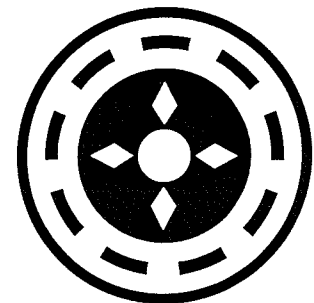
*Top Fifty: A Compilation of Significant Indian Cases*, compiled by the National Indian Law Library, costs \$85.00.

### Other Publications Offered For Sale by The National Indian Law Library:

(Prices are subject to change, shipping and handling charges are additional)

*American Indian Law: Cases and Materials, 3rd edition, 1991*, by Robert N. Clinton, Neil Jessup, Monroe E. Price, price is \$45.00.

*American Indian Law: Cases and Materials, 3rd edition, 1992 Supplement*, by Robert N. Clinton, Neil Jessup, Monroe E. Price, price is \$10.00.



*American Indian Law in a nutshell, 2nd edition, 1988*, by William C. Canby, price is \$16.00.

*American Indians, Time and the Law, 1986*, by Charles F. Wilkinson, price is \$13.00.

*Battlefields and Burial Grounds, 1994*, by Walter Echo-Hawk and Roger Echo-Hawk, price is \$15.00.

*Code of Federal Regulations, Title 25, 1995*, published by U.S. Government Printing Office, price is \$15.00.

*Federal Indian Law, Cases and Materials, 3rd edition, 1993*, by David Getches, Charles Wilkinson, and Robert A. Williams, Jr., price is \$54.00.

*Felix S. Cohen's Handbook of Federal Indian Law, 1992 edition*, edited by Rennard Strickland, price is \$85.00.

*Handbook of American Indian Religious Freedom, 1991 edition*, edited by Christopher Vescey, price is \$15.00.

*The Indian Child Welfare Handbook: A Legal Guide to the Custody and Adoption of Native Americans, 1995*, published by the American Bar Association, price is \$69.95.

*Indian Claims Commission Decisions 1946-1978*. This forty-three volume set reports the work of the Indian Claims Commission. Each volume is sold separately at a

cost of \$25.00. The *ICCD Index* is sold at \$25.00.

*Indian Land Area Map, 1992*, published by the U.S. Department of the Interior, price is \$5.00.

*Mending the Circle: A Native American Repatriation Guide, 1996*, published by the American Indian Ritual Object Repatriation Foundation, price is \$40.00.

*The Rights of Indians and Tribes, 2nd edition, 1992*, by Stephen L. Pevar, price is \$8.00.

**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.

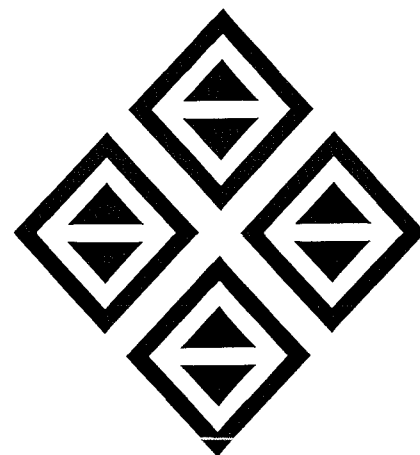
**TAX STATUS.** The Native American Rights Fund is a non-profit, charitable organization incorporated in 1971 under the laws of the District of Columbia.

NARF is exempt from federal income tax under the provisions of Section 501 (c) (3) of the Internal Revenue Code, and contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

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**ALASKA OFFICE:** Native American Rights Fund, 310 K Street, Suite 708, Anchorage, Alaska 99501 (907-276-0680) (FAX 907-276-2466).



# OTU'HAN

*In the Journals of Lewis and Clark, it is noted that the Sioux had a custom of giving gifts in the names of those they wished to honor.*

This custom is referred to as **Otu'han** — a Lakota word literally translated as “giveaway.” Items of value such as shawls, quilts and household items are gathered over a long period of time to be given away during powwows or celebrations in honor of births, anniversaries, marriages, birthdays, and other special occasions. The **Otu'han** is also customary in memory of the deceased. The custom of giving in honor or memory of someone is still very much alive among Indian people today. We are honored to list those donors making gifts to the Native American Rights Fund in spirit of the Otu'han. **January - July 1997**

## *In honor or memory of:*

A side of my family I know little about.....Marjorie Merjanian  
All members of the Narraganset Tribe of R.I. ....Ethel B. Lesser  
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*Continued on page 22*

## Otu'han "giveaway"

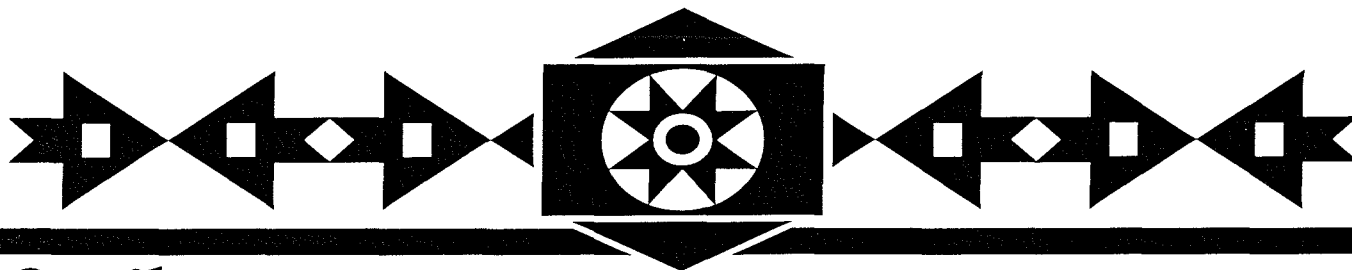
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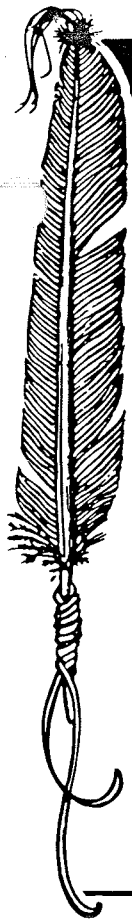
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The Native American Rights Fund is a nonprofit organization specializing in the protection of Indian rights. The priorities of NARF are: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of 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. (Visit our website at [www.narf.org](http://www.narf.org))

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