

The

**NARF LEGAL REVIEW**

Native American Rights Fund

Fall 1983

**INDIAN EDUCATION: THE STRUGGLE CONTINUES**

If Native Americans are ever to attain true self-determination, quality education for all Indian people must also be achieved. Over the years, NARF's legal representation in assuring access to quality education opportunities for Indians has ranged from assisting tribes in the development and maintenance of tribally-controlled community colleges to the protection of students' rights to wear long hair in traditional fashion. NARF's most recent involvements in Indian education have encompassed work in the areas of compliance with federal Impact Aid regulations by public school districts, prevention of Bureau of Indian Affairs' school closures, promotion of Indian school board authority over Bureau of Indian Affairs' schools, and preservation of an Indian-controlled college. Each of these matters has important implications for the future quality and availability of education for Indian people.

*Photographs courtesy of the Anthropological Archives  
Smithsonian Institute*

**IMPACT AID**

One of the most critical education issues in which NARF has recently been involved is that of the Impact Aid regulations which provide for the input of Indian people into education matters affecting Indian children. In 1950, the Impact Aid laws were enacted by Congress to fund public school districts which educate children whose parents live or work on federal lands, and therefore, pay no property taxes to help support the local school district. Beginning in 1953 these statutes were made applicable to school districts educating Indian children whose parents reside on non-taxable Indian land.

Such federal funding routinely goes into the district's general fund and thus can be utilized for practically any purpose including support for the basic educational programs. Over the years, those public schools located on or near Indian trust lands with a significant number of Indian students have become heavily dependent on Impact Aid funding. Through Impact Aid last year, 722 public school districts in 24 states serves 93,981 eligible Indian students. Impact Aid provides an average of 11% of the budget for these schools, and in 26 districts, Impact Aid provided over 50% of the basic budget.

Prior to 1978, school districts, as a practical matter, were not required to account to the federal government concerning the expenditure of Impact Aid monies. Although a school district received Impact Aid funds based on a count of Indian children, there was no statutory mechanism to insure that Indians would in return be provided with an equal educational opportunity or their fair share of the district's total revenues.

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The 1978 Education Amendments to the Impact Aid laws were the direct result of Congressional findings that the lack of Indian involvement and participation in public school programs required remedial legislation. Congress placed the burden upon the affected school districts to develop policies and procedures to insure that substantial and meaningful Indian involvement and participation were obtained in all facets of school activity funded by Impact Aid monies. To enforce this law, Congress made the establishment of such policies and procedures a condition to entitlement for federal Impact Aid funds. Furthermore, Congress authorized the Indian tribes to oversee compliance of the public schools with the Indian involvement condition by empowering tribes to file a complaint with the Department of Education against any public school which fails in any way to comply with the act and regulations. Congress also directed that the regulations implementing these new laws establish whatever steps are necessary to ensure that there is substantial Indian tribal and organizational participation. Congress clearly intended that public schools which receive funds under Impact Aid be held to a strict standard of accountability in carrying out their responsibility under the law to increase Indian involvement in public school programs.

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One of NARF's first involvements with the issues of Impact Aid came in *Creek Nation v. Wetumka School District*. Wetumka is a small town located in east-central Oklahoma. The Indians in Wetumka, who comprise approximately one-half of the inhabitants, are members of the Muscogee (Creek) Nation with tribal headquarters in Okmulgee, Oklahoma. They are among the most traditional of the Oklahoma tribes in that they have an unusually high percentage of full-bloods (77%) and a large proportion of them routinely speak their native language. However, they have a low educational achievement rate and a very high unemployment rate. Understandably, the Indian parents and leaders are very concerned and involved with the education of their young people.

In their efforts to become involved with the education program at Wetumka, the Indian parents were confronted with an uncooperative, newly-hired superintendent and a popularly elected school board. Efforts made by the Indians to become knowledgeable and have some input into school programs were constantly rejected. The school district took this stance despite the fact that it receives substantial federal funding, including Impact Aid monies, which require opportunities for Indian parent input.

Upon request from the Indian parents and officials of the Creek Nation, NARF came to their assistance. Initially, NARF attorneys attempted to settle the differences amicably by sitting down and working out an adequate and acceptable policies and procedures document. The school district, through its counsel, refused to do this and it was necessary to hold administrative hearings.

During the course of preparation for the hearings, NARF discovered startling evidence that Indian students at Wetumka tested out approximately 1-1/2 grade levels below their white counterparts, and the drop-out rate for Indian students is far higher than with their white counterparts. The school district, with no Indian representatives on the school board, had made no effort to address these problems, and in fact, maintained that there was no problem at all.

NARF attorneys represented the Indian parents and Creek Nation at the administrative hearings and in analyzing the school district's proposed policies. The Department of Education's final determination adopted a substantial portion of the recommendations submitted by NARF on behalf of the Creek Tribe and Indian parents. The final version of the school district's Impact Aid policy and procedures are a great improvement toward providing Indian parents with a meaningful opportunity to positively impact the school program. In addition, the Oklahoma Department of Education has taken steps to disseminate information gained from the Wetumka experience throughout the state's school system. We remain hopeful that other Oklahoma school districts which receive Impact Aid funding will benefit from this experience, and fully comply with the requirements of the federal law.

