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FINANCIAL SUPPORT

Native American Rights Fund depends almost entirely upon gifts and contributions from private individuals and foundations. It is important for the work of the Fund that its support come from persons throughout the country who believe in its work. Besides evidencing a vote of confidence in NARF's efforts to right three centuries of injustice, such support provides a diverse base of financial backing not tied to the government or any single institution.

NATIVE AMERICAN RIGHTS FUND

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The Native American Rights Fund is a non-partisan, non-profit organization. *Contributions are tax deductible.*

America is on Trial:



America on Trial: The Indian goes to Court

"Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians... reflects the rise and fall of our democratic faith."

—the late Felix Cohen, Esq.

Today, many signs point to a fresh awakening, to a recovery among Indians both of pride in peoplehood and faith in democracy. Every American has much to gain from this fledgling Indian renaissance which reaffirms the American dream.

The Native American Rights Fund (NARF) is in the vanguard of the young movement. NARF is a new, non-profit legal program controlled and manned largely by Indians. It is devoted to the orderly interpretation of the vast body of white man's law which touches the lives of all Indians. By choosing the slow, sometimes tedious process of the courtroom rather than the more dramatic expedient of the barricades, NARF directly challenges the American system of justice. In effect, we are all on trial.

"Indian law" is no easy test; it is an interwoven, complex web of old treaties (often ignored), an accumulation of administrative and judicial rulings (often contradictory), and literally several thousand federal and state statutes, borne of many decades of varying governmental policies. NARF is the leading, private, legal organization in America working full-time to untangle this web in ways that spell justice for Indians—indeed, for all Americans, because Indian problems turn out to be everyone's problems. To list NARF's current efforts in litigation and research is to list many of this country's most pressing social dilemmas.

For example:

NARF strikes a blow for *ecology* wherever it defends tribal water rights and fishing rights, and whenever it opposes the imposition on Indian lands of strip mines and factories which pollute the environment.

NARF is frequently called upon to represent Indians in actions against non-representative school boards, both public and private. The Indians' growing interest in education is in the traditional

On the prairie a century ago, white buffalo-hunters took only the hides, and sometimes only the tongues, leaving the rest to rot in the sun. "You can see that the men who did this were crazy," the Sioux said.

Since the landing of the Pilgrims, the Indian has been forced to stand by while profit-hungry adventurers and developers slaughtered his game, drained his lakes, polluted his rivers, scarred his earth and blackened his very air. Now, in partnership with a sizable segment of white America, Indians are working toward a sane ecology, a fruitful harmony between man and "the greening earth."

In this seminal struggle NARF plays a significant role.

PYRAMID LAKE, NEVADA

This beautiful lake was set aside for the Paiute Indians in 1859 in return for the Indians' relinquishing their vast homeland area. The theory was that the tribe could always make a living from the bountiful lake. In subsequent years, the U.S. government seized the lake's only source of water for use by the white community, thereby killing the tribe's natural fishery, reducing the lake by one-third and dangerously increasing its salt content. NARF brought suit against the U.S. Secretary of Interior, seeking to prevent him from permitting further depredations. A federal court has required the government to take action to stabilize the lake's level.

STRIP MINES IN HOPI LAND

The construction of six, giant coal-burning power plants in the Southwest, and their land-destroying strip mines, threatens thirty-nine reservations. NARF, representing the Jicarilla Apache and Chemehuevi Tribes, as well as individual Navajos and Hopis, has launched a legal assault on the plants and strip mines. Law suits have been brought attacking the failure of federal agencies to fulfill their responsibility to Indians and recent enactments meant to protect the environment. More than ecological havoc will result from the power complex—not only will Indian homelands be destroyed, but Black Mesa and other sacred shrines will be irretrievably desecrated. NARF's efforts have led to a reduction in the size of the proposed complex, but a monumental struggle lies ahead.

ALASKA PIPELINE

In Spring, 1972 the Secretary of Interior announced he would approve a permit for construction of the controversial trans-Alaska oil pipeline. NARF, on behalf of the Arctic Slope Native Association, is asking the Secretary to include in the permit a pro-

fortunately, predominantly non-Indian school administrations have tended to divert these funds from Indian purposes. Now NARF is helping Indian groups challenge this illegal practice. Moreover, the Bureau of Indian Affairs, which parcels out Johnson-O'Malley funds, has asked NARF to assist it in revising the regulations.

