

# ANNOUNCEMENTS

Native American Rights Fund

Winter 1979

## “We Also Have A Religion”

### The American Indian Religious Freedom Act and the Religious Freedom Project of the Native American Rights Fund

On August 11, 1978, President Carter signed into law the “American Indian Religious Freedom Act.” Introduced as Senate Joint Resolution 102 and now Public Law 95-341, the Act is intended to guarantee to native peoples—American Indians, Native Alaskans and Native Hawaiians—the right to believe, to express, and to practice their native traditional religions. This is to be achieved by establishing a comprehensive and consistent Federal policy directed toward protecting and preserving the native religious practices in this country.

Among other things, the Act guarantees to Native Americans access to religious sites, use and possession of sacred objects, and the freedom of worship through traditional ceremonial rites. Furthermore, it calls on the President to direct Federal agencies, whose activities affect Native American religious practices, to evaluate their policies and make changes where possible to insure that Native American religious and cultural rights are protected. It also directs the President to report back to Congress one year after the signing of the Act with the results of his evaluation, including any changes that were made in administrative policies.

Like all other religions, the religious beliefs and practices of Native

Americans fall under the protection of the First Amendment of the Constitution. However, historically—and especially during the past decades—infraction of Native religions has been increasing. Because Native American religions are so culturally removed and different than their own, non-Indians do not see them as having the same status as “real” religions. This attitude has led to the enactment and enforcement of a multitude of Federal laws without any consideration of their possible affect on Native religions, and which have severely restricted the religious practices of Native Americans. Though these laws often concern such worthy objectives as the preservation of wildlife and the protection of wilderness areas, they were not written with an awareness of their potential adverse affect on Native religions.

It is the belief of the Native peoples, of the congressional sponsors and supporters of the Resolution, and many others that this country need not violate the religious freedom of her Native peoples; that Federal laws and programs can be made compatible with Native religious practices; and that this Act will serve as a clear policy statement from Congress that this country intends to respect and protect the religious freedom of Native Americans.

#### Part I: Federal Suppression of Native Religious Practices

*The Indian Religion has no name because it's part of all Indian life. Before the coming of the New People, this was our paradise, right here in America. Everything natural comes from God and is made by Him. God is in you and part of you. The Bible and our own religion are closely related. The only difference is that we practice and live ours every day.*

Emie Peters, Dakota

The nature and varieties of Native American religions is set down in thousands of books, articles, studies and dissertations. In fact, no aspect of Native American life has been subject to greater examination by historians and others. So it is neither necessary—nor possible in this space—to attempt even a limited review. However, one aspect of Native religion must be discussed because of its importance to an understanding of the need for the “Native American Religious Freedom Act,” and why this Act should be applied to protect certain customs, traditions and practices which some may question as not being

truly “religious” in nature, and, therefore not entitled to protection under the Act.

This aspect is the *unity* of traditional Native cultures in which the religious beliefs permeate all parts of individual and community life. Whether it was the now historical buffalo hunt, planting and harvesting of food, relations with neighboring tribes, or even how one was to be named, sacred ceremonies and beliefs came into play. “Ceremonies, great and small, were the very fabric of life. They furnished the chief opportunities for learning, for feasting, for lovemaking. They gave courage to a lone hunter. They fused a group together in heartening ritual. They combined the functions not only of a church but of a school, clinic, theater, and law court.”

Where most Western cultures have divided life into distinctly separate political, social and religious aspects of existence, Indian traditional life is still unified in many ways. In 1961, the Fund For the Republic conducted a private study, which summarized this social unity:

*. . . In their society and in their religion, Indians believe they have values worth preserving. These are sometimes stated in*

Continued on page three

## NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund is a national law firm specializing in the protection of Indian rights and resources. NARF's priorities identified by the Steering Committee are the preservation of tribal existence; the protection of Indian resources; the promotion of human rights; the development of a body of law relating to Indian people; the accountability of the dominant society to American Indians and the advancement of self-determination.

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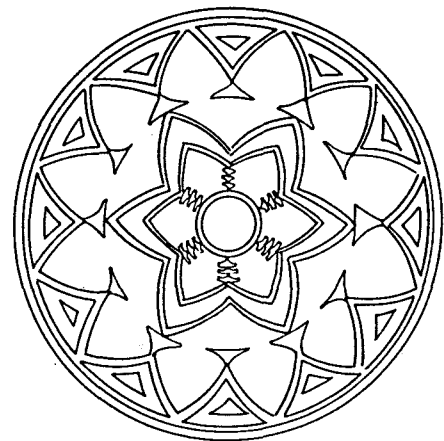
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*mystical terms and, if related to the Supreme Being, are sometimes kept secret. Nonetheless they exist. Two examples out of many involve their idea of unity and their reverence for Mother Earth. Unity is evidenced by the individual's voluntarily working with the community of which he is a part. He gives his strength and help to perpetuate the traditional culture. Cohesion is also furthered in many tribes by a veneration for elders and reliance on their wisdom. Status as well as personal security is often gained by service.*

The following is a brief examination of some of the historical and current issues to illustrate both the nature of Indian religious beliefs and the course Federal suppression has taken.

### The Taking and Restoration of Blue Lake

To the Taos Pueblo Indians of northern New Mexico, the Blue Lake area is holy land. As the principal source of the Rio Pueblo de Taos, Blue Lake is actually and symbolically the source of all life; it is the retreat of souls after death; and the home of the ancestors who gave life to the Taos people of today. The August ceremonies at Blue Lake serve to bind the youths of the Pueblo to the community as it exists and has existed for centuries. Blue Lake, therefore, symbolizes unity and continuity of the Pueblo people. Because the religious significance of Blue Lake extends to the entire watershed, the whole area is considered sacred.

The Taos Indians have resided in their present location at least since 1300 A.D., and probably long before. Although specific land areas were set out for the pueblos during the Spanish colonization period, it appears that the Taos traditional life style was not seriously interfered with. In 1848, the United States assumed control of the area under the Treaty of Guadalupe Hidalgo, and existing Spanish land laws were recognized. But all other land was considered public domain as far as the United States was concerned, and the Blue Lake area was within the public domain. But until the turn of this century, the Taos did not become overly alarmed by the land status of the Blue Lake area or the ever-growing presence of the White man, since the Blue Lake area was high in the Sangre de Cristo Mountains, secluded from most outsiders.

But in 1906, President Theodore Roosevelt proclaimed Blue Lake and the surrounding area as part of what is now the Carson National Forest. It is doubtful if the Taos fully understood the implications of this action, but they came to realize that Blue Lake was no longer exclusively theirs. Thereafter, they could not go into the area for religious ceremonies undisturbed from outside interference as before. Realizing this, they began what was to be a 64-year struggle to regain the sacred area for their exclusive use. During this time, various compromises were offered by the Federal government, but were either rejected or failed to work out as promised.

When the Indian Claims Commission was established in 1946, the Taos Pueblo reluctantly filed their land claim to the Blue Lake area, but made it clear that they wanted the land returned and not monetary compensation. But since the ICC Act did not provide for return of lands, the Taos petitioned Congress, recognizing that only by special congressional act could they regain the Blue Lake area. Repeatedly, they had bills introduced providing for outright return of the land, and repeatedly they died in Congress. But by the 1960's they began to plead their cause on the basis of religious rights. Congress' main concern was that granting the Taos claim would establish an undesirable precedent for other Indian land claims calling for return of areas for religious purposes—a situation they thought they had forever precluded with the establishment of the Indian Claims Commission, which was authorized to award only monetary compensation if an Indian land claim was upheld.

Therefore, what the Taos Pueblo had to do was convince Congress of the uniqueness of their claim; that even within the area of Native religious practices, their situation and claim was such that no other tribe could reasonably assert an identical consideration. Testifying on behalf of the Taos, Stewart Udall, then Secretary of the Interior, characterized the Taos claim as unique in that it was based solely on religious grounds. But Congress was persistent in requiring the Taos to prove that the nature of their religious use of the land and of the meaning of the area for them was so critical that nothing else, neither money nor sharing of the area with others nor having special areas or days set aside for them, would be adequate. Finally, the testimony of anthropologist John Bodine and others apparently convinced wavering congressmen of just this *uniqueness*. (Besides Bodine, the Taos had received support from neighboring Whites, especially long-time resident artists around the town of Taos.) Bodine emphasized that control of the entire area, not just Blue Lake, was essential to the practice of the Taos religion for Blue Lake was but one of many "shrines" in the area and all were necessary; that the total ecology must be undisturbed because of the use made of local plants and other natural features; and that the very presence of non-Indians constituted defilement of the ceremonies. Perhaps more importantly, he pointed out that the delicate interrelationship of the social institutions which make up the Taos culture was threatened. That danger to one—religion—would eventually lead to the weakening of others, such as the political system and family life; that the disappearance of the Taos religion could easily lead to the dissolution of the Taos culture; and that no other tribe's entire religion depended to the same degree on shrines in such a restricted area.

In 1970, Congress finally passed the bill, and on December 15, President Nixon signed it into law, returning over 48,000 acres to the Pueblo. This marked the first time in the history of the United States that an Indian claim for land, based on the practice of a Native traditional religion, ended successfully in return of the land to the Indian tribe.

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*Henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiian.*

American Indian Religious Freedom Act  
of 1978

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### The Ghost Dance Movement

The Ghost Dance movement is often characterized as the last, desperate attempt of the Indians to oppose the white seizure of the land. It began around 1888, when a Paiute Indian from Nevada, known as Wovoka, appeared and told how he had experienced a prophetic vision. That a better world would be coming for the Indians; that this new world would come in a whirlwind out of the West and would crush out everything in this land which was old and dying; that the white man would disappear; that Indians long dead would return; and that the nearly extinct buffalo would come back as numerous as before.

*"There was much that was beautiful about this movement. Wovoka counseled Indians to remain nonviolent, to be faithful to family life, and pray and hope, and above all, to dance. They were to dance that ecstatic circular dance about the center of life, singing those songs of supplication that now remain to posterity in some contemporary peyote rites. Even more impressive was the exhortation for all Indians to come together, to cease fighting among themselves—a message of truly prophetic ethical value, for Indian tribes too had a long record of strife and*

## American Indian Religious Freedom Act

Senate Joint Resolution 102  
Public Law No. 95-341

August 11, 1978

Whereas the freedom of religion for all people is an inherent right fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution; and whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions are an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridement of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge of the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned; Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled:* That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

SEC. 2. The President shall direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

### LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1308 accompanying H.J. Res. 738 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-709 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 3, considered and passed Senate.

July 18, H.J. Res. 738 considered and passed House; proceedings vacated and S.J. Res. 102, amended, passed in lieu.

July 27, Senate concurred in House amendment.

warfare over hunting grounds and other, less significant causes. Maybe here, for the first time in active memory, Indians would truly be one people.

"The Ghost Dance spread like a grass fire eastward, southward, and northward; more elaborate myths sprang up along with it, such as the idea that the Ghost Dance shirt would ward off the white man's bullets and that a great flood would engulf the white men as it engulfed all creation in the dawn celebrated by Indian mythology."

(C. Starkloff, The People of the Center.)

But the Ghost Dance was not looked upon as the nonviolent, religious movement that it was. It was considered a threat to be crushed before the tribes could really unite. And so the vision of Wovoka came to a " . . . crushing halt under the Hotchkiss guns of a panicky and no doubt vengeance-bound army detachment at Wounded Knee Creek in South Dakota, in late December of 1890" (Starkloff). At Wounded Knee, nearly 300 of the 350 men, women and children were killed by a well-armed force of 500 soldiers. Lakota Medicine Man, Black Elk, who witnessed the massacre related many years later:

"And so it was all over. I did not know then how much was ended. When I look back now from this high hill of my old age, I can still see the butchered women and children lying heaped and scattered all along the crooked gulch as plain as when I saw them with eyes still young. And I can see that something else died there in the bloody mud, and was buried in the blizzard. A people's dream died there. It was a beautiful dream. And I, to whom so great a vision was given in my youth,—you see me now a pitiful old man who has done nothing, for the nation's hoop is broken and scattered. There is no center any longer, and the sacred tree is dead."

## Peyote and the Native American Church

Peyote has been used for religious purposes since pre-Columbian times. The current issue involving peyote concerns its use by members of the Native American Church in their religious ceremonies. It is considered and used as a "sacrament," and for this reason both Congress and the courts have treated this use as a *bona fide* religious practice entitled to protection.

Federal narcotic laws regarding the use of peyote provides for a special exemption for religious use by members of the Native American Church. The exempting language states that "the listing of peyote as a controlled substance . . . does not apply to the non-drug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law."

However, Indians, like other citizens, are subject to state law as well

"The right to free religious expression embodies a precious heritage of our history. In a mass society which presses at every point toward conformity, the protection of self-expression, however unique, of the individual and group becomes even more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old religion in using peyote one night at a meeting in a desert hogan."

California v. Woody (1964)

as Federal. Although nine states have adopted legislation similar to the Federal law, even where the state involved has an exemption for religious use by Indians, members of the Native American Church are still being arrested for possession and use of peyote. And unlike consideration given other religions, they are often under the burden of having to prove to state authorities their legitimate membership in the Native American Church. So despite some protective laws, discriminatory harassment against Native Americans still persists in this area.

### Religious Ceremonial Use of Feathers

The use of feathers has been a part of American Indian culture long before the European discovery of this country. Used for both decorative and ceremonial purposes, they are essential to many religious ceremonies still practiced today. But the continued availability of such feathers to Indians is threatened by laws restricting their procurement and use, and by the tenuous existence of many species of birds, caused—not by the Indians— but by powerlines, insecticides, and outright extermination.

It is difficult for non-Indians to understand and accept the fact that Indians do attach religious importance to the use of feathers in certain rites; indeed, they are essential if the rite is to have any religious meaning for the Indian. The religious needs of other, more orthodox faiths is readily accepted by most, but these same people reject as primitive the same needs of the Indians. The use of wine in the Catholic and Jewish faiths is not questioned as being used for bona fide religious purposes. In fact, during the prohibition era, a special exemption was created to allow for the procurement and use of wine for sacramental purposes. It is in this respect that Native Americans are asking for equal consideration of their own beliefs. For thousands of years, the natural wildlife of this country have lived with no danger of extinction that could be blamed on the Indians. Yet, ironically, it is the Indian who is often accused of being insensitive to wildlife conservation, when all he is asking is simply that provisions be made so that he can continue to practice certain rites of his religion.

### The Sun Dance

The sun dance is one of the oldest and most solemn ceremonies of the plains Indian culture. For some tribes, it was a relatively recent adoption; for others, its origin is unknown. The sun dance is one of the most misunderstood of all Indian religious rites. Many think of it as an initiation into manhood, or as a way of proving one's courage. It is neither. Rather, it is both a prayer and a sacrifice; and it is not something an Indian did voluntarily, but only after he had a vision or a dream of such a nature that he knew he was being called to participate in the dance. One account describes the sun dance very vividly:

*Staring open-eyed at the blazing sun, the blinding rays burning deep into your skull, filling it with unbearable brightness . . . blowing on an eagle-bone whistle clenched between your teeth until its shrill sound becomes the only sound in the world . . . dancing, dancing, dancing from morning to night without food or water until you are close to dropping in a dead faint . . . pulling, pulling away at the rawhide thong which is fastened to a skewer embedded deeply in your flesh, until your skin stretches and rips apart as you finally break free . . .*

*Many people do not understand why we do this. They call the sun dance barbarous, savage, a bloody superstition. The way I look at it, our body is the only thing which truly belongs to us. When we Indians give of our flesh, of our bodies, we are giving of the only thing which is ours alone. If we offer Wakan Tanka (God) a*

*horse, bags of tobacco, food for the poor, we'd be making him a present of something he already owns. Everything in nature has been created by the Great Spirit, is part of Him. It is only our flesh which is a real sacrifice—a real giving of ourselves. How can we give anything less?*

To the Whites, especially the missionaries, their first encounter with the sun dance was a mixture of bewilderment and horror. But their suppression of it, as they came to see its religious significance to the Indians, was quick and complete. For over half a century, they banned it whenever and wherever possible. In 1921, for instance, the Office of Indian Affairs issued a policy statement to its agents which stated:

*The Sun dance, and all other similar dances and so-called religious ceremonies are considered "Indian offenses" under existing regulations, and corrective penalties are provided. I regard such restrictions as applicable to any (religious) dance which involves . . . the reckless giving away of property . . . frequent or prolonged periods of celebration . . . in fact any disorderly or plainly excessive performance that promotes superstitious cruelty, licentiousness, idleness, danger to health, and shiftless indifference to family welfare.*

The idea of personal, physical sacrifice is not restricted to the Native Americans. Many accounts of the conversion of Indians to Christianity relate how surprised many missionaries were at the ease with which many Indians adopted the new faith. But it was the striking similarities to their own beliefs which enabled Indians to identify with Christianity. To the tribes which practiced the sun dance, the account of Christ's crucifixion as a sacrifice to God, was seen as very similar to their own idea behind the sun dance. So when the sun dance ceremony was denounced instead of accepted, even more confusion set in—as far as the Indians were concerned—regarding Christianity. John Lame Deer, Dakota medicine man, has said: "The difference between the White man and us is this: You believe in the redeeming powers of suffering, if this suffering was done by somebody else, far away, two thousand years ago. We believe that it is up to every one of us to help each other, even through the pain of our bodies."

So the sun dance still continues. No longer banned, many of the younger generation see it as the one essential ceremony that must be preserved if their religion is to have any of its real meaning.

### The Native Hawaiians

In testifying before the Senate Committee in favor of the Act, Senator Inouye of Hawaii related how the coming of the missionaries to Hawaii resulted in the conversion of a majority of the Native Hawaiians to Christianity; how the old gods were forgotten; and their worship chastised and forbidden by the new religious leaders. Yet, despite the demise of much of the Hawaiian culture, including its religion, certain traditions and beliefs remain. To those individuals who still revere these traditions and beliefs, the right to freely express and practice them is of utmost importance to their identity as Native Hawaiians and to their spiritual well-being.

Essential to Hawaiian religious expression is the right of free access to sacred sites; to the many ancient ko'as (altars) and heiaus (temples) whose remains dot the Islands. To these places, the ancient Hawaiians came to worship. Today, many Native Hawaiians still feel called by spiritual tradition to worship at these ancient sites. But too often they are prevented from doing so. The continued use of Kahoolawe Island for bombardment and ship-to-shore target training by the Navy is one example. Protest has come from a number of Native Hawaiians who

believe the Navy's actions to be an abhorrent abrogation of the traditional religious principle of Aloha Anina (love and respect for the land). Because of the Navy's use of the area, public access to many of Kahoolawe's religious sites is prevented. The Navy is beginning to cooperate in efforts to assure that neither national defense interests nor religious freedom rights will be sacrificed. Target areas have been moved away from religious sites, sites are being catalogued, and restoration is beginning on some. Steps are also being taken to provide for safe public access to the religious sites.

Although the problem of Kahoolawe is far from resolved, progress is encouraging, especially when compared with conditions on other Islands where severe restrictions to free exercise of traditional religious practices continue to exist. On almost every Island, Native Hawaiians are prevented from taking pilgrimages to sacred sites because they are on restricted lands—lands owned by the military, the state or by private companies and individuals. Many religious sites within Volcano National Park are off limits to the public, and Park officials have prevented Natives from taking herbs and volcanic sulphur used for medicinal purposes from the Park. Of particular concern is that many of the sites in restricted areas are being either destroyed by land development or are deteriorating through neglect.

Senator Inouye stated that many Native Hawaiians, young and old, "feel the mystery or sacredness that is there, feel a connection with the past and undergo perhaps a transcendental experience. This too is a form of worship, as spiritual for some as the recitation of the mass. This is an experience that the Native Hawaiian today believes he must share to secure his well-being. It is an experience that, as Americans committed to the belief that each individual may choose his form of spiritual fulfillment, we must allow him."

## PART II: The Failure of the First Amendment

*We support this measure because we want the right to worship and the right to an Indian way of life without any suppression, without any inhibition, and with the full support and protection of the U.S. Government. We support this measure because it will finally begin the process of sensitizing the Government, its agents, and its employees to the unique situations of the American Indian, the Alaskan Natives and the Native Hawaiians. It is these people whose way of life has consistently been infringed upon and violated by the laws of this country and the way in which they were enforced."*

**Barney Old Coyote, Crow**

The First Amendment of the U.S. Constitution clearly encompasses the religious freedom rights of Native Americans. Nevertheless, Congress saw fit to pass this remedial law pertaining expressly to the rights of a minority despite the fact that such rights are already protected. The legislative history of Senate Joint Resolution 102 justifies the necessity for the Act as being the only way to make clear to Federal Government agencies and others that Native religious practices are equally entitled to respect and proper protection by the Government in the enactment of laws, policies, and practices.

Some may maintain that from its inception, the First Amendment was meant to, and did in fact, apply to Native religious beliefs and was not intended to be restricted to Judeo-Christian religions. It may be impossible to document whether the "Founding Fathers" did or did not also have Native beliefs in mind in their concern for establishing religious freedom in this country. But despite what may have been the

intention in their minds, the history of this country is consistent in the area of Native religions.

It is a bleak history of disrespect, ignorance, suppression and attempted eradication of Native beliefs and practices. Such treatment by the White society could not have been so much the result of a conviction of the righteousness of their own faith—for they respected or at least tolerated other faiths in both the Old and New World. It must surely have rested in the belief that the "barbarism" and "savagery" of the Natives rendered their religious beliefs unworthy of any respect or consideration. The White people have given tolerant respect to other religions, cults, and creeds existing in this country and the world over. But the religious beliefs of the Native American have been subjected to suppression and persecution from the very first and continues to this day.

It is, therefore, an attitude that needs changing. An attitude that will turn suspicion and suppression of Native religious practices into respect and protection. It was essentially this attitude that made the First Amendment a meaningless promise to Native Americans during much of this country's history. So whether *in theory* the First Amendment legally applied to Native Americans, *in fact* it did not in that it afforded them no protection.

Because of this attitude toward Native religions, it was necessary for Congress to pass remedial legislation in the form of the "American Indian Religious Freedom Act of 1978." The primary congressional sponsor of the Act, Senator Abourezk stated:

*Representatives of traditional Indian religious societies have sought to protect their rights, to have access to sacred religious sites, to make use of a variety of natural substances and wildlife in the practice of their religion and to secure privacy for sacred ceremonials. Infringement of these rights have consistently occurred due to enforcement of conservation laws which simply failed to take into account their impact on such Indian religious and cultural practices. While our resolution does not attempt to specifically amend existing legislation, it does call for examination of relevant Federal laws and procedures for the purpose of making appropriate changes in their administration. This fundamental question of Federal policy represents an issue all Americans can readily understand and support. I hope that expeditious action on the resolution will lead to securing the exercise of those rights and establishing permanent awareness on the part of all federal officials.*

According to Kurt Blue Dog, NARF Attorney and Co-Director of NARF's American Indian Religious Project:

*The purpose of P.L. 95-341 is to insure to the Native American the right to believe, express, and practice his religion in his traditional way by clearly establishing a comprehensive and consistent Federal policy directed toward protecting and preserving Native American religious freedom. Historically, the lack of knowledge, unawareness, insensitivity, and neglect have often been the keynotes of the Federal government's interaction with traditional Indian culture and religion. Among other things, it is the insensitive enforcement procedures and administrative policy directives which have interfered with the culture and religious practices of Native Americans.*

So, there are basically two points of view as to why Native religious rights have historically been infringed upon. One view stating that the basic cause was an ethnocentric attitude which allowed, or rather fostered, suppression. And the official view holding that though Native religious rights may have been suppressed, that existing problems are a result of mere inadvertence.

Whatever the view, the new Act is intended to solve these conflicts between Federal laws and Native religious rights. To fulfill the mandates of P.L. 95-341, President Carter has directed the various Federal agencies to reevaluate their policies and procedures to identify any changes needed to correct this situation. Therefore, Federal agencies responsible for administering laws which presently interfere with Native religions must examine them to see if they can be made to accommodate them to the religious rights being sought. They must also report on what changes in the law or regulations may be necessary for such an accommodation.

Additionally, the President has appointed a Federal task force in the Executive Branch to investigate these problems and to recommend solutions, through consultations with traditional Indian religious leaders. Following a one-year review, the task force is to report back to the President, who will then submit a final report to Congress. In conjunction with the Federal agency efforts, the Native American Rights Fund and the American Indian Law Center will research and formulate the necessary changes in an effort to modify existing Federal laws and practices which unnecessarily infringe upon Native American religious rights.

It is important to note that the Religious Freedom Act has limits as to what protection can be secured under it. Native religious rights are infringed upon not only by the Federal government, but also by state and local governments, private companies and organizations, and individuals. This Act, however, applies *only* to Federal or Federally-related activities. However, although there must be a Federal connection, it does not have to be direct Federal action itself for the Act to apply. Federal funds which support organizations or colleges whose activities are violating a Native group's religious rights may be sufficient Federal connection to invoke the Act.

## PART III: The American Indian Religious Freedom Project

*The Act presents a number of challenges in its mandate that American Indians and other Native American religions be protected and preserved. It is a great opportunity, however, for Indians and Natives to further secure their existence in America. Given the tenuous nature of this existence up to this point, Indians and Natives cannot afford to let this opportunity pass to secure their right to religious freedom. It is submitted that this Project can be of great assistance in achieving this goal.*

### Excerpt from NARF's Proposal

As stated above, the Act does more than proclaim that it shall henceforth be the policy of the Federal government to protect the religious freedom of Native Americans; it also calls for specific action by the Executive Department.

The provision in the Act calling for consultation with Native traditional religious leaders was absolutely essential in order for the Act to bring about the desired changes in Federal law and policy.

In order to facilitate Native American consultation and achieve the desired beneficial changes for Native Americans called for by the Act, NARF submitted a proposal in June of 1978, in conjunction with the American Indian Law Center of the University of New Mexico and others involved with the legislation, proposing that NARF begin an "Implementation Project" to begin the following month. The project was subsequently funded with joint funding from the Bureau of Indian Affairs (BIA), the Administration for Native Americans (ANA), and the Community Services Administration (CSA), with ANA being the granting agency. The project is to operate for approximately one year,

the same time frame set by the Act for the Administration to prepare its report to Congress on this matter.

In cooperation with the Federal task force effort, NARF is conducting a parallel review of Federal agencies' policies and procedures, making certain that the Federal task force does not overlook any area of concern to the Native American. There will, therefore, be two separate reports on Native religious freedom when the project is completed. NARF anticipates that the work of its Project will be completed by July 30, 1979.

### Project Staff

John Echohawk, Executive Director of the Native American Rights Fund, has assigned two staff attorneys to act as Co-Directors for the Project—Kurt Blue Dog, a Sisseton-Wahpeton Sioux from South Dakota, and Walter Echo-Hawk, a Pawnee from Oklahoma. Both attorneys have had extensive experience in dealing with Indian religious rights in Federal and state prison matters. Also working on the Project as a consultant is Henry Old Coyote (Crow), formerly of the Senate Select Committee on Indian Affairs; and Burgess Primeaux (Osage-Ponca) and George Tah-Bone (Kiowa) as paralegals. Assisting as a part-time consultant is Dale Old Horn (Crow), Director of Indian Studies at Eastern Montana College.

The American Indian Law Center in Albuquerque, under the direction of Philip "Sam" Deloria, has been engaged to do a substantial portion of the legal research required. Working with Mr. Deloria is Vicky Santana, Parker Sando and Jeff Taylor. The Center's work is vital to the Project, and the experience of its staff in dealing with the Federal system through its past and existing projects is especially useful to this Project. The Center's work will concentrate on Federal statutes, regulations, and policies which impact adversely on the religious rights of Native Americans.

### Native American Religion Advisory Board

For the Project to be successful, it is essential that the *broadest possible* input be obtained from American Indian and other Native American groups and individuals affected by Federal practices and regulations. To achieve this input, a 15-member "Native American Religion Advisory Board" has been formed as an integral part of the Project. The Project is now able to draw—on a continuing basis—from the Advisory Board's knowledge and experience with the issues, as well as make additional contacts from referrals made by Board members. The Advisory Board is representative, but is not meant to be exclusive or exhaustive (see page 13 for complete Board membership). All Board meetings in connection with the Project are open to any Native American who has an interest and a contribution to make.<sup>1</sup>

### Project Design

Research into any area of American Indian life, whether for contemporary or historical insight, is difficult at best due to the conditions and locations of the primary resource materials. Though thousands of historical volumes exist, the original records are scattered throughout the country in Federal, state and private archives, and with few guides to indicate what and where some written information may exist.

The study of Native American religion has its additional unique problems. First, there is not one "Native American Religion," but as many as there are tribes and even variations within a tribe. Second, native religions are not "public" types of religions where the tenets and practices for each are reduced to a printed form as the Koran and Bible. And this leads to the third problem. Much needed information must be gathered from present-day practitioners, who are difficult to identify, to

<sup>1</sup>One more Board meeting remains as this issue goes to press.



*Indian Religious Freedom Project personnel, pictured here from left to right: Dale Old Horn (Crow), Project consultant; Henry Old Coyote (Crow), Project consultant; Parker Sando (Jemez Pueblo) and Vicky Santana (Blackfeet), staff attorneys for the American Indian Law Center, Albuquerque, New Mexico.*

locate, and obtain information from. But these problems are slowly being overcome—especially with the help of the Advisory Board.

The Project is divided into two major components. The first is consultation with American Indian, Hawaiian and Alaskan groups. This component is being conducted throughout the Project period, primarily by the paralegal and the consultant staff under the supervision of the Project Co-Directors. The base of traditional Indian and Native groups participating in the consultation process is gradually expanding; additional specific data on the incidence of problems is being gathered; and the Advisory Board is being consulted in the development and implementation of specific remedial proposals.

The second Project component involves organization and classification of data; legal research; drafting proposals for remedial action; liaison with the Federal task force; and implementation of specific remedies in conjunction with the Federal task force. This component is being conducted primarily by NARF and the American Indian Law Center's legal staff.

The Project is being conducted in three phases:

*Phase I (three months).* Gathering additional information on the problems and expanding the base of tribes and individuals involved in the consultation process; organization of data on the problem into manageable form; analysis of Federal statutes, regulations, guidelines.

*Phase II (three months).* Drafting of remedial proposals and consulting with the Advisory Board on remedial action; liaison with Federal inter-agency task force; assuring the adequacy of their information, putting them in contact with Indians, securing their involvement in and support for remedial proposals.

*Phase III (six months).* Further consultation with the Advisory Board and assistance to Indian and Native groups in establishment of implementation mechanisms; working with Federal task force and Federal agencies on implementation of remedial actions including regulatory amendments, inclusion of statutory amendments as needed as part of legislative program of agency and executive branch.

There are several special problems which have to be dealt with as the Project evolves, but hopefully, workable solutions can be found. Some of these special problems are:

*Definitions.* It is important that Federal officials and the general public understand the basic religious considerations surrounding the substances and practices in question so that the necessary support for remedial actions is forthcoming. It is difficult to communicate these considerations without forcing Native religions into a conceptual framework that the English language has developed to express its *own* religious concepts, but which is inadequate to express non-Western religious thought and practice. For example, the English language varies between derisive terms—witch doctor, medicine man—and pseudo-scientific terms—shaman, animism—to express Indian religious concepts.

*Confidentiality.* Generally, Native people have been reluctant to reveal the details of religious beliefs and practices, partly because of the inherent sanctity of these beliefs and partly to avoid the exploitation of the religion for commercial purposes. It is ironic that at this stage of the process the burden is being placed upon the Indian people to justify their "exemption" from Federal law and regulation, and that in order to do so, they may have to reveal details of religious beliefs and practices.

*Bureaucratization.* The basic problem here is to find a workable basis for recognition of Native religious freedom, which is not open to abuse by non-Indians and Indians who might misuse their rights for illicit purposes. Obviously, the goal is to have the least possible discretion placed on Federal officials to determine "authenticity" of Indian religious practices. By removing this discretion from the Federal officials, the burden of distinguishing the "authentic" from the "bogus" will fall on the Native people, which raises the unpleasant but perhaps unavoidable prospect of bureaucratic procedures—i.e., issuing of identity cards, and the like.

### **Religious Infringement Issues**

Most of the incidents of religious infringement identified by the Advisory Board for consideration by the Project staff fall into one or more of the following areas.



**Preservation of and Access to Sacred Areas.** Like religions everywhere, many Native groups consider certain physical locations such as cemeteries, ceremonial sites, mountains and other areas to be sacred. But oftentimes, they are denied access to such sites or allowed only restricted use. In some instances, the areas are even being destroyed by excavation, flooding or mining. The issue here is not necessarily ownership of the areas in questions, but the right to have the areas protected from desecration and to have access to them. Many of these areas are on Federal land controlled by such Federal agencies as the Forest Service, Park Service, Bureau of Land Management and other Federal agencies. The American people are capable of understanding and respecting holy areas such as Mecca, Jerusalem and St. Peters, but apparently not yet the holy sites of the Natives.

**The Right to Religious Use of Peyote.** Although Federal drug laws and several Western states permit use of peyote for *bona fide* religious purposes, members of the Native American Church are still being arrested for possession and use of peyote. Issues that are being researched include the right to grow and harvest peyote; the right to transport peyote free from arrest; and the right to *bona fide* religious use in every state where the Native American Church exists.

**The Right to Recover Religious Objects.** For many tribes, the free exercise of their religion has been further complicated by the fact that many religious artifacts have been lost to museums, private collectors, or foreign countries. Native religious leaders complain that they are unable to perform religious ceremonies and rites without the artifacts. The NARF implementation staff is consulting with affected tribes to determine what actions can be taken to recover their religious objects. It is hoped that these museums will cooperate with the tribes.

NARF is currently negotiating with the Denver Art Museum in an attempt to recover a Zuni tribal war god sculpture. War god sculptures are placed by Zuni Bow Priests in remote open shrines every year to protect the New Mexico Pueblo. Tribal leaders have informed the museum that the statue is a sacred religious object; that it is communal property and, thus, could not have been acquired legally by the museum; and have asked for its immediate return. The Denver Art Museum has about 15,000 Indian Artifacts.

**The Right to Cross Borders Freely for Religious Purposes.** Many tribes bordering Canada and Mexico have been split by international boundaries, and historically been involved in border disputes with the Immigration and Customs Departments. Natives cross to attend ceremonies and visit ancient tribal sites. Medicine bundles and other religious materials prepared and sealed by medicine men and worn for health, protection, and purity reasons have sometimes been searched and confiscated by Customs officials. This renders them useless and unclean to their owners according to their religious beliefs. It is hoped that special exemptions can be made to protect religious materials.

**The Rights of Incarcerated Indians.** The religious rights of Indians confined in prisons and reformatories are constantly being infringed. They are denied access to their spiritual leaders; refused religious items needed for ceremonies; and prevented from wearing their hair in traditional fashion. Although some progress has been made recently, especially through NARF's Prison Project which dealt mainly with religious freedom rights, much remains to be done. Despite statements that religious involvement is one of the most successful rehabilitative forces, prison officials continue to deny to Indian inmates their First Amendment rights.

**Right to Religious Privacy.** This right refers not only to preserving the sanctity of ceremonies, but also to the right to freedom from illegal search and seizures of religious items. When the Taos Pueblo Indians were attempting to recover the sacred Blue Lake area, they found it difficult to explain to Congress the religious significance of the area to them without revealing details of ceremonies; to them such public revelations would have desecrated the ceremonies themselves. This



*Milton M. Marks, Yurok, a member of NARF's Religious Freedom Advisory Board, is presently serving his second term as Chairman of the California Native American Heritage Commission. In 1970, Marks founded the Northwest Indian Cemetery Protective Association, Inc., in Eureka and has served as its Chairman for the past eight years.*

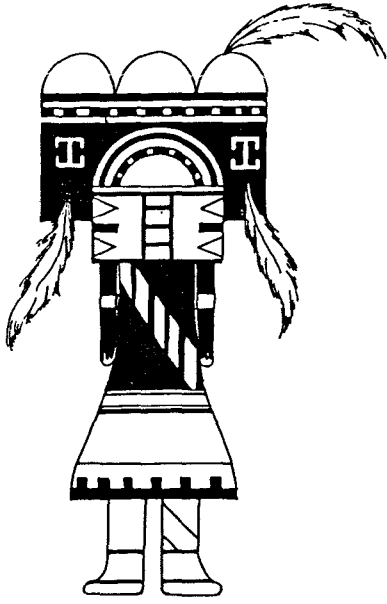
right to privacy also covers the right to travel around the country and across borders without having religious artifacts searched and confiscated. Ministers of Western religions are properly respected but not the Indian medicine man.

**The Rights of Indian Students.** Probably in no other area have the religious rights of Indians been violated more than in Federal, public and denominational schools. Historically, it was in the schools, under the guise of "education," that the Indian was stripped of his culture, language and religion. There are still instances today where Indian students' rights are violated. For example, although Christian holy days are duly honored on the school holiday calendar, Indian students are not permitted days off for their religious ceremonial days. They are also prevented by school dress codes from wearing their hair in traditional fashion, which for them has religious meaning. And some Native parents believe that compulsory attendance for Indian youth infringes on their religious rights to raise their children in a manner that would ensure cultural identity and religious preservation.

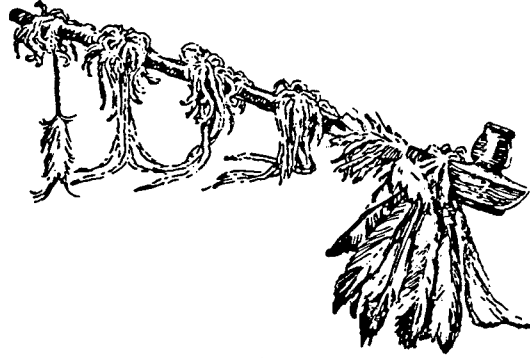
**The Right to Traditional Hair Styles.** In any confined environment where the Indian may find himself—schools, prisons, reformatories, military service—he is seldom allowed to wear his hair in Native fashion. It is difficult for the non-Indian to see this as a religious issue, and this is principally because he does not understand the unity of culture and religion for most Natives. The traditional Indian has not yet divided his personal life into separate areas. For him, religion, art, language, and family are all united.

There are other issues and areas that are being investigated by the Project staff and will be included in NARF's report to Congress.

Continued on page twelve



*We have been told by the white men, or at least by those who are Christian, that God sent to men His son, who would restore order and peace upon the earth; and we have been told that Jesus the Christ was crucified, but that he shall come again at the Last Judgment, the end of this world or cycle. This I understand and know that it is true, but the white men should know that for the red people too, it was the will of Wakan-Tanka, the Great Spirit, that an animal turn itself into a two-legged person in order to bring the most holy pipe to His people; and we too were taught that this White Buffalo Cow Woman who brought our sacred pipe will appear again at the end of this "world," a coming which we Indians know is now not very far off.*

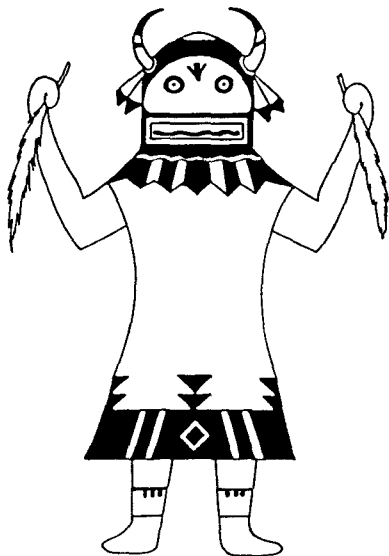


*Most people call it a "peace pipe," yet now there is no peace on earth or even between neighbors, and I have been told that it has been a long time since there has been peace in the world. There is much talk of peace among the Christians, yet this is just talk. Perhaps it may be, and this is my prayer that, though our sacred pipe, and through this book in which I shall explain what our pipe really is, peace may come to those peoples who can understand, an understanding which must be of the heart and not of the head alone. Then they will realize that we Indians know the One true God, and that we pray to Him continually.*

Black Elk, The Sacred Pipe

Our departed ones, happy-hearted maidens, children who lived here and there, will love these seasons, even-tide they greet shadows. And when the last Red Man and the memory of my tribe myth among the white swarm with the invisible when your children's children alone in the field, the streets, highway, or in the silence they will not be alone. In place dedicated to solitude, streets of your cities and you think them deserted, returning hosts that once this beautiful land. The white alone. Let him be just a people, for the dead are not I say? There is no death, or So

I believe there are no people of any color on this earth who do not believe in the Great Spirit—in rewards, and in punishments. We worship him but we worship him not as you do. We differ from you in appearance and manners as well as in our customs; and we differ from you in our religion; we have no large houses as you have to worship that Great Spirit in, if we had them today, we should want others tomorrow, for we have not like you, a fixed habitation—we have no settled home except our villages, where we remain but two moons in twelve. We like animals, rove through the country, whilst you whites reside between us and heaven, but still, my Great Father, we love the Great Spirit—we acknowledge his supreme power—our peace, our health, and our happiness depend upon him, and our lives belong to him—he made us and he can destroy us.  
Petalesharo, Pawnee (1822)



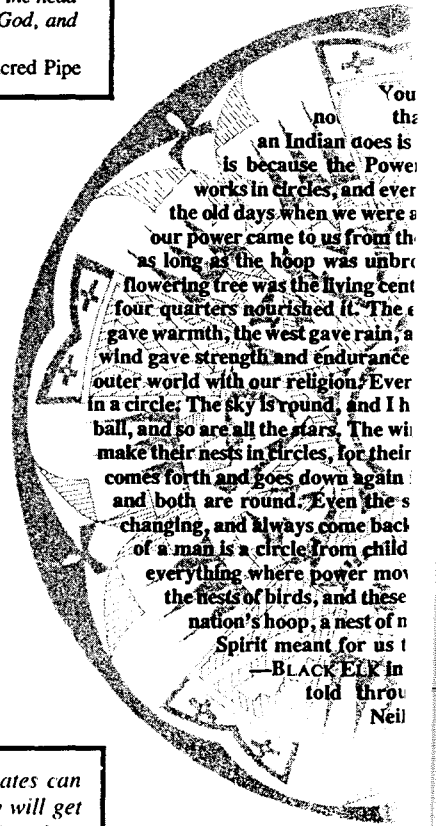
### BLUE LAKE

There it lies  
Nestled in the high mountains  
The Little Blue Eye of Faith  
The Deep Turquoise Lake of Life  
Blue Lake, my church  
Guarded by Mother Earth  
Surrounded by Life  
Rippled by the Wind  
It's life giving water flows  
Yet, within its depths, mysteries lie  
Those which man will never know

©James F. Cordova, Taos Pueblo

*Members of any other ethnic group within the United States can return to their native country, their place of origin and they will get acquainted with their traditional culture. But not the American Indians. The native land, the place of origin—for the Indian it is here. Once the culture is wiped out, that is the end. There is no place for us to go back to.*

Lloyd Old Coyote, Crow



You the no the  
an Indian does is  
is because the Power  
works in circles, and ever  
the old days when we were a  
our power came to us from th  
as long as the hoop was unbro  
flowering tree was the living cent  
four quarters nourished it. The  
gave warmth, the west gave rain, a  
wind gave strength and endurance  
outer world with our religion. Ever  
in a circle. The sky is round, and I h  
ball, and so are all the stars. The wi  
make their nests in circles, for their  
comes forth and goes down again  
and both are round. Even the s  
changing, and always come back  
of a man is a circle from child  
everything where power mov  
the nests of birds, and these  
nation's hoop, a nest of n  
Spirit meant for us t  
—BLACK ELK In  
told throu  
Neil

Brother! Continue to listen. You say that you are sent to instruct us how to worship the Great Spirit agreeably to his mind; and if we do not take hold of the religion which you white people teach we shall be unhappy hereafter. You say that you are right, and we are lost. How do you know this to be true? We understand that your religion is written in a book. If it was intended for us as well as for you, why has not the Great Spirit given it to us; and not only to us, but why did he not give to our forefathers the knowledge of that book, with the means of understanding it rightly? We only know what you tell us about it. How shall we know when to believe, being so often deceived by the white people?

Brother! You say there is but one way to worship and serve the Great Spirit. If there is but one religion, why do you white people differ so much about it? Why not all agree, as you can all read the book?

Brother! We do not understand these things. We are told that your religion was given to your forefathers and has been handed down, father to son. We also have a religion which was given to our forefathers, and has been handed down to us, their children. We worship that way. It teaches us to be thankful for all the favors we received, to love each other, and to be united. We never quarrel about religion.

Brother! The Great Spirit has made us all. But he has made a great difference between his white and red children. He has given us a different complexion and different customs. To you he has given the arts; to these he has not opened our eyes. We know these things to be true. Since he has made so great a difference between us in other things, why may not we conclude that he has given us a different religion, according to our understanding? The Great Spirit does right. He knows what is best for his children. We are satisfied.

Red Jacket, Seneca



*The other puzzle was as between Catholic, Methodist, Baptist, Episcopal, Mormon, Quaker, etc. To the Indian's mind there was nothing strange in having so many denominations, because there were many cults among his people, but he could see no sense in the fanatical notion that a person could belong to but one of them at a time and be required to denounce the other at sight. Why these sects should hate each other so, was quite beyond his understanding.*

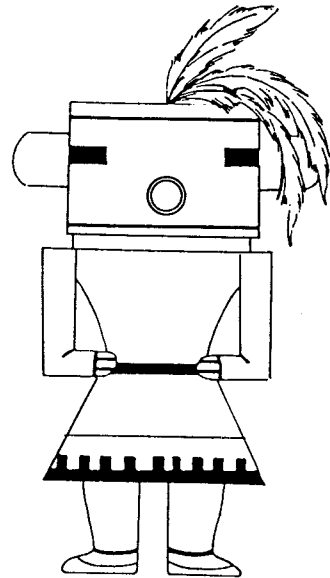
C. Wissler, Red Man Reservations

In the house of long life,  
there I wander.  
In the house of happiness,  
there I wander.  
Beauty before me,  
with it I wander.  
Beauty behind me,  
with it I wander.  
Beauty below me,  
with it I wander.  
Beauty above me,  
with it I wander.  
Beauty all around me,  
with it I wander.  
In old age traveling,  
with it I wander.  
On the beautiful trail I am,  
with it I wander.

Navajo

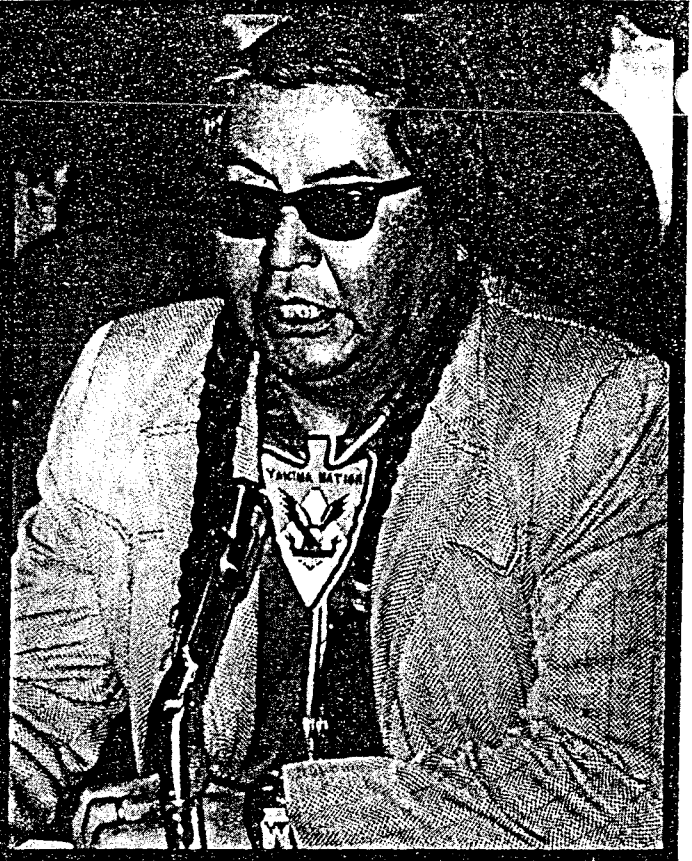
*To us the ashes of our ancestors are sacred and their resting place is hallowed ground. You wander far from the graves of your ancestors and seemingly without regret. Your religion was written upon tables of stone by the Iron finger of your God so that you could not forget. The Red Man could never comprehend nor remember it. Our religion is the traditions of our ancestors—the dreams of our old men, given them in the solemn hours of night by the Great Spirit, and the visions of our sachems, and is written in the hearts of our people.*

Seattle, Squamish Chief



*"In our Northwest Tribes, we do have some variations in religious practices; however, I cannot speak for all the Tribes, but within the Yakima Nation. We have the old ritual religion which should be respected and not interfered with. We do not allow photographs; we do not allow tape recordings or any publications; we only practice within the Tribe itself and this religion reflects back to the Creator."*

**Johnson Meninick, Vice-Chairman  
Yakima Nation and Religious Freedom  
Advisory Board Member**



## CONCLUSION

Three years ago, this country celebrated its 200th anniversary as an independent nation. Generally absent from this celebration were the Native Americans. Few tribes or other Native groups joined enthusiastically in the Bicentennial; and those who did participate probably were not celebrating what was for them only a reminder of over 200 years of subjugation. For even if all the treaties had been honored, all the promises kept, and all the government officials been wise and honest, the Native peoples would still have been dispirited over a celebration which commemorated—at least for them—a history which witnessed the taking of their lands, the annihilation of numerous tribes, and the loss of much of their traditional ways of life.

And yet after two centuries of oppressive policies aimed at their complete assimilation and even genocide, the Native Americans still remain. Most retain many aspects of their traditional ways and beliefs, and many tribes are even larger than before. This resurgence is not only in the form of population growth, but also cultural revival, protection of the remaining land and resources, and control over all aspects of life. It is nothing less than a determination for tribal survival.

And it is for this reason that the Native American Rights Fund became involved in the efforts aimed at the implementation of the "American Indian Religious Freedom Act." From its establishment in 1971, NARF's first priority has been the preservation and promotion of tribal existence. For Native Americans, existence is defined by more than mere physical survival. It encompasses the native language; family and group solidarity; social relationships; and, above all, traditional religious beliefs. Recognition and protection of Native religious beliefs and practices is, therefore, necessary for cultural survival. NARF's aim is to work toward full implementation of the word and the spirit of the Act.

When this country celebrated its Centennial in 1876, it was the height of the so-called "Indian Wars." Ironically, Little Big Horn was the beginning of the end for real freedom for most tribes who were still resisting the White advance across the country. It was the end of the free, nomadic life and the beginnings of the reservation system. The next century was to see a fluctuating Federal Indian policy from one of assimilation to tribal survival—and back again. The 1976 Bicentennial year saw the Federal government once again seemingly favoring cultural survival and self-determination for Native Americans. But how long this will continue to be the policy is uncertain in light of the history of previous Government reversals.

What will be the condition of the Native Americans in the year 2076 when the country celebrates its tricentennial? Will any Indian tribes, Native Alaskans or Native Hawaiians still exist; and if so, will they be culturally distinguishable from the rest of the people? This will be the real test of the democratic philosophy of this country—at least so far as the Native Americans are concerned.

For further information on the American Indian Religious Freedom Act, NARF's Project, and especially those who may have knowledge of existing or potential infringements of Native American religious rights by either Federal, state or local governments, please contact:

Kurt Blue Dog

Walter Echo-Hawk

Lorraine Edmo

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## The American Indian Religious Freedom Project of the NATIVE AMERICAN RIGHTS FUND

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**Consultants:** Dale Old Horn (Crow)  
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(Taos Pueblo)  
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Harding Big Bow  
(Kiowa)  
Mountain View, Oklahoma

Clifford Black  
(Alaskan Native)

Truman Daily  
(Otoe-Missouri)  
Red Rock, Oklahoma

Jack Jackson  
(Navajo)  
Windowrock, Arizona

Randy Kalahiki  
(Native Hawaiian)  
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Archie Fire Lane Deer  
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Robert E. Lewis  
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Zuni, New Mexico

Milton Marks  
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McKinleyville, California

Johnson Meninick  
(Yakima)  
Toppenish, Washington

Lloyd G. Old Coyote  
(Crow)  
Crow Agency, Montana

Stanley Red Bird  
(Rosebud Sioux)  
Rosebud, South Dakota

Edward Red Hat  
(Southern Cheyenne)  
Longdale, California

John "Sammy" Sapiel  
(Penobscot)  
Falmouth, Massachusetts

Howard E. Tommie  
(Seminole)  
Hollywood, Florida

**Alternates:**  
Thomas Big Lake  
(Crow)

William Fletcher  
(Southern Cheyenne)

Emerson Jackson  
(Navajo)

Joe Little Coyote  
(Crow)

Jane Penn  
(Wintu)

Marie Saltclah  
(Navajo)

Bernard Second  
(Mescalero Apache)

Pete Stump  
(Cree)

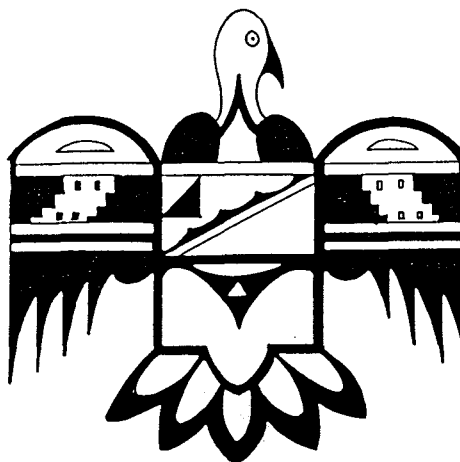
## NARF Receives Special Grant For Tribal Energy Project

In October, 1978 NARF was awarded a special grant from the Administration for Native Americans (ANA) and the Community Services Administration (CSA) to develop Tribal Energy and Social Development Offices on three Indian reservations. NARF is subcontracting part of its grant to the Council of Energy Resource Tribes (CERT) for the implementation of this Project. The overall objective of the Project is to assist tribes to begin regulating and controlling the development of energy resources on their reservations.

NARF has sub-contracted the socio-economic aspect of the Project to CERT. The three tribes selected to participate in the Project are all members of CERT, they are the Laguna Pueblo and Jicarilla Apache of New Mexico and the Ute Tribe of the Uintah and Ouray Reservation in Utah. CERT has a total membership of some 26 tribes.

The Project has been segregated into a number of major tasks. Both NARF and CERT staff will undertake a survey of socio-economic and legal impacts of energy development on Indian reservations. Both organizations will develop and administer training sessions on energy development and related legal and socio-economic issues for the three Tribal councils and the Tribal energy office staffs.

CERT will develop an information system to facilitate the dissemination, retrieval and utilization of relevant information on energy development and its implications. Both NARF and CERT will be responsible for providing on-going legal and technical assistance to the energy offices during the one-year Project period. It is anticipated that the energy office personnel for the local Tribal offices will be selected by the end of March, 1979 and training sessions will begin by mid-April. The offices should be in operation shortly thereafter. Ms. Thelma Stiffarm, a member of the Cree and Gros Ventre Tribes is serving as NARF's Energy Project Director. Ms. Stiffarm is former Deputy Director of the American Indian Law Center in Albuquerque, New Mexico. The present project is scheduled to last through September, 1979. Ms. Stiffarm reports that CERT is working with the three tribes to secure funding for the on-going operation of the local energy offices. More information on this Project will be provided in the next issue of this publication.



# Major Developments

## HUNTING AND FISHING RIGHTS

For many tribes, the right to hunt, to fish and to harvest certain plants on or near reservation land continues to be important to tribal subsistence and livelihood. Under treaties, which removed these tribes from their aboriginal hunting and fishing lands and placed them on reservations only a fraction of the size of their aboriginal areas, such rights were generally retained.

Today's issues regarding the hunting and fishing rights of Indians fall into two basic categories. First, what rights do tribes have to continue to hunt and fish on lands outside reservation boundaries but which are on aboriginal lands ceded under various treaties? Second, what rights do tribes have to control hunting and fishing within their reservations boundaries free from state control? Since its inception, NARF has considered these rights to be of paramount importance to tribal survival and identity. The following four cases illustrate both the diversity of tribal claims and the continued importance of hunting and fishing rights to Indian tribes.



### UTE MOUNTAIN TRIBE SECURES HUNTING RIGHTS WITH STATE OF COLORADO

Judge Hatfield Chilson of the United States District Court for the District of Colorado issued a Consent Decree on September 21, 1978, whereby members of the Ute Mountain Ute Tribe may hunt in the four million-acre Brunot Agreement Area in southwestern Colorado under the supervision of a Tribal Hunting Commission. Much of the area is national forest land in the San Juan Mountains. Signing of the Decree ended two years of negotiations among members of the State of Colorado Wildlife Commission; Bill James of the Attorney General's Office; the Business Committee of the Ute Mountain Ute Tribe; Scott Jacket, Tribal Chairman and Native American Rights Fund attorneys.

When the threat to the Ute Mountain Ute Tribe's hunting rights came to NARF's attention, NARF was prepared to litigate those rights in federal court for the Tribe. But in light of the expenditure of time and money involved in litigation, NARF first asked the State of Colorado whether an out of court settlement could be reached before initiating court action. State officials responded positively, given the fact that Indian law precedents would assure to the Tribe all of their rights secured by the Act of 1874 (18 Stat. 36) and the Tribe's right to regulate their members' hunting and fishing rights off the reservation.

Last March Tribal officials and officials of the State's Wildlife Commission were prepared to sign an agreement recognizing the Tribe's historic rights to the Brunot Cession Area when local citizens obtained an injunction in Montezuma County Court, temporarily preventing the historic agreement from being signed. On the same day, the Ute Mountain Tribe filed Civil Action No. 78-C-0220 in federal district court against wildlife officials of the State of Colorado seeking declaratory and injunctive relief against impairment of federal Indian hunting rights and privileges secured for the Utes in 1874. Both parties later agreed to enter into the consent decree which embodied the proposed agreement rather than continuing the litigation.

### Historical Background

The consent decree honors a century old agreement called the Brunot Cession of April 19, 1874 (18 Stat. 36) in which the United States assured the Ute Tribe that its members could hunt in the San Juan Mountains "so long as the game lasted and the Indians were at peace with the white man." In exchange, the Ute relinquished their title to San Juan Mountain area. The right to hunt in the San Juan Mountains has never been extinguished by the federal government. This right and the Tribe's reservation is all that remains of the Ute Indian's aboriginal domain which extended to large parts of Colorado, Utah and New Mexico.

The Ute Indians lost their historic lands through a series of treaties and agreements with the United States in the Nineteenth Century. One of the most significant treaties was that of March 2, 1868, in which the Utes managed to reserve their title only to the western third of the State of Colorado and relinquished all claim and title to their other lands.

Shortly after 1868, gold and silver was discovered in the San Juan range, which was located within the Ute's Reservation, bringing a barrage of miners to the area. The United States did nothing to honor the Treaty of 1868 and in fact began further negotiations with the Ute Indians for the cession of that area as well. The Ute Indians fiercely resisted any further cession, but after extended negotiations laced with threats of the possibility of enforced military removal, they signed the Brunot Cession Agreement in 1874.

### General Provisions of the Consent Decree

The Consent decree provides for the establishment of a Ute Mountain Ute Brunot Area Agreement Hunting Commission which will issue a "Ute Mountain Ute Tribal Hunting Code for the Brunot Agreement Area." This Code will be Tribal law and the Tribe will use it to regulate and control all hunting by authorized members which is specified in the decree when the hunting is done for subsistence, religious or ceremonial purposes.

All Tribal members wishing to hunt in the Brunot Agreement Area must first obtain Tribal regulations and hunting permits and a proper and complete identification at all times.

Monies received from fines and fees paid by Ute Mountain Ute Tribal hunters are to be used by the Brunot Agreement Area Wildlife Commission for the maintenance of the Commission.

Violators of Tribal hunting regulations are to be prosecuted in the Ute Mountain Ute Tribal Court and the penalties and fines are to be comparable to those provided for under State law. However, Tribal hunters in the Brunot Agreement Area who violate federal law will be prosecuted in federal court.

Tribal hunters will be subject to State law when they hunt in the Brunot Cession Area for other than subsistence, religious or ceremonial purposes and when they hunt on private property without the owner's consent.

In the agreement the State of Colorado reserves the right to exercise general police power in the Brunot Agreement Area and to impose special conservation restrictions on the Indian hunting privileges described in the agreement when necessary to preserve a species of game animal.

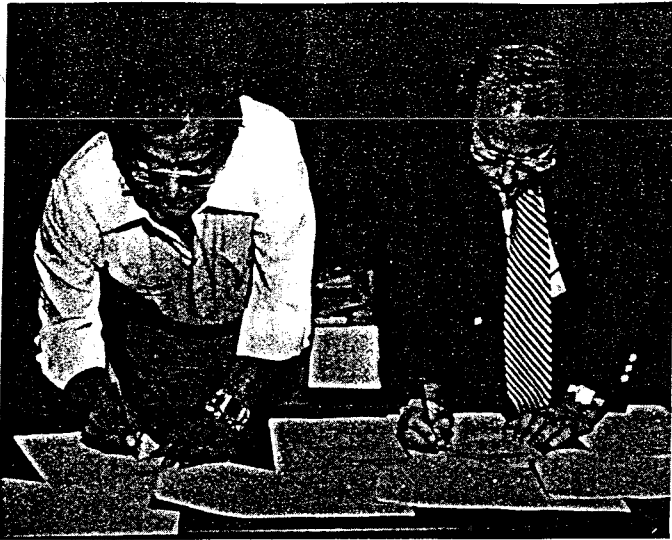
The agreement further provides for cooperation of the Tribe and the State in training Tribal game wardens and in development of a Cooperative Game Management Plan.

Year-round hunting for deer and elk by authorized tribal members without state licenses is to be permitted subject to a number of conditions.

Authorized Tribal hunters may hunt deer and elk for subsistence, religious or ceremonial purposes during the state seasons subject to Tribal regulations. Recognized Tribal hunters are not subject to state license requirements or to state bag limits, except when the State and the Tribe mutually agree on special conservation restrictions when necessary to preserve a species of game animal, or when necessary to implement a game management plan.

Commercial hunting will not be allowed. Hunters may not barter,

Native American Rights Fund



*Ute Mountain Ute Tribal Chairman Scott Jacket signs historic hunting agreement with Tom Farley, former Chairman, Colorado State Fish and Wildlife Commission.*

trade or sell wildlife which they have killed, but they may barter, trade or sell raw or tanned hides. There will be no hunting on private land without the owner's consent.

This agreement resolves a six-year dispute between the Ute Mountain Ute Tribe and the State of Colorado. It began in 1972 when a Tribal member, Clifford Whyte, was arrested the first day of the hunting season after killing a deer in Montezuma County in the San Juan National Forest. He had no valid Colorado hunting license and was charged with the unlicensed killing of a deer.

A hearing was held on his motion to dismiss on stipulated facts and on June 4, 1973 the case was dismissed by Judge George R. Armstrong of the County Court for the County of Montezuma on the grounds that the 1874 Brunot Agreement precludes any authority of the State of Colorado to subject Whyte to its hunting laws. The County Court's decision was appealed to the District Court for the County of Montezuma. It issued an order dated June 10, 1974 reversing the County Court's judgement and remanding the case for proceedings consistent with its opinion. As of September, 1976 there had been no trial and on October 4, 1976 the judge of the County Court for the County of Montezuma signed an order granting Whyte's motion to dismiss with prejudice on the grounds that Whyte's speedy trial rights had been violated. [*Ute Tribe of Indians v. State of Colorado, et al., Civil Action No. 78-C-0220.*]

## **GREAT LAKES TRIBES ASSERT ABORIGINAL FISHING RIGHTS**

NARF attorneys, in conjunction with local legal services attorneys, are representing the Bay Mills Indian Community in a suit brought by the United States on behalf of Bay Mills and the Sault Ste. Marie Tribe of Chippewa Indians against the State of Michigan. Both Tribes were parties to two treaties under which large parts of the present State of Michigan and adjoining areas of the Great Lakes were relinquished by the Tribes. The Great Lakes area encompassed the aboriginal fishing sites for these Tribes as well as many other neighboring tribes in the area. The Tribes depend to a great extent for their subsistence and livelihood on the fishing economy of the region.

The Tribes are contending that they retained the right to fish free of state regulation in the areas of Lake Superior and Lake Michigan which were ceded in the treaties. The Tribes and the Federal government are asking the Court to declare that the affected Tribes, as descendants to signatories of the 1836 treaty have reserved rights to fish in substantial portions of the Great Lakes.

The matter finally came to trial in Federal District Court in March, 1978 and lasted nearly a month. Trial concluded on December 18, 1978, following a recess due to the Judge's ill health. At trial, over 300 exhibits were introduced by all parties and extensive expert testimony was received from historians, ethnohistorians, archeologists and anthropologists. In addition, several Tribal witnesses testified regarding oral tradition in their communities as it pertained to the meaning of the treaties of 1836 and 1855. The trial transcript is contained in ten volumes and totals nearly 3,000 pages.

Closing argument and post-trial briefs were submitted February 2, 1979 and the District Court's decision is now pending. (*United States v. Michigan*, U.S. District Court, Western District of Michigan, Civ. No. M26-73).

## **FOURTH CIRCUIT UPHOLDS EASTERN CHEROKEE FISHING REGULATIONS**

On November 30, 1978, the United States Court of Appeals for the Fourth Circuit entered a decision upholding the lower court judgment. In the Fourth Circuit opinion, the Court unanimously held that North Carolina could not impose its fishing licenses and fishing regulations on tourists fishing in the Put and Take Program of the Eastern Band. The case is significant because it is the first Court of Appeals case which has held that the Tribe, together with the United States Department of the Interior, can pre-empt overlapping state fishing and game laws as they apply to non-Indians.

Currently, the State of North Carolina is preparing a petition for a writ of certiorari to the United States Supreme Court. [*Eastern Band of Cherokee Indians v. North Carolina, U.S. Court of Appeals for the Fourth Circuit, No. 76-2161.*]

## **QUECHAN TRIBE ASSERTS EXCLUSIVE HUNTING AND FISHING AUTHORITY WITHIN RESERVATION BOUNDARIES**

On January 11, 1979, oral argument was presented before the U.S. Court of Appeals for the Ninth Circuit in San Francisco. Argument was presented on the issues of whether California game laws applied to non-Indians within the Fort Yuma Reservation and if so whether state game wardens had the authority to enter the Reservation to enforce them. Earlier, the lower Federal District Court had ruled that although state game laws did apply to non-Indians within the Reservation, state game wardens had no authority to enter the Reservation without Tribal consent.

Both the Tribe and the State are appealing the District Court's decision. The State is arguing that Tribal sovereign immunity does not bar the State's action; the State game laws apply to non-Indians; and that State game wardens do have the authority to enter and enforce State game laws on non-Indians within the Reservation. Besides arguing that the Tribe's sovereign immunity bars the State's action against it and that State game laws do not apply within the Quechan Reservation, the Tribe is also asking that the case be transferred back to the District Court for consideration of whether the Tribe's comprehensive hunting and fishing code now pre-empts the application of overlapping state laws.

Subsequent to the oral argument, the Ninth Circuit Court issued an order postponing any decision until it renders a decision in a related case—*Confederated Tribes of the Colville Reservation v. State of Washington*. A decision in this case is expected in the coming months. [*California v. Quechan Tribe, U.S. Court of Appeals for the Ninth Circuit, No. 77-1500, 77-2172*]

## EASTERN LAND CLAIMS

There are presently about 20 Indian land claims which have been filed seeking return of more than 20 million acres of aboriginal land areas from Maine to Louisiana. All of the suits charge violations of the Indian Nonintercourse Act of 1790, which prohibited state and local governments and other non-Indians from acquiring Indian lands without congressional ratification and involvement. NARF is currently assisting in at least twelve of these land claims cases. What makes each complicated is the unique nature of each land transaction; that is, under what conditions they occurred and whether the Indians who sold the land were acting as members of an active tribe or as individuals. Summarized here are status reports on five of the NARF land claims cases. Future issues of *Announcements* will report on the progress of these very important land claims actions.

### NEGOTIATIONS CONTINUE IN MAINE LAND CLAIMS CASE

Negotiations aimed at settlement of the Maine Indian land claim continued through 1978 with at least two new settlement proposals being offered by members of the State's congressional delegation. The latest proposal was introduced in October, 1978 by former U.S. Senator William D. Hathaway (D—Maine) which would provide the Penobscot and Passamaquoddy Tribes with \$37 million. Of this sum, \$10 million would be used toward the purchase of 100,000 acres of land now held by 14 large landholders. The actual Tribal claim seeks 12.5 million acres, roughly two-thirds of the State of Maine and \$25 billion in trespass damages.

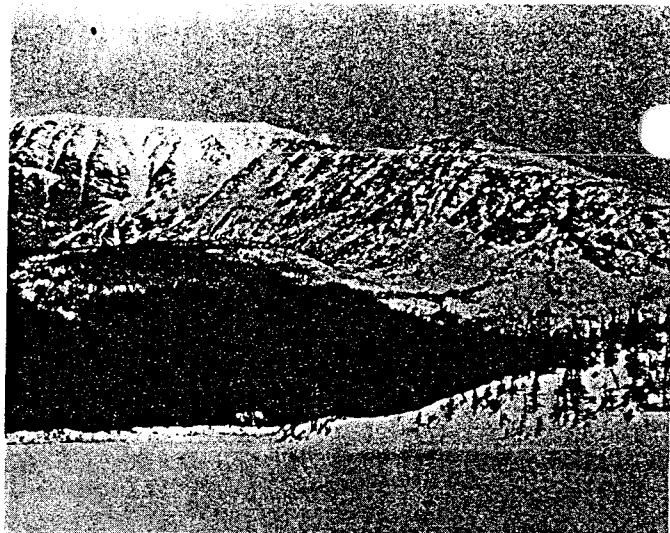
In a statement, which was not made public, the large landholders indicated their willingness to sell 200,000 acres of land to be held in trust for the benefit of the Tribes. This proposal was endorsed by President Jimmy Carter, Maine's Governor James Longley, Attorney General Joseph Brennan, who is now Governor, Congressman David Emery, Senator William Cohen and Senator Edmund Muskie. The leaders of the two Tribes termed the offer a "constructive proposal", but did not actually endorse it.

Since the Hathaway proposal was made public, the Tribes have been involved in negotiations with the large landholders concerning the price, location and method of acquisition of lands which those companies are willing to convey. The Tribes have also been involved in discussion with the Department of Interior concerning various benefits which will be available to the Tribes if the settlement is accomplished. Discussions with the State of Maine concerning jurisdictional matters had not begun as of the end of the year, although a preliminary meeting had been held with Governor-elect Brennan.

On March 9, 1979, U.S. District Court Judge Edward T. Gignoux announced a six-month extension of the time in the claims litigation so that negotiations could continue among the parties in the Maine case. This was the fifth such extension that Judge Gignoux has made since January, 1977.

Last June, the Maine congressional delegation also introduced legislation drafted by Congressman William Cohen, who is now Senator. This legislation provided for the outright extinguishment of the Passamaquoddy and Penobscot claims. In place of the claim, the Cohen legislation provided for an action in the U.S. Court of Claims in which recovery would be limited to the difference between the value of the land when taken and the amount paid, plus simple interest. The Tribes objected vigorously to this course of action and President Carter indicated that he did not support the measure. President Carter had earlier indicated in a public appearance in Bangor, Maine that he would veto legislation extinguishing the Tribal claims on terms other than those which had been negotiated by the Special Task Force which he had appointed in October, 1977, and the Tribal negotiating committee. Matters remained at a stalemate until October when former Senator Hathaway proposed a totally-Federally funded settlement.

Indian Township Passamaquoddy Tribal Governor Harold Lewy recently announced that he had replaced the Township representation to the Tribal negotiating committee. Lewy named Allen J. Sockabasin



*Mount Katahdin, spiritual home of the Maine Indians.*

*(Photo courtesy of The Wabanaki Alliance)*

and Albert Dana to succeed Wayne A. Newell and Jeanette Neptune. George Stevens has been appointed as an alternate. Currently representing Pleasant Point Passamaquoddy Reservation on the Committee are Tribal Lt. Gov. Cliv Dore and Albert Sockbeson. Representing Indian Island Penobscot Reservation are Tribal Governor Wilfred Pehrson, Andrew Akins, James Sappier and Timothy Love. Stanley Neptune of Indian Island is an alternate. Representing off-reservation Penobscots is Reuben (Butch) Phillips of Dover—Foxcroft.

### FIRST CIRCUIT COURT OF APPEALS UPHOLDS RULING OF DISTRICT COURT ON QUESTION OF MASHPEE TRIBAL EXISTENCE

On February 13, 1979, the First Circuit Court of Appeals in Boston, Massachusetts, upheld the decision of the Massachusetts District Court on the question of Mashpee Wamponoag Tribal existence. In the original complaint, filed August, 1976, the Mashpee Tribe sought a declaration of ownership to approximately 13,000 acres of undeveloped land in the Town of Mashpee, Massachusetts. All individual homeowners were exempted from the claim within the claim area. The defendants in the suit included the Town of Mashpee, the State of Massachusetts, several real estate developers, a utility company and several title insurance companies.

The suit is based on the Indian Nonintercourse Act of 1790, which requires federal approval of tribal land transactions. No federal approval was obtained for the transactions by which the Mashpees lost their land. The defendants asserted that the Mashpees were not a tribe and therefore not entitled to the protection of the Act. This question of tribal existence was severed out for a separate trial by District Court Judge Walter J. Skinner.

Trial was completed in January, 1978, after 40 days of testimony and presentation of evidence. The issue of tribal existence then went to the jury and the jury was instructed to decide whether there was a Mashpee Wamponoag Tribe in existence on six key dates. The jury found that there was a Tribe in existence in 1834 and 1843 when the Tribe lost its land, but not in 1790, 1869, 1870 and 1976. Judge Skinner then took the case under advisement because of the inconclusive nature of the jury's findings. On March 24, 1978, the *Mashpee* case was dismissed by the Court on the grounds that no Tribe existed to assert the claim.

The Plaintiff tribe raised a number of issues on appeal to the First Circuit Court of Appeals. First, the Mashpee Tribe argued that District Court erred by refusing to grant a continuance pending the Department of Interior's action on the Mashpee application for federal



recognition as a tribe. The Court of Appeals ruled, however, that the lower court acted correctly in denying the continuance.

The Tribe also challenged the District Court's instructions to the jury on the definition of a "tribe." The Tribe was required to prove that it met the definition of a "tribe of Indians," as the phrase was used in the 1790 Indian Nonintercourse Act. The Court of Appeals concluded that "... there were a few isolated sentences of the Judges' charge that may have been unclear or overstated, but the instructions taken as a whole were largely consistent with the position that the plaintiffs argued. . . ." and refused to reverse on that ground.

In addition, the Mashpee Tribe asserted that the District Court was wrong in placing the burden of proof of tribal existence on the Tribe. They contended that the burden of proof should have been placed on the defendants by virtue of a federal statute placing the burden on non-Indian claimants in Indian land cases. The Court of Appeals held the statute inapplicable, however, in this case.

The Mashpees further argued that the special verdicts returned by the jury were irreconcilably inconsistent and totally ambiguous. As a consequence the Tribe argued that the only solution was to order a new trial. In response to this issue, the Court of Appeals held that the jury's answers could support the judgment and that a new trial was not required on the basis of the special verdicts.

Finally, the Tribe maintained that the District Court failed to investigate sufficiently the impact on the jury verdict of an anonymous threatening phone call made to one of the jurors, and that a new trial therefore, was mandatory. The Court of Appeals ruled that a satisfactory investigation had taken place and a new trial was not needed.

NARF attorneys representing the Mashpees are now preparing an appeal to be submitted to the Supreme Court of the United States. [*Mashpee Tribe v. Town of Mashpee*, 447 F. Supp. 940 (S.D. Mass. 1978)].

## **PRESIDENT CARTER SIGNS NARRAGANSETT LAND CLAIMS SETTLEMENT LEGISLATION**

On October 2, 1978, President Carter signed into law the "Rhode Island Indian Claims Settlement Act." This negotiated settlement marks the first Indian land claims to be settled on the East Coast. The Tribe's original claim, filed in Federal District Court in Rhode Island in 1975, called for the return of approximately 3,200 acres to tribal ownership, which included 600 acres of surface lakes.

Under the terms of the Settlement Act the Tribe is to receive 1,800 acres, half of it State land and half to be purchased from private landowners who are willing to sell at fair market value. The land will be purchased with a \$3.5 million appropriation from Congress. These lands are to be held by a state-chartered, Indian controlled corporation and subject to a permanent, Federally-imposed restriction against alienation. The lands will be put in Federal trust for the Tribe if the Tribe gains Federal recognition. (As this issue was going to press, it was learned that the Governor of Rhode Island has filed a bill in the Rhode Island Legislature to create the permanent public corporation to hold the land in trust). The Tribe has the option to establish its own hunting and fishing rights on the settlement lands. The land will be pre-zoned but otherwise exempt from local zoning restrictions. Settlement lands will be free of property taxation; however, any profit-making activities would be subject to taxation. State civil and criminal law will generally apply, such as health, building and other codes.

The Narragansett Settlement will undoubtedly have an impact on the other Eastern Indian land claims cases still pending. The existence of the Indian claims not only subjects the parties to lengthy and expensive court battles, but also imposes a cloud over land titles which has disrupted real estate and municipal bond sales in the disputed areas. But despite the economic hardships the suit may have caused some, the Narragansetts "... are equally bitter about the loss of their last remaining chunks of reservation lands in 1880 when the Rhode Island Assembly paid them \$5,000 and declared their Tribe defunct."

## **NEGOTIATIONS CONTINUE IN CATAWBA LAND CLAIMS ACTION**

Since 1974, NARF has been assisting the Catawba Tribe in its Tribal land claim arising out of treaties between the British Crown and the Tribe in 1760 and 1763. By these treaties, the Tribe ceded a much larger tract of land to the colonies in return for the establishment of a 15-mile square, 144,000 acre reservation situated on what is now the border between North and South Carolina. In 1840, the State of South Carolina, without federal consent or participation, negotiated a treaty with the Tribe purporting to extinguish the Tribe's title to their 1763 reservation. In return, the State promised to secure for the Tribe a suitable reservation in North Carolina. The State failed to do this and in 1842, purchased a 630 acre tract of land for the Tribe within the original boundaries of the 1763 reservation as a new reservation for the Tribe.

In 1976, after more than a year of historical and legal research, NARF submitted a litigation request to the Secretary of the Interior, on the Tribe's behalf. The request asked the Secretary to request the Justice Department to initiate legal action on behalf of the Tribe to regain possession of the 1763 Reservation. After reviewing the Tribe's request for more than a year, the Interior Department asked the Justice Department in 1977 to bring suit on the Tribe's behalf to regain possession of the Reservation.

The Tribe and the federal government adopted the position that a negotiated settlement was preferable to protracted litigation. To that end, the Tribe in 1977 undertook lengthy negotiations with South Carolina State officials which culminated in a November, 1977 agreement between the Tribe and the State's Attorney General. The agreed upon settlement would provide that in return for the extinguishment of the Tribe's claim, legislation would be enacted by Congress which would establish a federal reservation on unoccupied lands, a Tribal development fund and status as a federally-recognized Indian tribe. In the months that followed, however, opposition among Tribal members to the proposed settlement plan emerged, centering around failure to the Tribe's proposal to allow those members who might elect to receive their share of the settlement benefits in cash. In July, 1978, the Tribe voted to revise its settlement proposal to allow those members who desired to receive their portion of the settlement on an individual rather than a Tribal basis to elect to do so. The Tribe is currently in the process of drafting legislation and is negotiating with representatives of the Administration and Congress in an effort to develop settlement legislation which can be enacted during the current session of Congress.

## **SEMINOLE TRIBE FILES SUIT AGAINST STATE IN LAND DISPUTE**

The Seminole Tribe of Florida has filed a suit against the State which challenges the legality of a 1950 dedication of 16,000 acres of the Seminole State Reservation for use as a flood control district. The 16,000 acres had been part of the East Big Cypress Reservation, first set aside by the State as a reservation for the Seminoles' exclusive and perpetual use in 1936. In this suit, the Tribe claims that the 1950 dedication was void by virtue of non-compliance with the 1790 Indian Nonintercourse Act, and therefore constitutes a breach of the State's trustee responsibilities toward the Seminole Tribe.

The suit was filed initially by the Seminole Tribal attorney. The Tribe asked NARF to serve as co-counsel and NARF drafted and filed an amended complaint. Shortly after the amended complaint was filed, the Florida Attorney General's office indicated its interest in settling the case. NARF and the Tribal Attorney met twice with the State's attorneys. On December 10, 1978, the Assistant Attorney General assigned to the case recommended that the State settle the case. NARF has agreed on an appropriate measure of damages for purposes of settlement and expects to meet with Florida attorneys soon in order to work out a preliminary settlement. [*Seminole Tribe v. Florida*, U.S.D.C. for the So. District of Florida, Civ. No. 78-6116-DIV-NCR]

## OTHER MAJOR CASES

### FLANDREAU INDIAN STUDENT REINSTATED

In January, 1978, NARF was contacted by the representative of an Indian student who had been wrongfully expelled from an Indian boarding school in violation of the student's due process rights. The school had stated that it would not reinstate the student pending the administrative appeal through the Bureau of Indian Affairs. Since those appeals could take months, and since the student had already been out of school for one semester, NARF immediately began work on the legal proceedings necessary to reinstate the student. The next week in Federal court in South Dakota, NARF's attorneys argued to Federal Judge Nichols that the student was denied due process of law and that he was entitled to a preliminary injunction reinstating him in school. Judge Nichols agreed and the student was back in school several days later. Later that month, the United States agreed to drop all administrative appeals in light of Judge Nichols' findings.

The *Cornelius* case was the first known case which interpreted the Indian student rights regulations under 25 CFR Part 35. These regulations were approved in 1974; however, they have been seldom used to insure student rights despite many purported violations by BIA school administrators. After the opinion was rendered in the *Cornelius* case, the Office of the Associate Solicitor for Indian Affairs agreed to contact Indian boarding school administrators and inform them that they must abide by these regulations. [*Cornelius v. U.S., District Court, So. Dakota, So. Division, C.A. No. 78-4002, filed January, 1978.*]

### U.S. SUPREME COURT ISSUES FAVORABLE RULING IN COLORADO RIVER WATER REVIEW

In this case, NARF is representing the Cocopah Tribe, one of five lower Colorado River Tribes, in trying to determine the water rights of the Tribe to the Colorado River. This case was originally decided by the Supreme Court in 1963. During the intervening years, the five Colorado River Tribes have filed motions to intervene for the purpose of securing additional water rights.

In October of last year, NARF participated in the argument of the case before the U.S. Supreme Court. On January 9, 1979, the Supreme Court issued its opinion which proved favorable to the Cocopahs. The Court approved and ordered the entry of a supplemental decree which included a subordination provision which provided that in times of shortage the five tribes would come first in allocation of water.

The Court deferred other issues, including whether or not the Tribes be allowed to intervene in the case to a special master of the Supreme Court. A retired Senior Judge of the Fifth Circuit Court of Appeals will serve as this Special Master. The Master has scheduled a March 29 1979, pre-trial conference in Phoenix, Arizona. After hearing Tribal witnesses, the Special Master will make recommendations to the U.S. Supreme Court. [*Arizona v. California, 373 U.S. 546 (1963).*]

### UTE TRIBE RESCINDS WATER AGREEMENTS WITH STATE OF UTAH

On March 5, 1979, the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah announced it was cancelling any participation in the Central Utah Project (CUP) and repealing all water agreements with non-Indians in the Uintah Basin.

Tribal council members based their repeal on the reported refusal of the Utah Legislature to consider a settlement agreement on Tribal claims in the basin. Included among the Tribe's current agreements with non-Indians is one which supplies water to Roosevelt City by the large Uriah Heap Spring, located on Indian trust lands. This spring has been a major source of water to the City.

A significant aspect of the Central Utah Project is to divert water from the Uintah Basin over the Wasatch Mountains to Salt Lake City for agricultural, municipal and industrial purposes. In 1965, the Ute Tribe agreed to defer the irrigation of some of its lands so that approximately 60,000 acre-feet of water could be diverted to the Wasatch Basin. In recent years, it has become apparent that the Tribe, which was promised certain water storage and irrigation projects in return for its deferral of water, was not receiving those benefits expeditiously. As a result, the Tribe has taken a more vigorous posture in asserting these water rights and out of this has emerged the effort between the Tribe and the State to bring about a comprehensive water entitlement settlement.

During the past six years, NARF has assisted the Ute Tribe in trying to secure and quantify its water rights and other reservation rights. Tied to the water settlement is the settlement of certain hunting and fishing and taxation issues. At one time, the Ute "compact" was to include civil and criminal jurisdiction but that now appears to have been lost for the present time. During the past two years, NARF has assisted the Tribe's attorney in negotiating a comprehensive settlement covering water, hunting and fishing, taxation and civil and criminal jurisdiction for the State of Utah. The key to the settlement is the significant "Winters Doctrine" water rights of the Ute Tribe. Tribal Council Chairperson Ruby Black has indicated that the Tribe is still open to negotiations in this dispute with the State.

### U.S. SUPREME COURT RECOGNIZES MISSISSIPPI CHOCTAW RESERVATION AS "INDIAN COUNTRY"

On June 23, 1978, the Supreme Court of the United States reversed two lower court rulings and held that the Mississippi Choctaw Indian Reservation constitutes "Indian Country" within federal jurisdictional statutes. The Court held that Federal courts and not state courts had jurisdiction over a prosecution of an assault allegedly committed by an Indian on the Reservation.

The opinion in the *Smith John* case was favorable to Indian interests since it recognizes the existence of an Indian reservation in face of a challenge by the State that no reservation existed.

NARF assisted the Indian's private attorney during the briefing of the Federal case to the U.S. Court of Appeals. NARF prepared the appeal of the State case to the Supreme Court and briefed and argued both cases in that Court on behalf of the Indian defendants. [*Smith John v. Mississippi, 437 U.S. \_\_\_\_ (1978).*]

### DECISION IS EXPECTED IN FLORIDA TAX CASE

The question as to whether the State of Florida can collect state sales tax from the Seminole Tribe for tribal business activities on the reservation is still pending. In October, 1976 the State of Florida filed suit against the Tribe asking the court to order the Tribe to collect state tax on admissions the Tribe charges to the Seminole Village and on arts and crafts items it sells on the Seminole Reservations. The State claimed in its original complaint that the Tribe owed it more than \$8,000 in taxes. In May, 1978, a hearing was held on the Tribe's motion to dismiss the case. To date, the Judge has not ruled on the Tribe's motion. [*Askew v. Seminole Tribe of Florida, Inc. Civ. No. 76-17413, Seventh Judicial Circuit Court, Broward County, Florida.*]



# News Notes

## PROFESSIONAL STAFF CHANGES

During the past year a number of transitions occurred in NARF's professional staff. Following completion of the *Mashpee* trial in January, Staff Attorney Barry Margolin left NARF's employ and re-joined the staff of Massachusetts Fair Share. Maine Staff Attorney Dennis Montgomery left NARF in June and now is employed by the Colorado Attorney General's Office in Denver.

NARF's former Legislative liaison Suzan Shown Harjo joined the Interior Department's staff in March and now serves as a Special Legislative Assistant to Asst. Secretary of Indian Affairs Forrest Gerard. NARF's Legislative Liaison position has not yet been filled.

In May, NARF's Head Bookkeeper Susan R. Hart was promoted to the position of Treasurer/Controller. In early September, Staff Attorney John Wabaunsee joined the Legal Services Corporation Office in Denver as Coordinator of Indian Programs.

There were two additions to the staff in October when Ms. Thelma Stiffarm, a Cree-Gros Ventre Indian, joined the staff as Director of NARF's special energy project. Ms. Stiffarm is former Deputy Director of the American Indian Law Center in Albuquerque and has also served as a legal consultant to the U.S. Commission on Civil Rights. Ms. Grace Gillette, an Arikara Indian from North Dakota, joined the staff as Business Manager during this same month. Ms. Gillette was hired to replace Mr. James A. Laurie, who is now employed by Management Task Force in Denver.

## STEERING COMMITTEE ELECTS TWO NEW MEMBERS

During the past year two new people were elected to the NARF Steering Committee replacing Mrs. Janet McCloud of the Tulalip Tribe, who chose not to run for another term and Ms. LaNada Boyer, a Shoshone-Bannock Tribal member, who resigned in September.

## National Indian Law Library (NILL)

NILL began in 1972 with the assistance of a grant from the Carnegie Corporation, and is now funded through a grant from the Administration for Native Americans in the Department of Health, Education and Welfare.

Its purpose is to serve as a national repository for Indian materials and resources, primarily legal materials and resources. In addition to files, law review articles, books and monographs on Indian law, the library also has the *Indian Law Reporter*, *Indian Claims Commission Decisions* and general reading material on the historical and anthropological aspect of various Indian tribes, and receives national Indian newspapers and tribal newsletters.

NILL makes available to legal service organizations, federal and state government offices, universities and law schools, private attorneys, Indian organizations, and individuals interested in Indian law, Court decisions as old as 1956 to the present, plus most of other materials via the NILL *Catalogue*. The *Catalogue* is updated periodically, and the next supplement is expected to be published in the spring. Publication of the next NILL Cumulative Edition of the *Catalogue* is contingent upon completion of a project to convert all library shelf-cards to a computer based system.

Replacing Mrs. McCloud is Mr. Herman Williams, also a Tulalip Tribal member who works for the Department of Housing and Urban Development in Seattle, Washington. Mr. Williams serves as a Special Assistant to the Regional Administrator for Indian housing programs in Region X. Mr. Roger Jim, a member of the Yakima Tribal Business Committee, was elected in October to fill the unexpired term of Ms. Boyer. Mr. Jim has served on his council for the past eight years. He also is immediate past Area Vice-President for the National Congress of American Indians and served three times as President of the Affiliated Tribes of Northwest Indians. NARF's staff and Steering Committee members welcome these two new members.

We would also like to extend special thanks to Mrs. McCloud and Ms. Boyer for their years of service to the organization. LaNada Boyer was one of the original Steering Committee members and incorporators for the Native American Rights Fund. She served continuously on the Committee since 1970 and has served several terms as a member of the Executive Committee as well.

### NATIVE AMERICAN RIGHTS FUND OFFICES

Requests for assistance and information may be directed to the main office:

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or to the Washington, D.C. office:

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Native American Rights Fund  
1712 N Street, N.W.  
Washington, D.C. 20036  
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### Contributions to NARF

The work of the Native American Rights Fund is supported solely by grants from private foundations, federal funds for special projects, and individual donations.

NARF continues to seek financial support from individual donors. Private contributions are especially important because the flexibility of unrestricted funds allows NARF to more effectively represent its clients.

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