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In a similar issue, NARF was requested to represent the Sisseton-Wahpeton Sioux Tribe, an Indian parent committee and individual Indian parents who believe they have been denied their rights in Impact Aid matters. The Tribe and Indian parents had continually raised very serious concerns with the Sisseton school board relating to substantially higher drop-out rates for Indians than non-Indians, far more incidents of corporal punishment with Indian students, disproportionate numbers of Indian students failing, a lack of Indian participation in extra-curricular activities, and a disproportionately low number of Indian students graduating and entering post-secondary educational institutions. Nonetheless, the all-white school board had continually ignored or rebuffed efforts by Indian parents to become involved in these issues, despite the fact that 53% of the school population is of Indian descent.



After negotiations to secure the Indian involvement required by the 1978 amendments failed, NARF filed a formal complaint on behalf of the Tribe with the Department of Education. Following a hearing, a Hearing Examiner from the Department upheld the school district's Impact Aid policies as being in basic compliance with the essential requirements of the law. NARF appealed the decision to the Secretary of Education who overturned the Examiner's decision. The Secretary's decision substantially adopted NARF's position and directed the school district to revise its policies and procedures regarding Indian involvement in Impact Aid expenditures.

The issue is as yet unresolved as the school district attempts to comply with the Secretary's decision. The district's revised policies and procedures were submitted to the Department and in June, 1983, the Department conditionally approved them, finding that subject to a few minor qualifications, the revisions are in compliance. In July, 1983 NARF filed its latest brief, arguing that the revisions are inadequate. Basically, NARF asserts that the revisions do not contain an adequate public hearing requirement nor do they provide for the adequate dissemination of information required by the 1978 amendments. A decision by the Secretary on these critical issues is awaited.

## BUREAU OF INDIAN AFFAIRS SCHOOL CLOSURES

Many of NARF's education cases have evolved from actions or decisions of the federal government. The recent attempts made by the Bureau of Indian Affairs (BIA) to close several BIA schools brought NARF several requests for assistance by affected Indian tribes, individuals, and parent groups who opposed closure and who view these schools as desirable.

These schools provide an educational opportunity for many Indian children who otherwise might be without a feasible alternative if these schools were to close. Frequently Indian youth are faced with the disadvantages of cultural discrimination, language barriers, economic inequities, unstable family situations, alcohol-related problems, and isolation factors. These disadvantages contribute to the extremely high drop-out rate of Indian students in public schools.

Two of the schools slated for closure were the subject of NARF cases. The Wahpeton Indian School, an elementary boarding school in North Dakota, was scheduled for closure in 1982. NARF was successful in postponing and possibly halting the closure of this school. Intermountain Inter-Tribal High School is scheduled to close at the end of the 1983-84 school year pending further action by Congress.

"Wahpeton Indian School has a consistent record of having a stable enrollment and cannot accept more students from a waiting list because of the lack of federal funding to provide necessary staffing for additional students," says Senator M. Burdick of North Dakota, in response to the BIA's charges of inefficiency and declining enrollment as major reasons for closing the schools. Senator Burdick also added that "Wahpeton is the most per-pupil cost-efficient school in the entire BIA system and its students place very high in national achievement tests." As a boarding school, Wahpeton also provides a home for Indian children, many of whom have no other home to turn to, or have special education needs.

NARF's assistance in challenging the closure of these schools has resulted in establishing a body of law governing such closures. In *Omaha Tribe, et al. v. Watt, et al.*, NARF represented the Wahpeton Indian School Board and the Omaha Tribe of Nebraska in a suit against the Secretary of the Interior and the Assistant Secretary for Indian Affairs to prevent the BIA from closing the Wahpeton School. (The Omaha Tribe also has Indian students attending the Wahpeton School.) The federal court ruled that closure of an off-reservation boarding school is both a major change in BIA policy regarding Indian education, and in its policy of providing education services to Indian people. In these circumstances, the court held that consultation is required under the governing statutes and regulations before the decision to close the school can be made.

In a similar situation, NARF has represented the Intermountain Inter-Tribal Boarding School. Since 1949, this school, which is located in Brigham, City, Utah, has been educating Indian students. Originally the school served only students from the Navajo Tribe, but subsequent expansion has created the 298-acre campus which houses

Indian students from 22 states representing 65 tribes.

Intermountain is a fully accredited high school, certified by the state of Utah and the Northwestern Association of Schools and Colleges. Intermountain provides more than just an academic atmosphere for Indian youth — vocational training, cultural arts, practical arts, and a counseling program are other important facets of life at the Intermountain School. The school has the highest graduation rate (88%) and the lowest truancy rate of any remaining BIA school.

The BIA had decided to close Intermountain School at the end of the 1982-83 school year but that decision was rescinded. On behalf of the Shoshone-Bannock Tribes, the Navajo Tribe, the Gila River Indian Community, and the Intermountain Inter-Tribal School Board, *Shoshone-Bannock, et al. v. Watt* was filed by NARF. The suit sought declaratory and injunctive relief to prevent the defendants from unlawfully closing the school. The planned closing was in violation of a congressional act providing funds through the 1982-83 fiscal year.

NARF has been very active in presenting these school closure issues before Congress. Due to congressional actions both Wahpeton and Intermountain will remain open through the 1983-84 school year. It has furthermore been decided that Wahpeton shall remain open indefinitely. The school's excellent record and achievements have brought it the acknowledgement it deserves.

Intermountain Inter-Tribal on the other hand is not so fortunate. Intermountain is currently slated for closure at the end of the 1983-84 school year. Despite much support for this school from Indian communities and organizations, the future for Intermountain looks dim. As budget cuts loom ever present, especially for Indian programs and services, close monitoring will be necessary to ensure that the BIA fulfills its obligations in Indian education.