"WHITE-WASHING"

NARF represents many Indian students trying to maintain their "Indian-ness" in the face of assimilationist pressures. ("Dear God," a Navajo girl at boarding school was heard to pray, "help me not to hate my mother and father.") Last spring, for example, three Indian students were expelled from Pawnee, Oklahoma schools for wearing their hair in traditional fashion. When the board of education refused to reinstate them, Fund attorneys obtained a restraining order. The case has now been appealed.

CIVIL RIGHTS

"Treat all men alike. Give them all the same law."

—Nez Perce Chief Joseph, addressing congressmen and cabinet members, 1879

In "the deep north," Indians often confront racism and discrimination. Consequently, NARF has begun to represent Indians in their struggle for civil rights.

EMPLOYMENT IN SOUTH DAKOTA

The Fund has provided assistance to attorneys in South Dakota who are fighting job discrimination in the state's Employment Security Office. At issue is the department's dismissal of a non-Indian after he protested the department's failure to enforce equal opportunities for Indians.

JUSTICE IN NEBRASKA

Raymond Yellow Thunder, a Sioux, was beaten to death in Gordon, Nebraska. After hundreds of Indians from throughout the country flocked to

Gordon to protest the killing, four young white men were arrested and convicted of manslaughter. The Fund was instrumental in bringing the facts in the case to light and has prepared a civil rights action in an attempt to secure damages for the relatives of Yellow Thunder.

PLURALISM AND SOVEREIGNTY

"Our nation was respected by all who came in contact with it, for we had the ability as well as the courage to defend and maintain our rights of territory... but an evil befell us when we became a divided nation..."

—Black Hawk, the Sauk Chief, 1832

Over the past 200 years the assimilationist drift in federal policy has weakened tribal integrity and frequently snuffed out tribal life. Now many tribes are going to court in order to secure a threatened land-base and to survive as sovereign entities within the American commonwealth of cultures.

LINE OF POWER

In *Skeet v. Tuscon Gas & Electric*, NARF is assisting a large group of affected Navajos seeking to prevent the utility from obtaining rights-of-way for power lines through the reservation. One issue here is whether the utility will be permitted to induce by false promises and other fraudulent practices individual landowners to grant rights-of-way.

REPAIRING THE PAST

NARF is representing the Passamoquoddy and Penobscot tribes in their efforts to compel the state of Maine to redress wrongs dating back to 1794. In a similar action the Oneidas have asserted that transactions in 1795, by which most of their lands passed to the state of New York, violated federal law. A hearing on behalf of the Oneidas is being sought from the U.S. Supreme Court by attorneys assisted by NARF.

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NARF is frequently called upon to represent Indians in actions against non-representative school boards, both public and private. The Indians' growing insistence on winning a voice in the *educational policies* of schools their children attend has many obvious parallels, both black and white, in our cities and suburbs.

In pursuing numerous cases of discrimination against Indians, NARF joins this nation's long and honorable struggle to secure full *civil rights* for all Americans.

NARF assists tribes in their continuing fight for survival, both political and cultural. It thus explores the American commitment to *pluralism*; that is, to the democratic notion that each minority group in America may march to the beat of a different drummer.

NARF was formed in 1970. Very quickly it became a major force in Indian affairs—respected by judges, relied on by tribes and consulted frequently by federal agencies, including the Bureau of Indian Affairs and the Office of Economic Opportunity. At present, NARF is involved in more than 100 cases bearing on a variety of important issues, from water rights to tribal autonomy. A sampling of these cases is considered below.

ECOLOGY

"If we and the biosphere on which we depend are to survive... we must believe, with the Sioux, in the goodness and beauty of the greening earth, the only mother."

—Justice William O. Douglas

seized the lake's only source of water for use by the white community, thereby killing the tribe's natural fishery, reducing the lake by one-third and dangerously increasing its salt content. NARF brought suit against the U.S. Secretary of Interior, seeking to prevent him from permitting further depredations. A federal court has required the government to take action to stabilize the lake's level.

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EDUCATION

"Father, we ask you... above all, that you will teach our children to read and write."

—the Seneca Chief Cornplanter's plea to President George Washington.

Most Indian children today read and write at levels three or more grades below the national average. They are victims, by and large, of an historic system which has confused education with assimilation. As Senator Edward Kennedy's subcommittee on Indian Education has noted, "Education was the means whereby we emancipated the Indian child from his home, his parents, his extended family and his cultural heritage. It was... an attempt to wash 'the savage habits' out of his mind..."

INDIAN-CONTROLLED SCHOOLS

At least 30 Indian groups are now operating their own schools, often with legal assistance and advice from NARF. In addition, in places like the Rocky Boy reservation, Montana, NARF is helping Indian communities maintain control of previously white dominated school boards by assisting in the negotiation of Federal contracts.

DIVERTED FUNDS

Under the Johnson-O'Malley Act, special federal funds are channeled into public schools that serve heavy concentrations of Indian children. Un-

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NATIVE AMERICAN RIGHTS FUND

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Ford Grants \$1.2 Million to NARF

The Ford Foundation has announced a grant of \$1.2 million to the Native American Rights Fund (NARF) for the litigation of major issues affecting the American Indian. Foundation president McGeorge Bundy described the grant as "our largest single effort to date on behalf of American Indians" and said Ford plans to help NARF become an independent agency.

NARF is directed by a young California attorney, David Getches. Getches, who is white, was co-director of the Escondido office of California Indian Legal Services before joining the NARF staff. Four of the eleven regular NARF lawyers are Indian, and the eleven-member governing board of the organization is entirely Indian.

NARF is working with the Harvard Center for Law and Education on problems relating to Indian education. It is the national Indian law back-up center for the Office of Economic Opportunity's legal services program, and it has prodded some of the nation's largest law firms, including the Washington, D. C., firm of Arnold and Porter, to take an interest in Indian law.

In their litigation, the fund's attorneys are guided by several broad objectives, including:

- To protect Indian rights to land, water and other natural resources, which are viewed as prerequisites to the preservation of any distinctively Indian way of life;
- To assist Indians in achieving the fulfillment of the government's special trust and treaty obligations to them;
- To protect Indian civil rights;
- To help strengthen tribal sovereignty and preserve Indian culture, values and heritage, by contributing to the development of a body of Indian law that will help Indians to maintain their ways of life within the dominant society.

As examples of the fund's activities, NARF is representing the Muckleshoot, Squaxin, Sauk-Suiattle, Skokomish, and Stillagumish Tribes in a suit against the state of Washington over the treaty-protected right of the tribes to regulate fishing on their reservations.

Another case questions the validity of a real property tax levied by Riverside County, California, on lands held in trust by the United States for the Agua Caliente Band of Mission Indians. The fund maintains, among other things, that the tax threatens Indian tribal sovereignty since it undermines the tribe's ability to impose a tax of its own.

A suit that was later favorably resolved on behalf of four pueblos in New Mexico claimed a number of abuses by the Bernalillo Municipal School District, including acts of discrimination against Indian school children and misuse of federal funds designated specifically for Indian pupils.

Three major cases being litigated on behalf of Hopi, Jicarilla Apache, and Chemehuevi Indians involve the threat to the water and land resources of Indians on some forty reservations in the Four Corners area of the South-

west. The danger is posed by the operation of two large coal-burning power plants and plans for four more. The Black Mesa, sacred to the Navajo and Hopi Indians, is being strip-mined for coal to supply the plants; shale displaced during the mining is being washed by rainfall onto Indian agricultural lands where it hardens, making farming virtually impossible; and water being pumped from beneath the Mesa is threatening Indian wells in the area.

The fund is also investigating questions of state jurisdiction over the Passamaquoddy Tribe of Maine, providing legal advice to a group of Navajo artisans who are forming a cooperative to market their handmade jewelry, and advising Indian groups attempting to develop community-controlled schools in South Dakota, Wyoming, Montana, Wisconsin and Iowa.

Spanish Forces Start Coalition

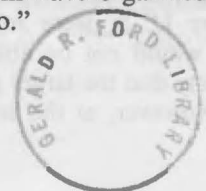
BY STEVE NICKESON

When three U. S. Congressmen and one Senator sent out invitations for their meeting, they expected two things: (1) a fairly small, quiet conference of Chicano and Puerto Rican leaders and (2) the start of a political coalition between the two largest groups of Spanish-speaking people in the U. S. From the opening of the meeting, events proved them wrong on the first expectation; and the jury is still out as to whether or not the second goal was met.

The four Spanish-speaking lawmakers had sent out 500 invitations for the Oct. 23-24 meeting, but they expected no more than 200 people. Instead, 2,000 showed up at the hotel where the conference was held in the Washington, D. C., suburb of Arlington, Va. In the course of the two days the conference organizers themselves were berated; one prominent Chicano leader caused a minor national tempest by saying that a New Mexico state policeman had raped his wife; one Congressman totally gave up the idea of Spanish-speaking unity; and the other three were faced with weeks of evaluation and re-evaluation on whether the meeting was a success.

The major forces behind the conference were Rep. Edward Royball (D.-Calif.), a Chicano, and Rep. Herman Badillo (D.-N.Y.) the first Puerto Rican to be elected to Congress. The two were able to get support from Republican Rep. Manuel Lujan and Democrat Sen. Joseph Montoya, both of New Mexico. Two other Spanish-speaking Congressmen—Henry Gonzalez and Eligio de la Garza, both of Texas—declined to participate in the meeting.

Although Chicanos and Boricuas (Puerto Ricans) had never worked together on any issue in the past, the idea of a Spanish-speaking coalition is not unusual in these days of special interest politics. Before the conference, Badillo said, "The women and the blacks have organized effectively and we believe we should too."



Native American Rights Fund

The Fund is staffed by attorneys David H. Getches and Bruce Greene, and John E. Echohawk, a recent graduate of the University of New Mexico Law School. Arizona attorney Michael Gross is engaged in a project to assist Indian communities in obtaining control and management of their own schools. In addition to the use of its staff, the Fund draws assistance from California Indian Legal Services attorneys for whose time the Fund reimburses CILS. Because of the contrast between the small staff and the national scope of the Fund's projects, only those cases which are of widespread national concern or those which could potentially result in a major alteration of existing policies toward Indians can be accepted.

An advisory board of Indians from throughout the country is being assembled. It will supervise the Fund's activities and help shape its goals. The Board, together with the staff, will work toward maximizing the effectiveness and ability of the Fund to combat the many and varied legal problems facing Indians in the United States by setting standards of service and seeking adequate funding to perform its functions. In this way, it is hoped, Native American Rights Fund will be able to fulfill the tremendous need for a permanent and effective advocate for the perservation and enforcement of Indian rights.

December, 1970



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Native American Rights Fund

A National Project of California Indian Legal Services

2527 Dwight Way, Suite 9

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(415) 845-5767

David H. Getches
Director

INFORMATION ON

NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund is a new project designed to engage in litigation of major significance to Indians throughout the nation. The Fund has been operating since August, 1970, as a part of California Indian Legal Services (CILS), which received a \$155,000 grant from the Ford Foundation to extend CILS services nationally. During the term of the eighteen month grant, it is expected that the Fund will become independent of CILS and will have its own governing body. Currently CILS receives tax deductible contributions and grants for the use of Native American Rights Fund.

Although the Fund has been in existence for only a few months, it is actively handling several major lawsuits. The Fund's activities include:

--Litigation to help the Pyramid Lake Indians of Nevada save their single asset - Pyramid Lake - from destruction by diversions of water from the river that feeds the Lake.

--A suit to prevent the Army Corp of Engineers from flooding part of the Winnebago Reservation in Nebraska for recreational purposes.

--Legal action challenging the discriminatory treatment of Indian children in a New Mexico public school district and the misuse of educational funds by the district.

--A suit to force the government to recognize the title of the Cocopah Tribe in Arizona to a substantial amount of land which was added to the Reservation by the shifting of the course of the Colorado River.

--Action against the State of Washington to establish the treaty fishing rights of several Indians tribes in that state.

The Fund recently received a grant from the Field Foundation to undertake work in connection with the partially completed series of environmentally disastrous coal burning power plants and strip mines which affect numerous reservations in the Southwest.

The Fund is establishing a national clearinghouse library for legal briefs and documents relating to Indian law for the information and assistance of lawyers working on Indian legal problems. Additional funding to assist with this project is being sought.



NEW YORK TIMES
NOV. 17-1971

INDIAN FUND GETS
\$1-MILLION GRANT

Legal Assistance Provided
by the Ford Foundation

General Times 11-17-71



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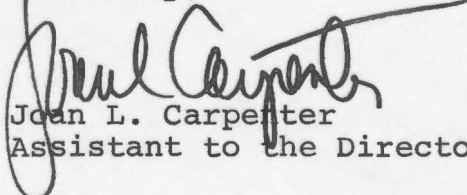
27 November 1972

Mr. Leonard Garment
Special Counsel to the President
The White House
Washington, D.C.

Dear Mr. Garment:

I am sending you several copies of the Fund's
newsletter Announcements at the suggestion of Martin
Schneider.

Sincerely,


Joan L. Carpenter
Assistant to the Director

JLC/mcp

Enclosures



Native American Rights Fund

The National Indian Law Library

ANNOUNCEMENTS

Volume 1, No. 1

June, 1972

Development Of The National Indian Law Library

...Indian law is a vast hodgepodge of treaties, judicial and administrative rulings, and unrecorded practices in which the intricacies, the perplexities, the confusions and injustices of the law governing Indians lay concealed —

Felix Frankfurter

On May 23, 1972 the Carnegie Corporation of New York announced that it had made a \$119,000 grant to the Native American Rights Fund for the development of the National Indian Law Library.

Alan Pifer, President of Carnegie Corporation, in announcing the grant, said: "The National Indian Law Library is already well on its way to being the best source of documents on Indian law in the country. We are pleased to help it develop into a research and information center with a nation-wide reach. We hope its expanded services will encourage more lawyers to represent Indian clients and thereby secure justice for Native Americans now inadequately served."

In the fall of 1971, the Fund began to develop the concept of a central clearinghouse for Indian legal materials. The formation of the first national Indian legal program, combined with already existing OEO Indian legal services and the resulting three-fold increase in Indian litigation, brought into sharp focus the need for such a project.

In the past, no single person or institution has been aware of all of the lawsuits affecting Indians which have been filed, and there has been no con-

certed effort at communicating the existence of such suits or other significant developments in Indian law. This has been particularly detrimental to the restoration of Indian rights because the efforts of those few attorneys who have been involved have been uncoordinated and the results (often even the existence) of Indian related litigation has not been generally known to others working in the field.

Many attorneys have been unable to represent Indians at all due to the difficulty of researching Indian law and keeping track of current developments and because of the specialized nature of the problems. Either the task has proven too great for the attorney or firm, or the cost has been prohibitive to the Indian client.



In all areas of Indian law, it is highly desirable to present the courts with issues in an orderly, carefully calculated manner so that the law in this

difficult and complex field of work develops favorably. Bad law can be made by having the "wrong" case decided too soon, and much work and many costly mistakes will now be avoided by attorneys and their preparations for litigation made more complete because of the compilation and ready access to the files of the National Indian Law Library.

As one of the first steps towards setting up the Library, Fund staff members, with encouragement from the Office of Economic Opportunity, visited the National Clearinghouse for Legal Services in Chicago and discussed with them all of the implications of the development of the Library project.

The Clearinghouse is widely known for providing comprehensive services to lawyers practicing poverty law, and in this capacity has developed a collection of Indian related cases. This month the Library, with the assistance and support of OEO, officially assumed the Indian law functions of the Clearinghouse with the transference to Boulder of all Indian law documents in the Clearinghouse collection.

The development of workable indices has proved to be the most difficult problem facing the Library. The Fund's staff represents the largest body of Indian law expertise in the country and all of the attorneys have been assisting with the refinement of the index in order that it might be a truly effective research and litigation tool. Consultants from across the country including law librarians, bibliographers and professors of Indian law have also been working with Melody MacKenzie, Librarian, and other staff to ascertain what improvements and changes should be made at this early stage of operation.



Indian Claims Commission Decisions Now Available

As part of its function as a legal resources library, the National Indian Law Library began negotiations with the Indian Claims Commission in November 1971 and was able to obtain a complete set, arranged by volume, of the Commission's decisions.

The Library has indexed the entire set of Commission opinions by tribe and docket number and is completing the process of indexing the set by subject matter.

The decisions of the Commission have never before been indexed and annotated. For the first time they will be readily accessible to the public. The Commission and the Library are certain that this project will be an invaluable tool to those persons working or interested in the field of Indian Law.

The Commission has asked the Library to make the decisions available at minimal cost to other libraries, individuals or organizations, since the Commission has not been able to do so itself. The volumes are xeroxed copies and spiral bound in durable covers. The Library's actual cost is \$20.00 per single volume or \$500.00 for the entire set of twenty-seven volumes. This price includes postage and handling, as well as xeroxing and binding costs. Orders for complete sets take approximately four weeks to fill. Individual sections of the decisions (by tribe, docket number, etc.) are available on short notice.

Additional Acquisitions Sought

Since February the National Indian Law Library has been attempting to obtain copies of the briefs and pleadings of both sides in cases relating to Indian law from all private firms, legal services programs and individual attorneys across the country who have been or are now litigating on behalf of Indians. This is an enormous task and the staff of the Library asks the

assistance of all those who may be able to help the Library make its collection of materials more complete.

Although attorneys may be hesitant to commit the time and money involved in searching their files to locate pertinent materials, the staff of the Library is certain that the consequent availability of a central collection of these materials will benefit all those litigating in Indian law. If xeroxing expenses are a problem, attorneys should feel free to send the Library originals with the assurance that they will be copied and returned promptly.

How To Obtain Library Documents

Copies of all Library holdings are available to anyone requesting them. Minimal xeroxing costs of \$.03 per page are charged, except to legal services programs, Indian clients and tribes, and public interest law firms. When requesting materials, please direct your inquiries to:

Melody MacKenzie, Librarian
The National Indian Law Library
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760
Ext. 67

The Library will mail any materials it has by return mail and, if it does not have copies of the specific pleadings requested, will make every attempt to locate them.

A list of the present holdings is included with this edition of *Announcements*. Each item listed has a library acquisition number shown in the upper left hand corner. Please include this number when ordering materials. Readers should return the subscription request form on the back page of this issue and should indicate specifically whether or not they wish to obtain a list of all the documents available in each individual case, as well as the Library Subject Catalogue which is in preparation.

There is no charge for a subscription to *Announcements*, which will be published monthly, or for the Library Catalogues.

The Cataloguing Procedure

The Library's cataloguing system includes the following procedures:

1. Each case is assigned an acquisition number. Individual pleadings, memoranda, opinions, etc., are given the same acquisition number in addition to an individual letter, re case number 100, pleading number 100A, memorandum number 100B.
2. Following the assignment of an acquisition number, a shelf list card, which is really a "master card," is prepared. This card contains all the important information about the case—i.e., the state, title of case, tribe, date, a brief synopsis of the case, and the individual pleadings.
3. Once the shelf list card has been prepared, the following additional tracings are added:
 - a. Two cards identical to the shelf list card so that the case appears under its state and tribe.
 - b. One to fifteen cards with the main subject heading(s) in capital letters; depending on the number of areas of law touched in a single case, there may be up to fifteen cards prepared at this step in the cataloguing system.
 - c. One card with the *plaintiff vs. defendant* (or author, if book or article) at the top.
 - d. One card with the heading of *defendant, plaintiff v.*

The resulting system is useful in two ways: If a request comes in for a specific case or article, it can be found under its state and tribe, under anywhere from one to fifteen general topics of Indian law (i.e., termination, relocation, etc.) and also under the plaintiff's name and under the defendant's name.

Secondly, the catalogue is an excellent research tool. *E.g.*, to find material on termination, one need only look up the subject heading and all of the cases ever filed related to this subject will be there; or, *e.g.*, to find cases on reservational jurisdiction in California, one will look up the subject heading JURISDICTION — RESERVATION, until he comes to the California cases, which will appear altogether after the Arizona, etc., cases on the same subject.

History and Development of the Native American Rights Fund

The Native American Rights Fund is a new legal program devoted to the assertion and the protection of Indian rights and to the orderly development of the body of law affecting Indians. The Fund's major emphasis is upon the preservation of Indian resources and the fulfillment of national obligations to Indian people.

The Ford Foundation helped to develop and establish the Fund through two grants it made to California Indian Legal Services, under which the Fund was started as a special national project in June 1970. Proceeding from a base of some expertise in the complex and undefined area of Indian law, and encouraged by a degree of success in their work at California Indian Legal Services, three attorneys, two of whom

were experienced members of the staff at CILS, and the third, a recent Indian law graduate, initiated a national program.

The Fund has now separated from its parent organization, CILS, and has established its headquarters in Boulder, Colorado. There is also a Washington, D.C. branch office which acts as an important link between the Fund and those administrative offices in the Capitol which serve Indians, as well as working on selected problems of Eastern Indians.

The staff of more than a dozen lawyers, which includes four Indian attorneys, are under the direction of a Steering Committee of Indian leaders and representatives from across the country.

The caseload of the Fund is a reflection of the criteria outlined by the Steering Committee. Matters involving the protection of Indian natural resources, treaty rights, and tribal sovereignty have been given high priority by the Committee. Other important areas of emphasis are education, termination, culture and religion. Because of the limited resources of the Fund, cases involving large numbers of Indians or dealing with laws affecting large numbers of Indians receive first consideration.

The work of the Fund is presently supported by a three-year core grant from the Ford Foundation and is supplemented by many individual contributions, as well as grants for the following special projects.



Indian Law Back Up Center

The Fund acts as the national Indian Law Back Up Center under a contract from the Office of Economic Opportunity through the University of Colorado. In this capacity the Fund provides a wide variety of technical assistance and litigation support to all those legal services projects which have Indian clients.

Thomas L. Smithson has recently joined the Fund's staff to coordinate the Indian Law Back Up Center activities. After one year of practice with Neighborhood Legal Services Centers in Detroit, Michigan, as a Reginald

Heber Smith Community Lawyer Fellow, Smithson moved in 1968 to Pine Ridge, South Dakota, to practice in a one-man law office on the Pine Ridge Indian Reservation. The office, which served a population of approximately 10,000 Oglala Sioux people, was jointly funded by the Association on American Indian Affairs, Inc., and the Office of Economic Opportunity.

Mr. Smithson's background provides him with a special kind of expertise and understanding for the needs of legal services lawyers and their clients and his addition to the Fund's staff has added a vital link to the concept of the Indian Law Back Up Center.

The Southwest Indian Environmental Project

The Field Foundation and the Akbar Fund have provided a significant amount of support for the development of the Southwest Indian Environmental Project. The Southwest is the heart of Indian country within the continental United States. There are some forty Indian reservations in the area and the air and water resources of all of these reservations are endangered by the construction of a gigantic power complex which is now in progress in the Four Corners area.



The Fund has filed several suits involving attempts on the behalf of Navajo, Hopi, the Jicarilla Apache, Chemehuevi, and Cocopah Indians to halt further destruction of Indian resources in the Southwest.

Education Resources

In conjunction with the Harvard Center for Law and Education and under a grant from the Office of Economic Opportunity, the Fund is providing legal assistance and technical advice to Indian communities involved in educational change within their schools.

Further, The Norman Foundation provided the Fund with monies for four Know Your Rights: Indian Education Workshops in 1971.

Recent Native American Rights Fund Case Developments

Pyramid Lake: Court Order Halts Secretary Morton.

In spite of the assurances given to the Pyramid Lake Tribe and to the court, the Secretary of Interior proposed new regulations for operating the Newlands Reclamation Project without consulting with the tribe or its attorneys.

Most of the water which would maintain the level of Pyramid Lake is taken for the Newlands Reclamation Project which is operated under criteria established by the Secretary of Interior. The government had assured the Tribe and the Federal District Court in Washington, D.C., which has before it the Pyramid Lake Tribe's case against the Secretary of Interior, that the tribe would be given an opportunity to comment on any proposed changes in the operating criteria and that they would be submitted to the court for its prior approval. These assurances were violated when the Secretary published new operating criteria for the Newlands Reclamation Project in the Federal Register early in April. Within a few days, Fund attorney Bob Pelcyger went to Washington, D.C. and asked the Federal Court to restrain the Secretary of Interior from implementing the new criteria.

The Tribe contended that the Secretary's new criteria were actually worse than the old ones. The judge agreed and issued an order invalidat-

ing those parts of the new criteria that had the effect of taking more water away from Pyramid Lake from the old criteria. This was a tremendous victory for the Pyramid Lake Tribe and for the Fund in that it halted further destructive acts by the government against the tribe's most valuable resource. The judge also set the case for a full trial in July.

Oil Companies Attempt to Stop Eskimo Borough Election Thwarted.

Seven oil companies recently brought suit to stop the establishment of a borough under the control of Eskimos on the North Slope of Alaska. Before the borough is officially established, there must be an election held in which the voters of the North Slope can indicate their desire to become incorporated. The election is presently scheduled for June 20.

On April 26, 1972 the oil companies asked the court in Alaska to stay the holding of the election. Fund attorney David Getches argued against the motion on behalf of the Arctic Slope Native Association, five of the North Slope villages, and two individual Eskimos. The judge ruled that the oil companies could not stop the election. Further proceedings in the matter are scheduled for June 12.

Pawnee School Stopped from Excluding Indian Children with Long Hair. Fund attorneys Yvonne Knight and Charles Wilkinson filed suit against a

UCLA Clinical Study Program

The Fund is an important component in the University of California at Los Angeles School of Law "Intensive Quarter Program."

Under the program, second and third year students with an interest in the field of Indian law serve as law clerks and research assistants for Fund attorneys on a three to six month basis. While in residence at Boulder the students provide a necessary research function to the staff and at the same time receive valuable experience in the field of Indian law, as well as course credit for their experience. The students are under the supervision of Professors Monroe E. Price and Reid P. Chambers of the UCLA School of Law.

school district in Oklahoma to reinstate three Pawnee youths who had been suspended from school for wearing their hair in a long, traditional hair style. Although the existing law is to the effect that federal courts do not have jurisdiction to stop schools from regulating the hair style of students, a Federal District Court judge in Oklahoma City held that it would violate the rights of Indian children whose culture was the basis for their particular hair styles.

A temporary restraining order was entered against the school district and the students returned to school. A hearing on a request for a permanent injunction is scheduled for June 5. **Supreme Court Petition Filed in Hopi Strip Mining Case.**

Several weeks ago a Federal District Court in Washington, D.C. ordered the Fund's case to set aside the Secretary of Interior's approval of the lease permitting strip mining on the Hopi lands transferred to Phoenix, Arizona. A petition for writ of mandate was filed with the Court of Appeals for the District of Columbia, but was denied.

Recently, Fund attorney John Echohawk prepared and filed a petition for a writ of certiorari with the United States Supreme Court in an attempt to have the high court review the trans-

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National Indian Law Library Catalogue Current Holdings June 1972

The following is an alphabetical list of the cases, articles and other materials now available through the National Indian Law Library. The com-

plete catalogue of the documents available in each case is too lengthy to be included in this newsletter.

If you are interested in receiving this catalogue of documents or if you would

like to receive the catalogue with subject headings when it is completed later this year, please fill out the Subscription and Catalogue Request on the last page of this issue.

Cases

The line directly below the title gives the state, court(s), tribe(s) and date(s) when applicable. The court, except where shown as a Federal Court, tribal court or administrative agency, is a court of the state indicated at the beginning of the line. The courts listed are not meant to be a history of the case, but only refer to the documents in the library files. The date is that of the earliest document in the case in our files. The date preceded by the letter "d." indicates the date on which the case was settled or decided. If no date preceded by the letter "d." is shown, then the case is undecided, on appeal in another court, or the decision is unreported and we have no record of it. If only a date preceded by the letter "d." is shown, then all of the litigation in our file occurred during the year of the decision. The symbol (C.—) indicates a connected or consolidated case.

Although the Library has made every effort to make our files as complete and accurate as possible, there may be errors which we rely upon you to help us correct.

1005	Acquisition Number
Wisconsin v. Richard Gurnoe.	
Wisc., Cir. Ct., Sup. Ct., Chippewa, 1970, d. 1972	
State	Courts
Tribe	Dates

(C. 1006).—Connected or consolidated case

1224
Affiliated Ute Citizens v. United States.
Ct. Cl., Ute, 1971.

1211
Affiliated Ute Citizens v. United States.
Utah, U.S. Sup. Ct., Affiliated Utes, 1971, (C. 1191).

1197
Agua Caliente Band of Mission Indians v. County of Riverside.
Cal., 9th Cir., Sup. Ct., Agua Caliente Band of Mission Indians, 1970.

1029
Ames, Jackson v. Walter Hickel.
Cal., N.D. Cal., Hoopa, 1969.

1021
Arnett, G. Raymond v. 5 Gill Nets.
Cal., Ct. App., 1970.

1239
Bad Bear, Grace v. Fall River County Subcommission for the Mentally Retarded.
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1096
Benally, Herbert v. Glenn Sills.
N.M., Dist. Ct., Navajo, 1970, d. 1971.

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1092
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N.M., D.N.M., 1971.

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1060
Big Knife, Joe v. Rocky Boy's Chippewa-Cree Tribal Business Committee.
Mont., D. Mont., Chippewa-Cree, 1971.

1185
Bitsie, Marie v. William McGee.
Ariz., D. Ariz., Navajo, 1972.

1082
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Carlson.
S.D., 10th Cir., Sioux, 1968.

1059
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1147
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S.D., 10th Cir., 1969.

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1148
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Cal., Ct. App., Sioux, 1970.

1020
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Cal., Justice Ct., Ct. App., Sup. Ct., Hoopa, 1969.

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Cal., Ct. App., U.S. Sup. Ct., Pitt River Tribe,

1019
California v. Willard Rhoades.
Cal., Ct. App., U.S. Sup. Ct., Pitt River Tribe, 1970.

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1040
Campbell, Thomas v. Walter Hickel.
Cal., N.D. Cal., 1970.



1112
Cannon, Joseph, *In re Estate of*.
Okla., Dept. of Interior, Osage, 1969.

1158
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Ct. Cl., Quinault, d. 1971.

1038
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1178
Carmeneros, Lucy M., *In re*.
Colo., Before State Bd. of Social Services,
Southern Ute, 1970, d. 1971.

1270
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1028
Celestine, