

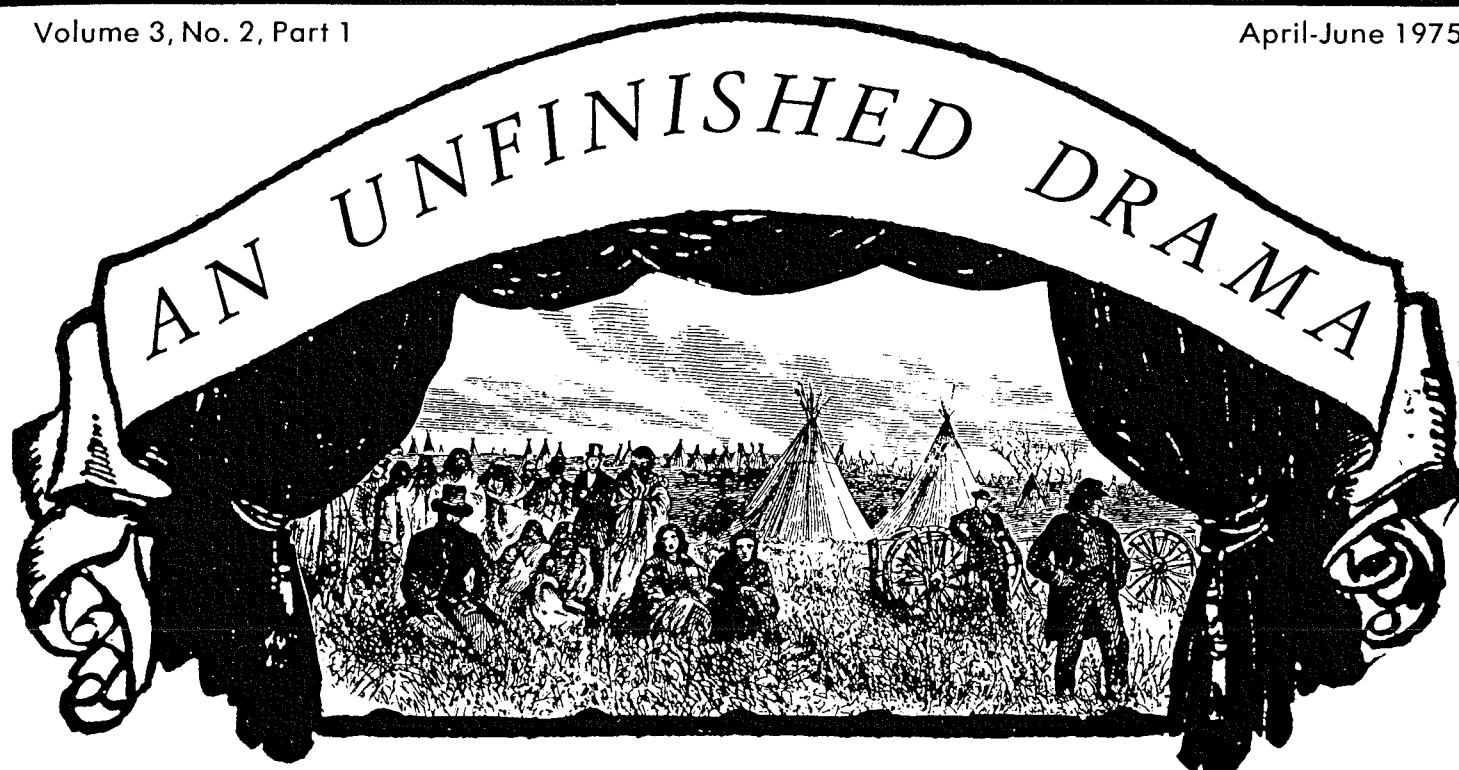
Native American Rights Fund

The National Indian Law Library

# ANNOUNCEMENTS

Volume 3, No. 2, Part 1

April-June 1975



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TOM PAINE:

Chief Propagandist  
of the  
American Revolution

*(reverently in 1775)*

It is at all times necessary, and more particularly so during the progress of a revolution, and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to the first principles. It is by tracing things to their origin that we learn to understand them, and it is by keeping that line and that origin always in view that we never forget them. An inquiry into the origin of rights will demonstrate to us that rights are not gifts from one man to another, nor from one class of men to another.



Tom Paine

## THE PLOT

This story is about the 26 Indian tribes who came to live on the Northern Great Plains of America. It is about the wars and the enemies of these people, and about their allies. It is a tale of greed and the power of individual men over other men. It is about explorers, cavalry and Indians; about lawyers, businessmen, government agents and Indians; and finally about cowboys becoming Indians.

It is a portrayal of the process of colonization, and therefore a record of the acquisition of wealth and high social status played by an expanding white population at the expense of a native red population. It is about a colonial system established 200 years ago which required that native social systems be broken up so as not to impede the progress of the new white dominant society. It is a recounting of how, although rendered impotent, the self-conscious nationality of the native Indian population was never completely liquidated.

Herein, then, is a depiction of how native religions and languages were destroyed or suppressed — a record of how a low status was assigned to virtually all of the native Indian customs and physical characteristics. And finally, it is an account of plunder and rape, not just of goods and women, but of entire Indian nations.

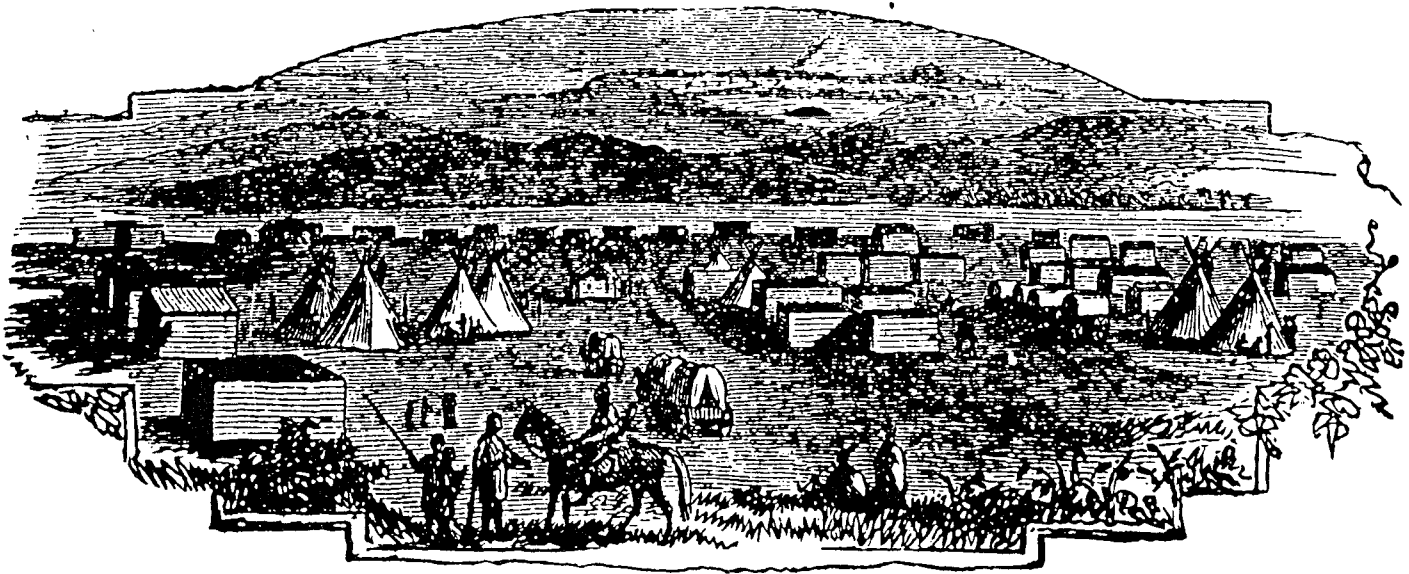
Instrumental to this drama of the process of colonization of Indian people were the advocates, the many white Christian reformers who called themselves "friends of the Indians". They were really the scriptwriters and directors for this saga, who inspired (and to some lesser degree are still inspiring) the policies of the U.S. Government, the producer of this epic.

It was the friendly scriptwriters who thought up the devices which the government-producer used to divide reservations into individual homesteads for the Indians (sometimes spoken of as the allotment of the land in severalty). It was these

chroniclers who arranged for Indians to be made citizens of the United States so they could live under the same laws that governed the whites. And it was they who inspired the producer to establish a universal government school system for Indian children to hasten their Americanization.

The Indians were very well-directed in this story as every reviewer of the effects of colonization on Indian society has noted. Nonetheless, directing and producing this saga has taken its toll among the white participants as well, because, like the Indian players, the white actors, writers, directors, producers, and members of the audience have also suffered losses. These losses are necessarily of a more subtle sort than those experienced by the Indian players. They began to show up in the 1850's when there was a marked growth in hypocrisy among the scriptwriters, directors, and the producer as their so-called form of justice grew harder to rationalize. Then came a blunting of conscience in the white audience, followed by a significant decline in human sensitivity, not only among the audience, but also among the scriptwriters, directors and the producer.

Ironically, as this story nears an end it is only the Indian members of the cast who have maintained their integrity and self-respect. White people, having paid no real attention or respect to red people for almost two centuries, have lost sight of their first principles and their origins. Of course, the script is not finished yet, and so it remains to be seen whether or not the audience will yet be moved by the stoic portrayal of the Indians — one full of wisdom, reverence for their brothers, and respect for the Mother Earth, which the native actors have been playing so well for the past 200 years.



## THE STAGE SETTING

The setting for this drama is a part of America which is high and barren, windswept and arid. The winters are frigid, with howling blizzards piling snowdrifts in all the cuts and coulees. Summers are unbearably hot with dry winds searing the grasses and drying up the streams.

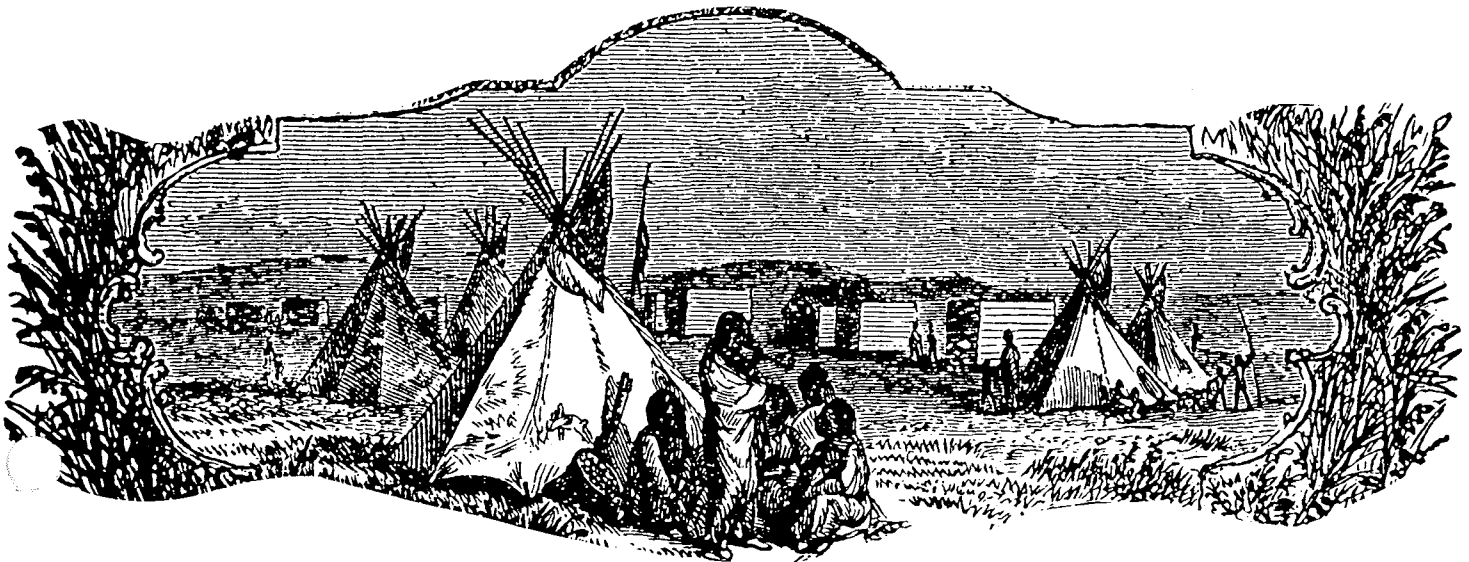
Along the wide and shallow rivers, which often become raging torrents from the flash floods of spring, are groves of cottonwood and box elders, chokecherries and wild plums. On the high ridges are stands of ponderosa pine and cedar. Underneath the ground is

gold, coal, oil and oil shale, natural gas, silver, potassium, aluminum, clay, chalk, semi-precious stones, and water.

Once, huge herds of buffalo roamed by the millions up and down the unending sea of grass on the surface. They are gone now. Some mule deer still browse in the wooded areas, as do a few remaining antelope on the high, rolling ground. There were and still are (although many less) black bear and grizzlies rummaging in search of berries, fish and honey. There are only a few wolves and foxes left to grow fat

from the jackrabbits and prairie dogs. There are some, but not too many eagles, ducks and geese. Only the prairie chickens still strut in sufficient numbers as they perform their strange mating dance in dusty circles on the flats.

The plains described in this setting encompass an area of land within America that is now part of the states of Montana, Wyoming, North Dakota, South Dakota and Nebraska. It is a big and fragile kind of land and the men who wrested a living from it had to be strong. They still have to be.



# The Prologue

## MAKING INDIANS INTO WHITE MEN

**SITTING BULL:**  
Sioux

*(prophetically in 1875)*

We will yield to our neighbors — even our animal neighbors — the same right as we claim to inhabit the land. But we now have to deal with another breed of people. They were few and weak when our forefathers first met them and now they are many and greedy. They choose to till the soil. Love of possessions is the disease with them. And they would make rules to suit themselves. They have a religion which they follow when it suits them.

They claim this Mother Earth of ours for their own and fence their neighbors away from them. They degrade the landscape with their buildings and their waste. They compel the natural Earth to produce excessively and when it fails, they force it to take medicine to produce more. This is an evil.

This new population is like a river overflowing its banks and destroying all in its path. We cannot live the way these people live and we cannot live beside them. They have little respect for nature and they offend our ideals. Just seven years ago we signed a treaty by which the buffalo country was to be ours and unspoiled forever. Now they want it. They want the gold in it. Will we yield? They will kill me before I will give up the land that is my land.

The Indians who migrated more than two centuries ago to the Northern Great Plains, whether they came from the east, west or south, did so because of pressures from other powerful Indian tribes, who were themselves fleeing the advance of European explorers and settlers, most of whom were escaping pressures from still another society an ocean away.

These migrating people had less than half a century to change their woodland or agricultural ways to roles which would enable

them to survive on the fragile and barren plains. The new plains Indians made this transition remarkably well by absorbing what they could, not only from each other, but also from the Spanish, British and French explorers. They made magnificent use of the horse and the buffalo, and they prospered as hunters and food gatherers. During the second half of the 1800's, as their new plains life-role was once again slowly being destroyed by an advancing culture, they found themselves trapped. They had reached the end of the stage and there was no other place for them to move off to. As a result they then had to somehow learn to sustain themselves in their new roles side-by-side with their oldest Indian enemies, often on the same reservation. What they did not learn how to do, however, was to impersonate white men.

Unable to accept the inevitable, some of their warriors struggled on in vain to preserve their original roles on the plains until the end of the 19th Century. On several occasions they were victorious, as on June 25, 1876, when a group of Sioux, Cheyenne and Arapaho gave a masterful performance against General George Custer and his forces at the Little Big Horn near what is now Crow Agency, Montana. The performance came just before the nation's first centennial celebration.

It was only three years later, in the winter of 1879, that the tenacious Northern Cheyenne decided to return on foot to their home on the Northern plains from the Oklahoma Indian Territory.



Although only a few of them survived the 2,000 mile trek and/or their pursuers, even then the Northern Cheyenne seemed destined to set a tone and pace on the Great Plains story-stage for those other tribes who were resisting the colonization of their peoples.

In 1887 the Dawes Act was passed. It was an attempt by the scriptwriters to make individual Indians owners of individual plots of land — so they could better act like white men. What was left over after the Indians were given their plots, was opened to non-Indian people for settlement. The plains people resisted; some tribes did better than others. Although millions of acres passed from Indian ownership to non-Indian ownership, Indians on the plains and elsewhere continued to live communally and sustain their parts as Indians.

The last warriors on the Great Plains died in 1890 as the Nevada Paiute Wovaka's Ghost Dance was moving across the Great Plains. Sitting Bull was murdered at the Standing Rock Reservation in South Dakota on December 15, 1890. Thirteen days later a band of Sioux led by Big Foot was massacred at Wounded Knee, South Dakota, on the Pine Ridge Reservation. Not much could have exceeded these dramatic events in producing terror and revulsion in the white audience, yet for the most part they were unmoved.

Soon thereafter the plains people were completely confined to their reservations and suffered continuing decline in the human spirit. Once confined and subdued, their lines in the script were continually changed in an effort to make them play the part the white producer had in mind for them. Their religious ceremonies were outlawed or modified by the white man. The men, as hunters, and the women, as gatherers, could not find enough food to provide for their children. They were not acting like white men, but they were at their mercy under their direction.

In June 1924, Congress gave its approval to an act (or a script) which made all Indians, including those of the plains, citizens of the United States. Despite this, Indians continued to starve and to play their life roles differently than white men wanted them to.

In 1934 Congress revised the play and added another act which was designed to revitalize tribal governments which they had been destroying for more than 100 years in the form of white corporations. Some plains tribes changed their remnant governments to conform with the new law, known as the Indian Reorganization Act, but regardless of these new corporate entities the members of most tribes continued to be im-

poverished, and stoic in their difference from white men.

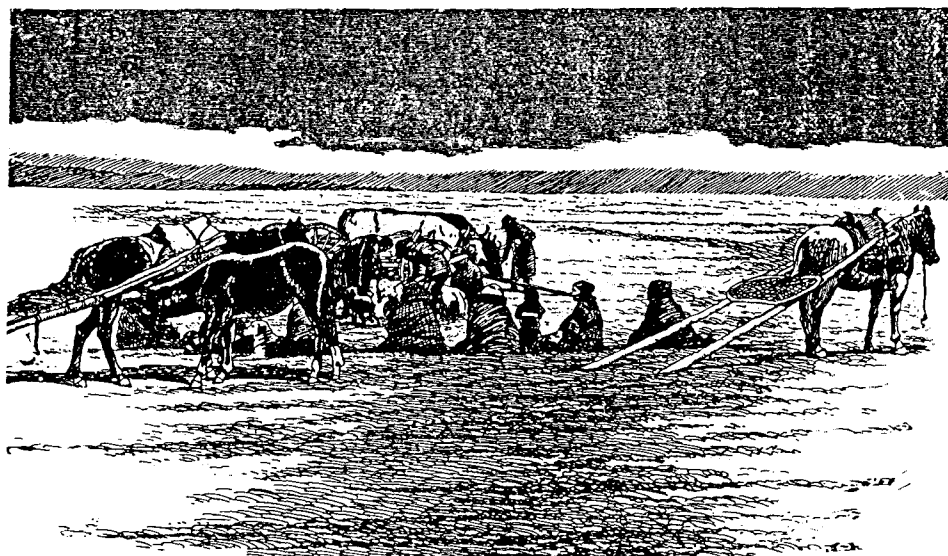
In 1949, Congress turned itself around again and instituted another revision in the story line — this one was a kind of liquidation drive — the Indian Relocation Program. Many of the Indians who participated and who were therefore relocated either starved or drank themselves to death in the cities. Even when the backdrop was changed they chose not to impersonate white men.

In 1953 Congress decided to have a rehearsal for yet another new scenario. This one was designed to eliminate some Indians from the script entirely. To do so they terminated one of the country's most prosperous tribes, the Klamath of Oregon. As a part of this rehearsal the government-producer also liquidated the Klamath tribal assets. Immediately some starved or drank themselves to death — most, although lost from their tribal existence, were still acting like Indians off stage.

A year later the U.S. Senators and Congressmen directors tried another termination rehearsal, this time using the Menominee Tribe as players. They created another stage setting and made the Menominee Reservation into an American county and

distributed the tribal assets among shareholders in a corporation. The Menominee starved, and lost their land and their shares, but they remained Indians and were strong enough to finally persuade Congress to restore their former role as a federally recognized tribe in 1973.

Shortly before this, in 1971, President Nixon had announced yet another new policy-plot called Indian Self-Determination. Today, in 1975, the concept of self-determination is still part of the script, but because the white directors are frightened and entrenched in their own bureaucratic power struggles, few Indian players have yet been allowed to determine what their roles will be in the next act of the American saga. The bulk of the cast of Indians are still living as Indians, which is not the part the white writers, directors, and producer had in mind for them when this story began two centuries ago. Whether the producer will now actually permit the Indian members of the cast to share in the script writing, direction, and production is what will most likely determine the survival of Native American people, and the validity of the principles and concepts the American nation was founded upon 200 years ago.



## A Synopsis of the Action

For 200 years the plains Indians, whose lives and lands were taken in trust by the U.S. government, watched helplessly as their precious resources were either poorly directed, illegally booked (i.e. leased), and generally mismanaged or rendered uninhabitable under the guidance of the federal trustee and producer of the show.

What happened to the Great Plains Indians was not unlike the relationship between the original American colonies and the British Crown. And like an old late-night television rerun, the Indians on reservations have played the part of the colonists in the 13 colonies, and the Secretary of Interior has played the part of Britain's King George III.

As early as 1908 one of the most critical props for the last act of this drama was being assembled. In that year the U.S. Supreme Court held in *Winters v. U.S.*, a case arising on the Fort Belknap Reservation in Montana, that Indians were entitled to as much water from rivers running through or bordering their lands as they needed to develop their reservations. Without the water, the Court noted, the treaties and governmental acts reserving the land for Indian use would be meaningless. The Court also said the government, as the trustee of Indian lands, was duty bound to preserve Indian rights to the needed water.

Regardless of their legal right, however, the Indians could not use their water to develop their reservations because they did not have the money for the costly dams and irrigation systems that were needed. And regardless of the law and of trustee obligations, time after time the U.S. Bureau of Reclamation and Army Corps of Engineers built dams and irrigation systems upstream from Indian land or condemned Indian land to make dams and then diverted the water to non-Indian settlers.

The Indians on the reservations were left alone on the stage without footlights, costumes, or scenery. It was the old story in Indian affairs and colonization. In order to advance the economic growth of a developing white community, the first stages of economic development were being denied to an underdeveloped Indian community.

Eighteen years after the Supreme Court established the Winters Doctrine, the first laws governing leasing of public federal lands for mining were passed. Eighteen years after that, in 1938, Congress passed the Omnibus Tribal Leasing Act which allowed Indians to lease coal rights on their tribal lands to private corporations subject to approval of the Secretary of Interior. These laws were also to become critical props for staging this drama. Then for almost 3 years nothing happened with regard to leasing of Indian land on the Northern Great Plains. Although several major reclamation projects damaged Indian lands and water rights, the impact was less severe than for the water-short reservations in the Southwest. The delay in leasing of Indian coal was due to several factors. One, there was plenty of coal for the power





hungry eastern cities in Appalachia, and the expense of transporting western coal to those areas where there was a market or it was considered too great. There was also considerable natural gas and oil available. Another stumbling block was the complex procedural regulations and layers of approval within the BIA and Interior which discouraged development. Beyond that were the unique factors of tribal governing councils, the trust status of the lands, and the complexities of surface vs. mineral rights on the allotted or homesteaded lands.

In the 1960's as the Northern Great Plains tribes continued to find themselves in extreme poverty, the coal, oil, and power companies began to realize the value of the coal underlying Indian lands. A few tentative contacts were made and by 1966 the first coal sales on the plains reservations were being closed.

For the Indians the stakes were high. The average unemployment rate on their reservations was over 50%; the average per capita income was about \$1,600 per year, and alcoholism was affecting at least one member in 65% of the families.

Some of the Indians believed that leasing their coal could provide a way out of the knot of economic and social depression strangling their reservations. But some also knew that their tribal existence was at stake as strip-mining could destroy the cultural continuity and integrity of the lands, as well as their ability to ranch or farm their lands.

The leasing problems varied from one reservation to the next because of individual tribal government policies and the fact there were three categories of land available — tribal land, allotted land, and ceded land. On the reservations the surface of the allotted land was owned primarily by individual Indians,

on others primarily by non-Indians. But for the most part, regardless of who owned the surface, the tribe owned the mineral rights underneath. Ceded land was land which had been relinquished by the Indians to the government for settlement or homesteading by individual non-Indians, and the mineral rights were, in some instances, still retained by the tribes.

On the Northern Great Plains it was often the case with allotted and ceded lands that while the surface was owned by white cowboy ranchers, the Indians still had the right to lease the lands beneath the ranches for strip-mining.

Following the original Omnibus Leasing Act, the Department of Interior determined that Indian land tracts larger than 2,560 acres could only be leased if additional land was needed to ensure a supply of coal "necessary to permit the construction of thermal electric power plants or other industrial facilities near the reservation". A study subsequently conducted by the Council on Economic Priorities (CEP) in 1974 found that "the average Indian lease was eight times larger than that amount, or 23,523 acres. The CEP study also showed that of all the coal mining leases on Indian lands, 10 of the 11 were larger than the 2,560 acre limitation. Apparently a lot of power facilities were going to be needed near the reservations.

In 1967, an ocean and a continent away, another colonial project of white corporate America began to disintegrate, and the impact reverberated back to the plains. Just as the Arab and other oil producing companies began to end American and other colonial domination of their natural resources, the coal companies (who were for the most part also oil companies or their subsidiaries) began expanding their lease holdings on

Indian lands. Peabody Coal picked up 16,000 acres of Northern Cheyenne land for 12¢ an acre at one sale where they were the one lone bidder.

Only two years later, at two other sales in the same area, there were six bidders each. The winning bids then offered some \$16 an acre for prospecting permits.

In October, 1971, the Bureau of Reclamation released a massive report called the "North Central Power Study". The study, paid for by 35 power companies, outlined a complex and ill-planned process by which the Northern Great Plains would become the next Appalachia.



Suddenly everything was happening at once. The oil producing countries were beginning to flex their muscles; the power companies were conducting an intense propaganda campaign to persuade Americans to consume more power; Congress was passing the Clean Air Act which prohibited burning anything except the kind of low sulfur coal found on the plains; President Nixon was declaring a new policy of Indian Self-Determination; the environmentalists were fighting the power companies and other polluters; inflation and corporate profits were on the rise; and the Indians were still starving.

After the Bureau of Reclamation's study came out, a number of other volunteer, state, and national groups got together to do their own studies. Conferences, reports, studies and committees, as well as a horde of lease brokers and coal company agents, came onto the plains like a plague of grasshoppers.

In October, 1972, the Secretary of Interior, Rogers C.B. Morton, seeing the chaotic planning, the resulting concern, and he himself hounded from all sides, resolved to take the situation in hand by announcing the formation of yet another interagency federal-state task force called the Northern Great Plains Resource Program (NGPRP). The goals of NGPRP were to "coordinate on-going activities and build a policy framework which might help guide resource management decisions in the future".

The situation was absurd. The Bureau of Reclamation study had been issued in 1971, well after the coal rush had already started. The new NGPRP did not provide for any significant participation by the public, and further was not even scheduled to release its final report until December, 1975. The strategy of Interior looked as if it



*Truly Yours*  
*G. A. Custer*

had been handled by General Custer himself.\*

By 1973, most of the Great Plains tribes had recognized that perhaps the last great white onslaught was upon them. Their continuing performance which had been tenuous for so many years, was now even more threatened because of an increase in the insistent demands of the dominant audience. These demands, stimulated by the world energy crisis, were centered on the vast low sulfur coal and plentiful water resources located on their lands. The coal reserves were now drawing international attention and stimulating a considerable amount of modern day cupidity. And their water was being coveted in direct proportion to their coal.

The plot began to thicken as more and more of the Indians realized that there would be

\* Custer graduated 34th in a class of 34 from West Point Military Academy.

unplanned and rapid development of their coal reserves and their water resources, coupled with an influx of many thousands of non-Indian people to the reservation and off-reservation areas and a concomitant use of their precious water, as well as environmental pollution — all of which would threaten their viability and sovereignty.

In the playbook as the roles of the plains Indians evolved in the 1900's, so did the lives and make-up of the Indians' adversaries. It was like re-staging a play in which the cast of characters remains the same, only the costumes are changed.

Unfortunately, this new white cavalry which was descending on the Northern Great Plains Indians in the 1970's was far more complex and well-disguised than the troops that swarmed over the plains in the late 1800's. The repertoire or strategies of the new cavalry was so multi-faceted and was moving against the plains people from so many different approaches that the Indians had little time or opportunity to take their cues.

One of the reasons the new white onslaught appeared so treacherous was its characteristic diffuseness and total lack of accountability. The new actor-troops played under stage names like Meadowlark Farms, (a sort of sub-subsidiary of AMAX Coal Company), Consolidated Coal (Continental Oil), Island Creek Coal (Occidental Petroleum), ad hoc committees, water quality subgroups, citizens advisory committees, federal agencies, upper and lower basin commissions, and special task forces.

Complicating the scene was the fact that these modern day government agents and player-opponents had what the cavalry of the 1800's didn't have and what the Indians had never had — almost unlimited supply lines.



# AN UNFINISHED DRAMA

## Act I

### THE REVOLUTION BEGINS

#### THE PLAYERS

The Sons of  
Liberty

*The Northern  
Cheyenne*

The Redcoats

*The Bureau  
of Indian  
Affairs*

The East India  
Tea Company

*The Consoli-  
dated Coal  
Company*

King George  
III

*The Secretary  
of Interior*



King George

#### FRED LAST BULL:

Northern Cheyenne,  
Keeper of the  
Sacred Arrows

*(prophetically in 1957)*

They will be powerful people, strong, tough. They will fly up in the air, into the sky, they will dig under the earth, they will drain the earth and kill it. All over the earth they will kill the trees and the grass, they will put their own grass and their own hay, but the earth will be dead — All the old trees and grass and animals.

They are coming closer all the time. Back there, New York, those places, the earth is already dead. Here we are lucky. It's nice here. It's pretty. We have the good air. This prairie hay still grows. But they are coming all the time, turn the land over and kill it, more and more babies being born, more and more people coming. That's what He said.

He said the white men would be so powerful, so strong. They could take thunder, that electricity from the sky, and light their houses. Maybe they would even be able to reach up and take the moon, or stars maybe, one or two. Maybe they still can't do that.

Our old food we used to eat was good. The meat from buffalo and game was good. It made us strong. These cows are good to eat, soft, tender, but they are not like that meat. Our people used to live a long time. Today we eat white man's food, we cannot live so long — maybe seventy, maybe eighty years, not a hundred. Sweet Medicine told us that. He said the white man was too strong. He said his food would be sweet, and after we taste that food we want it, and forget our own foods. Chokecherries and plums, and wild turnips, and honey from the wild bees, that was our food. This other food is too sweet. We eat it and forget. ... It's all coming true, what He said.

Between 1966 and 1971, the Northern Cheyenne Tribal Council granted permits for exploration and surface coal mining to a number of coal companies covering acreage which amounted to 56% of the total land on the Northern Cheyenne Reservation in Montana. The Tribal Council, under the guidance and with the approval of the Bureau of Indian Affairs, had leased the land in an effort to provide a source of income to the 2,700 tribal members, 27% of whose work force was unemployed.

All in all the Council had been advised to sign a total of 11 exploratory permits for the Tribe's land. However, for the most part the Tribal Council was very much uninformed of the ramifications of strip-mining and more importantly of the omissions and deficiencies in the standard BIA contract coal leases. The permits did not even follow federal law for Indian lands because they were so loosely worded as to reclamation and other environmental considerations.

Economically, the permits were as flawed as the original British Tory's Tea Tax. Not only did they bring in less money per acre than was being paid on other privately leased lands, they gave the coal companies the right to exercise lease options, which were appended as a part of the original exploratory permits. The options set the price for the coal at the time the prospecting permit was issued and therefore before a determination had been made of the coal's quantity, accessibility, and probable market value.

Under the terms of the BIA contracts the coal companies were able to explore on the Cheyenne Reservation for the Indians' coal, discover its value, and secure it without the Cheyenne being able to negotiate with them to obtain a royalty based upon the true market value

of their minerals. The permits' lease clauses also gave the coal companies the right to use the Indians' land for any kind of building or other production, processing, and transportation activities related to coal.

Thus, under the BIA-devised contracts the coal companies were able to obtain the right to virtually transform the quality and the character of the reservation. Like ultimate set designers they could engage in the construction of power, conversion, and petro-chemical plants; the building of railroads and other industrial parks; as well as new towns of non-Indians whose populations would submerge the small population of Cheyenne and make them a minority in their own land.

In 1969, new cost leasing regulations were promulgated by the Secretary of Interior to make certain that Indians could make informed decisions as to whether or not they wished to lease their land. The new regulations were in large part due to the terrible conflicts that had developed in the Southwest with regard to leases let in 1966 on the Navajo and Hopi reservations.

Unfortunately, but typically, the BIA was either unable or unwilling to set up the necessary procedures to make certain the new safeguards were implemented.

Therefore what a strip-mining set on the Northern Great Plains stage still meant in the 1970's was the destruction of the land for grazing and wheat production. No other kind of surface activities would be possible while the mining was actually going on, and reclamation of the lands to their original condition was considered unlikely at best.

The National Academy of Sciences issued a report which projected that lands receiving under 10 inches of rain per year

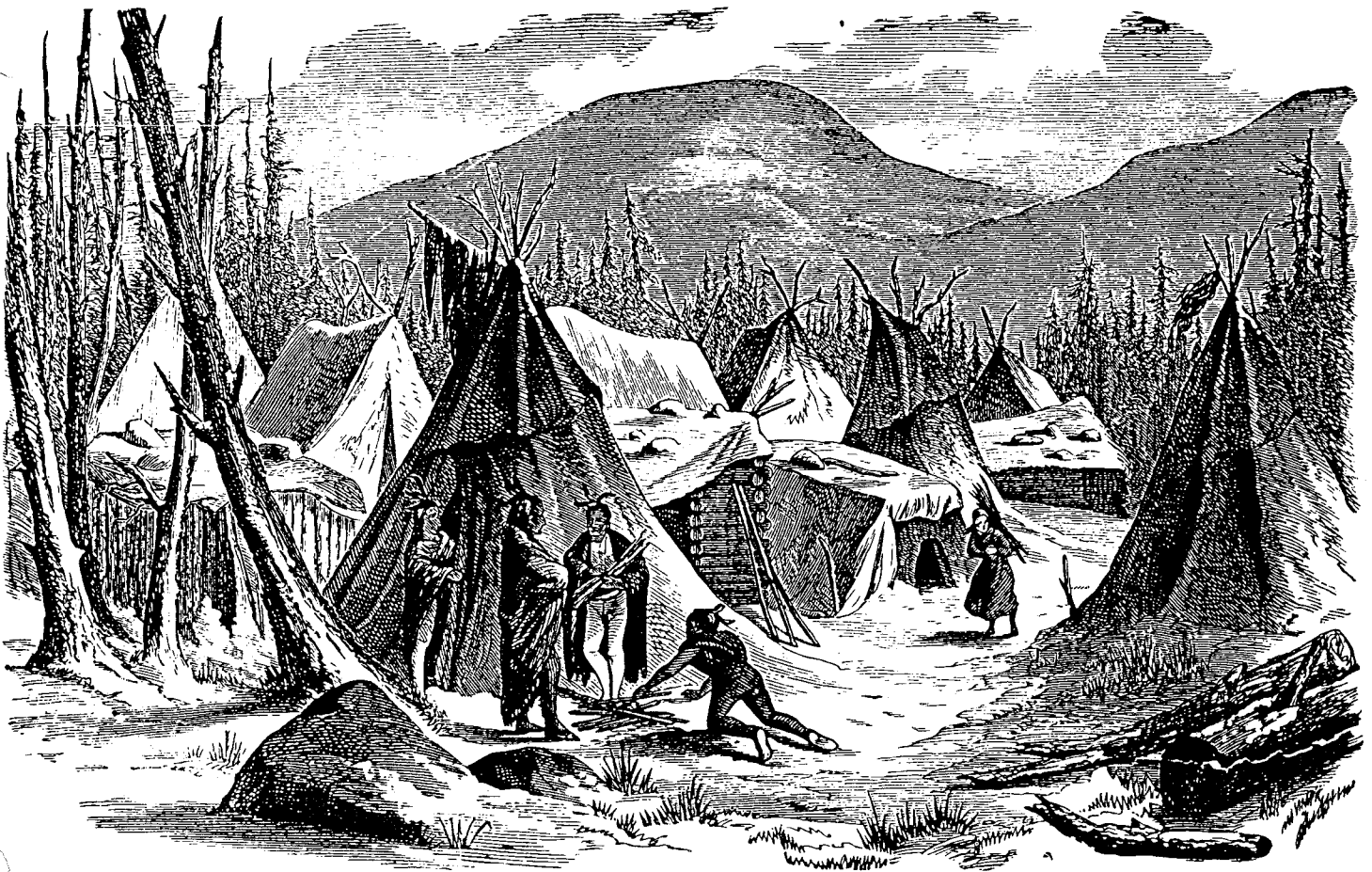
were not reclaimable, and that western lands receiving more than 10 inches might be recoverable over a period of years with very careful attention. On the Northern Cheyenne reservation rainfall averages slightly over 12 inches annually and the natural grasses which are as tenuous as the Northern Cheyenne people cannot be reseeded. Hybrid seed must be used.

Strip-mining also taxes the water resources by lowering the water table. Worse is the fact that coal itself is an aquifer which stores water like a sponge and slowly releases it for vegetation on the surface. Removal of the coal removes this aquifer which can never be replaced. Further, vast amounts of water are needed in the gasification process, which produces not just the natural gas needed by energy-hungry America, but also emissions causing dangerous air and water pollution.

Most threatening to the integrity of the Cheyenne Nation, however, were the consequences of industrialization — the influx of thousands of non-Indian workers and their families and the boom bust economy. The land on the Northern Great Plains is fragile. But it does not compare with the vulnerability of an Indian culture forced to exist side-by-side with a mammoth non-Indian industrial complex.

By 1971, at a time when the Cheyenne Tribal Council was engaged in its third major coal sale, the Tribal Council members began to publicly express their concern with regard to the reclamation provisions under the permits and their conformance with the federal strip-mining regulations for Indian lands passed in 1969. The new regulations, which had been promulgated after two years of study by the Interior Department were supposedly designed to insure that surface mining on an





Indian reservation would only take place after federal studies had established reclamation requirements and these had been incorporated into the leases.

As soon as the Cheyenne's inquiries reached the BIA Superintendent, Bureau officials began a feeble document and paper scramble to cover their tracks "as a matter of record", not only with regard to the third coal sale, but also for the first two coal sales. Nothing in the way of making real technical examinations happened except that memoranda between the Superintendent, the Area Office, and Bureau officials in Washington were exchanged. Then in July, 1972, Consolidated Coal Company (CONSOL) made a rather extraordinary offer to the Cheyenne.

What CONSOL purposed to the Northern Cheyenne Tribal Council was to negotiate a virtual

corner on the bulk of the Northern Cheyenne's coal without conducting the competitive bidding that had taken place in conjunction with earlier permits.

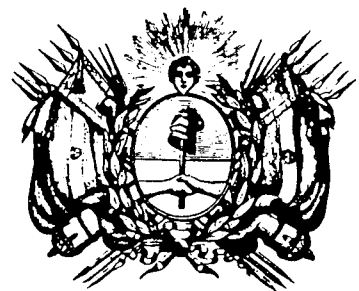
Whereas the prospecting permits issued to other coal companies, like Peabody and AMAX and granted on competitive bids conducted by the BIA, were bringing the Cheyenne an annual rental of about \$1 an acre, CONSOL suddenly purposed a no-bid offer of \$35 an acre — which would have yielded the impoverished Northern Cheyenne Tribe \$2 million a year in land rent alone.

In addition, CONSOL said the Tribe's royalty on each ton of coal extracted would be 25¢ rather than the 17.5¢ agreed to by the other companies prospecting on the reservation under BIA guidance. It was the CONSOL offer that prompted the Indians to open the curtain on the revolution.

JOHN ADAMS:

*(defensively, in 1815)*

What do we mean by the Revolution? The War? That was no part of the Revolution: it was only an effect and consequence of it. The Revolution was in the minds of the people, and was effected . . . in the course of 15 years before a drop of blood was shed at Lexington.



ECONOMIC TYRANNY

## It Was Too Good To Be True

What the CONSOL project called for was strip-mining 1 billion tons of Northern Cheyenne coal, enough to fuel two or three mammoth coal conversion plants that would eventually produce 1 billion cubic feet of pollution-free natural gas for the consumption of the dominant white audience.

A \$1.2 billion investment by CONSOL in a coal conversion complex was the big hitch in the deal because it implied a city of over 5,000 non-Indian people on the tiny Cheyenne reservation. At 433,434 acres, the Northern Cheyenne Reservation is one of the smallest reservations in Montana, and is dwarfed by its Crow neighbor to the West which has 1.5 million acres.

CONSOL continued to press the Northern Cheyenne Council members throughout July, 1972, to skip the usual practice of asking for competitive bids for the same leased acreage on the grounds that the Indians would lose several months of income. Then as a final gesture of good faith, CONSOL representatives proposed that the company would make a contribution to the Tribe of a new \$1.5 million health center. It was readily apparent to the Cheyenne that the health center, although desperately needed by tribal members, was also being built for the non-Indian employees of CONSOL, who would, if the contract was approved, shortly be invading the reservation.

Some pressures were subtle, others not so subtle. CONSOL's people said that if they could not conclude the negotiations at an early date they would be forced to take their plans elsewhere and that the valuable project would be lost to the Northern Cheyenne. "It may be a long time before a

project of this magnitude comes again, if ever", said the CONSOL representatives. Naturally CONSOL was in a hurry to get the new permit signed. White men are always in a hurry.

The problem was that rejecting CONSOL's new offer carried severe political implications for the elected tribal council. Many of these members had been elected because of their support of the policy of distributing two-thirds of any of the income received from the mining companies on a per capita basis. To reject the CONSOL offer could have a direct and substantial impact on the individual incomes of the endemically impoverished Cheyenne.

CONSOL set a 15 day deadline in July, 1972, but CONSOL executives and members of the tribal council were still negotiating in November, 1972.

The situation was becoming more complicated because at about the same time other coal company crews had begun test drilling on previously leased land along the Cheyenne burial grounds and otherwise disrupting the lives of the tribal members. Uncertainty developed rapidly, not only among the tribal council representatives, some of whom were replaced by new members in a Council election held in November, but also among those Northern Cheyenne tribal members who held individual allotments of land on the reservation. They became so alarmed that they formed a group called the Northern Cheyenne Landowners Association to oppose coal development.

It had not taken long for the word of CONSOL's deadline offer to spread across the reservation and for the Northern Cheyenne

Landowners Association to move into action. Tribal members were urged to come to meetings and much discussion was held among them about the effect of the mining and the problems with the permits.

These meetings led to recognition on the part of most of the Cheyenne, not just the Council members, of the problems with the permits. They saw, then, whenever any one of the companies decided to exercise their rights to lease under the permits, that the Tribe was not going to be able to obtain a fair royalty for its coal. They also saw that there were no real guarantees that their land would be reclaimed, even if it was reclaimable, and that the possibility of the companies building conversion plants and other installations on the leased land was a fearful threat to the future of the Cheyenne Tribe.



At this point in the play what the tribal council wanted were at least some guarantees that Cheyenne land would be treated with as much respect and care as possible. The Council met and finally decided in December, 1972, to call in attorneys from the Native American Rights Fund to look over the leases and for advice in putting together a Northern Cheyenne Natural Resources Code. Such a code, they hoped, would insure the preservation of their land to the best degree possible and would require the reclamation of those acres that were strip-mined.

NARF staff attorney, Joseph J. Brecher, was assigned to the task. He was a non-Indian lawyer who had spent several years at NARF working on the environmental problems confronting the Southwest tribes by the construction of the gigantic Four Corners Power complex. He was considered by most people who knew him to be outspoken environmentalist.

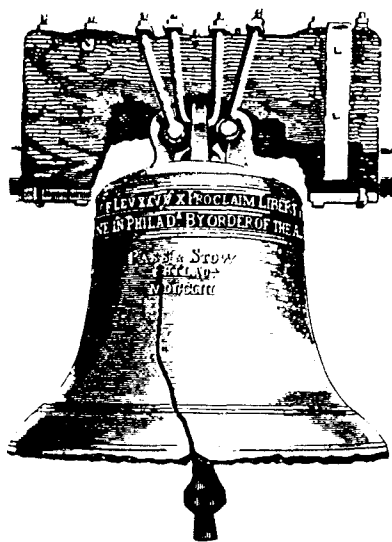
As Brecher went to work on behalf of the Cheyenne to evaluate the leases and then to draft the Natural Resources Code it became clearer and clearer, both to him and to the Council, that the leases offered no real protections to the Cheyenne in terms of reclamation safeguards and that they were not likely to either receive the fair market value for their coal or to be paid for damages that were almost certain to be done to their property.

Concerns were developing rapidly and pressures were put on all parties from all sides. Rumors were rampant that the Cheyenne, in addition to placing a severance or extraction tax on coal and passing a tribal reclamation ordinance, were going to cancel all their existing permits and leases, in addition to turning down the CONSOL offer. The Code went through several drafts in preparation for a detailed review by the Council. What the

Cheyenne Council members were seeking in putting together the Natural Resources Code was a way to use their land to provide the best economic return to the Tribe while still preserving Cheyenne heritage and a chance for their children's future.

At every turn new legal issues and new rumors had to be confronted. A short telephone interview between Brecher and a reporter from the Billings Gazette in January, 1973, fatally injured the working relationship between Brecher and the Northern Cheyenne. The paper carried a story about the phone interview which attributed a statement to Brecher that the Cheyenne were going to cancel their leases.

The Council was rightfully angered that he would speak on their behalf. In addition, the Gazette story made it appear as if the Council only acted to safeguard the tribe's resources after being prodded by the Northern Cheyenne Land Owners Association. This was not true; the Council had been seeking expert advice and assistance for many months. Although Brecher's story was corrected in a later issue of the Gazette, the damage was done and NARF's role in Act I with the Northern Cheyenne players ended abruptly in February 1973.



In March, 1973, the Northern Cheyenne people moved center stage and passed a resolution which declared all permits and leases issued to corporations for surface coal mining on their reservation null and void. The resolution was sent by letter to the Billings area office of the BIA.



#### RESOLUTION NO. 132 (73)

**A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL RELATING TO THE CANCELLATION AND TERMINATION OF ALL EXISTING COAL PERMITS AND LEASES ON NORTHERN CHEYENNE RESERVATION.**

WHEREAS, there now exists between the Northern Cheyenne Tribe and various coal companies, leases and permits of our coal assets that are not in compliance with 25 CFR 177; and

WHEREAS, the Northern Cheyenne Tribe does not know of any authority that allows any Interior Department Official to disregard the requirements of 25 CFR 177; and

WHEREAS, the Northern Cheyenne Tribe does not recognize the existing permits and leases as binding on the Northern Cheyenne Tribe due to the failure of the Bureau of Indian Affairs to comply with 25 CFR 177;

**THEREFORE BE IT RESOLVED,** by the Northern Cheyenne Tribal Council that officials of the Bureau of Indian Affairs and the Secretary of the Interior are hereby directed by the Northern Cheyenne Tribal Council to withdraw the department's approval and terminate and cancel all permittees and lessees, whereby permits and leases have purportedly authorized and empowered permittees and lease holders to explore for and mine coal on the Northern Cheyenne Indian Reservation.

**PASSED, ADOPTED AND APPROVED** by the Northern Cheyenne Tribal Council by (11) votes for passage and approval and no votes against passage and approval this (5th) day of March, A.D., 1973.

For the Cheyenne the resolution was an act as daring as the one taken by the Sons of Liberty. It was the Sons of Liberty, disguised as Mohawks, who led other American patriots in the Boston Tea Party. The reverberations from the Northern Cheyenne's act of saying "no" to the BIA, to CONSOL, and to other energy companies were tremendous.

The BIA had led the Indians to the coal companies without giving

them either the protection or the information they needed as colonial subjects. What the Cheyenne announced to the BIA and to the world was not unlike what Thomas Paine said to the American colonists and the British Crown in his revolutionary tract *Common Sense* published in 1776. Almost 200 years later the Northern Cheyenne Indian patriots were pledging to vigorously oppose all corporate,

state, or federal agencies that might attempt to destroy their environment; not to tolerate the abuse of their sovereignty, their natural rights, or their treaty commitments; and finally not to allow mining interests to determine what their future was going to be. If economic tyranny was not the cause of the first revolution, it was certainly the cause of this second one.



BOSTON TEA PARTY, 1773





Within a few weeks the Northern Cheyenne Tribal Council retained the Seattle law firm of Z, Pirtle, Morisset and Ernst to file an administrative petition to the Secretary on their behalf requesting the cancellation. In January, 1974, the petition was filed by the Zientz firm against the Secretary of Interior alleging 36 specific violations of the trust responsibility in regard to the leases. In the petition the Cheyenne reminded the Secretary-trustee and the BIA of the terrible betrayal of their trust to the Indians — that the Secretary had permitted violation of his own environmental regulations, that he had ignored the acre limitations set by his Department of Indian leases, and that he, through the BIA, had failed to make the coal companies prepare the necessary mining and environmental studies required by "royalty" law.

The Cheyenne's position was based on one of common sense. Nonetheless, it took 14 months for the then Secretary of Interior, Rogers C. B. Morton, who had played the role of King George III in the most recent events in the drama, to act in response to the Cheyenne.

On June 4, 1974 Morton announced he would not cancel the leases, but he did declare a moratorium on further development on the reservation until there was a mutual agreement between the coal companies and the Indians. Acknowledging some, but by no means all, of the Cheyenne allegations, he argued that there was not sufficient basis to justify reversing his previous approval of the leases, but that the Indians could now make certain that their leases did comply with the law. If the Indians were somewhat encouraged, the coal companies and other holders of permits were enraged.

Making an important aside, Secretary Morton moved stage-left and stated that if any litigation arose out of the Cheyenne's action, the government would pay the Tribe's legal expenses to the extent of his statutory authority. These new lines in the play, although somewhat conditional, were critical to the Cheyenne, whose income to provide tribal government and other local community services to their members was then less than \$300,000 a year.

That amount could easily be spent on legal fees alone, even in a short court battle against the coal companies, and a short battle appeared unlikely.

Secretary Morton's decision ironically also finally forced the BIA to impose an unofficial moratorium on the sale of leases and permits on Indian land all across the country until the Bureau's leasing policies and procedures for Indian lands could be reviewed.



## The Northern Cheyenne Minutemen

The threat of strip-mining, like the Tory Tea Tax of 1773, awakened the Northern Cheyenne people just as the Tea Tax had the American minutemen 200 years earlier. It was the kind of economic tyranny that fostered the growth of political groups on the reservation who wanted to preserve their rights to their land, culture and heritage. Most importantly the Cheyenne Minutemen recognized that they wanted the right to govern their own future.

The major result of the whole political revolution on the Northern Cheyenne Reservation was

that the Tribe saw that if they were going to mine they could, if they so chose, develop the coal resources on their reservation themselves in accordance with the social and political needs of their people — a decision not unlike the one made by the colonists 200 years earlier. The difference was, that doing so would require a kind of commitment and cooperation between the Northern Cheyenne and the federal government that had never before existed — one which had not been possible between the American colonies and the British Crown until after the Revolutionary War.

The Cheyenne knew they could not survive another war with the U.S., but they also knew how much extensive technical and financial aid would be necessary for them to govern and develop their own resources themselves. Many wondered if such a plan could ever be implemented

without being co-opted and contaminated by those playing the role of the Tories in this play.

Those who believed it would work were encouraged by Secretary Morton's decision to try to pay for any necessary litigation costs because they believed that recompensation for the years of

exploitation and neglect of their resources by the BIA was a government responsibility. They saw too that it also could eventually open the door to full governmental participation in a program for Indian economic independence which would benefit the nation as a whole.

## An Intermission and Rehearsal for the Northern Cheyenne

Mining activity at Northern Cheyenne is minimal now. The NARF Natural Resources Code is still before the Council, and the Ziontz petition to cancel the leases is now on appeal. There are still conflicting political forces within the tribe, but they are working hard towards a resolution of their problems. The tribal minutemen, resisting corporate domination, are vigorously rehearsing a campaign to educate their fellow tribal members. They are translating the strip-mining script into the Cheyenne language and they are planning to hold a referendum on strip-mining in 1976 sponsored by the Tribal Council.

1976 also happens to be a crucial year for the Northern Cheyenne for another reason. In 1926 Congress passed the Northern Cheyenne Allotment Act which was one of the last to be passed before the complete abolishment of the Allotment Policy by Congress in 1932.

It provided that the minerals underlying the Northern Cheyenne Reservation would be reserved for the benefit of the tribe, but "that at the expiration of 50 years from the date of approval of this Act the coal or other minerals, including oil, gas, and other natural deposits, shall become the property of the respective allottees or heirs". In 1968 Congress then amended the Northern Cheyenne Allotment Act or script to provide that the minerals should remain tribally owned. However, Congress

recognized a crucial ambiguity in its 1926 Act, that is, if the 1926 Act had created a Fifth Amendment protected property interest in the allottees and their heirs, Congress could not subsequently take that away without payment of just compensation. In order to resolve this ambiguity the 1968 Act therefore authorized the Northern Cheyenne Tribe to commence a lawsuit in the federal district court in Montana "to determine whether under the provisions of the Act of 1926, as amended, the allottees, their heirs or devisees, have received a vested property right in the minerals protected by the Fifth Amendment". The district court held in favor of the Tribe saying there were no property rights and no compensation was due the allottees. The Court of Appeals recently reversed this decision and ruled against the tribe, and a petition for certiorari is now pending before the Supreme Court.

The Cheyenne Tribal Council is now worried that if the mineral rights remain with individual allottees, they can more easily be pressured to sell or be bought off by the mining companies. Or, in the alternative, if the tribe decides to mine, it may not have an economically feasible unit of land unless the individuals holding allotments also want to mine.

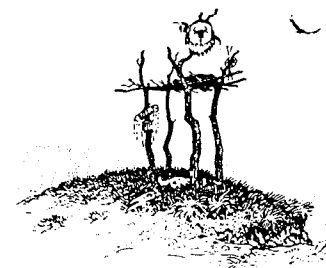
If the tribe loses before the Supreme Court, the allottees (who are primarily Indians unlike on other Montana reservations

where the allottees are primarily non-Indians) may come under considerable pressure from the coal companies to lease their allotments which checkerboard the reservation before the tribe as a whole decides what it wants to do. The coal and oil companies' strategy to date in their dealings with individual white ranchers who own land near the reservation has been to divide and conquer. The Tribal Council and many other Cheyenne now know that the Tribe's future existence, whether it includes more coal development or not, is dependent upon the strength that lies in unity. Without it, their final part in this drama could become a tragedy.

MORNING STAR:  
Northern Cheyenne

*(courageously in 1877)*

Tell the Great Father that Dull Knife and his people ask to end their days here in the north where they were born. Tell him we want no more war. Tell him that if he lets us stay here, Dull Knife's people will hurt no one. Tell him if he tries to send us back, we will butcher each other with our own knives.



# AN UNFINISHED DRAMA

## Act II

### ANOTHER VERSION OF THE REVOLUTION



TOM PAINE:

(adamantly in 1776)

While men could be persuaded they had no rights, or that rights appertained only to a certain class of men, or that government was a thing existing in right of itself, it was not difficult to govern them authoritatively.

The ignorance in which they were held, and the superstition in which they were instructed, furnished the means of doing it. But when the ignorance is gone and the superstition with it, when they perceive the imposition that has been acted upon them, and when they reflect that the cultivator and the manufacturer are the primary means of all the wealth that exists in the world beyond what nature spontaneously produces, when they begin to feel their consequences by their usefulness and their right as members of society, it is no longer possible to govern them as before.

The fraud, once detected, cannot be retracted. To attempt it is to provoke derision or invite destruction.



#### THE PLAYERS

The Sons of Liberty	<i>The Crow Tribe</i>
The Committee on Correspondence	<i>The Crow Mineral Committee</i>
	<i>Silas Big Medicine</i>
	<i>Alex Bird-In-Ground</i>
	<i>Robert Howe</i>
	<i>Dale Kindness, Jr.</i>
	<i>Eloise Pease</i>
	<i>Frank Plain Bull</i>
	<i>George Reed, Jr.</i>
The Redcoats	<i>The Bureau of Indian Affairs</i>
The East India Tea Company	<i>Westmoreland Resources Company</i>
King George III	<i>The Secretary of Interior</i>

More members of the Crow Tribe, measured on a percentage basis, live on their reservation than do the members of any other tribe on the Northern Great Plains. Their tribal existence is strong and their land, although greatly diminished, is large in comparison to that of many other plains tribes.

The Crows began their formal relationship with the U.S. government by negotiating a treaty in 1851 which provided them with 38.5 million acres in Montana and Wyoming. Between then and now, through other treaties, Acts of Congress, and cessions of land, they have lost all but 1,554,253 acres. Although almost 2.5 million acres are included within the exterior boundaries of the Crow reservation, of this amount, only 344,304 acres are still tribally owned and 1,209,949 acres are allotted. The other 1,000,000 acres have been transferred to white ownership. Nonetheless, on the remaining acres 4,200 members of the Crow Tribe have continued in their traditional roles.

Ironically, the future tribal existence of the Crow people may now hinge on something the Tribe agreed to in 1899. It was in that year the Crows agreed to cede about 1,150,000 acres of their reservation land on the southern border to the U.S. government for sale to homesteaders. The proceeds from the sale of these

acres (which were not to be sold for less than \$4 per acre) were to be used by the Secretary of Interior for special projects on the reservation, such as an irrigation system, the construction of a hospital, buying cattle and sheep, and building a good fence around the remaining reservation.

Congress didn't get around to ratifying the 1899 agreement until 1904 and at that time the surface rights to these lands went to the new homesteaders and the mineral rights were vested with the Crow Tribe. It may have been one of the best deals the Crows ever made, because underneath these acres were rich low sulfur coal deposits.

Like their next door neighbors, the Northern Cheyenne, the Crow people have suffered endemic poverty since the late 1800's when they were confined to their reservation. If the Crows have fared slightly better than their Cheyenne neighbors, it is because they were not so badly decimated as the Cheyenne, and thus they were able through their strength and power to maintain a significantly larger land base, which has since provided them with a correspondingly larger tribal income from grazing and mineral leases. This is not to say that there are not a lot of cold economic and social facts surrounding the Crow. Unemployment on the reservation stands at 29%; elsewhere in Montana the figure is 7.8%. The average income among Crow families on the reservation is about \$2,800; state-wide the figure is \$10,137.

Nonetheless, the Crow culture is not yet as endangered as the Cheyenne. Virtually all Crow youngsters speak the ancient language of the Crow, and Crow religion and customs still flourish. More importantly, however, is the fact that a large portion of the Crow-owned coal is off the reservation, lying under the 1899

ceded lands, while all of the Cheyenne's coal is directly beneath their reservation.

Like the Cheyenne, the Crows signed permits and leases under the guidance of the BIA for lands, both on the reservation and off the reservation in the ceded area, between 1966 and 1971. Leases were given to Shell Oil Company, Westmoreland Resources, and AMAX. Permits were issued to Gulf Mineral Resources and Peabody Coal Company.

In 1971, as alarm grew on the Cheyenne Reservation at the prospect of strip-mining and the unfairness of the royalties the Indians were obtaining, the Crow also began to look more carefully at their own permits and leases. In particular they were troubled by an agreement they had made with two gentlemen brokers. The gentlemen, both lawyers, were in the business of securing permits and leases on coal rich lands, and then transferring the rights to mining companies for a percentage of each ton of coal removed.

In the case of Crows they negotiated an agreement for something known as Tract I, one of three tracts of land in the ceded area, which contained an unknown amount of coal. (Tracts II and III were leased by Westmoreland Resources Company.) Their agreement with the Tribe provided that they would pay the Crows 17.5¢ per ton for coal removed from Tract I. Since the two gentlemen were only brokers, they were not able to develop the coal themselves. So in exchange for turning over their rights to the coal on Tract I, they obtained an agreement whereby Westmoreland would pay them 5¢ per ton on coal removed from all three tracts. It later turned out that there was not enough coal on Tract I to make it economically feasible to mine, and so both the Crows and Westmoreland lost money on the deal, while the two

gentlemen brokers will do very well on the 5¢ a ton proceeds from Tracts II and III. So it has often gone in the Indian coal business.

In addition, when making the deal, the two gentlemen persuaded the Crow Tribe that they could not sell their coal on Tract I unless they also gave them rights to 30,000 acre-feet of water per year which the brokers argued would be needed for conversion facilities. The Crows agreed and transferred one of their precious water options from agricultural to industrial use and then to the two brokers. During this same period of time, the Crows altogether turned over to different coal companies (Gulf, Shell and Peabody) options on 140,000 acre-feet of water per year receiving minimal payments in return. The BIA guided them through these arrangements as well. So it has often gone in the Indian water business.

Early in 1973, Gulf Mineral Resources (which had a permit) and Shell Oil Company (which had a coal lease) on Crow reservation lands began to exercise these by beginning exploratory drilling. A rumor was circulated that a non-Indian city of up to 200,000 people was being considered for the neighborhood of Wyola or Lodge Grass on the reservation. Since it was about this time that the Cheyenne announced their intentions to cancel their leases, the Crows began to realize the magnitude of what they had done.

Like the Cheyenne, the Crows were also finding out that there were coal companies like CONSOL which were willing to pay 25¢ a ton for coal. Regardless of CONSOL's rate, it was now clear to them that if the Tribe had negotiated with Westmoreland Resources Company directly, Westmoreland would have agreed to pay them at least the 22.5¢ per ton royalty Westmoreland had ended up paying the Crows and the two gentlemen brokers.



## An Interlude — "Let the Bastards Freeze in the Dark"

**MRS. IRVING ALDERSON:**  
Montana Rancher

*(vehemently in 1971)*

To bully, discourage or threaten people into giving up their homes is certainly wrong. To condemn the land on which an 80-year-old couple has built a life together is indecent. To threaten to condemn a young rancher carving out a new life and planting new roots for himself and his family is also indecent.

While the stage hands were setting up the scenery behind the curtain at the Crow Reservation, most of the State of Montana was acting out its own version of the revolution. The white ranchers who had taken over Indian lands a century or two earlier were

**STEVE CHARTER:**  
Montana Rancher

*(vehemently in 1973)*

We feel, all of us, that this is our last stand. That there's no place else, now, that we could go to live the kind of life we've built. If we tear this land up and dam the rivers and dry them up and muck up the air with smokestacks and fill it full of people and ticky-tacky houses, there just won't be any place left, not in this whole Country; there won't be anything left.

fighting the same forces the Indians had had to fight and were defeated by — the railroads, the mining interests, and the federal government.

In 1971, when the Bureau of Reclamation released its ponderous, two-volume report, The

North Central Power Study, alert Montanians and other white residents of the Northern Great Plains states were alarmed. Even a quick perusal of the massive report told readers that the power and mineral conglomerates planned nothing short of destruction of the Great Plains way of life. In response, the whites put together a volunteer action group, the Northern Plains Resource Council, which was composed of white ranchers, environmentalists, civic, cultural and historical groups, and people who loved clean big skies, and open spaces.

For a large number of ranchers whose lands were above coal deposits, it was too late. Under pressure, coercion, and

sometimes fraud, they or their neighbors had sold their lands to speculators, brokers and power companies. Indeed, at the time the North Central Power Study had been released, the coal rich non-Indian lands were check-boarded with mining-interest ownership. It was like a new and horribly ironic version of the Indian Allotment Act. In addition, in Montana, although the existing potential supply of water from the rivers in the Yellowstone Basin was judged at 1,735,000 acre-feet of water per year, energy companies had already received options from the Bureau of Reclamation for 871,000 to 1,400,000 acre-feet per year in the Basin. Further, they had requested or indicated interest in another 945,000 acre-feet per year from those same streams. Worse, if possible, was the fact that not everybody was in line yet or had made their request for the water they would need to develop the enormous mineral resources they were buying in the area. These kinds of allocations did not leave much for the ranchers and farmers and they did not even take into consideration the prior and paramount water rights of the Indians.

As the coal rush proceeded, the Montana Congressional delegation began working hard on legislation which would provide some safeguards from the explosion of development that was happening in their state. There were, of course, mixed feelings in Montana and in other Great Plains states about the development. Some people stood to benefit from it; for others it meant the destruction of their way of life.

Beyond the problems of the individual land owners, the general public was worse off than either the cowboys or the Indians. The law passed by Congress in 1920 with regard to leasing of public lands provided for few

environmental safeguards and extraordinarily long, 20-year leases.

Because of the lack of competition for western coal, those companies and brokers who had secured permits and leases on federal public lands from the Bureau of Land Management (BLM) were paying royalties so low as to constitute a steal in present day terms. Unfortunately, most of the permits and leases had been taken out in the 1960's and it will be 1986 before the agreements run for the 20 year period and the royalties can be adjusted.

Shortly after the formation of the volunteer Northern Great Plains Resource Council, the U.S. Government's own General Accounting Office (GAO) came out with a report which severely criticized both the BLM and the BIA for their leasing practices. The GAO pointed out that federal land speculators could buy rights cheaply, hold on to them for long periods of time with no plans to mine the coal, and then sell the rights at a large profit in the rising market. Further, the GAO said that, with regard to the leases made in the 1960's, there were practically no provisions for any land reclamation or environmental considerations. Nonetheless, the BLM and the BIA were ignoring the deficiencies in the few safeguards that there were, preferring apparently to wait instead for each lease to come up for renegotiation.

Even the newer 1970's public land leases, which had stiffer reclamation and environmental requirements, were not being enforced. With regard to the BIA, the GAO said that the technical examinations of environmental effects were not being done and the companies were being permitted to proceed with exploration without any approved mining plans whatsoever. GAO pointed out that for the most part,

there were no compliance or performance bonds covering the Indian lease requirements, and that in the few cases that there were, the amounts were insufficient to cover even the estimated reclamation costs.

With regard to both federal public and federal Indian leases, the problem seemed to be that neither the BLM nor the BIA had any "procedures" for the preparation of environmental impact statements and so they were simply not being made. By November, 1972, because neither the BLM or BIA, or their boss, the Secretary of Interior, had made any moves in response to the GAO criticisms, the Environmental Protection Agency (EPA) began to pressure Interior to take some kind of remedial action.



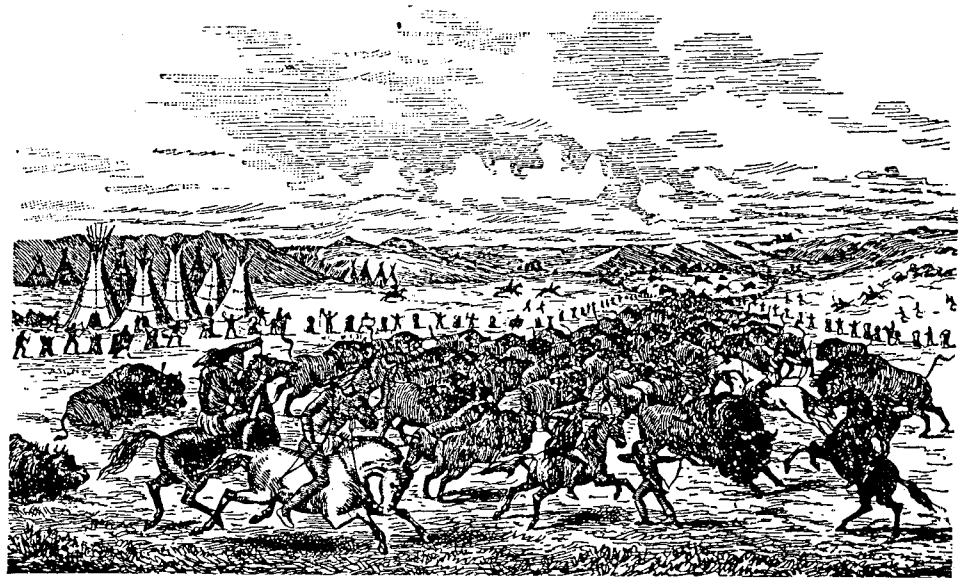
Meanwhile, back on the ranches in Montana, the legislators were becoming as upset and frustrated with the Secretary of Interior as the Indians had been for a 100 years and still were. Under the leadership of Montana Senators, Mike Mansfield and Lee Metcalf, the United States Senate passed a resolution calling for a moratorium on further leasing of federal lands for one year or until the Senate could act on proposed strip-mining legislation. The Secretary of Interior refused to uphold the resolution and told the Senators that they could rely instead on the already totally discredited policies of the Interior Department to guarantee "environmentally acceptable mining". The Montana delegation



and their supporters were incensed.

Nobody knew — not the Indians, not Interior, not the states involved — how much land was actually under lease for coal mining purposes on the Northern Great Plains. In a token response, since the GAO report, the BLM had been holding up approval of any further coal permits and leases while it tried to learn how much public coal was already under lease. This was done in an effort to placate those who were angry about the rapid development, as well as to placate the coal companies who were told by the BLM that the agency would proceed cautiously on a case-by-case basis, (i.e., "don't worry, we'll take care of your needs"). Those on the other side, who were most angry about the strip-mining, felt there should be no strip-mining at all if neither Interior, nor the states nor the coal companies could ensure orderly and reasonable development.

The result of the antagonism between the coal developers (and their supporters) and the ranchers and environmentalists (and their supporters) was symbolized by an ugly bumper sticker seen most often near major mine development areas. It read: "Let the Bastards Freeze in the Dark."



## Act II (Continued) — Meanwhile Back on the Reservation

In the fall of 1973, as the curtain went up on the Crow stage, the Crow players began another kind of revolution. What followed in the next 18 months was a remarkable drama between the Indians and one of the major coal companies in America.

The Crows knew one thing — they wanted to be strong again. They were tired of their poverty and they knew they had a way to change it and most of them were intent on doing this. They moved onto the stage with their primary motivation being their knowledge that the royalties they were receiving for the coal being mined on the ceded lands were not what they were fairly entitled to.

It is perhaps important to note here that the Crow Tribe did not submit to the provisions of the Indian Reorganization Act, and it therefore still votes by the traditional general council method. As a result, every male over the age of 21 and every female over the age of 18 is eligible to participate in tribal decisions. The Crow Tribal

Council is not unlike the original town councils which met as the colonies proceeded to form and govern themselves into the new United States.

Also coal was not the only problem of the Crows, and it was concern over a number of problems that led them to the Native American Rights Fund in the summer of 1973. After some preliminary discussions and a request for help, Daniel Israel, a non-Indian NARF attorney, was assigned to make a two-day visit to the Crow Reservation in September, 1973. During the visit, he met with tribal leaders, individual Indian allottees, parents of Crow school children, and tribal elders. Among the items the Crows discussed with Israel were:

1. Coal mining operation problems on the Crow Reservation.
2. Crow hunting and fishing treaty rights problems.
3. The problem of excess non-Indian land holdings in violation of Section 2 of the Crow Allotment Act.

4. Law and order jurisdiction problems in Lodge Grass.

5. Water rights problems on the Crow Reservation in conjunction with the Bureau of Reclamation's allocations to the tribe from the Yellowtail Dam Project.

6. Leasing problems on individual allotments held by Indians.

7. Educational discrimination problems in public schools near the reservation.

8. Economic problems of the Crow Indian Land and Livestock Association.

There were other problems, of course, but as far as Israel could see, the Crows could use the entire 17-man NARF legal team just as a starter. He returned to Boulder and began to digest what he had heard. For the next 18 months, he was to spend almost every waking hour immersed in the legal problems of the Crow people, and during this time, he was to play virtually every role a legal advocate can play in a very concentrated period of time.

Between the time the Northern Cheyenne announced their intention to cancel their leases in March, 1973, and the time NARF became involved at Crow, the Crow Mineral Committee, appointed by the General Council, had had some informal discussions with Westmoreland Resources. Westmoreland, unlike the other companies holding Crow permits, had already constructed a mine and was targeted to commence mining on July 1, 1975 on Tract III of the ceded area off the Crow Reservation.

In November, 1973, the Crow Tribal Council passed a resolution which enlarged the responsibilities of the Crow Mineral Committee and it also elected seven new Committee members representing the various districts

on the reservation. They were: Robert Howe, who was also elected Chairman; George Reed, Jr., selected as Vice-Chairman; and Eloise Pease, who was chosen as Secretary. The other representatives were Dale Kindness, Jr., Alex Bird-In-Ground, Silas Big Medicine, and Frank Plain Bull. Placed on these Crow players was the heavy responsibility of playing roles which put them in the position of confronting the Department of Interior and the energy companies.



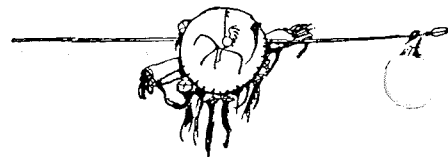
The new Mineral Committee was instructed to look into the existing permits and leases very carefully and to make a report back to the General Council in January, 1974. Shortly thereafter the Mineral Committee made a formal request to NARF to assist them in their effort. With monies advanced by NARF, and later reimbursed by the Crow Community Action Program, the Crow Mineral Committee hired two independent coal experts to join them and Israel in plowing through the voluminous and highly technical paper props surrounding the coal leases. Inquiries went out to each of the permit and lease holders, as well as to the BIA, seeking mining plans and contract details. Maps, charts and data on estimated coal tonnage piled up. The magnitude of the sorting task alone was often overwhelming.

Because Westmoreland Resources was ready to commence mining on Tract III of the

three tracts it had leased and because the company had constructed a \$34 million mining facility, as well as having financed a Burlington Northern Railroad spur, a great deal of emphasis was placed on the Westmoreland lease.

In January, 1974, the Crow Mineral Committee recommended to the entire Council that it be authorized to enter into formal negotiations with Westmoreland Resources representatives with regard to adjusting the royalties which would be paid the Crows for their coal. The Council agreed and passed a resolution to this effect and also instructed the Mineral Committee to support amendments before Congress that would insure mining could take place on the ceded land where the tribe owned the coal, but which white ranchers were unwilling to lease or sell. And finally, among other things, the Council told the Mineral Committee to develop a set of environmental control regulations which would cover mining on lands within the boundaries of the Crow Reservation itself.

At the same time, the Council recommended continuation of the ban on approving any further coal leases or permits until the Council decided what it was going to do, and tabled a resolution which would have divided the coal royalties on a 50/50 basis between per capita payments and the tribal government. Some of the Crows were particularly worried that passing such a motion would be like counting their chickens before they hatched and would be taken by Westmoreland as an indication that the Crows were satisfied with the 17.5¢ per ton price.



December and January were exhausting months for the Crow Mineral Committee and Israel because hours and hours of rehearsals were required with regard to the renegotiations. The actual renegotiations began the second week of February and were still going on when, in late March, a whole new troupe of actors suddenly marched on stage. A group of white ranchers, who owned the surface rights to the ceded Crow land, had filed suit against the Secretary of the Interior in federal district court in Montana to stop the mining on environmental protection grounds (*John R. Redding et al v. Secretary of Interior*). Suddenly, the Crows found themselves having to shift their energies and their attention to a new battle and ironically found themselves standing on the same side of the battle line as Westmoreland Resources.

Throughout the spring, Israel was consumed with the preparation of legal papers, including a motion for summary judgment. An environmental defense group, Friends of the Earth, was also joining in the action, but this time on the side of the white ranchers. The play was making for strange drama, as well as strange bedfellows.

Despite the cloud of litigation which threatened to stop the mining entirely, negotiations between the Crow Mineral Committee and Westmoreland proceeded. In May the federal district court ruled against the ranchers and the environmentalists. By then, both sides were exhausted, and in late June, 1974, after six months of talks, the Crow Mineral Committee went back to the General Council with a new proposed offer. The Committee had been successful in obtaining an amended agreement with Westmoreland covering a number

of issues, but most importantly increasing the royalties for the Crows from 17.5¢ per ton to 25¢ per ton or 6% of the selling price FOB at the mine site, whichever was greater.

The 25¢ per ton figure was to apply only to all coal mined during the remainder of 1974 and in 1975. For coal shipped during 1976 and 1977, Westmoreland agreed to pay 30¢ a ton or 6% of the FOB price. In 1978 and 1979 it

would be 35¢ and 6%. Furthermore, the 25¢ to 30¢ a ton royalties would only apply to the 77 million tons of coal which Westmoreland Resources was already under contract to sell to four mid-western utility companies. For the more than 800 million tons of yet uncommitted or unsold coal, Westmoreland agreed to pay the Crows 40¢ a ton or 8% of the selling price FOB at the mine price.

## The Crows Said No

The Crows, who once sold Yellowstone Park for 5¢ an acre, said no to the new offer. They did so not so much because of the final royalty price offered, but because the lease contained too much Crow coal, given the long range development plans of Westmoreland Resources.

Westmoreland's own conservative estimate placed the amount of coal in the tracts it had leased on the ceded land at 900 million tons. But, Westmoreland also admitted that it only had a sales contract for 77 million tons, with a sales option for another 300 million, and that the mine it had constructed only had a maximum production capacity of 455 million

tons. The company clearly, by its own admissions, had control of much more Crow coal than it needed to operate a profitable mine. Further, the coal experts hired by the Crow Mineral Committee estimated that there were 1.1 billion tons of coal in the tracts rather than 900 million estimated by Westmoreland.

Many of those people in the audience during this act of the play were startled that the Crows decided to reject the amended Westmoreland lease. However, one close observer of the drama said there was nothing startling at all about the rejection. It was clearly the biggest issue to ever hit the Crow Tribe and they had good reason to be very suspicious. The Crows knew that whatever they decided was likely to affect them and their children for generations to come.

Following the "no" vote, the Crow Mineral Committee went back to the drawing tables. Basically, their new directive from the Council was to make a more complete determination of whether the amended lease was in fact the best lease and if the lease contained too much coal. Westmoreland agreed to keep the amended lease proposal open for 60 days to give the Crows more time to consider it, even though the Company had originally set a 15-day deadline for acceptance.



The President of Westmoreland Resources, Penn Hutchinson, indicated to curious reviewers of the drama that the terms of the proposed amended lease were not going to be retroactive. He told those who asked that the company would begin to deliver its coal to its customers immediately even if the amended lease was rejected, and that the tribe would receive only the 17.5¢ per ton price which was agreed to in the original lease.

**PENN HUTCHINSON:**  
President,  
Westmoreland Resources

*(adamantly in June, 1974)*

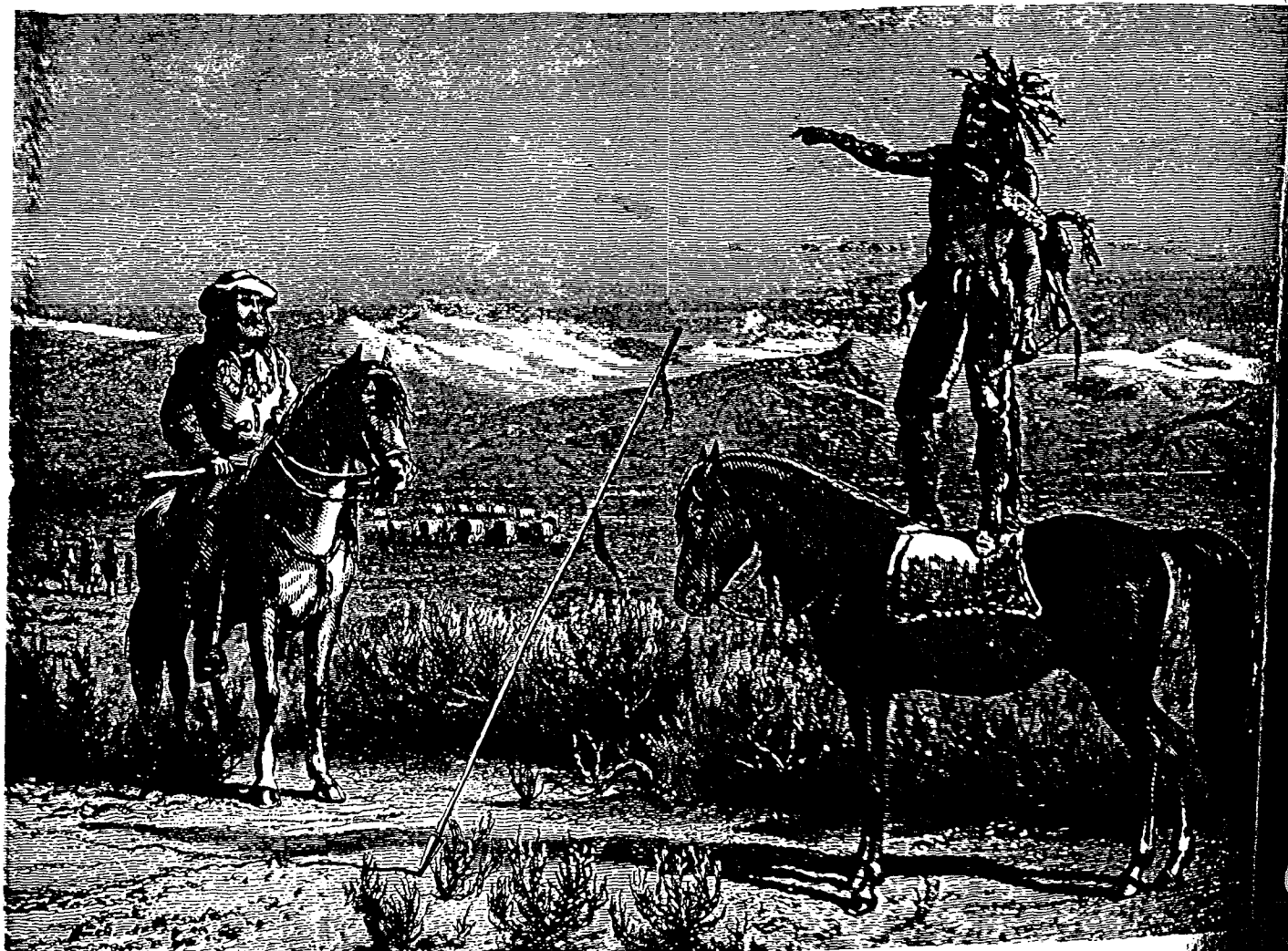
This is the best coal deal in the North American continent for similar quality coal. We are not in a position to negotiate further. We cannot go higher.

On July 13, 1974, a little more than two weeks after the original no vote, the Crow Council passed a resolution which cancelled the Westmoreland lease and all others previously granted by the Tribe. This decision necessitated a very quick costume change by everyone. Within a month, a lengthy petition to declare the Westmoreland Resources lease null and void had been prepared by NARF and the new Crow tribal attorney, Thomas Lynaugh. The petition was filed with the Secretary of Interior, and the Crow Council decided to appoint a special tribal delegation to handle this aspect of the coal effort, rather than leave it to the Crow Mineral Committee.

The Secretary of Interior, who had just issued his half-yes, half-no decision with regard to the

Northern Cheyenne's petition, was annoyed that the Crows were now also on his doorstep. His underlings relayed the message to the Crows that there was little hope that the Secretary would consider cancelling the Crow leases — the pressures of the new Project Independence and the weight of the mining industry were too great for him to act like the Indian trustee that he was. All he would do, his messengers said, was to "arbitrate" the dispute between the Crows and Westmoreland.

Thus, in October, 1974, both sides were invited to Washington to iron out their differences before Interior personnel. The Crows were understandably reluctant to go and there were many differences of opinion as to just what the official Crow negotiating



on this new stage should  
stakes were so high that  
were very rough in the  
camp, particularly between  
the Tribe's new general  
Thomas Lynaugh. No one  
knew what was going on  
the scenes in the West-  
moreland camp, but things  
have been much

less, once in the  
capital the two sides met;  
and under the  
Pat Standoverbull,  
tribal Chairman, and  
Yellowtail, Jr., the Vice-  
Chairman, they finally agreed. On  
December 1974, the Secretary  
(and the Crow trustee)  
put his stamp of

HUTCHINSON:

Resources

December, 1974)

the best-paid owners of

the Crows got under the  
Westmoreland lease

to veto sale of  
Westmoreland to any  
who would use it in  
a facility located  
miles of the Crow

to enlarge their  
by buying the  
from West-  
mining was

linked to the  
of the coal and  
\$10¢ per ton or  
price FOB,  
\$17.5¢ per ton.  
the contract was  
of coal had  
royalties up to  
press time the  
approaching

4. A provision which forced  
Westmoreland to develop the  
Crow coal fields at an  
aggressive rate. In par-  
ticular, the contract required  
Westmoreland to mine 14  
million tons of coal a year by  
1982 so that the Company  
could not hold onto the coal  
for speculation and the  
Crows could count on a stable  
income from the sale of their  
coal. This provision solved  
the problem of there being  
too much coal in the lease  
which had led the Crows to  
turn down the June offer and  
then to cancel the leases  
entirely in July. Now, if the  
Company only mines 10  
million tons in 1982, it will be  
forced to pay the Crows 4% of  
the market value of the  
additional 4 million tons  
needed to fill the agreed  
production quota.

Even greater production  
standards were imposed for  
subsequent years so that the  
Crows could have a  
predictable revenue source  
from this off-reservation  
mine. Most importantly as a  
result of this provision in the  
new lease, the Crows had  
more flexibility with regard  
to the development of their  
remaining coal reserves,  
whether off the reservation  
or on the reservation.

5. Finally, the new lease  
contained an agreement to  
come back to the negotiating  
tables to "adjust" the  
royalties every ten years.

What Westmoreland got from  
the Crows was a good faith clause  
that assured the Company that  
the deal was a solid one.

PENN HUTCHINSON:

(reflectively,  
December in 1974)

We spent a traumatic year when the  
Crows sought to invalidate our coal  
leases.

Perhaps Mr. Hutchinson was  
saying something about what had  
gone on in the Westmoreland  
camp. Nonetheless, the day the  
agreement was finalized,  
Westmoreland gave the Crow  
Council a \$1,717,200 check as a  
down payment and two days later  
the tribe mailed a \$200 per capita  
check to each of the tribe's 5,771  
members. The checks came to the  
Crows just before Christmas.

### Better Late Than Never

In January, 1975, a few weeks  
after the Westmoreland deal had  
been closed, the BIA released a  
report on the impact of coal  
development on the Crow  
Reservation. The report indicated  
that full-scale rapid development  
of coal production could produce  
royalties of up to \$6 million per  
year for the Crows or \$6,395 for  
each tribal member annually. The  
BIA report also predicted that as  
a result, the reservation's  
population would soar from about  
10,000 to 45,000 people. Although a  
"high level" of coal development  
would produce more than 700  
mining jobs for Indians, most of  
the newcomers to the reservation  
would be white, and that as a  
result, the Crows would become a  
minority on their own reservation  
and find that their political power  
was diluted and their social arena  
disrupted. The report predicted  
that this pace of change would be  
too fast to allow for adaptation by  
the Indians. It seemed to say that  
low-level development meant  
decreased royalties and high-  
level development meant  
decreased Crows.

As the Crows had been  
proceeding towards a final deal  
with Westmoreland, the Montana  
State Legislature had been  
proceeding towards a substantial  
increase in their severance tax on  
coal. Because the Westmoreland  
lease was on ceded land, the state  
contended that coal mined there



was not exempt from such state taxes. Since these taxes, which were included in the FOB selling price, had the effect of increasing the Crow's royalties the Crows stood to gain by the state tax provided the severance taxes did not go so high as to discourage or

drive away those companies interested in development of the Crows off-reservation coal. Nothing about being an Indian was simple.

On the national scene, Congress, having labored for well over 18 months on a new federal

strip mining legislation, finally passed a tightly controlled bill which provided stricter environmental regulations and generally was not considered favorably by the coal companies. President Ford then vetoed the bill.

## The Intermission — A Stalemate

What has happened on stage since the Crow/Westmoreland deal can only be described as a stalemate or, perhaps in terms of this drama, an intermission. No one knows whether there is going to be a second Revolutionary War on the Northern Great Plains or not.

At the Northern Cheyenne camp there is a moratorium on coal development, while the Cheyenne await the outcome of their comprehensive community survey, as well as the outcome of their petition before the Supreme Court with regard to who owns the minerals on the allotted lands. Presumably, sometime within the next year, the decision will be made as to whether, and if so under what circumstances, coal mining will resume on the Northern Cheyenne Reservation.

At Crow, the only Indian strip-mining on the Northern Great Plains is being done by Westmoreland Resources. In order to do so, Westmoreland is paying the highest royalties in America to the Crows. Although, Shell Oil has made overtures at Crow to each of the individual tribal members to try to get their on-reservation lease moving and AMAX has openly discussed the possibility of renegotiating their lease in the ceded area in 1976, the other energy companies presently holding permits are just sitting around waiting to see what happens. And so are the Crows.

There are several other factors which have contributed to the intermission/stalemate. There is

the 30% severance tax imposed on all Montana coal, which has caused energy companies to re-evaluate their commitments in Montana and which is the kind of tax now being looked at by several other Great Plains states as well. There are the new restrictions on state mining plan approvals which were recently imposed by the Montana legislature and which are also being watched carefully by the other Great Plains states.

Then there is the impact of the case known as *Sierra Club v. Morton*, where the bureaucratically encumbered Department of Interior is presently struggling to make a decision as to whether or not the development of all Northern Great Plains federal coal (and possibly Indian coal) constitutes a major federal action. If the Interior bureaucrats decide that such development does constitute a major action, then a multi-state environmental impact statement will have to be prepared, which will take at least two years, and which will again cause all mining plan approvals to be suspended during its preparation — whether they are in Montana, Wyoming, North Dakota, South Dakota or Nebraska.

Another reason for the intermission is the *Redding v. Morton* litigation (ranchers and environmentalists vs. the government and the Indians) which is now going through a lengthy process of clarification via legal petition. Some time in the next year there will be a

rehearing with regard to a determination of exactly whether or not the leasewide environmental impact statement ordered by the Ninth Circuit must include both Westmoreland leases on the Crow ceded area, or can include only Tract III (which is being mined), with Tract II (which is not yet being mined) to come in the future.

Still additional uncertainties persist and make immediate massive coal development on the plains unlikely. There is, for instance, the unknown status of the federal strip mining bill which may incorporate severe restrictions on the mining of alluvial valleys in the west. There is the unknown outcome of the *Environmental Defense Fund v. Secretary of Interior* water litigation which may yet deprive the energy companies of the opportunity of actually taking the large quantities of Wyoming and Montana water promised them by the Bureau of Reclamation for use in upgrading coal, for slurry pipelines, or for oil and gas conversion.

Finally, there are the players themselves — an unusual combination of people (pro-environmentalists, cowboys and ranchers, and suspicious Indians) — all playing some kind of role opposite the mining companies. Up on the Northern Great Plains stage, one could say that people are waiting for the air to clear and are breathing deeply of some of the last clear air in the country while doing so.



# AN UNFINISHED DRAMA

## Act III

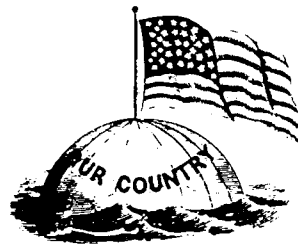
### THE DECLARATION OF INDIAN INDEPENDENCE

Thomas Jefferson, in preparing the original Declaration of Independence, wrote that not only is it the right of the people to revolt against arbitrary, undemocratic rule, but it is the "duty" of every patriotic American to do so.

Jefferson then listed 18 grievances called "A history of repeated injuries and usurpations all having as a direct object the establishment of an absolute tyranny over these States". Some of the indictments against King George III were as applicable to the British Monarch as they were to become to the U.S. Secretary of Interior.



*Thomas Jefferson*



**THOMAS JEFFERSON:**  
(deliberately in 1776)

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has directed a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies without consent of our legislatures.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

In every stage of these oppressions we have petitioned for a redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be a ruler of a free people.

#### THE PLAYERS

The First Continental Congress	Members of the 26 Northern Great Plains Indian Tribes
The Declaration Committee	Allen Rowland, Northern Cheyenne
	Lyman Young, Fort Belknap Reservation
	Alvina Grey Bear, Standing Rock Reservation
	Ralph Wells, Fort Berthold Reservation
	Grace Estes, Lower Brule Reservation
	Wilber Decoteau, Winnebago Reservation
	Starr Reid, Shoshone Wind River Reservation
	Jess Miller, Arapaho Wind River Reservation
The Second Continental Congress	The delegates of the Native American Natural Resources Development Federation



On December 18, 1973, more than 100 Northern Great Plains Indian people met on the Fort Berthold Reservation in North Dakota. They had assembled that day to discuss their Winters Doctrine water rights to the rivers flowing through and the ground water underneath their reservations. The atmosphere was full of tension and concern due to the fact that federal agencies, the states and private interests were rapidly making plans to use more water than there was on the Northern Great Plains.

Because of their endemic poverty these tribes had not been able to develop their reservations and make use of the water which was rightfully theirs. Now there was a recognition that they had marketable mineral resources which could, if they so chose, bring them the income they needed to develop their reservations and for which they would also then need their own water. From the beginning of the meeting it was clear that a mutual line of defense was about to be formed of these tribes, some of whom had only 100 years before been at war with each other. This time, however, they were going to make one last stand on the Northern Great Plains together.

At this late hour the Department of Interior has decided to send a peace commissioner in the form of a representative from the Northern Great Plains Resource Program (NGPRP) to meet with the Indians and to ask for their comments with regard to federal development plans for the Northern Great Plains. Although the NGPRP study had been underway for over a year, no one had bothered to contact the Indians until this day.

The discussions and deliberations went on hour after hour. Recognizing that the issues were too complex to be settled that day, Mr. John Vanderwalker, Director of the NGPRP study, asked that the tribal delegates become "consultants" to the NGPRP study in a last minute attempt to provide Indian input and avoid the upcoming conflict. Vanderwalker told the representatives that the study report had already been drafted and was shortly due to be finalized, but that he was very much anxious to have the Indians' position included in the final report.

### The Declaration Committee

Because of the lateness of the hour, a temporary committee was chosen to work on drafting a statement from the Indians to Interior. These people were to play a role as important in the events to come as the original Declaration Committee made up of Thomas Jefferson, Benjamin Franklin, John Adams, Roger Sherman, and Robert Livingston. This time, 200 years later, the delegates for the new Indian declaration committee were to be: Allen Rowland, Northern Cheyenne; Lyman Young, Fort Belknap; Alvina Grey Bear, Standing Rock; Ralph Wells, Fort Berthold; Grace Estes, Lower Brule; Wilber Decoteau, Winnebago; and Starr Reid, a

Shoshone, and Jess Miller, an Arapaho, both from the Wind River Reservation.

This declaration committee met several times over a period of months. Then on February 28, 1974, all the tribal representatives met once again in Mobridge, South Dakota, where the Standing Rock Sioux Tribe acted as host. This meeting was the equivalent of the First Continental Congress, staged 200 years before. The approximately 100 delegates in attendance spent the entire meeting marking up the final draft of the input statement prepared by the declaration committee. As the tribal delegates worked on their statement the vast problems they were facing concerning natural resources and their survival came into painful focus.

That night and the next day the delegates became determined to organize as quickly as possible into a formal federation, and before the meeting was adjourned a constitution and by-laws had been drafted to take home to their respective tribes for review.





### The Second Continental Congress

On March 27, 1974, almost a year after the Northern Cheyenne had started the revolution, the Northern Great Plains Indian delegates met again in Billings, Montana, to adopt a constitution and by-laws for what that day was named The Native American Natural Resources Development Federation (NANRDF). Most importantly, like the original Second Continental Congress, the Indian delegates also voted on and unanimously passed A Declaration of Indian Rights to the Natural Resources in the Northern Great Plains.

The Indian tribes and people of the Northern Great Plains, being confronted with an all-pervasive crisis threatening the present and future uses of their natural resources, including but not limited to their land, right to use of water and their coal, do hereby declare as follows:

The Northern Great Plains area of the United States is presently attracting international attention due to

the energy crisis which makes the vast coal resources of this area very appealing for immediate development. The development of this coal and the concomitant use of water, air, and other natural resources threatens the viability of our environment and the continued existence of the 26 tribes which occupy the Northern Great Plains within the states of Montana, Wyoming, North Dakota, South Dakota and Nebraska.

These tribes would be severely burdened with immense consequences resulting from any natural resource development. It is for this reason that these tribes desire to submit the following declaration for inclusion in the report of the Northern Great Plains Resources Program. The tribes have been asked to participate in numerous work group statements on this matter, but it is readily apparent that the major impact upon the survival of these Indian tribes will be foisted upon the erosion of their water rights and the depletion of water resources due to the need for massive quantities of water to develop the coal. The Indian water rights here involved, then, are like the Indian fishing rights considered by the United States Supreme Court in *United States v. Winans*, 198 U.S. 371, 381, (1905); they are "not much less necessary to the existence of the Indians than the atmosphere they breathe".

The Indian tribes of the five states do hereby give notice to the world that they will maintain their ownership to the priceless natural resources which are geographically and legally related to their reservations. Indian tribes and people, both jointly and severally, have declared and the courts have sustained that the American Indian tribes of the Northern Great Plains

have the prior and paramount rights to the water, including all tributaries thereto, which flow through, arise upon, underlie or border upon their reservations. These prior and paramount rights would extend to all waters that may now or in the future be artificially augmented or created by weather modification, by desalination of presently unusable water supplies, by production of water supplies as a by-product of geothermal power development, or by any other scientific or other type of means within the respective reservations in the Northern Great Plains area.

In view of the tribes' prior and paramount rights to all the waters to which they are geographically related, it is self-evident that any major diversion of said waters for any purpose would constitute an encroachment upon Indian water rights. All federal agents or agencies, including but not limited to the Bureau of Reclamation, Corps of Engineers, states, persons, parties or organizations are, therefore, put on notice that any diversion or use of such tribal waters shall be at their own risk.





### An Entré Act

Up until 1950, the U.S. was totally self-sufficient energy wise. It was easily able to meet its growing thirst for energy with cheap and abundant domestic fuels — coal, oil, gas, and hydroelectric power. But by 1960, imports of crude oil and petroleum products had begun to account for 15% of the total domestic oil consumption, and by 1973 imports had jumped to 35%. This growing dependence was the result of increasing consumer demand, cheap imports, and a steadily deteriorating domestic supply situation.

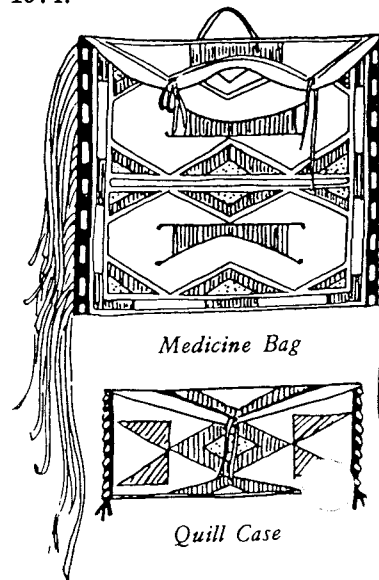
Ironically, America's growing dependence on foreign oil was considered a blessing by many. Inexpensive foreign oil meant lower consumer prices in America and a more competitive domestic industry in world markets. At the same time as America's dependence on foreign

oil was growing, however, the world oil market came to be dominated by a few Middle East countries with massive reserves and production costs of merely pennies per barrel.

The disadvantage of this dependency came as a smoke signal in 1967 when an oil embargo was imposed by these countries because of the tensions in the Middle East. Few paid any attention, however, and it was not until the Middle East countries imposed a total embargo on crude oil shipments to the U.S. and other countries in the winter of 1973, that the full impact of America's dependence on the Middle East became apparent. The U.S. government was suddenly as helpless as it had made its Indian wards.

The oil embargo, which was imposed in October, 1973, just six months before the Northern Great Plains Tribes got together for the first time, was slow to take effect. Nonetheless by January, 1974, oil

imports were down by  $n$  barrels per day, reducing the available supply of oil by what was usually needed by American consumers. At same time prices for foreign were jumping to unheard levels. They rose from about  $n$  per barrel in September, 1973, to over \$11 per barrel by January 1974.



## Project Independence vs.

### The Declaration of Indian Independence

In response to the embargo, and in final realization of the tenuousness of the dominant society's dependence on foreign energy sources, President Nixon announced "Project Independence" — a new federal program with a goal of "energy independence for the United States by 1980". Nixon's announcement came in March, 1974, at the same time that the Northern Great Plains Tribes passed their own Declaration of Indian Independence with regard to their valuable water and mineral resources.

Whatever Nixon's Project Independence meant to the world, the Declaration of Indian Rights to the Natural Resources in the Northern Great Plains was the first formal notice given to the U.S. government, the states, and individual corporate interests that the Indian tribes of the Great Plains intended to fight to protect, preserve, and conserve the resources which their forefathers gave their lives to retain.

The Declaration put all parties on notice that any further abuse of Indian rights would not be tolerated, and set out for federal officials, the states, and the rest of the country a summary of the legal basis for the prior and paramount water rights of the 26 Tribes. It also stated Indian principles for planning and development of this water, the minerals, and the other natural resources on their land.

The conflict was readily apparent. A large portion of the natural resources essential to the U.S. government's ability to meet the goals of Project Independence were located on Indian reservations. In fact, the billions of tons of low sulfur Indian coal were

considered to be the key to the whole effort. That coal had the potential of making the Northern Great Plains into the boiler room of the nation — or as some called it "a national sacrifice area".



### The Native American Natural Resources Development Federation

At the time that the representatives of the Northern Great Plains got together for the first time in December, 1973, NARF had been asked by the delegates to assist in the preparation of the input statement (which eventually became the Declaration of Indian Rights), as well as to provide the necessary legal and technical advice to assist them in locating experts and the monies with which to obtain them.

This was done because at that time NARF was already working with several of the member tribes on their resource problems and had had considerable experience on behalf of other clients with the kinds of obstacles and handicaps facing the new Federation. The Federation met officially for the first time in Billings, Montana in May 1974. At the time of the

meeting, 19 of the 24 governing bodies of the Northern Great Plains Tribes had formally approved the constitution, and by-laws and governing officers were elected.

Mr. Robert Burnett, from the Rosebud Sioux Reservation in South Dakota, was elected Chairman. Mr. Nathan Little Soldier, a Hidatsa-Arikara from the Fort Berthold Reservation, was elected Vice-Chairman. Alvina Grey Bear, a Standing Rock Sioux, was elected Secretary; and Joe Day, an Assiniboine-Sioux, from Fort Peck, was chosen as Treasurer. Representatives from each of the states also nominated a delegate. Roger Yankton, a Sioux from Devils Lake, was selected as the North Dakota delegate. Elnita Rank, Crow Creek Sioux, was chosen as the South Dakota delegate. Laura Snake, Winnebago, and Allen Rowland, Northern Cheyenne, were selected to represent Nebraska and Montana, respectively. The Wyoming tribes did not appoint a delegate at this meeting.

Because the new Federation was still without funds or staff, Thomas W. Fredericks, the attorney from the Native American Rights Fund who had been assisting the Federation from the beginning, was asked by the group to be its coordinator. Fredericks, who was then also Deputy Director of the Native American Rights Fund, was personally familiar with the problems of the Tribes inasmuch as he himself is a Mandan Indian from the Fort Berthold Reservation.

Therefore, in the summer of 1974, NARF began a search for foundation support which would enable it to allocate the time of one full-time attorney to the Federation effort without jeopardizing NARF's ability to meet its other existing commitments to Indian clients. After



several months of discussion and evaluation, the William H. Donner Foundation agreed to join with NARF in an effort to assist the Federation in developing a real capacity to provide its 26 member tribes with the technical assistance necessary to make mutually beneficial decisions with regard to the protection and use of their land, water and minerals.

In October, 1974, the Donner Foundation approved a grant for \$60,000 to provide about 1700 NARF attorney man-hours, along with corresponding support services, to the Federation. The Donner grant also provided initial seed monies for Federation consultants and traveling expenses for the Federation's Executive Committee.

Each day since the Federation first became organized it has become increasingly clear to their representatives, and to NARF, that the most difficult Indian natural resource to protect is water. The coal, oil, and gas and other mineral resource problems, although immense, are relatively simple in comparison. Not only is Indian water in demand by many powerful interests, it can be diverted or depleted before it ever reaches the reservation, and not even the Indians are sure how much is rightfully theirs. Therefore, protecting Indian water tests the very core of the concept of the trust relationship.

By the beginning of 1975, Federation members had become concerned with the legislation being drafted in the Department of Justice which, if passed as drafted, would provide for a five-year period in which all federal agencies would quantify their respective water rights. Under this plan, conflicts would then be resolved by litigation. The Justice Department's proposal also provides that the Secretary of Interior have the responsibility for quantifying Indian rights. Because of the considerable

conflicts of interest between the agencies under the Secretary's jurisdiction; Federation Members are opposed to the bill as now written.

In late March, 1975, NARF attorneys learned of a Memorandum of Understanding between the Secretary of Interior and the Secretary of the Army. In essence, the Memorandum authorized the Secretary of the

Interior to contract for the marketing of water for industrial uses and incidental purposes from the six main stem reservoirs built by the Army Corps of Engineers on the Upper Missouri River. While the Memorandum contains language which prohibits the Secretary from entering into any contract which would encroach upon the need for irrigation, flood control, and hydro-electric power





eration, there is absolutely no  
age to restrict the Secretary  
entering into agreements  
would infringe upon the  
and paramount water rights  
Indian tribes on the Nor-  
Great Plains.

eration members have  
objected to the  
and its total  
of the water rights of  
tribes, believing that there is  
by the Secretary of the In-  
enter into any contract  
marketing of water for  
uses without en-  
upon the prior rights of  
tribes — particularly until  
as the Secretary knows  
and extent of the Indian  
in the upper tributaries of  
Missouri River Basin. At the  
all anyone knows is that  
knows.

water rights situation for  
Northern Great Plains tribes  
further complicated by the  
the State of Montana has  
taking preliminary steps  
adjudication of Indian  
rights in state court.

universally, Indians and  
tribes prefer to have their  
Doctrine water rights  
in federal courts.  
universally, states and  
claiming under state law  
have the Indians' water  
determined in state courts.  
conflict is now pending  
the Supreme Court in two  
cases, Colorado River  
Conservation District v.  
States (formerly known as  
States v. Akin) and  
United States. The  
turn on who files first  
it is the state court or  
federal court that first  
jurisdiction.

imately, whatever the  
Indian tribes have the  
resources necessary to  
go to court, and  
ments know this. Most  
to adjudicate Indian  
are 10 or 15 year

propositions, involving hundreds  
of thousands of dollars and  
requiring the best legal talent  
available. NARF is representing  
several tribes in such water rights  
suits, but not even NARF can  
assume the financial and man-  
power responsibilities on behalf of  
Indian clients unless the federal  
government trustee agrees to join  
the action and pay the ex-  
traordinary expenses associated  
with such actions for expert  
witness and hydrological studies.  
When the federal trustee is  
willing, then NARF is able to  
represent its Indian clients as  
plaintiff-intervenors, to plan  
litigation strategies and to  
present the tribe's position to the  
court directly, free of any conflict  
of interest.



On the Northern Great Plains,  
the Northern Cheyenne, still  
setting the pace, went boldly into  
court on a pro se basis and filed  
suit in January, 1975, to protect  
their rights to the waters of  
Rosebud Creek and the Tongue  
River which flow through their  
reservation. With support of the  
other Federation members, they  
then pressed the U.S. government  
to file a companion suit on behalf  
of both the Northern Cheyenne  
and Crow Tribes to adjudicate  
and quantify their rights to these  
and other Montana waters.  
Fortunately, the government  
agreed, and on March 1, 1975, filed  
suit in Federal District Court in  
Montana (U.S. v. Tongue River  
Water Users Association, et al).

The Northern Cheyenne are  
now attempting to find monies  
which will enable them to retain

their own private legal counsel for  
the case so they can make certain  
their rights are fully protected.  
The Crow Tribe, with income  
from the Westmoreland lease,  
now has the ability to hire private  
counsel to represent its interests.

Even though the BIA and the  
Bureau of Reclamation agree that  
many years will be required  
before the full nature and extent  
of Indian water potential can be  
accurately determined, and even  
though they recognize that the  
exercise of the Northern Great  
Plains Tribe's water rights will  
have a direct effect on the  
Missouri River basin, they have  
done little or nothing to correct  
the situation.

Several years ago, in an at-  
tempt to advocate the interests of  
the tribes, the Secretary of In-  
terior established within the BIA  
an Office of Indian Water Rights.  
This office now has responsibility  
for water resource inventories, as  
well as related legal in-  
volvements. It has only been able  
to fund limited inventories on  
some of the reservations in the  
states of Montana and Wyoming,  
and these are only intended to  
provide a very tentative estimate  
of the requirements of the tribes  
in these states. Studies on the  
reservations in other states in the  
Upper Missouri River Basin have  
not been initiated despite the fact  
that all parties concerned  
recognize that these needs will  
range from "significant" to  
"large".

Intead, to date the Secretary of  
Interior has been focusing his  
energies on: (1) international and  
federal-state compacts which  
specifically distribute waterflows  
between states, regions or  
nations; (2) federal and state  
laws which mandate specific  
riverflows to satisfy water quality  
standards and instream fishing  
needs; and (3) riverflows  
protected by federal and state  
scenic and recreational river  
acts.

### It is Easier Not to Know

Indian water rights on the Northern Great Plains will likely continue to be ignored by both the federal trustee and the Northern Great Plains states unless the Federation is able to mount an effective administrative advocacy effort on behalf of its members. There is a long and difficult haul ahead because so many agencies and officials are involved, very few of which want to even know about, much less be concerned with, the protection of Indian rights. It is easier for the states and the federal agencies to not know they are taking Indian water, because once water is taken it is so much harder for the Indians to get it back.

There are several reservations on the Great Plains that do not have sufficient surface water available for any substantial development efforts. For these

reservations it is important to remember that Indian reserved rights to the use of water also extend to ground, as well as surface, waters. Several recent court decisions have so held, and despite federal and state reluctance to face this conclusion, there is no escaping it.

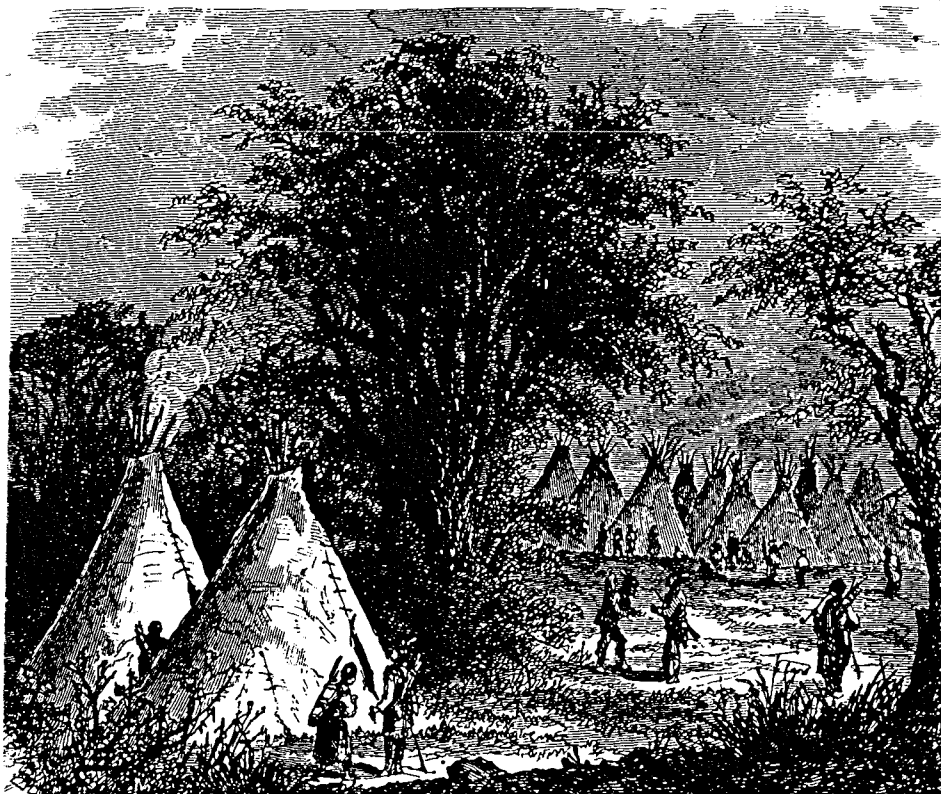
The nation now appears to be heading more or less inexorably to a federal law of groundwater. It is hard to overemphasize the practical and legal significance of this long overdue development. But much work lies ahead, not only for the Indians, but also for the government and courts of the dominant society for its contours, its perimeters, its very essence have yet to be defined. Presently there are no guidelines on how the "prior and paramount" Indian rights will be measured in relation to other, non-Indian or non-federal users rights in the same groundwater basin, nor do people know how the administrative and

judicial responsibilities to control the use of groundwater will be divided as between the state, federal and tribal governments and/or courts.

In the water-short West, and particularly on the Northern Great Plains, adjusting their lifestyles to conform with the Indians' legal water rights could be the most difficult role members of the dominant white society have ever had to play.

For the Indians, playing out their new revolution will be extremely difficult without substantial aid from their trustee who is also their enemy. For example, BIA monies for inventorying Indian resources other than water are also limited, and on the basis of BIA accomplishments to date, it will take about 20 years to complete minimally adequate resource inventory on the Northern Great Plains Reservations.





In the meantime, the U.S. Geological Survey and the U.S. Bureau of Mines, sister Interior bureaus, will receive about \$50,000,000 to inventory, evaluate and classify resources located on public lands this fiscal year — more than 50 times the amount set aside for the BIA, even though one-third of the total remaining mineral resources are located on Indian lands.

Since the Donner grant was made to NARF, the Federation has been attempting to pull together the legal and other technical resources it will need just to make an assessment of how to proceed in what may be their last battle.

The first step was the formation of the Federation itself. The second, third and fourth steps have yet to be completed. These include:

Obtaining a congressional appropriation of more than \$700,000 enabling the Federation to obtain the necessary independent specialists to

guide them in planning the use of their resources.

Having the federal trustee call a moratorium on the allocation of water within the Northern Great Plains for all federal agencies until all Indian rights are quantified and adjudicated.

And finally, obtaining sufficient capital to initiate Indian controlled development projects for those tribes who do choose to develop their valuable resources.

Ironically, just at the point in time when national and worldwide interests are centered on the remaining water and mineral resources of the Northern Great Plains tribes, the Congress, other governmental agencies, and private philanthropic groups claim financial inability to provide the Northern Great Plains Indians with the monies they need for evaluating, planning and protecting their resources, resources that are critical not only to Indian society, but to the larger society as well.

STANLEY K. HATHAWAY:  
Secretary of Interior

*(addressing the  
National Congress of  
American Indians,  
June 25, 1975)*

The issue of energy development in the West is one which is squarely before me — before the Congress and the Nation — and before the Indian community. It is among my concerns that areas proposed for increased production of coal lie within, or intermingle with Indian lands. I can readily understand your feelings of apprehension about the prospects of large scale energy developments.

To the extent that development is under our control, we will all have to work closely together to be sure energy projects are developed with long-range social, cultural and environmental impacts in proper perspective. We will attempt to keep the decision making process as open as possible, to aid in the flow of information so that all options are available and understood by the concerned entities.

But I see here an opportunity — an opportunity for jobs and a more stable economic base for many Indian communities, without the loss of the unique Indian heritage which is so valuable to us all. I see also an opportunity for the people in these places to play a positive role in helping the Nation meet its energy objectives.

It will be the test of the self-determination policy and of our ability to carry out our trust responsibilities if energy sources on Indian land can be developed meeting these multiple objectives — the people objectives as well as the energy and economic goals.

On July 25, 1975, President Ford accepted Secretary Hathaway's resignation after six weeks of service. Hospitalized and under psychiatric treatment, his supporters blamed his critics. Meanwhile, the Indians on the Great Plains are waiting for the appointment of still another trustee.

NORTHERN CHEYENNE  
KIT FOX WARRIOR:

*(peacefully in 1883)*

Nothing lives long —  
Except the rocks.

# The Epilogue

## TURNING WHITE MEN INTO INDIANS

WALLACE D. McRAE:  
Montana Rancher

*(testifying before EPA  
officials in 1973)*

Both of my grandfathers were early settlers, coming to Montana before the turn of the century, shortly after the Battle of the Little Big Horn where Custer met his demise while attempting to rid the West of the Red Menace. Custer was an implement of the policy of the United States Government that dictated that the Indian, his buffalo, and his way of life was an impediment to progress. The Indian, being an obstacle to economic development, had to be eliminated or overcome.

After nearly 100 years of honest endeavor, I have begun to discover that my family's effort does not amount to much. I have become, for all practicable purposes, an Indian. For like the Indian, I am standing in the way of progress because I like and work above part of the world's largest known reserves of fossil fuel, but resist the rapidity with which my part of the country is becoming industrialized and degraded, in an attempt to satisfy this Nation's apparently unsatiable appetite for energy.

In the language of my neighbors, the Cheyenne Indians, the name of white man is the same as the name for spider — "Veho". As I see the webs of high-voltage lines; the webs of railroads and strip mines; and the poisons we exude from our activities; the rivers sucked dry of their life-giving juices; I am reminded of the wisdom of the Indian exhibited by his prophetic name for us. Truly, we exhibit all the characteristics of a Veho or a spider.

The drama is unfinished. The plot is too long and too complex. Like a theatre in-the-round there is action everywhere and there is confusion. There are so many actors on the stage that it is impossible to include all of their lines in the script and so the directors (Congress) and the producer (the Executive branch) are arguing. Ironically, some of



the members of the white audience have gone up on the stage and are acting like Indians. Very few of the Indians are acting like white men.

It is just past Labor Day and no one has yet been selected to fill the part of the Secretary of Interior. Whom this man will be and how he and the other supporting members of the Department of Interior cast decide to play their roles in the next few months and years will be critical to the outcome of this drama. Few close observers believe that there will ever be a man selected to the Interior cabinet post who will be courageous enough to act like a real trustee to the Indians. But it may yet happen for there have been some very remarkable changes on the American stage during the past 200 years.

The Northern Great Plains Indian people who put together the new Declaration of Indian Independence face even greater odds than the original signers of the Declaration of Independence,

who, as Benjamin Rush the recalled, recognized that they had all signed the Declaration "a noose around our necks". Benjamin Franklin replied, half in humor, half in deadly earnest: "Yes, we must all hang together or we shall all hang separately"

The original signers and the colonists who supported the Declaration of Independence were striking out against economic tyranny imposed by government an ocean away, and the revolutionary war they fought was against an army which had to be transported across that ocean.

By comparison, the Indian tribes of the Northern Great Plains are completely surrounded and outnumbered 1,000 to 1. Therefore, for all practical purposes they can only fight the Indian version of the revolutionary war in the courts and in the halls of legislative and administrative advocacy, whereas the Indians are severely handicapped by the lack

adequate legal resources or the monies required to hire these resources. So, with few exceptions, they remain dependent on the Secretary of the Interior — their trustee and their frequent enemy.

If the odds against the Indian signers of the Declaration are greater than they were against the colonists, the economic tyranny behind the Indian's Declaration is even more disproportionate. For instance, non-Indians, like Montana rancher John Redding, whose family bought land on the ceded portion of the Crow Reservation and was forced to give up this land when the Crows decided to mine, have fared far better than the Indians.

Certainly it is no less painful for a white family to give up land which has been their home for several generations than it is for an Indian tribe, but the Indians have never been given the kind of compensation which permitted them to relocate and start a new life on another land base in better economic condition than they were to begin with. This is not true for the non-Indian ranchers of Montana who have now been paid millions of dollars for their ranches or were handsomely reimbursed by the coal companies for damages caused by test drilling on their lands.

Indian oil contracts may be an even more telling illustration of the kind of economic tyranny strangling Indians and which the Northern Great Plains people are determined to fight. The Navajo receive a 12.5% to 16.5% royalty on the crude oil pumped from their land. Arab countries receive 50% to 56.7% of the companies' oil revenues. Although the costs of production are different, it is clear that payments to American Indians by American companies are substantially inferior to those made by the same companies to foreign countries. And while President Nixon was bemoaning

America's energy crisis shortly before his resignation, U.S. coal producers were shopping around for customers outside America to buy the coal they planned to mine on Indian lands and pay minimal royalties on.

Sadly, in spite of these disparities, getting Indian support for the Declaration of Indian Independence and for economically rewarding agreements like the re-negotiated Crow/Westmoreland lease is difficult, not only among members of the dominant society, but also among Indians.

In some tribes, particularly among older Indian members, they still fear that if their tribes show progress of any kind, the federal government will start termination proceedings against them. The same kind of hesitancy also applies to accepting HEW or OEO (now Community Services Administration) grants for fear that monies received from these sources will later be charged against them, if their tribe should be awarded a money judgment in a claims case against the U.S.

Other Indian people are frightened because they have been dependent on the federal government for as long as the early colonists depended on the institution of the British Monarchy. In both instances — with the British Crown and now with the Department of Interior — the institutions became and have become so deified and entrenched after hundreds of years of power that most of the colonists and now the Indians simply could not/cannot imagine how life would proceed without such guiding forces. Nonetheless, the colonists revolted, and so now too, it appears, have the Indians.

Regardless of the outcome of this drama, if America is to overcome its current economic and energy crisis the members of its dominant society must be prepared to change their life-roles

once again. There are no more frontiers on the world stage onto which they can expand. The time is past when growth means progress and bigger means better. Fundamental changes must now be made in the American way of life — changes in attitudes, changes in life styles, and changes in governmental policies.

In a rapidly collapsing timespan, it is becoming more apparent each day that the Indian's reverence for Mother Earth is an attitude that must be adopted by the dominant culture if either white men or Indian men are to survive. Instead of destroying Indian culture Americans must now consider the possibility of adopting Indian respect for the fragility of the earth. Even now as the process of colonization continues, it has all but exhausted the wealth of the native Indian population.

As a result the dominant society has begun to turn upon itself and to devour the land, the resources, and the individual freedoms it so recently acquired. On the Northern Great Plains the process is well under way. The new cycle of conquest has started to render the Northern Great Plains farming and ranching population impotent as their institutions and customs are destroyed — it is on the Northern Great Plains where cowboys are becoming Indians.

When the curtain opens on Act IV of this drama, instead of a gold rush in the Black Hills of the Dakotas, it will likely be the coal and water rush on the Northern Great Plains, and instead of the old cowboys vs. Indians scenario, another one will have replaced it — one where the cowboys and Indians are both clinging tenuously to their old ways of life. It remains to be seen whether either one or both will survive their last stand together.





## ✧ The Role of the Native American Rights Fund ✧

NARF opened its national offices in Boulder, Colorado, just about the time the alarm with regard to coal leases began on the Northern Cheyenne Reservation. It's work on behalf of the Northern Cheyenne in drafting a natural resources code for the tribe was a prelude to the major efforts that followed on the Crow Reservation.

NARF's role at Crow has been not without trauma. The stakes in this drama are too high and the pressures on individual men — Indian and non-Indian, lawyer and non-lawyer — too great for it to be any other way. Corporate profits, cultures and life styles are threatened. Moreover, at Crow the first steps in the process which is vital to continued Indian tribal existence, but threatening to the dominant society, have been taken. At Crow a move towards de-colonization has been made.

The Crows have begun de-colonization by benefiting from their rights to the mineral resources beneath their ceded land, and this has given them a degree of economic independence which will enable them to have the financial resources and the time necessary to make an informed decision about what they want to do with regard to the coal which lies beneath their reservation.

This is not to say that the income from the Westmoreland lease has made them immune from pressures or free from other treacherous aspects of colonization. In August, Shell Oil Company, in an attempt to persuade individual tribal members to accept new conditions for a permit lease signed in 1971, sent each Crow tribal member a letter which promised an August payment of \$200-per-person if the tribe would come to terms immediately. Robert Howe, the Chairman of the Crow Mineral

Committee, called the letter "a classic example of people trying to exploit the ignorance of our people and their economic condition". The \$200 bonus was treacherous because it came at a time when the Crows could have used the extra cash to buy costumes and provisions for the annual Crow Fair which began August 17.

The Crow Tribal Council rejected the Shell offer, so Shell set up a trailer at the Crow Fair in a new attempt at "communication". A sign outside the Shell trailer promised: "Free Movie and Gift". Inside, Shell representatives handed out key chains and pen lights after showing a 15-minute film on the virtues of coal development. The film's narrator, noting that the Crow had once relied on the buffalo to provide for their economic well-being declared "Earth Mother is still providing for her children" by giving the Crow "the new buffalo — a new kind of nourishment — coal".

That may well be the case, but the Crows must be allowed to make the decision to partake of that nourishment as carefully and freely of coercion as possible, because a decision to do so may well be more threatening to their survival than the colonization of the west and the destruction of the buffalo.



### A Kind of Legal Independence

During this drama NARF provided over 800 attorney man-hours of free legal assistance to the Crows at a time when the tribe

was unsure if it wanted to proceed with any coal development whatsoever. The Crows could not afford to pay their private counsel for that amount of legal advice and advocacy, and, because the tribe had already had a taste of the quality of advice the BIA as trustee could provide, it was more than reluctant to depend on the government for assistance.

In addition, NARF advanced monies which enabled the tribe to retain independent coal experts to evaluate the leases and permits which the tribe had signed with the guidance and approval of the BIA. In effect, NARF provided the Crows with a kind of legal independence — the kind which made the final Crow/Westmoreland lease possible.

The Crows are now able to use private legal counsel entirely to work with tribal leaders, the Crow Minerals Committee and the Tribal Council, with regard to further coal development both on and off the reservation. Because of this NARF is now concentrating its work on behalf of the Crows on reservation land-ownership problems whereby non-Indians have obtained lands on the reservation totalling more than 1 million acres, many of which are in excess of the maximum acreage allowances under the Crow Allotment Act. NARF is also assisting individual Crow allottees who have been kept in economic bondage by leasing practices which have also circumvented the maximum lease terms allowed by law. Finally, NARF attorneys are working on several education-related matters on the reservation.

The legal roles played by NARF on the Northern Great Plains have been complex and have required a tremendous commitment of manpower. At Northern Cheyenne NARF began by



acting as evaluators of coal leases and as drafters of a tribal natural resources code. At Crow NARF started by evaluating leases and ended up, not only evaluating, but re-negotiating, litigating, monitoring state and federal legislation, and filing administrative appeals.

At the same time NARF recognized that the odds facing the Northern Great Plains tribes were so great that even a large amount of legal advocacy, was only one aspect of what was needed. NARF saw that if the Indians were to succeed they were going to have to stand together as a single political entity. As a result NARF has worked hard to assist with the development of the Native American Natural Resources Development Federation. This effort has also not been easy.

The five-state Northern Great Plains area encompasses all or parts of 23 Indian reservations which provide a resource and cultural base for over 80,000 Native American people. Among these people there is a great amount of institutional complexity — each reservation has its own political structure and legal codes. And there is a great diversity in the Indian's approach to economic and social problems, however common these may be.

Despite this diversity, and some old and strong adversities among the member tribes, the Federation has stayed together for over a year and a half. NARF is now preparing formal incorporation papers and it is likely that within the next six months NARF will have established an independent office to coordinate all the resource inventories, litigation efforts, and development programs of the 26 member tribes.

As a result of the decision made by the Northern Cheyenne and Crow people in this drama, those tribes who do have coal reserves

have almost unlimited options. They can seek to have all or portions of existing permits and leases legally set aside and then either elect to prevent large scale mining from taking place now or in the future or invite operators and those presently on the reservations to work with them in extracting their reserves.

Those who decide to can renegotiate new royalties on existing permits and leases on a percentage of the selling price, and can make certain that advance royalties are tied into production schedules. They can withhold approval of conversion facilities which coal companies might be using with regard to coal from their leases and which are located upon or near the reservations.

They can also consider joint venturing or joint ownership of mining operations on existing leases. The Crow Tribe was unable to obtain approval of joint venturing Westmoreland Resources, primarily because Westmoreland had large pre-existing financial commitments to mining on the ceded land which gave the company the powerful argument that the Crow Tribe ought not be allowed to joint venture after Westmoreland Resources had put up such a large portion of the venture capital.

This kind of argument cannot be made by other companies now holding existing permits and leases on any of the Northern Great Plains reservations because they have not yet made the kind of capital investments made by Westmoreland. For these tribes to attain a significant share of the profits, they would have to make a capital contribution to the mining operation.

This capital contribution could be in the form of outright cash contribution or in the alternative it could be achieved by the tribe's giving up a portion of their royalties as the owner of the coal

or by sharing any tax savings which might result from partial Indian ownership.

Finally, like the Crows, any of the six tribes with significant coal reserves could obtain land purchase option agreements with respect to the portions of their lease land which is no longer required for mining.

Regardless of their options, for any of the 23 tribes to accept federal policy direction in the future with regard to their resources, coal, other minerals or water, the federal trustee will have to demonstrate that he can guarantee the Indians that they will be able to exercise maximum discretion over the manner in which development on their reservations takes place.

Indian tribes are sovereign entities and this, together with the fact that Indian land, while held in trust, is a privately-owned resource, can lead Indians to withhold their strategic resources from development all together. Therefore, America must accept this ultimate possibility, while still seeking to create a compatible involvement for Indians to pool their resources with those of the rest of the nation.

ANONYMOUS SIOUX POET:

*(prophetically in  
1776)*

YOU SHALL LIVE

A thunder-being nation I am, I have said.

A thunder-being nation I am, I have said.

You shall live.

You shall live

You shall live



# Some Background Notes on THE CAST OF CHARACTERS



## THE WINNEBAGO

*From time immemorial the Winnebago people were woodland Indians. They greeted the first Frenchman Nicolet in 1634 near what is now called Green Bay, Wisconsin. They were recruited as allies of the French, then Great Britain and finally the Americans, who only wanted their lands.*

*Under coercive legal and political power they signed a treaty in 1825 ceding all of their territorial claims in Wisconsin to the U.S. Government. In return they were given a small reservation above the upper Iowa River. There many of them contracted smallpox and died. In 1846, U.S. Cavalry soldiers were sent to drive them to a reservation in Minnesota. Two years later the soldiers came once more and drove them to another location.*

*Then, twice more in 1853 and 1856, they were forced to move again. At the time of the move of 1856, they signed a new treaty with the U.S. Government which gave them a reservation at Blue Earth, Minnesota "in perpetuity". They made a difficult adjustment and turned from woodland people into agricultural people and were considered to be in a "Flourishing condition" by the Commissioner of Indian Affairs in 1860.*

*Two years later their neighbors, the Santee Sioux of Minnesota, were starving and they went on the warpath because of unmet promises by the federal government. The white Minnesota neighbors of the Winnebagoes*

*suddenly found it impossible to distinguish between the Winnebago and the Santee Sioux and demanded that all Indians be removed from the limits of the State.*

*Under political pressure, Congress tore up its treaty with the Winnebago and ordered them to a place where there was supposedly no danger of intrusion from whites. The remaining Winnebago, who by then numbered a mere 2,000, were taken on steamboats down St. Peter's River, then down the Mississippi to the Missouri, then up the Missouri to a new reservation called Crow Creek. The new reservation was 2,363 miles by river from their old Minnesota home, but only about 300 miles by land. The transfer was like a modern day bureaucratic snarl in Indian affairs. Men, women and children were jammed like animals on the boats and were transported more than 2,000 miles when they might just as well have reached their destination without hardship in covered wagons on the overland journey of only about 300 miles. As a not-so-final painful twist, the government required the Winnebago to pay the cost of this strange removal from treaty funds that were already long overdue to them.*

*Upon their arrival the Winnebago were dumped from the boats onto a desolate bank by the river. There were no houses to shelter them from the burning summer heat. They had been promised farm implements, but none came. They had been promised food, but none came for months and then much of it was rotten.*

*The agents of the early Indian bureau and the suppliers with whom they contracted were having a field day with funds and foods intended for the Winnebago. Soldiers patrolled the area to keep the starving and sick Winnebago from leaving their new reservation to hunt or to attempt to get food from other tribes. Desperate, some escaped and fled to their old friends, the Omaha Tribe, then located in Nebraska, where they were welcomed and protected. Not all of their members escaped though; many were shot down while attempting to leave and "squaws" were raped by drunken troopers. However, once they saw the bulk of the Winnebago at the Omaha Reservation, the government decided to take half of the Omaha's land and to give it to the Winnebago.*

*In 1970 the U.S. government decided to condemn almost half of the Winnebago Reservation, including the best river-front lands of the Winnebago along the Missouri River for a recreation lake complex.*

*The case of the Winnebago is one of peculiar hardship . . . It is to be feared that it will be many years before their confidence in the good faith of our Government, in its professed desire to ameliorate and improve their condition, will be restored.*

*— Report of the Commissioner of Indian Affairs, 1863*

*Today, only 877 members of the Winnebago Tribe live on or near their reservation which covers about 27,500 acres; 61% of them are without jobs.*

## THE OMAHA

As early as 1690, the Omaha people roamed back and forth from the north-eastern woods to what is now Omaha, Nebraska. They had skin tents to use when hunting in the woods and earth homes to live in when they were farming on the plains. In 1802 the tribe was decimated by small pox and the few remaining Omaha became friendly with the few remaining Winnebago, as the latter fled into the upper plains territory. The culture and languages of the Omaha and Winnebago were similar, as were their experiences with white men.

In 1854 the Omaha were induced to sign a scandalous treaty under which they sold all their land, some 93 million acres, to the U.S. and were left with less than 80,000 acres. It was only 12 years later that the government took the northern half of the reservation for their friends, the Winnebago.

For the next ten years they clung desperately to their few remaining lands, as they were buffeted by white settlers who wanted to see them, and the Winnebago, removed to "Indian Territory" in Oklahoma. The Omaha were finally "saved" by a white woman ethnologist who persuaded Congress to grant the Omaha's lands in severalty. Today about 1,400 people live on the small (39,000 acres) Omaha Reservation; 63% of the labor force is unemployed.



## THE SIOUX

Sometime before 1640 French missionaries and traders heard about a strong people who dwelt in greatness and lived many streams far to the west beyond the large inland seas, the Great Lakes. In translation between Indian languages and the French language, the name was distorted from Nadouessioux, to Scioux and then finally to Sioux.

It was not until 20 years later that any Europeans met the Indians to whom these names applied. They were Indians from the four tribes comprising the Santee Sioux. In their homeland, which was to become the state of Minnesota, they lived near the headwaters of the greatest of all the rivers on the American continent, the Mississippi, and depended on the natural bounties of the forests, lakes and marshes for their survival.

When the first exploring traders reached the Santee Sioux in 1660, the Indians were eager to develop trade with them because other hostile tribes to the northeast had for some years been receiving French goods, particularly weapons, which gave them a decided advantage over the Santee.

The Santee were still in their historic Minnesota homelands when the American period began for them with the Upper Missouri Expedition in 1805, which was sent to oust the British traders operating on U.S. soil. The Expedition opened the road to ruin for the Santee.

In 1851, after several decades of ill-treatment from both westward-moving settlers and the new American government, the Wahpeton and Sisseton bands of the Santee Sioux people ceded to the U.S. their lands in southern and western Minnesota, as well as some in Iowa and Dakota. They received \$1,665,000 in cash and annuities for this gesture. In August of the same year, the two remaining bands of the Santee Sioux signed a waiver to their territorial claims, which embraced most of the southeastern quarter of Minnesota. For this they received \$1,410,000 in cash and annuities over a 50-year period.

In all the Santee ceded about 24,000,000 acres of rich timber and agriculture lands. Left for their use were two relatively small reservations, each about 20 miles wide and 70 miles long, through which flowed the upper Minnesota River. Of course there were the usual unforeseen loopholes in the 1851 treaties. The bands were tricked into signing a trader's paper which had never been explained to them and this paper gave to traders and half-breeds

some \$400,000 of the Indians' annuities.

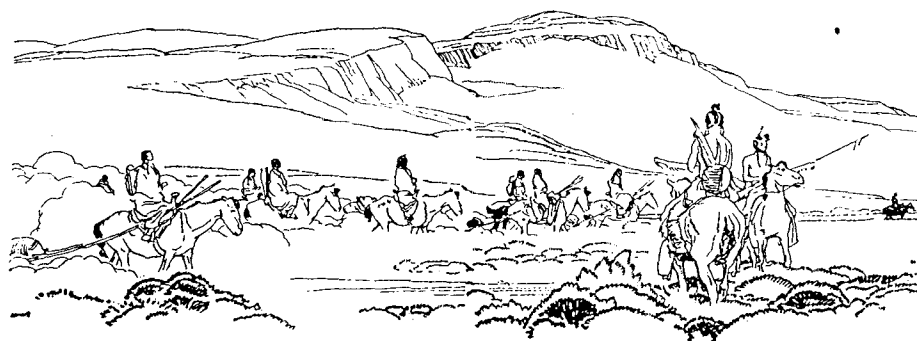
Within a few years after the signing of the Treaties of 1851 the two reservations were completely surrounded by white farmers who were demanding that the Santee lands be drastically reduced. Santee leaders were taken to Washington and persuaded to relinquish about 1,000,000 of their remaining acres for which the Senate decided to pay them \$.30 an acre. When the money was finally appropriated, they got half of it; the other half once again went to settle the claims of traders, most of which were fraudulent.

During the winter of 1862 the Santee nearly starved. In desperate condition they waited for June when they were supposed to receive food and cash annuities. Nothing came in June; nothing came in July; nothing came in August. The delay was due to the fact that the treasury people in Washington were debating whether to issue the Santee Sioux paper money or coins.

In starving desperation about 5,000 Santee from several bands descended on the upper Minnesota agency. For once U.S. soldier-commander kept his head and restrained his troops, and the Santee were given the food which they desperately needed. Unfortunately, it was not enough to keep them full, and finally on August 17, 1862, some Santee, led by Little Crow, swept over settlements and farms — 300 white settlers and 100 soldiers were slain.



Pursued by cavalry, these Santee fled westward, finding refuge among the Dakota of the Great Plains. The others went to Canada. Chief Little Crow and 39 other leaders were either killed or captured and condemned to death. The remaining Santee, who numbered on several thousand, were held in concentration camps. Their reservation was taken from them and opened to white settlement.



Finally in 1863, Congress authorized President Lincoln to set apart another reservation for these Santee. Under military guard they were taken to a new "homeland" selected for them in the Dakota Territory.

### The Teton Sioux

During the last part of the 1600's other groups of Sioux people known as the Teton Sioux, who were also living in the Northwest, were driven away by Frenchmen and by the powerful Chippewa.

These bands slowly moved from the western extremities of Lake Superior down, out, and across the Upper Missouri. It was a 50-year trip, during which they transformed themselves from woods people to plains people and began not only to survive but to prosper in a totally different environment on the Great Plains.

The group eventually evolved into seven bands and today these Teton Sioux are remembered as the colorful media Indians of western history. They are also remembered for their courage, bravery, and beauty; and for the complexity and drama in their social and religious ceremonies. Among Indians, they are remembered for their cohesiveness and unity and for their confidence and ability to overcome all obstacles, all adversities, and all enemies.

By 1750 the Teton Sioux controlled all of the country between the Missouri River and the Black Hills, and between the Little Missouri and the North Platte Rivers. Despite the great distances, they got together as often as possible to settle their problems, to feast and celebrate

with ceremonies and games, and to perform their sacred Sun Dance.

They continued to move about the plains as they experienced shortages or hunger in one place, but they always found abundance in another. Only one other group of Indians, the Apache, survived the onslaught of the white forces as long as they did.

Over the better part of 100 years the Black Hills became a "holy land" to the Teton Sioux. Because of this they made certain that the hills were in the region which became a part of the great reservation assigned for their exclusive occupation under the Treaty of 1868. But when gold was discovered a few years later, and the miners and settlers came in hordes, swarming over the Black Hills and surrounding the territory, the U.S. conveniently forgot about the terms of the treaty.

The Sioux didn't forget. Nor did their old enemy, the Cheyenne — whom they had once driven out of their country — and who came back to fight beside them against the invaders. The Black Hills still bear the stains of these battles, and the names of Sitting Bull, Crazy Horse, Gall, Rain-in-the-Face, and American Horse will always be a part of the American saga.

On June 25, 1975, 100 years after Custer was defeated, fresh stains were added to the Black Hills when the Court of Claims, with one judge dissenting, held that the Sioux were not entitled to any interest payments for the government's taking of the Black Hills. The interest payments involved in the case represented the difference between judgments of \$17,000,000 and \$100,000,000 for the Sioux.

The Teton Sioux fought their white destroyers with courage and determination unsurpassed by any people in the history of the world. But the white forces were so large that there was no hope of prevailing. For all their bravery, spirit, and belief in themselves, and for all their moral, mental and physical strength, the Teton Sioux were helpless in attempting to combat the criminal violations of legal treaties. They were helpless in the face of wanton disregard of human rights, the breaking of solemn promises, and the starvation inflicted upon them by a corrupt political system and a society that turned standards of decency and justice on and off to serve the greed and desire of the moment.

In the end, like their Santee brothers, the Teton Sioux were splintered and confined to small portions of unwanted lands on the Great Plains. Since that time they have developed separate governments and tribal memberships, but the sense of the old Sioux Nation still smolders within them whether they are on the Cheyenne River Reservation, at Lower Brule, or at Pine Ridge.

### The Sioux of the Cheyenne River Reservation

Under the Treaty of 1868 the Sioux Nation as a whole agreed to a territory encompassed by the western slopes of the Black Hills, the Niobrara River on the south, the Missouri River on the east, and the Cannonball River to the north. After gold was discovered in the Black Hills, an 1889 Act of Congress established six reservations for the Teton Sioux, including 2,700,000 acres for the "Cheyenne River" Sioux.

By other Acts of Congress in 1909 and 1910, all unallocated and unsold land on the Cheyenne River Reservation was opened for homesteading to non-Indians. As a result, 47% of the remaining reservation land area of 1,400,000 acres is now owned by non-Indians. An additional 104,044 acres of the best agricultural and residential lands were flooded by the Bureau of Reclamation in order to create Oahe Reservoir in the last decade. Today there are 4,300 Sioux at Cheyenne River; 27% of them are without work.

### The Sioux of the Lower Brule Reservation

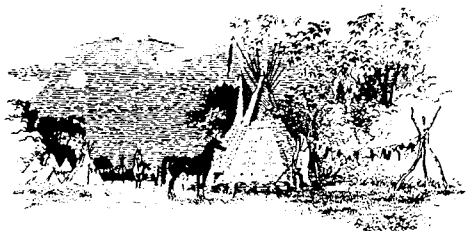
*At the Lower Brule Reservation a small group of the Sioux Tribe took up residence after being splintered during the last of the plains wars. Today there are 701 of them living on or near the reservation at Lower Brule, South Dakota, 23% of their work force is unemployed. The tribe still owns approximately 75,000 acres of the remaining 120,000 acre reservation.*

### The Sioux of the Pine Ridge Reservation

*The Oglala Sioux are one of the largest bands of the Teton Sioux. Their history is painfully distinguished by the fact that in late December, 1890, troops from the U.S. Cavalry intercepted a group of them under the leadership of Chief Big Foot on the Pine Ridge Reservation at Wounded Knee Creek. Now they are remembered as the descendants of the victims of the Wounded Knee Massacre. There are about 7,500 surviving Oglala Sioux living at Pine Ridge today. The tribe controls about 372,000 acres of the 2,778,000 acre reservation, non-Indians own 1,270,000 acres within the boundaries of the reservation. The unemployment rate of the Sioux at Pine Ridge is 42%.*

### The Sioux of the Rosebud Reservation

*The Rosebud Sioux Tribe is another large band of the Teton Sioux. They were relegated to the Rosebud Reservation in 1890 after the Wounded Knee Massacre. Today the tribal rolls include 7,500 people; 26% of the adults have no work. The reservation now comprises more than 978,000 acres; the tribe owns a little less than half of these acres.*



### The Sioux of the Fort Totten Reservation

*A band of the Teton Sioux Indians who are living near Fort Totten, North Dakota, are called the Devils Lake Sioux Tribe. Their history is similar to that of all the other Teton Sioux Bands. Today there are about 2,000 people at Fort Totten; the acreage of the reservation is 244,507, but only 473 acres are tribally owned. Non-Indians control 192,794 acres; the rest is either allotted to Indians or to government agencies. The yearly tribal income is \$3,400. 59% of the people are unemployed.*



### The Sioux of the Standing Rock Reservation

*The Indian people at Standing Rock are also descendants of the Teton Sioux. Their tribal headquarters is at Fort Yates, North Dakota, and there are about 4,700 of them living near there; 34% of them are unemployed. The remaining reservation land base is about 848,000 acres; a little over 33% of the land is tribally owned.*

### The Sioux of the Santee Reservation

*At first the largest band of the Santee Sioux Tribe were inclined to stand and fight for their rights to remain in their homeland in Minnesota. That inclination caused the death of most of their warriors, who were killed at the New Ulm Massacre in 1862. In 1863 a large group of the remaining tribal members, mostly old men, women and children, were moved from Minnesota to new land near what became the Crow Creek Reservation in South Dakota. Then in 1866 the surviving members of the band were once again moved to their present reservation near Niobrara, Nebraska. There are about 360 tribal members living on 5,791 acres, of which 3,599 are owned by the tribe; and 60% of them are unemployed.*

### The Sioux of the Yankton Reservation

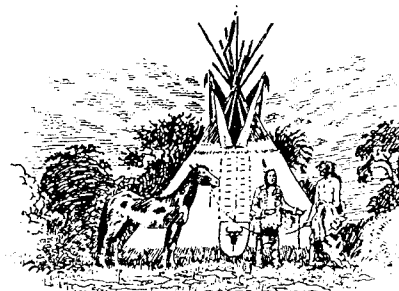
*The Yankton Sioux Tribe is one of the few Santee Sioux bands whose reservation still encompasses the site of their second traditional home. These people never fought against the U.S. and generally lived in peace with other tribes.*

*Still, due to disease and poverty, about 1,400 remain on the 435,000 acre reservation, whose headquarters are at Wagoner, South Dakota. The tribe owns only 5,560 acres; non-Indians own 400,000 acres. Unemployment affects 66% of the tribal workforce.*

### The Sioux of the Sisseton Reservation

*The Indian people now living on Sisseton Reservation, which straddles North Dakota and South Dakota, are also descendants of the Santee Sioux. When they were still living in Minnesota, on their first reservation, tribal leaders ruled that all whites on the reservation must dress like Indians in an effort to prevent soldiers from assaulting the reservation in response to outbreaks of violence among other Indian bands nearby. Despite this creative effort to survive through costumery, the tribe was ultimately forced to flee to Canada and was not able to return until 1868 when they signed another treaty with the U.S. Government at Enemy's Lake.*

*The current Sisseton Reservation was established by Congress in 1867; there are 2,500 Sisseton-Wahp Santee Sioux people living on 106,000 acre reservation. Only 10,000 acres are tribally owned. The tribal headquarters are at Sisseton, South Dakota. Reports show 42% of the tribal membership is unemployed.*



## The Sioux of the Crow Creek Reservation

*Under the Treaty of Fort Laramie in 1868, all of the land held by the Sioux east of the Missouri River was ceded to the U.S. government with the exception of the previously established Crow Creek, Yankton, and Sisseton Reservations, whose people were still hunting over a wide area. Four years later when the buffalo herds were systematically slaughtered by white commercial hunters, the Indians who were descendants of the Wicijela Band of Santee Sioux were finally forced once and for all to accept reservation life and rationed food. Today a small portion of them, about 1,200, are still on the 122,500 acre Crow Creek Reservation, near Fort Thompson, South Dakota. There they are continuing their struggle to preserve their tribal existence — 69% of them are unemployed.*

## The Sioux of the Flandreau Reservation

*In March 1869, a year after the Fort Laramie Treaty, 25 Indian families living at the original Santee Agency left and took homesteads at Flandreau in the Dakota Territory. Because of their small size they were forced to adopt the life style of the surrounding white settlers and today are among the most fully integrated Indian people. There are 267 people who count themselves members of the Flandreau Santee Sioux Tribe living on 2,356 acres at Flandreau. A comparatively small number of them (9%) are without work.*



## THE MANDAN, ARIKARA AND HIDATSA

*Many decades before the Sioux migrated into the Dakotas from the east, three sedentary tribes had settled along the Missouri River, which now bisects the states of North and South Dakota. Of these, the Mandan are believed to have arrived first. They lived in villages of half-buried earth lodges and slowly migrated north along the Missouri. The Mandan were the most competent and successful agriculturalists on the Northern Great Plains. They grew more corn than any other Upper Missouri tribe. Due to a strange lack of melanin, the Mandan were light of complexion, and many of the younger men and women in the tribe had silvery gray hair.*

*Their arrival along the Missouri was followed by that of the Arikara and Hidatsa. The Arikara, who were also agriculturalists, occupied villages of earth lodges between the Grand and the Cannonball Rivers. The Hidatsa people had established an agricultural life near present-day Devils Lake, but were pushed west by the first groups of Sioux and therefore settled at the junction of the Heart and Missouri Rivers not far from the Arikara and Mandan.*

*These tribes experienced little if any conflict with the white explorers. After several decades of trading, they may have perceived the greed of the white men, but they were not prepared for the insidiousness of it. In 1837, representatives of the American Fur Company left St. Louis on the steamboat St. Peters. Within a day of St. Louis, smallpox was discovered on board the ship. Instead of turning back, the St. Peters, carrying its uncontrolled pestilence, went on. The Indians, knowing the boat was filled with supplies they needed, could not be kept*

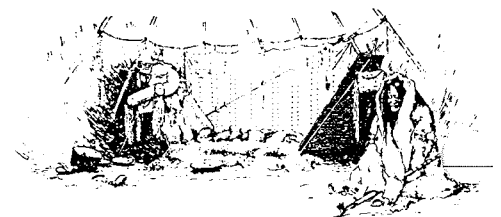
*away from it. Day after day as the St. Peters moved upstream the Indians swarmed about the cargo and became contaminated.*

*In all the villages of the Mandan, Hidatsa and Arikara, from Fort Pierre to the mouth of the Yellowstone, no smoke rose from the lodges. There were no sounds, except the screams of the dying. Many warriors, returning to their villages after the St. Peters had passed by, killed themselves because they could not stand to see the flesh rotting on their dying wives and children.*

*Thus that summer in 1837 more than 15,000 Indians were the first to pay the price of the corporate greed of one of the earliest American corporations. Some historians say 30 Mandans survived the epidemic, some say 37. No such exactness shows in the records of the Hidatsa or Arikara, but it is known that all were nearly wiped out.*

*The remnants of the tribes moved slowly together towards the Little Missouri River, near Fort Berthold, North Dakota. In 1871 a reservation of about 1 million acres was established for what was to become the Three Affiliated Tribes. After their land was opened for allotment in 1884 more than 57% of the reservation passed into non-Indian ownership.*

*In 1948, the U.S. Government condemned a substantial portion of the remaining lands to create the Garrison Dam and Garrison Lake that flooded the Indian agency and the cemeteries of the Mandan, Hidatsa and Arikara. The remaining members were moved once again to an area west of the lake which was named New Town, North Dakota. Today there are about 2,700 members of the Three Affiliated Tribes living on the remaining 980,500 acre reservation, 40% of them are unemployed. Non-Indians own 563,000 acres of land within the reservation boundaries.*







## THE CROW

The Crow used to be a part of the Hidatsa Tribe. The shared tradition by both groups is that they parted on the Upper Missouri River because of some political rivalry which occurred in the 18th Century. Hence, the people who became Crow had to turn from being agriculturalists into Plains Indians. They moved across the land without horses to settle in the shadow of the Rocky Mountains, and there they were surrounded by enemy tribes like the Blackfeet, the Arapaho, the Cheyenne, and the Shoshone. For almost a century after their arrival no year passed without warfare.

The Crow were physically strong, highly intelligent and extremely superstitious. From the beginning of the earliest contact, they sought to avoid white men, despising them and their way of life. The Crow called their land Absaroka from the word by which they were known to other Indians — Absarokee or "children of the large beaked bird".

Unable to remain totally immune from the white men, the Crow finally joined the United States soldiers in fighting other Indian tribes with whom the Crow were at war. In the treaty signed at Fort Laramie, Wyoming, in 1851, the Crow were confined to their present reservation of about 1.5 million acres near what has now become the Custer Battlefield National Monument. Today there are 4,200 Crow on or near the 1,550,000 acre reservation. The tribe owns 344,304 acres of this, the remainder is allotted. The unemployment rate of the Crows is 27%.



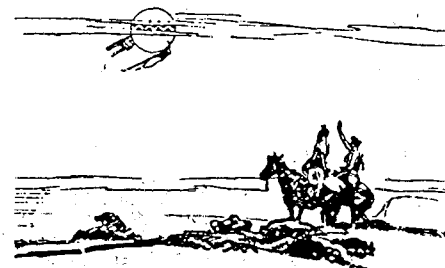
## THE TURTLE MOUNTAIN CHIPPEWA

The Chippewa, sometimes called Ojibway, were once one of the largest and most powerful tribes in North America. They were confederated with the Ottawa and Pottawatomini in the Three Fires Confederacy, but were driven west by the Iroquois (who were under pressure themselves from explorers) to the area of the Great Lakes. Shortly thereafter the three tribes in the Confederacy disbanded. Then it was not long until the Chippewa became friendly with the French trappers in the area and obtained French weapons.

It was the Chippewa who later used these weapons to drive some of the Sioux tribes west to the plains. Near the Great Lakes, the Chippewa became woodland Indians who lived primarily by hunting game, fishing, gathering wild rice, living in wigwams and traveling by canoe. They believed that a power dwelt in all objects, animate and inanimate. These powers, or monitors, were wakeful in summer, but dormant in cold weather.

For 100 years they survived by remaining north of the traffic moving out on the American frontier. Then, at the end of the century, as the white men began to recognize the value of the refuge the Chippewa had taken from the Sioux, they moved in on the Chippewa and imposed the Treaty of 1862, which wasn't ratified by Congress until 1940. In the treaty the Chippewa exchanged their claim to 9 million acres of woods and lakes for \$1 million and a reservation of 72,000 acres on the barren and remote border between North Dakota and Canada, near Turtle Mountain.

Today the annual income of the Tribe, whose headquarters are in Belcourt, North Dakota, is \$10,000. There are about 7,300 members living on the 70,000 acre reservation, half of which is allotted. Of the total work force 42% are unemployed.

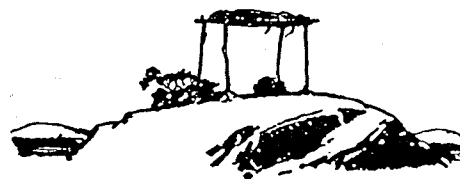


## THE ROCKY BOY'S RESERVATION

As the Eastern Confederacy of Indians was shattered due to the economic warfare waged among the tribes following the introduction of French guns and tools, wild bands of Chippewa and Cree fled on both sides of what now the Canadian border. Then the trails led from the Great Lakes as far west as northern Montana and Saskatchewan. One such band of Chippewa led by Chief Rocky Boy from Minnesota moved into northern Montana and nearby Canada in the latter part of the 19th Century.

During this same period, a large group of Cree Indians, led by Chief Little Bear, were also driven to the same area. Neither group had a land base and both bands were forced to squat on the fringes of Montana settlements and reservations. They were officially, but unsuccessfully, deported to Canada in 1896 by Congress.

Finally in 1916, through the efforts of Chiefs Rocky Boy and Little Bear and some friendly white citizens, a 107,000 acre reservation, named Rocky Boy, was established on part of the Fort Peck military reserve by Executive Order and the two groups of Indians, who were then merged, were allowed to return. There they have remained until today. Their population is about 1,200; 60% of the labor force is idle.



## THE BLACKFEET

The Blackfeet are descendants of a confederacy of Indians known as the Piegan, the Blood, and the Siksikd. Until the late 1800's the Blackfeet roamed most of the territory between the North Saskatchewan River in Canada to the southern headstreams of the Missouri River in Montana. The first treaty they signed with the white men set aside a vast area for the Tribe. As usual, a few years later a major portion of the land was designated by the U.S. government as common hunting grounds to be shared by the Blackfeet with the Flathead Indians, the Gros Ventre Indians, and the Assiniboine Indians.

In 1888, the remaining Blackfeet, who like many other plains tribes had been decimated by the diseases of white men, were gathered onto their present reservation. Today 6,200 Blackfeet reside on or near their 950,000 acre reservation, whose headquarters are at Browning, Montana; 37% of them are unemployed.

## THE ASSINIBOINE, GROS VENTRE AND SOME TETON SIOUX

The Assiniboine started out as woods people in the Lake of the Woods and Lake Winnipeg areas of Canada. Like others they came under pressure from the earliest French and British explorers and were forced to move further into Canada and Montana. There they evolved into the most expert of the buffalo hunters, and fought many wars with the other plains tribes.

For some unknown reason they maintained friendly relationships with whites even after the explorers and

settlers spread for the second time into their home territory. This friendship with the whites was the downfall of the Assiniboine for it was far more treacherous than the adversary relationships they carried on with the other Great Plains tribes. Their friendship with whites brought them whiskey, disease and injustice.

In 1836 traders brought smallpox to their area, which killed 4,000 Assiniboine men, women and children. The remaining members struggled on for almost 40 more years, but they never recovered their strength.

In 1873, some of the surviving Assiniboine were moved to the Fort Belknap Reservation near Harlem, Montana, and were forced to live with some of the most hated of their adversaries, the Gros Ventre, who spoke another language, having come from the Red River country, at the eastern edge of the plains. Until the 19th Century the Gros Ventre lived in the Milk River area across Northern Montana. During the 1800's they were moved by force to Fort Belknap. Today the reservation comprises 616,000 acres, of which 427,580 are allotted.

The remaining Assiniboine members were shunted to another reserve at Fort Peck, Montana, with yet another set of adversaries, a remnant Band of the Teton Sioux. Even today at Fort Peck these groups live in two distinct tribal groups — the Assiniboine occupying the southwestern and the Sioux occupying the southeastern portions of the 964,865 acre reservation.

At Fort Belknap there are 2,000 Indian people; 55% of them are without work. At Fort Peck the population is about 5,000; 48% of the eligible work force is idle.

It should be noted that it was in a case arising on the Fort Belknap Reservation that the Supreme Court held in 1908 that Indian tribes are entitled to prior and paramount rights to the water flowing through their reservations. The case, *Winters v. United States*, laid the basis for what has subsequently come to be known as the *Winters Doctrine*, which is now a critical supporting prop to the Northern Great Plains Indians in their struggle to gain independence.



## THE SHOSHONE AND THE ARAPAHO

The Shoshone Tribe originally lived in the Great Basin area between the Rocky Mountains and the Sierra Nevada range. There they were farmers. Following a severe drought about 1600, they moved to the plains just east of the Rockies and changed their ways to become hunters in order to survive.

They first encountered white men in the early 1800's. They liked to trade with them and so remained friendly. In 1863 they were coerced into negotiating the Fort Bridger Treaty with the U.S. government which gave them 44,675,000 acres of land lying in f - states. A few years later additional cessions reduced the reservation to 1,886,556 acres, a 96% reduction. Then in 1878, as a final insult, the Arapaho people, long-time enemies of the Shoshone, were settled on the same, greatly reduced reservation "temporarily". They are still there today.

The Arapaho, whose culture had also evolved from sedentary farming to semi-nomadic buffalo hunting, had competed with the Shoshone for over a 100 years and had been at war with them frequently. Their fate was sealed because some of their people fought against the white men. A few Arapaho had been with the Sioux and Cheyenne when Custer was defeated at Little Big Horn. They were finally starved into submission on the Wind River Reservation with the Shoshone.

Today the two tribes maintain separate governments, but, for matters which concern the reservation as a whole, a joint business council is convened. There are a little over 4,000 members of both tribes remaining on or near the reservation; 47% of them are out of work.





## THE SALISH AND KOOTENAI TRIBES

The Salish and Kootenai Tribes are from different linguistic families, but both are related to other Pacific and Northwest Tribes. The Salish were originally fish-eaters, but as they migrated inland they acquired horses and many other characteristics of the plains tribes. Later this became true of the Kootenai as well.

In the early 1700's the Salish and the Kootenai occupied western Montana, eastern Washington, southern British Columbia, and northern Idaho. They moved in groups to other areas for visits and had unusually friendly relationships with the tribes in all directions. Then, as other plains tribes were becoming confined by the westward expansion of the settlers, the Salish and Kootenai began to experience the first conflicts with their neighbors on the eastern side of their hunting grounds, the Blackfeet. At the same time they themselves were being pushed toward the Blackfeet by the expansion of the settlers arriving on the west coast.

Their current home, now known as the Flathead Reservation, was established by the Hellgate Treaty of 1855. In it, under coercion, they ceded most of Montana to the United States in exchange for about 1,000,200 acres of land. Naturally a succession of other acts followed which dissipated tribal holdings through land allotment and non-Indian homesteading.

Today about 630,000 acres or one-half of the land within the reservation boundaries, including almost all the better agricultural land located in the valley bottoms, is non-Indian owned. The mountains, the upland range, and the forest lands which comprise about 562,000 acres are Indian-owned. There are presently about 2,800 people living on or near the reservation, 34% of them are unemployed.

## THE NORTHERN CHEYENNE

About 1700, the Cheyenne people were forced from their earliest homeland in Minnesota west across the Missouri by the movement of the Sioux, who were moved by the Chippewa, who were moved by the French and British and so on.

The Cheyenne's first stop was in the Black Hills near the mouth of the Cheyenne River in southern South Dakota. To survive there they turned from woods people into plains people. In the early 1800's they moved to the headwaters of the Platte River. By 1832 a large part of the Tribe had decided to establish themselves near Bends Fort on the Upper Arkansas River. The remainder of the Tribe continued to live near the headquarters of the North Platte on the Yellowstone River.

In their efforts to classify Indian people, the separation of the Cheyenne Nation was made permanent by the U.S. government in the Treaty of Fort Laramie signed in 1851. The two groups were then called, respectively, the Southern and the Northern Cheyenne. For the purposes of this story only the Northern Cheyenne remain part of the cast of characters.

Those people who became known as the Northern Cheyenne actively opposed the advance of the frontier and the wholesale destruction of the buffalo. A group of them led by Two Moons were among the allied Indian nations that defeated Custer in 1876. It was not Two Moons' band, however, which felt the retaliation of this victory, but the remaining bands of the Northern Cheyenne. These people, led by Dull Knife and Little Wolf, were exiled in 1877 from the North Platte country and ironically sent south to join once again their southern brothers, who had been removed earlier to the malaria-infested "Indian Territory", now known as Oklahoma.

Homesick in early September of 1878, the Northern Cheyenne set out on an epic 2,000 mile walk in search of their former hunting grounds in the Yellowstone area. Three hundred people, including 80 warriors, started

out — only a handful ever reached the goal. At one time the tiny group of Cheyennes were being pursued by 13,000 army troops. Each day the starvation and harassment took its toll and the little band grew smaller and smaller.

In late November the band split. Little Wolf and most of the warriors, with about 70 women and children, went north, while Dull Knife led at 150 people (including the old people, the wounded and some women children) to seek refuge with the Clouds, Oglala Sioux. Before Dull Knife's band reached Red Cloud, they caught up with them, and finding them starving and freezing, led them to Fort Robinson, Nebraska. At first the Cheyenne were given food and friendly treatment. Then an order came from Washington that the Cheyenne were to leave immediately and return in December to the hated Oklahoma Territory from which they had recently escaped. Dull Knife refused.

In retaliation, he and his people were locked up by the troops in freezing barracks, without food, water, or fuel for five days. This effort was designed to break their spirit. At the end of five days, the Cheyenne broke out in a desperate struggle to save their lives. Their escape was short-lived. The bulk of them were gunned down. Most of the others, as they saw their children, their husbands and wives and mothers and fathers torn apart by bullets, committed suicide with their knives.

The government agents, then either in shame or some remorse, permitted those few who did survive to remain in the north. In 1884 they were given about 400,000 acres of land adjacent to the Crow Reservation. Today the population has increased to almost 2,700 people; 27% of them are unemployed.



## NARF DIRECTORSHIP

On June 1, 1975, Thomas W. Fredericks, a Mandan Indian from the Fort Berthold Reservation in North Dakota, was appointed as Executive Director of NARF. Mr. Fredericks had been Vice Executive Director since April, 1974, and a NARF staff attorney since June, 1972. He is a 1972 graduate of the University of Colorado School of Law and is admitted to practice in Colorado and North Dakota.

John E. Echohawk, Executive Director of NARF from April, 1973, until June, 1975, is continuing with the program in a full-time litigation role. Mr. Echohawk is a Pawnee and the first graduate of the University of New Mexico's special program to train Indian lawyers. He graduated from the University of New Mexico School of Law in 1970 and has been with NARF since its inception. He is admitted to practice in Colorado.

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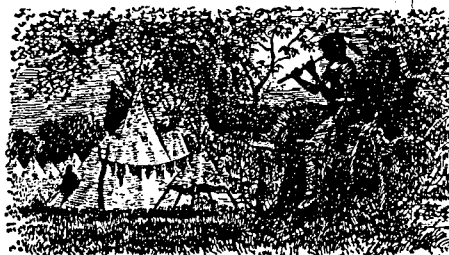
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