## INDIAN SCHOOL BOARD AUTHORITY



The Bureau of Indian Affairs operates many Indian schools across the country on or near Indian reservations that provide education for about 20% of the Indian student population. Historically, the BIA has operated these schools with little or no Indian parental involvement. In more recent times, the BIA has provided for appointed or elected Indian school boards which have been almost exclusively advisory in nature. In response to problems in the BIA schools, however, Congress perceived a need to mandate Indian control and involvement in the operation of these schools. As a result, the 1978 Education Amendments included the grant of certain authority to BIA Indian school boards over school operations. Unfortunately, the exact extent of that authority has never been clarified.

NARF is working on two fronts to implement the Indian school board authority granted by the 1978 amendments. First of all, NARF has undertaken representation of the Navajo Area School Board Association (NASBA), which is an organization of 60 BIA School Boards on the Navajo Reservation in Arizona, New Mexico, and Utah. These Navajo school boards are very active in the school board control issue. NASBA has intervened in *Benally v. Department of the Interior*, an administrative proceeding before the U.S. Merit Systems Protection Board involving the precedent-setting issue of Indian school board authority over BIA school budgets under the 1978 amendments.

With representation from NARF, NASBA is supporting the position of school employees that the BIA cannot change school budgets by laying off employees without the approval of the BIA school boards. In December, 1982, the Merit Systems Protection Board agreed with this position, deciding that the 1978 Amendments require the

BIA to obtain BIA school board approval prior to reducing personnel as a budget-saving measure. The decision is an important precedent-setting interpretation of school board authority under the 1978 Amendments affecting BIA school board across the country. NARF also contested BIA arguments before the Merit Systems Protection Board that the required school board approval was obtained in some instances. However, in the majority of the cases, approval was found to have taken place. NARF is now considering whether to pursue, through the appeals process, the issue of the nature and extent of the approval required.

Secondly, as a direct result of the *Benally* case, NARF will be involved in the development of BIA regulations to implement the school board authority granted by the 1978 Amendments. The BIA has never undertaken this task because of its dislike for the new law, but recent pressures like the *Benally* case have forced them to deal with the issue. Because of NARF's involvement in the issue on behalf of NASBA, the BIA has invited NARF's participation in the development of the 1978 Amendments' regulations.

NARF will have a substantial role in preparing these long-overdue regulations. Issues to be addressed include the parameters of Indian school board authority, Indian voting rights, legal liability of Indian school boards, and other related problems. NARF will be working in conjunction with lawyers from both the Interior Department and the Department of Justice. The regulations developed will have a major impact on Indian school board control of BIA schools for years to come.



## D-Q UNIVERSITY

In its wide-ranging work in education, NARF has also been involved in the struggle to save D-Q University's campus from seizure by the federal government. In the early 1970's, the federal government granted Degana-widah-Quetzalcoatl University (D-QU) a 643-acre tract of land and buildings. Located near Davis, California, these properties were granted for use by D-QU as a two-year post-secondary institute of higher learning. The institution is governed by an all-Indian Board of Trustees, and is dedicated to the continued progress of indigenous communities through education. The institution is sanctioned by the Saboba Indian Reservation, Chemeheuvi Indian Tribe, California Indian Education Association, and Inter-Tribal Council of California.

D-QU was awarded title to this land under provisions of the federal surplus property laws in 1971. However, attached to the deed, which was put in escrow, were conditions to apply for the next 30 years, at which time D-QU would have full control and title. These attached conditions led to many restrictive regulations, such as the denial of the right to mortgage the property to raise development funds, which inhibited the growth and development of D-QU as an institution of higher learning. Despite these inhibitive and restrictive factors, D-QU has continued to provide a unique education environment, offering Associate of Arts or Science degrees in such areas as Community Development, Native American Arts, and Indigenous Studies, among others.

The federal government in 1982 claimed that D-QU had breached its contract and served notice that they were exercising their powers under the deed and escrow agreement to revert title to the land. Conditions of that agreement required a continued enrollment of 200 full-time students and prevention of waste to the property, conditions that D-QU has fulfilled and continues to fulfill.

NARF sought a preliminary injunction in U.S. District Court of California in Sacramento to prevent the return of the deeds to the government. This preliminary injunction was denied as was the request for a stay pending appeal. A summary judgment hearing was held in April of this year and a decision is expected soon. The court will decide whether the undisputed facts show that D-QU has breached its contract. Morrison and Forester, a large San Francisco law firm, has graciously consented to take over the case on a *pro bono* basis.

Clearly, much remains to be accomplished for Indian education. Even though some battles have apparently been won, much still needs to be done. We cannot assume that any of our successes will be permanent, so not only must we continue to protect the present educational programs and institutions, we must also strive to expand and improve the educational programs and institutions serving Indian people. NARF will continue in its efforts to strengthen Indian education and correct inequities which have been allowed to exist for so long. The education of Indian people will remain a high priority for NARF in its attempt to secure basic human rights for Indian people.

## RECENT LEGAL DEVELOPMENTS

### CATAWBA TRIBE OF SOUTH CAROLINA ALLOWED TO PURSUE LAND CLAIM

The Catawba Indian Tribe of South Carolina will be able to pursue a claim for possession of a 140,000-acre reservation in South Carolina based on a 1763 Treaty with the King of England, according to a recent federal court decision. The claim, filed by NARF in 1980, was upheld in a decision by the Fourth Circuit Court of Appeals which reversed the lower district court in South Carolina in *Catawba Indian Tribe of South Carolina v. State of South Carolina*.

The Court of Appeals held that a 1959 Act of Congress which terminated aspects of the trust relationship between the Tribe and the United States did not extinguish the rights of the Catawba to pursue its claim for possession of property based on the 1790 Nonintercourse Act. The Nonintercourse Act prohibits transfers of Indian land without the consent of the federal government.

The Catawba Tribe claims that the 1790 Act invalidated an 1840 treaty between the Tribe and the State of South Carolina under which the 140,000 acres were ceded to South Carolina without federal consent. The Court of Appeals majority opinion stated: "We conclude that the Catawba Indian Tribe Division of Assets Act of 1959 did not ratify the 1840 Treaty, extinguish the Tribe's existence, terminate the trust relationship of the Tribe with the federal government arising out of the Nonintercourse Act, or make the state statute of limitations applicable to the Tribe's claim."

Chief Gilbert Blue issued the following statement on behalf of the Catawba Indian Tribe of South Carolina shortly after the decision:

As you know, the Fourth Circuit Court of Appeals ruled this week that the Catawba Tribe of Indians has the right to maintain a suit in Federal Court to recover its land and damages for trespass to its lands.

We filed this suit because our efforts to seek a reasonable settlement were ended when a State Commission voted against any Federal services and any possibility of expansion of our tiny, 630-acre reservation by voluntary purchases from willing sellers. That commission, like other governmental bodies before it, had no Indian members, and in its result ignored history, ignored justice, and ignored fair treatment.

Now, the Fourth Circuit has given us a forum so that our claims can be heard. The issues we will raise in

this suit are the same issues raised by other Eastern Indian Tribes such as the Oneida of New York and the Passamaquoddy of Maine. In each of these cases courts have held that tribes have the right to sue to recover their lands and money damages based on the tribe's historical title to land.

In our case, we have one other factor that strengthens our claim. The Catawba Tribe, like many other landowners in South Carolina, traces its land title back to the King of England. In 1763, the Catawba Tribe entered into a treaty with the King to grant to the King, Indian title to much of the land that is now the Carolinas, in exchange for recognized title to a tract 15 miles on each side.

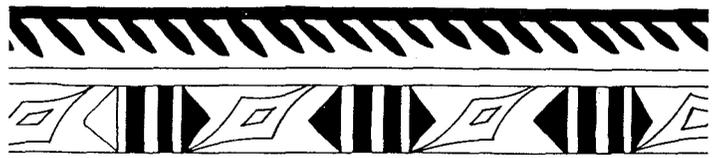
In 1840 the State of South Carolina moved the Catawba Tribe off its land in exchange for a promise of land in North Carolina and the payment of money. The Catawba Tribe never got the land and never got the money. Since that time the Tribe has sought return of its 144,000 acres. All the Tribe has gotten is promises and a 630-acre reservation.

All we have sought by way of settlement is sufficient land and resources to permit the Catawba Tribe to be culturally and economically viable.

All we have sought is to be treated fairly and honestly. Now, the matter will be settled by the Courts.

We are pleased by the decision of the Fourth Circuit. We believe the decision is historic, monumental, and significant to all Indian peoples. In terms of our own suit, the Fourth Circuit eliminated all doubt about there being any legal roadblock to our claim raised by the 1959 division of assets act.

We, and others who have examined this claim fairly, have known that the Catawba Tribe has a strong case and is likely to recover its land and obtain a damage award in the trial of the case. We were confident that the Fourth Circuit in deciding this case fairly would uphold our rights. We are just as confident of a victory at trial.





## ONEIDAS PREVAIL IN LAND CLAIMS CASE

The Second Circuit Court of Appeals has recently upheld a claim by the three bands of the Oneida Nation for wrongful dispossession of land. NARF represents the Oneida Tribe of Wisconsin in this matter. The case involves a claim for two years of trespass damages to 872 acres of land invalidly acquired by the State of New York in 1795. In earlier proceedings, a federal district court had found that the land was indeed invalidly acquired and assessed damages.

The liability and damages issues were then appealed to the Second Circuit which recently affirmed the liability of two New York counties for the damages and held that the State of New York must reimburse the counties for the damages. The Second Circuit's opinion holds that: (1) the Oneidas have a federal common law right of action to maintain the suit; (2) the 1793 Trade and Intercourse Act, upon which the case is based, can be privately enforced by the Tribes; (3) state statutes of limitation do not bar the action; (4) the claim does not present political questions

that cannot be decided by the courts; (5) no subsequent federal treaties ratified the land transfer; and (6) the Eleventh Amendment does not bar the claim for reimbursement by the State. The case was returned to court for further proceedings on the calculation of damages.

## FEDERAL COURT PREVENTS CLOSURE OF FIELD OFFICES SERVING 77 TRIBES

The Department of Labor was prohibited by a temporary restraining order issued September 15 from closing three Indian outstation field offices. The offices located in San Francisco, Seattle, and Denver provide technical assistance to 77 tribes who operate programs under the Comprehensive Employment and Training Act (CETA) and the new Job Training Partnership Act (JTPA). A trial on the merits of the case is expected to take place soon. The suit was filed by NARF on behalf of the Northern Cheyenne, Colville, Osage, Hopi, Lummi, Colorado River, and Papago Tribes.

These three offices provide the necessary assistance to the Tribes in handling the complex federal regulations

involved in implementing these federal employment programs. In a move to ignore the special needs of Native Americans, the Department of Labor attempted to close the offices by September 23 without consulting with the affected tribes as required by law. The Department of Labor had proposed to replace the three offices with Washington D.C.-based personnel having little or no experience in Indian issues.

Figures from the Indian and Service Population and Labor Force Estimates indicate that unemployment for America's Indians averages 51% and runs as high as 93% on some reservations. This compares with a national unemployment rate that has hovered around 9% in recent months. It is this striking difference which points to a need for special assistance in dealing with the tremendous unemployment present on our reservations today.

### **SUPREME COURT TO REVIEW CHEYENNE RIVER DIMINISHMENT CASE**

This term the Supreme Court will hear and decide the issue of whether a 1908 Act of Congress diminished the boundaries of the Cheyenne River Sioux Reservation in South Dakota. The 1908 Act opened a portion of the reservation to settlement by homesteaders, and the State and counties argue that the opened area is no longer a part of the reservation. The case arises in the context of jurisdiction (state v. federal) over a crime committed in the opened area. Supreme Court review was sought by the State and counties after both the district court and Eighth Circuit Court of Appeals had held that the 1908 Act did not diminish the reservation.

Arlinda Locklear, a NARF attorney in the Washington D.C. office, has been handling this case. She submitted a brief in September and oral argument in the Supreme Court is scheduled for December 7, 1983. Ms. Locklear's oral argument will be a precedent-setting event. She will be the first Indian woman to argue in the Supreme Court and she will be the first Indian attorney from NARF to do so.

### **WESTERN PEQUOT SETTLEMENT SIGNED**

On October 19 the "Mashantucket Pequot Indian Claims Settlement Act" was signed by President Reagan. The Act grants the Tribe, also known as the Western Pequots, federal recognition as a Tribe and \$900,000 from the federal government to buy 800 acres of land near their existing 220-acre reservation. Under this settlement, the State of Connecticut also agreed to deed the Pequots a 20-acre cemetery and to spend \$200,000 to build and repair roads on the reservation.

The Pequots, once 4,000 strong, now number under 200, but those that remain have never given up the claim to their land that was illegally sold 126 years ago. That sale took place in 1856 under a state law ironically entitled "An Act for the Preservation of Indians and the Preservation of their Property." A county court sold the ash and oak forest full of game, the marshes and the tribal burial ground under this pretext. Congress had passed a Pequot settlement bill earlier in the year that President Reagan vetoed because he felt it did not require the State to pay a fair share of the cost of the settlement. The Act settles the Tribe's lawsuit claiming the land which was filed by NARF in 1976.



## AWARD OF ATTORNEY'S FEES WITHDRAWN

At the beginning of the year, an award of attorneys' fees to NARF and other attorneys in *Carson-Truckee v. Watt* was made by a federal district court. The award of fees followed a favorable decision in the case which upheld the use of water from Stampede Reservoir primarily for the benefit of Pyramid Lake fishery. Recently, the court reconsidered the issue and decided that an award of fees would be inappropriate.

Essentially, the court declined to award fees because it found that the case did not involve complex or novel issues, it did not aid in interpreting the Endangered Species Act, and it did not substantially contribute to the goals of the Act. In addition, the court found that the federal government had raised and argued the same issues, had actively participated in the case, and had made significant financial contributions. The decision is being appealed to the Ninth Circuit Court of Appeals.



## BLACKFEET OIL AND GAS CASE GRANTED REHEARING

In a rare decision, the Ninth Circuit Court of Appeals agreed to grant rehearing in *Blackfeet Tribe v. Groff*, a case challenging the authority of the State of Montana to tax the Tribe's royalty interest from oil and gas production on the reservation. The State of Montana imposes four taxes on oil and gas production in that state and has claimed that production from Indian tribal lands is subject to these taxes, either because federal statutes consent to state taxes or because the taxes are imposed on non-Indian leases of the tribes and not the tribes themselves.

The Ninth Circuit had earlier ruled that the State could tax such interests based on a 1924 statute authorizing the state taxation. The Tribe had argued that the leases at issue were made under a later 1938 comprehensive leasing statute which made no mention of taxation.

NARF is assisting the Blackfeet Tribe in attempts to establish that the state taxes cannot be applied to mineral production from any reservation lands. If successful, this would greatly aid the Tribe's own taxing rights and increase the tribal mineral revenues. It would also be a precedent for other mineral-producing tribes. On a rehearing, the case will be heard by a panel of eleven judges.



## YANKTON SIOUX'S OWNERSHIP OF LAKE ANDES CONFIRMED

Since 1976, NARF has been working to establish that the Yankton Sioux Tribe is the rightful owner of the bed of Lake Andes, located within the original Yankton Sioux Reservation in South Dakota. In a short, recent opinion from the U.S. District Court in South Dakota, the court ruled that Lake Andes was a navigable lake and confirmed its earlier decision that the Yankton Sioux Tribe owns the lake bed. The lake bed is very fertile agricultural land so establishing the Tribe's clear title will greatly benefit the Tribe. NARF expects this case to again be appealed.



## SUPREME COURT DENIES PETITIONS FOR REHEARING IN WATER CASES

Soon after the adverse Supreme Court decisions in the Arizona and Montana water cases and the Pyramid Lake Paiute water case reported on in our last issue, petitions were filed asking the Supreme Court to rehear the cases. The petitions in the two cases were denied on October 3, 1983, the first day of the new Supreme Court term.

The Arizona and Montana cases will now return to the Ninth Circuit Court of Appeals where NARF and other tribal attorneys have asked that additional arguments in favor of federal jurisdiction be addressed before the cases are sent to the Arizona and Montana state courts as ordered by the Supreme Court. Attorneys for the Pyramid Lake Paiute Tribe are considering a number of different options in the Tribe's continuing efforts to secure sufficient water to preserve the Lake's valuable fishery.

In another action on the same day affecting Pyramid Lake, the Supreme Court denied the Tribe's petition for review of the *U.S. v. Alpine* case (titled *Pyramid Lake Tribe v. Truckee-Carson Irrigation District* in the Supreme Court). The case involves an adjudication of water rights in the Carson River, which has an impact on the availability of water for Pyramid Lake.

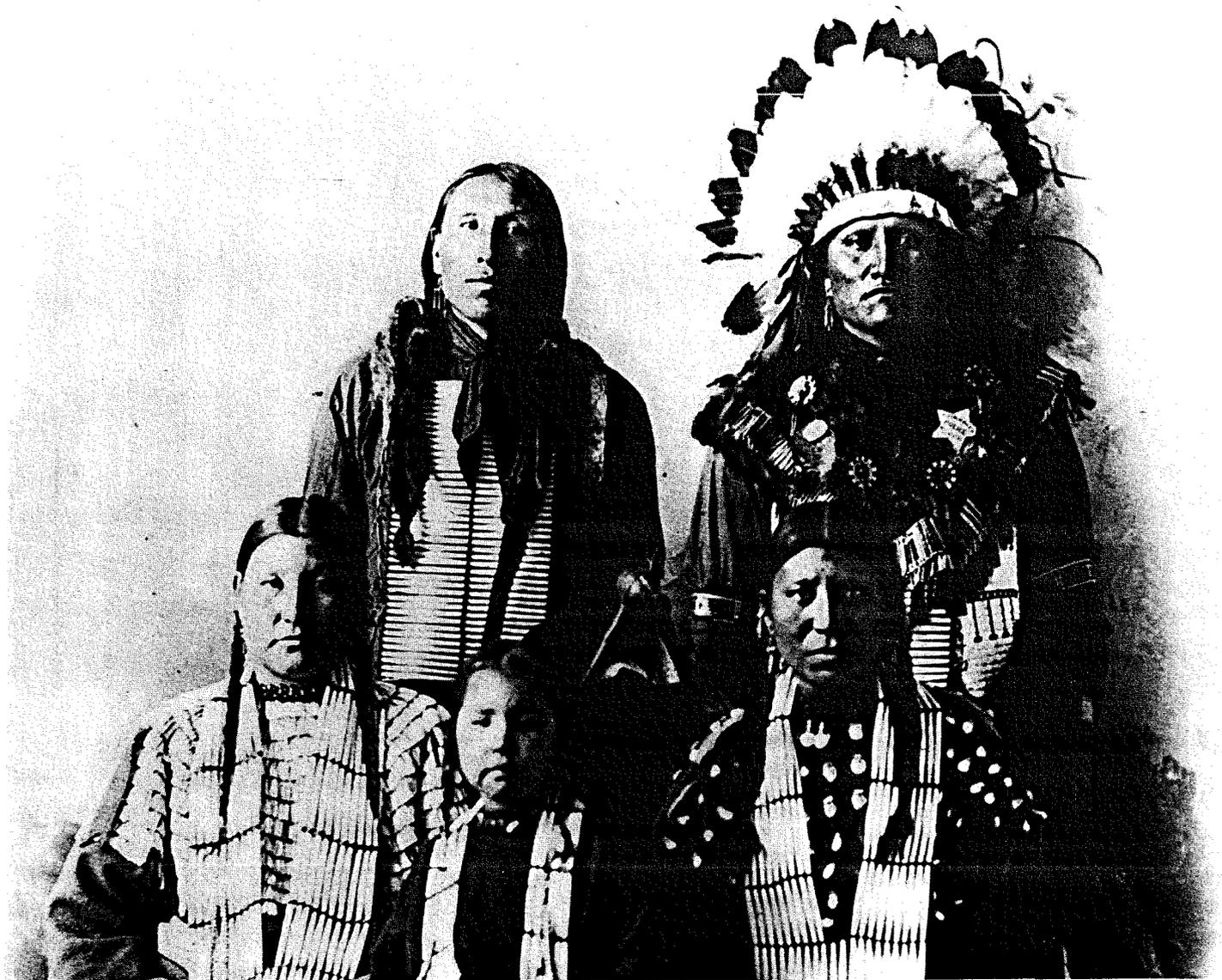
## STATE PROSECUTIONS IN MICHIGAN NULLIFIED

Various aspects of the *U.S. v. Michigan* treaty fishing rights case have been before the Sixth Circuit Court of Appeals four times. The latest issues before the Sixth Circuit involved state court prosecutions of two Indians who were fishing in accordance with Department of the Interior regulations, which have been upheld by the federal courts. The federal district court prohibited the enforcement of the state court orders.

On appeal, the Sixth Circuit on July 22 agreed with the district court because the Indians had been in compliance with fishing regulations approved by the federal court. The Court of Appeals also found that the Tribes had presented "a close case" for assessment of double attorneys' fees against the defendants for a frivolous appeal but declined to assess the fees.

Wade Teeple, President of the Bay Mills Chippewa Indian Community, NARF's client in the case, commented:

We are quite happy with the decision; it is only right that the state prosecutions were thrown out. The State of Michigan had no business arresting our tribal members. These two arrests took place in the spring of 1981. By now, everyone, even the State of Michigan, knows that the courts will stand behind us and protect our fishing rights.



## STATE LIQUOR LICENSE REQUIRED FOR INDIAN TRADER

A tribal member and Indian trader claimed in 1977 that the State of California did not have the jurisdiction to require a state license in order to sell alcoholic beverages on an Indian reservation. The case, *Rice v. Rehner*, involving a liquor establishment on the Pala Reservation in California, was recently decided by the Supreme Court in favor of the State.

At issue was the interpretation of a federal statute (18 U.S.C. § 1161) which authorizes tribes to allow liquor within their reservation as long as any transactions are in conformity with state law. The Supreme Court ruled that the regulation of liquor was not an area traditionally or historically regulated by the tribes and so there is no interference with tribal self-government by state regulation. The Court also relied on early statutes which it said authorized state regulation of the area and found no

federal preemption of the liquor area. NARF had filed an *amicus* brief in the case on behalf of the Pala Band of Mission Indians.

## ROSEBUD SIOUX TRIBE RETAINS RIGHT TO REGULATE LIQUOR

In a decision which came before the Supreme Court's decision in *Rice v. Rehner*, the Eighth Circuit Court of Appeals decided in *U.S. v. Mission Golf Course* that the Mission Golf Course and Mission Liquor Store are required to obtain tribal liquor licenses from the Rosebud Sioux Tribe. The Court found the area to be a dependent Indian community within the meaning of the Indian country statute. Extensive factual information concerning the characteristics of the community was considered. The exact effect of the Supreme Court's decision in *Rice v. Rehner* on this situation has not yet been determined. NARF had filed an *amicus* brief on behalf of the Rosebud Sioux Tribe.

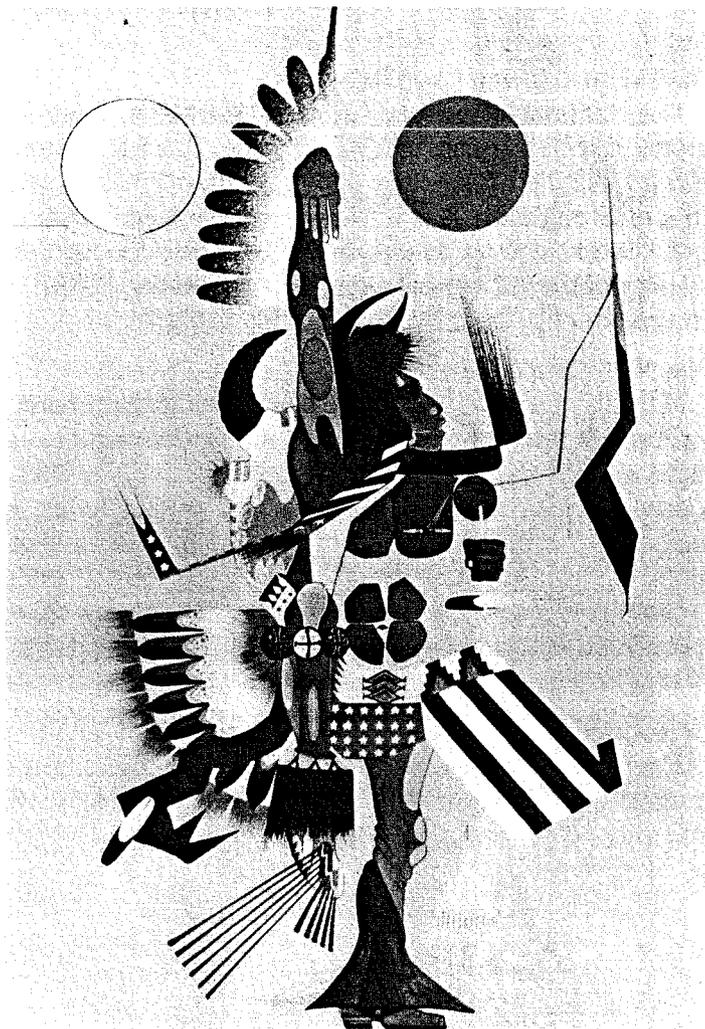
## FOURTH ANNUAL "VISIONS OF THE EARTH"

The Fourth Annual Visions of the Earth Art Show and Benefit was held at NARF's national headquarters in Boulder, Colorado on November 18, 19, and 20, 1983.

This year the focus of the three-day event was the work of students and alumni from the Institute of American Indian Arts in Santa Fe, New Mexico. This internationally acclaimed school of arts for Native Americans has been a major force in contemporary Indian art and has produced some of this country's most well-known Indian artists, actors, writers, and poets. The Institute had the work of its alumni and students for sale. Works from the Institute represented the areas of pottery, sculpture, jewelry, painting, and basketry.

As the guest artist for the benefit, Rance Hood, prominent Comanche artist from Oklahoma, was featured. Well-known for the traditional and spiritual approach he takes in his painting, Hood is one of the most highly regarded Indian artists working today. His painting entitled "Two Worlds" was used as this year's art show poster. In addition to the poster, other original works by Rance Hood were displayed.

The art show poster is still available for sale through NARF. A portion of the proceeds from this event benefits the Native American Rights Fund.



Rance Hood's "Two Worlds"

### Native American Rights Fund

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

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

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.

### Steering Committee

Roger Jim, Chairman	Yakima
Chris McNeil, Jr., Vice-Chairman	Tlingit
Kenneth Custalow	Mattaponi
Gene Gentry	Klamath
George Kalama	Nisqually
Bernard Kayate	Laguna Pueblo
Wayne Newell	Passamaquoddy
Leonard Norris, Jr.	Klamath
Harvey Paymella	Hopi-Tewa
Christopher Peters	Yurok
Norman Ration	Navajo
Lois J. Risling	Hoopa
Wade Teeple	Chippewa

Executive Director: John E. Echohawk (Pawnee)

Deputy Director: Jeanne S. Whiteing  
(Blackfeet-Cahuilla)

## NARF Publications and Resources

### **The National Indian Law Library**

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

### **The NILL Catalogue**

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

### **Bibliography on Indian Economic Development**

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

### **Indian Claims Commission Decisions**

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

### **Indian Rights Manuals**

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



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

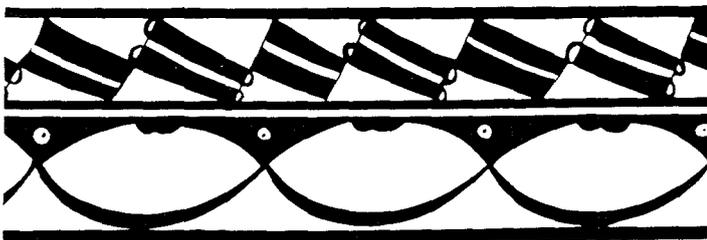
**A Self-Help Manual For Indian Economic Development.** This manual is designed to help Indian tribes and organizations on approaches to economic development which can ensure participation, control, ownership, and benefits to Indians. Emphasizing the differences between tribal economic development and private business development, the manual discusses the task of developing reservation economies from the Indian perspective. It focuses on some of the major issues that need to be resolved in economic development and identifies options available to tribes. The manual begins with a general economic development perspective for Indian reservations: how to identify opportunities, and how to organize the internal tribal structure to best plan and pursue economic development of the reservation. Other chapters deal with more specific issues that relate to the development of businesses undertaken by tribal government, tribal members, and by these groups with outsiders (Approx. 300 pgs. Price \$35).

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

### Films and Reports

**"Indian Rights, Indian Law."** This is a film documentary, produced by the Ford Foundation, focusing on NARF, its staff, and certain NARF casework. The hour-long film is rented from: Association Films, Ford Foundation Film, 866 Third Ave., New York, New York 10022 (212-935-4210). (16mm, FF110 -\$50.00).

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



**TAX STATUS.** The Native American Rights Fund is a nonprofit, 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.

**THE NARF LEGAL REVIEW** is published by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Anita Austin, Editor. There is no charge for subscriptions.

*The NARF Legal Review*

**MAIN OFFICE:** Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760).  
**D.C. Office:** Native American Rights Fund, 1712 N. Street N.W., Washington, D.C. 20036 (202-785-4166).

## OF GIFTS AND GIVING

### Otu-han

Otu'han, a Lakota word meaning "give-away," describes the age-old Sioux custom of giving gifts in the names of those they wish to honor. The Native American Rights Fund has developed the Otu'han memorial and tribute program to encourage our donors to continue this fine tradition by recognizing and honoring friends and loved ones through gifts to NARF.

We have received recent contributions in memory of:

- *Clyta Loran* — from Ruth F. Johnson
- *Mrs. Anna Graham* — from Ronald W. Jones
- *Tarie Lynn Brown* — from Marie Blackman
- *Ethel L. Dupuis* — from Delphis J. Dupuis

Besides the above-mentioned memorials, contributions in memory of Oscar Howe were recently made to NARF by staff members Mary Hanewall, Rebecca Martinez, and Marilyn Pourier. Oscar Howe, renowned Sioux artist and educator, died October 7, 1983 after an extended illness. The Native American Rights Fund had dedicated its 1982 "Visions of the Earth" national Indian art show and benefit to Oscar Howe as a tribute to his artistic contributions to contemporary Indian art. He played a significant role in the emergence of that movement.

NARF has also received a number of contributions from donors who have chosen to honor a friend or relative on a special occasion.

NARF was pleased to receive a generous gift in honor of Russell Hawkins, Chairman of the Sisseton-Wahpeton Sioux Tribe, from the National Indian Lutheran Board, in honor of his outstanding leadership. Chairman Hawkins has been listed by the Junior International Chamber of Commerce as one of the 10 outstanding men in the country.

An anonymous gift was made to NARF in honor of the birth of Eben Valentine Pelcyger. Eben's parents are former NARF employees, Joan Lieberman and Robert Pelcyger.

For further information on the Otu'han program contact Marilyn Pourier or return the newsletter coupon to NARF, specifying your interest in the program.

### Planned Giving Program

NARF's recently developed planned giving program has provided information upon request to more than 300 of our friends and supporters interested in knowing more about wills and how a will can work for them. We plan to continue to provide information about various aspects of financial and estate planning through special mailings and in issues of the NARF Legal Review. Ideas about creative, alternative ways to give to your favorite charity will be included, including gifts to the Native American Rights Fund. NARF has recently received a bequest from the estate of Helen M. Beardsley, a long-time donor to our organization. Last year over \$26,000 was contributed to the Native American Rights Fund through wills and bequests.

If you'd like to be included in our special mailings, contact Marilyn Pourier at 303/447-8760, or write her c/o NARF, 1506 Broadway, Boulder, CO 80302. All inquiries are in strict confidence and under no obligation. The enclosed coupon can also be used to request additional information about wills and bequests.

### Contributions to the Native American Rights Fund

The work of the Native American Rights Fund is supported by grants and contributions from private foundations, corporations, religious institutions, tribes, federal agencies, and individuals. Your continued generous support is vital to protect the rights of Native Alaskans and American Indians throughout the United States. Send your tax-deductible contribution today along with the enclosed coupon; donors contributing \$25 or more will automatically receive the quarterly NARF LEGAL REVIEW at no extra charge.

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*Boulder, Colorado 80302*

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