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NARF LEGAL REVIEW

Native American Rights Fund

Summer 1983

THE IMPACT OF THIS SUPREME COURT TERM ON INDIAN WATER RIGHTS AND OTHER RIGHTS

It is sometimes said that Indian people have considerable respect for and trust in the federal courts of this country because the courts have, for the most part, shown great respect for the rights of Indians. Nevertheless, there have been times throughout history, when there have been reasons to doubt the courts. The Supreme Court term which just ended presents one of those times when Indian people will again begin to wonder whether it is possible to obtain justice and fairness from the federal courts, particularly in the context of Indian water rights issues.

Up until fairly recently, there was little reason to doubt the federal courts in the Indian water rights area. After all, it was the U.S. Supreme Court which, in 1908 in *Winters v. United States,* first articulated the doctrine that when Indian reservations are established, Indians and Indian tribes are entitled to sufficient water to fulfill the purposes of the reservation. The Supreme Court reaffirmed the *Winters* doctrine in *Arizona v. California* in 1963 (decree entered in 1964). These cases have been the cornerstone of Indian water rights claims.

CONTENTS: Volume 9, No. 2

The Impact of this Supreme Court Term on Indian water rights and other rights 1
Recent Legal Developments 5
NARF Publications and Resources 7
Staff Changes 6
Of Gifts and Giving 8
Summer Law Clerks 6

Indian tribes were disturbed when, in 1976, the Supreme Court interpreted an act of Congress known as the McCarran Amendment, as authorizing the adjudication of Indian water rights in state courts in *Colorado River Conservation District v. United States.* But the optimists felt that the door of the federal courts was still open to Indian tribes. However, after this Supreme Court term, with adverse Supreme Court decisions in three major Indian water rights cases, the door of the federal courts may have been closed to many tribes in Montana, Arizona, California, and Nevada, and the door may be closed to other tribes whose cases are yet to be heard.

In the first of the decisions, *Arizona v. California,* decided March 30, 1983, the Supreme Court, relying on principles of "finality," ruled that five Colorado River Tribes were precluded from claiming water for lands which were not considered in the initial determination of the Tribes' rights. The five tribes, the Ft. Mohave, Colorado River, Chemehuevi, Cocopah, and Ft. Yuma, sought to modify the 1964 decree in the case in order to claim water for the additional lands.

The case was filed in 1952 in the Supreme Court as an original action between Arizona and California in order to apportion water between the two states which had been allocated in the Colorado River Compact of 1922. Other states intervened or became parties, and the United States intervened to protect its own rights and the rights of the five tribes. In its 1963 decision in the case, the Supreme Court held that the tribes were entitled to sufficient water for their present and future needs with reference to the purposes of the reservations. The Court went on to determine the quantity of the Tribes' rights based on the amount of practicably irrigable acreage on each reservation.

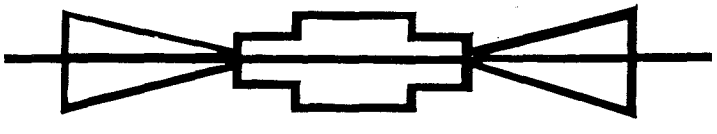
In 1977 and 1978, the five tribes moved to intervene in the case in order to oppose the entry of a supplemental decree and to seek additional water for omitted lands — lands which were irrigable but for which the United States never made a claim, and boundary lands — lands which were or could have been within the boundaries of the reservations but for which no water right had been claimed. The Tribes were later joined by the United States in making these claims. The Native American Rights Fund represented the Chemehuevi and Cocopah Tribes in the proceeding.

Beginning with this issue, the title of NARF's newsletter is being changed from ***Announcements*** to ***The NARF Legal Review.*** The newsletter also has a new editor, Anita Austin (Chippewa-Sioux).

A Special Master was appointed by the Supreme Court to hear the evidence and legal arguments, and to make recommendations to the Court. His recommendation was that an additional 200,000 acre-feet of water be allocated to the tribes for the omitted lands and boundary lands, but the recommendation was rejected in the Supreme Court's March 30th opinion.

Even though modification of the 1964 decree was technically possible under the terms of the decree itself, the Supreme Court held that the determination of Indian water rights in the earlier proceeding precluded additional claims for water for the omitted lands. Modification of the decree, the Court said, would conflict with the rule of finality and the necessity of providing assurance to the Southwest states and private litigants of the amount of water they can expect to receive from the Colorado River. As to the boundary lands, the Supreme Court adopted the Special Master's recommendations to award additional water where the reservation boundaries had been judicially determined, and directed that any unresolved boundary issues be expeditiously decided.

The tribes had argued that the United States' representation of their interests in the first proceeding was inadequate because of the government's representation of other competing federal interests. However, the Court determined that there was no conflict of interest and found no indication that the government's representation of the tribes was legally inadequate. The effect of a demonstrated conflict of interest was left open. However, that open question was quickly answered three months later in the Pyramid Lake case.

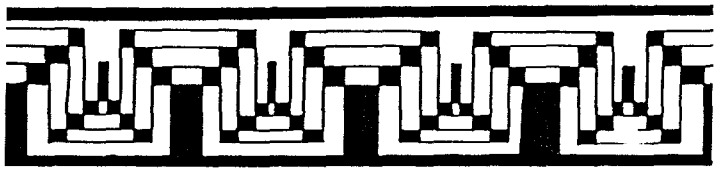


In *Nevada v. United States,* decided on June 24, 1983, the Supreme Court refused to allow the Pyramid Lake Paiute Tribe of Nevada to bring a claim for water for the maintenance and preservation of the Pyramid Lake fishery. This time the Court relied on a legal doctrine known as **res judicata** to rule that the Tribe was precluded from claiming additional water. The Tribe's rights, the Court said, had already been determined in an earlier case. But this time, the Court was required to get around a direct conflict of interest of the federal government who had represented the Tribe's interests in the earlier case.

The original proceeding was brought in 1913 by the United States to adjudicate water rights in the Truckee River. The government represented both the Pyramid Lake Paiute Tribe and the interests of the Newlands Reclamation Project. After many years, a final decree was ered in the case in 1944. The Tribe was awarded water based on the gable acreage on the reservation, but no water right was awarded and, in fact, none was claimed for the maintenance and preservation of the Pyramid Lake fishery which was essential to the Tribe's livelihood.

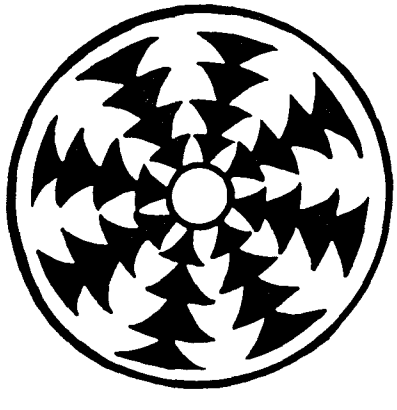
In the succeeding years, the level of Pyramid lake dramatically declined by about 20,000 acres, and the fish in the lake on which the Indians had historically relied, became extinct or nearly extinct. The primary cause of the decline was an upstream diversion dam (Derby Dam), a part of the Newlands Reclamation Project. The Newlands Project has been operated by the Truckee-Carson Irrigation District (TCID) since 1926.

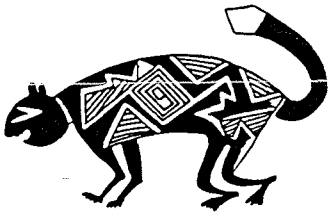
Because of the Lake's decline, the federal government initiated a new suit in 1973 in which the Tribe intervened, seeking additional water rights for the Tribe for the maintenance and preservation of Pyramid Lake and the lower reaches of the Truckee River, a natural spawning ground for fish. The defendants' main defense was *res judicata* — that the Tribe's rights had already been determined by the 1944 decree and no further claims could be brought by the Tribe. NARF represented the Pyramid Lake Tribe in the new suit, along with the Tribe's private attorneys.



Under the usual rules of *res judicata,* only parties to the original action are bound by the court's judgment. Moreover, *res judicata* ordinarily does not bar further claims between parties unless the same claims were previously litigated between the same adversary parties. In applying these principles to the Pyramid Lake case, there are several difficulties. Neither the Tribe nor TCID were parties to the original litigation — both had been represented by the United States. And if the Tribe's and TCID's interests were adverse, then by definition, the United States had a direct conflict of interest in representing both interests.

The Supreme Court neatly sidestepped these difficulties by establishing a new rule for situations where the United States in its trustee capacity, represents the interests of Indians and at the same time is obligated by Congress to represent other federal interests as in the case of reclamation projects authorized by the Reclamation Act of 1902. In these situations, the Court said, the Government need not follow "the fastidious standards of a private fiduciary, who would breach his duties to his single beneficiary solely by representing potentially conflicting interests without the beneficiary's consent." The Court went on to say that "the analogy of a faithless private fiduciary cannot be controlling for purposes of evaluating the authority of the United States to represent different interests." Put simply, the Court's decision says that the federal government is not bound by traditional rules of ethics and justice and fairness when it represents Indian interests which conflict with other federal interests which Congress has required it to represent.





A week later, the Supreme Court announced its third major Indian water rights decision in *Arizona, et al. v. San Carlos Apache Tribe, et al.*, decided July 1, 1983. The case is a consolidation of separate cases involving five tribes in Arizona and seven tribes in Montana. NARF represents the Fort McDowell Tribe in Arizona and the Northern Cheyenne Tribe in Montana.

In these cases, the issue was whether the Indians' water rights should be determined in federal court or state court. Reversing the Ninth Circuit Court of Appeals, the Supreme Court agreed with the lower district courts that the federal courts should defer to the state courts in each of the cases involved. In so holding, the Court clearly articulated its preference for state courts to hear and decide Indian water rights claims, even if the case is brought by an Indian tribe and the suit seeks only to determine the Indians' rights.

Before arriving at this conclusion, the Court had to first address the effect of provisions in the Arizona and Montana enabling acts and constitutions which specifically disclaim jurisdiction over Indians and Indian property. The tribes argued that these provisions precluded state jurisdiction over Indian water rights. But the Court determined it was unnecessary to decide the exact meaning and significance of the disclaimer provisions or to look to the general principles which define the limits of state authority over Indians and Indian property because the Court was "convinced that, whatever limitations the Enabling Acts or federal policy may have originally placed on state court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment." (The McCarran Amendment was enacted in 1954 as a waiver of the United States' sovereign immunity in general stream adjudications in state courts.) Yet, this conclusion again required the establishment of a new rule.

The Court applied a rule of construction which requires that a statute, in this case the McCarran Amendment, or its legislative history, indicate an intent to *limit* state jurisdiction over Indian water rights. However, the usual rule of construction is that an act of Congress must *explicitly confer* jurisdiction on state courts over Indians and Indian property. Citing the McCarran Amendment as controlling, the Court found no impediment to state court jurisdiction in the disclaimer provisions. Moreover, equality of statehood, the Supreme Court said, disfavors different treatment of states based on the disclaimers.

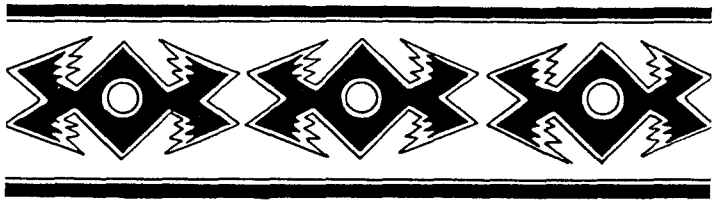
After concluding that the disclaimer provisions did not preclude state jurisdiction, the Court had little difficulty in finding that the federal courts should defer to the state courts in the cases, even though the arguments of the Tribes in favor of federal court jurisdiction have a "good deal of force." Surprisingly, the most important factor to prefer state jurisdiction cited by the Court was that the scenario presented by the tribes — the adjudication of Indian rights in federal court and all other rights in state court — assumes a "cooperative attitude on the part of the state court, state legislatures, and state parties which is neither legally required nor realistically always to be expected." In other words, because the state courts are likely to be uncooperative, the Supreme Court concluded that the entire cases should be heard in state court. The Court did leave open the question of whether the state court proceedings are adequate to hear the Indian claims, and the tribes are expected to raise several issues in this context. But it remains to be seen whether any state proceedings will be adjudged inadequate.

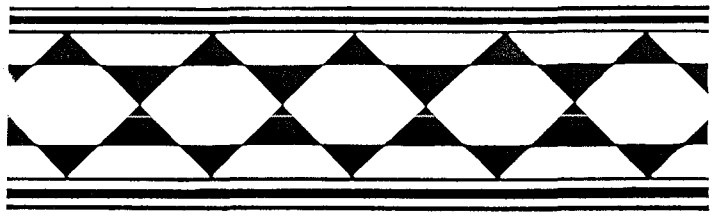
Each of the three decisions of the Supreme Court involved basic procedural issues of jurisdiction and the effect of prior court decrees. Yet, the cases are likely to significantly impact the course of Indian water rights litigation by presenting the possibility of a closed federal cou door to some claims and by virtually abandoning other claims to the state courts. The Court's jurisdictional ruling raises the possibility that the remaining substantive law questions involving the nature and extent of Indian water rights may be decided by state, not federal, courts.

All of these developments mean that Indian tribes will be required to take into consideration new factors in developing water rights strategies and will have to be especially careful about litigating their rights. At the same time, tribes may have less control over the timing and the place for bringing their claims because even if the tribes bring their claims in federal court they face the possibility of being dismissed in favor of state court adjudications. And states can seek to adjudicate the Indians' rights in state court merely by naming the United States as a party.

However, the McCarran Amendment does require that general stream adjudications (all parties before the Court) be filed in order for the United States to be joined as a party in state court. Such proceedings are extremely costly and take literally decades for completion. They also may be politically unpopular in a state, not only because of the expense, but because all water users in the state will also be required to prove up their rights. It is unlikely then that states or other parties will rush into state court to begin general stream adjudications.

For those tribes who have existing water rights decrees, the Supreme Court's decisions in these cases means that the possibility of obtaining additional water with an early priority date will be greatly diminished. Tribes and their attorneys will no doubt begin looking for other avenues of reaching the same goal. However, for the majority of tribes the Pyramid Lake and *Arizona v. California* decisions will have little effect because, for the most part, Indian water rights remain undetermined and thus there are no existing decrees.





The Court's decisions also allow some insight into particular concerns of the Court which may have had an effect on the outcome of the cases.

First, the Court is clearly concerned about avoiding the possibility of upsetting the rights of non-Indians who have relied on earlier water rights decrees. The Court has invoked the rules of finality and *res judicata* to prevent tribes from threatening the status quo. The Court's concern may be a preview of how it will treat historical land claims cases and other cases which have the potential of affecting the rights of private parties.

Second, when tensions between federal and state courts over water rights occur, the Supreme Court has clearly indicated its preference for state court adjudications even if federal court adjudication "might, in the abstract, be practical, and even wise..." because the McCarran Amendment "allows and encourages state courts to undertake the task of quantifying Indian water rights in the course of comprehensive water adjudications." The preference of at least some members of the Court for state control in a variety of areas and issues has been known for some time.

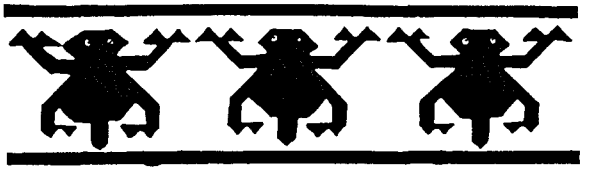
Third, the Court is not afraid to establish new tests or standards to insure that the outcome is consistent with its concerns and preferences. Most disturbing is the Court's articulation of a new conflict of interest rule for the Indians' trustee — the trustee has no conflict where Congress has also authorized him to represent other interests. However, the Court did state that where third parties or other interests are not involved, the usual principles governing trustee/beneficiary relationships will likely apply. The Supreme Court's decision in *United States v. Mitchell,* discussed below, addresses one such situation.

Other Supreme Court Developments

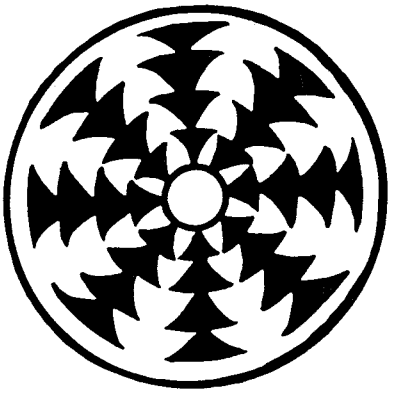
Three other Indian cases were decided by the Supreme Court this term. In only two of the cases did the Indians prevail.

In *New Mexico, et al. v. Mescalero Apache Tribe,* decided June 13, 1983, the Supreme Court unanimously ruled that the application of New Mexico's hunting and fishing laws to nonmembers on the Mescalero Reservation was preempted by federal law. The Court specifically looked to and relied on the facts in the case: (1) development of the fish and wildlife resources on the reservation is a cooperative tribal/federal effort which has resulted in significant increase in fish and wildlife resources without significant state participation; (2) the Tribe and the federal government jointly conduct a comprehensive fish and game management program; (3) the vast majority of the land of the reservation is tribal land (the Tribe owns all but 193.85 acres of the over 460,000-acre reservation); and (4) the state could cite no governmental functions it provides on the reservation and no off-reservation effects which would require state regulation. Nevertheless, the State of New Mexico argued that it had concurrent jurisdiction with the Tribe to regulate nonmembers. But the Court disagreed. Citing the above factors, and the cases governing the limits of state authority on Indian reservations, the Supreme Court held that tate regulation in this case would nullify and interfere with the Tribe's authority to regulate the use of its resources and threaten federal Indian policy which encourages tribal self-sufficiency and economic development. NARF served as of counsel in the case which was handled by the Tribe's attorneys.

In the second case, the right of Quinault allottees to sue the federal government for breach of trust in connection with management of forest resources was upheld in *United States v. Mitchell,* decided June 27, 1983. In the course of the 6-3 decision, the Supreme Court resolved a particularly troublesome question of whether the Tucker Act which confers jurisdiction on the Court of Claims over certain kinds of claims against the federal government, constitutes a waiver of sovereign immunity with respect to those claims. If a claim falls within the Tucker Act, the Court held that the United States has presumptively consented to suit. However, the Tucker Act does not create enforceable rights against the government; such rights must have their basis in other statutes. In the *Mitchell* case, enforceable rights were found in a 1910 act of Congress empowering the Secretary of the Interior to sell timber from allotted lands and to consent to sales by allottees, and the 1934 Indian Reorganization Act which directed the Department of the Interior to manage forest resources on a sustained yield basis. The Court said these statutes, coupled with detailed regulations promulgated under the acts, established a fiduciary relationship between the Indians and the federal government and impliedly mandated compensation by the federal government for breaches of its trust.



Finally, in *Rice v. Rehner,* decided July 1, 1983, the Court upheld the application of California's liquor licensing scheme to a federal Indian trader on the Pala Reservation. At issue was a federal statute, 28 U.S.C. § 1161, which authorizes tribes to allow liquor transactions on reservations as long as the transactions are "in conformity both with the laws of the State . . . and on ordinance duly adopted by the tribe. . . ." The Court found no tradition of tribal regulation of liquor which required protection from state law. On the other hand, states were found to have been permitted or required by Congress to regulate liquor transactions with Indians. Moreover, the states were found to have an interest in regulating reservation liquor activity because, the Court said, such activity has substantial impact beyond the reservation. The Court also held that state liquor licensing laws were not preempted by federal law because it interpreted § 1161 as specifically authorizing the application of state law. Even without such express authorization, however, the Court said state authority would not be preempted because of the lack of a "tradition of self-government in the area of liquor regulation. . . ." In the final analysis, the Court interpreted § 1161 as authorizing tribes only to decide whether liquor would be permitted on the reservation, but if permitted, the activity would be regulated by state law. NARF filed an amicus brief in the case on behalf of the Pala Band of Mission Indians.



RECENT LEGAL DEVELOPMENTS

ATTORNEY'S FEES ASSESSED AGAINST FEDERAL GOVERNMENT

On April 27 of this year, NARF received $50,000 from the federal government in reimbursement for its legal fees and expenses in **Covelo v. Watt.** The case was filed by NARF last September in U.S. District Court in Washington, D.C. NARF served as co-counsel with five Indian legal services programs in claiming that the Department of the Interior had failed to evaluate, prosecute and resolve the majority of 17,000 claims. NARF argued that the Department of the Interior had also ignored a congressional mandate to submit proposals for legislative resolution of claims unsuitable for litigation. Instead, the Reagan Administration planned to allow thousands of claims to die a quiet death on December 31, 1982, as the statute of limitations expired.

Upon prevailing, NARF requested reimbursement of fees from the federal government under the Equal Access to Justice Act. Attorney fee awards are granted under this act only when the government cannot establish that its position was substantially justified. The government's position in this case as trustee for Indian resources was not so justified, since proper action clearly required the trustee to protect the claims. The government's treatment of statute of limitations claims is an example of the indifferent attitude that this Administration displays too often in its role as trustee.

CONDEMNATION OF TRUST LANDS ALLOWED BY SUPREME COURT

By refusing to review the Tenth Circuit Court of Appeals' decision in **Yellowfish, et al. v. City of Stillwater** in May, the Supreme Court has allowed to stand the condemnation of Indian trust lands by the city of Stillwater, Oklahoma for a water pipeline. The result of this ruling is that states and their subdivisions may now choose between two federal statutes authorizing the acquisition of rights of way over trust allotments.

The older 1901 statute, 25 U.S.C. 357, authorizes condemnation and the more recent 1948 statute, 25 U.S.C. 323-328, authorizes negotiation with the Indians and the Secretary of the Interior. The Indi allottees represented by NARF asserted that the later statute as well current policy favoring Indian self-determination and tribal sovereignty reversed and superseded the early law. Thus, the Indians argued, the older law relied upon by the city to condemn their lands was no longer applicable to the Indian lands. They asserted the more recent act controlled and required the city to obtain the consent of the Secretary of the Interior and the Indians.

In April 1983, the Tenth Circuit ruled against the Indian allottees stating that the city had the option to either condemn the right of way across trust allotments under the early statute, or to obtain the Secretary's and Indian's consent under the later statute.

TWO BIA SCHOOLS TO REMAIN OPEN

The Bureau of Indian Affairs has agreed to keep open two off-reservation boarding schools, Intermountain Inter-Tribal Boarding School in Utah and Wahpeton School in North Dakota, both of which were slated for closure by the BIA. Wahpeton School will remain open indefinitely, and Intermountain will remain open through the 1984 fiscal year. The BIA is then expected to again recommend closure to Congress.

NARF filed separate lawsuits in both cases representing the respective school boards and various tribes in opposing closure.

Native American Rights Fund

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

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

Requests for legal assistance, contributions, or other inquiries regarding NARF's services may be addressed to NARF's main office, 1506 Broadway, Boulder, Colorado 80302. Telephone (303) 447-8760.

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Staff Changes

Henry Sockbeson, a member of the Penobscot Tribe, has recently joined NARF's Washington, D.C. office as a staff attorney. Henry has most recently been with Abinanti & Associates in Eureka, California. He specializes in Indian law and had previously worked as a staff attorney of the Eureka office of California Indian Legal Services. Henry is a 1976 graduate of the Harvard School of Law.

In Boulder, three attorneys have recently joined the staff. Bob Anderson, who was a law clerk for NARF last summer, is now a staff attorney. Bob is a Chippewa and he has just recently graduated from the University of Minnesota Law School. Steve Moore, formerly of Idaho Legal Services, has joined NARF to work half-time as director of NARF's Indian Law Support Center and half-time as a staff attorney. Alma Upicksoun has also recently joined the Boulder office as a staff attorney. Alma is an Alaskan Native and has just graduated from Cornell Law School.

Anita Austin has become the new technical writer for NARF. She is a Chippewa-Sioux, a 1980 graduate of Indiana University, and is currently completing her Masters Degree in English. Debbie Raymond, a Navajo, is NARF's new receptionist. Steven Platero, also a Navajo, has joined NARF as the new printer.

These recent additions to NARF's staff are due to the resignations of staff attorneys Terry Pechota, Scott McElroy, and Doug Endreson, all of whom have entered private practice, and Anita Remerowski, who resigned to enter medical school. Suzan Harjo has resigned her position as Legislative Liaison in the Washington office to accept another position in Washington. Staff members Oran LaPointe, Gloria Cuny, and Rosetta Brewer also recently resigned from their positions in the Boulder office.

Summer Law Clerks

Each summer NARF hires second-year law students to work as law clerks in our offices. Law clerks assist NARF attorneys in researching a variety of issues which arise in the context of ongoing litigation and, when appropriate, in drafting pleadings and briefs. NARF law clerks are therefore exposed to Indian law in some of the major cases in which Indians are involved nationally and also have an opportunity to develop essential legal research and writing skills for the future.

Antoinette Houle, a Creek/Chippewa, in her second year of law school at the University of New Mexico, is now a clerk in NARF's main office in Boulder. She is currently a staff member of the Natural Resources Journal and a past recipient of a Ford Foundation Graduate Fellowship. Also working in NARF's main office in Boulder is Darrell Thomas, a Turtle Mountain Chippewa. He has just completed his second year of law school at the University of Colorado.

NARF's other law clerk for the summer in Boulder is Leslie Wheelock, an Oneida, currently enrolled in the joint degree program offered by the Cornell Law School and the Cornell Business School. For the summer of 1982 she was a law clerk in the General Counsel's Office of the National Endowment for the Arts. During the summer of 1980 she was a legislative intern for the state of Indiana in Washington, D.C.

June Lorenzo, a Laguna-Pueblo, is the law clerk in NARF's Washington, D.C. office. During the summer of 1982 she was a law clerk for a private firm and during the summer of 1981 she researched 2415 claims for various tribes. In the past she has also monitored energy companies' compliance with federal and local regulations on Indian reservations.

NARF welcomes applications from second-year law students for these summer clerk positions. NARF especially encourages Native American students to apply. Frequently, NARF fills its vacancies for new attorneys with graduates who have previously worked as NARF law clerks.

NARF Publications and Resources

The National Indian Law Library

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

The NILL Catalogue

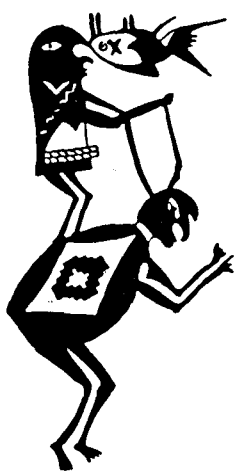
NILL disseminates information in its holdings primarily through its *National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources.* The *NILL Catalogue* lists all of NILL's holdings and includes a subject index, an author-title table, a plaintiff-defendant table, and a numerical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

Bibliography on Indian Economic Development

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

Indian Claims Commission Decisions

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



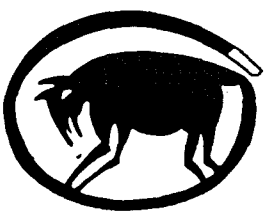
Indian Rights Manuals

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

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

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

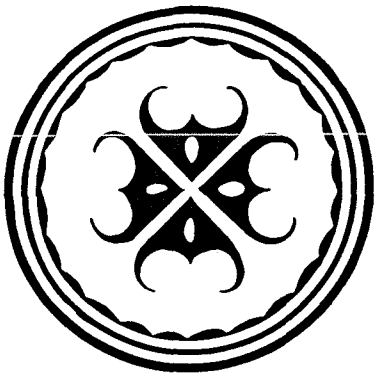
Handbook of Federal Indian Education Laws. This handbook discusses provisions of major federal Indian education programs in terms of the legislative history, historic problems in implementation, and current issues in this radically-changing field (130 pgs. Price: $15).



Films and Reports

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

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



OF GIFTS AND GIVING

Special Thanks for Gift From Reno-Sparks Tribal Council

The Native American Rights Fund would like to express special appreciation to the Reno-Sparks Tribal Council of Nevada for its recent $100 gift. Tribal Chairman Lawrence Astor stated: "As we have not utilized NARF assistance directly, please accept this small token so that you may be able to indirectly assist Reno-Sparks in your continued battle to protect Indian rights." The Reno-Sparks gift, along with recent contributions from the Passamaquoddy and Penobscot Tribes of Maine, the Pamunkey Tribe of Virginia, and the Hoopa Valley Business Council of California represents an increasing awareness by tribal governments of the importance of NARF's role in Indian rights and a commitment by these tribes to help assure the continuation of NARF's legal assistance for other tribes.

Contributions to the Native American Rights Fund

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

OTU'HAN

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

We have received recent contributions in memory of:

- *Willis Hite Farley* — from Mrs. Willis Farley
- *Isaac Ware* — from Leon A. Ware
- *Katharine Webster Rider* — from Paul L. Rider
- *Mrs. Faye Wynkoop* — from Dr. & Mrs. Howard M. Gish
- *Peter H. Reimer* — from Robert & Thelma Kauffman

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

For further information on the OTU'HAN Memorial Program, return the newsletter coupon to NARF, specifying your interest in the memorial program.

Planned Giving Program

NARF has recently initiated a planned giving program and can offer information and assistance to donors who would like to consider making a substantial contribution to the Native American Rights Fund, especially through a will. Planned gifts often provide substantial tax savings to the donor as well as the personal satisfaction which comes from assuring the financial future of the Native American Rights Fund. Since July of 1982, NARF has received bequests from the estates of:

(1) Celeste M. Arth
(2) Roger N. Baldwin
(3) Margaret Gage
(4) Clarence A. Gustlin
(5) Christine M. McColl
(6) Myer Shandelman Trust
(7) Florence E. Stockwell

For further information contact Marilyn Pourier (303/447-8760) or write her for more information c/o NARF, 1506 Broadway, Boulder, CO 80302. The enclosed coupon can also be used to request bequest information. All inquiries are held in strict confidence.

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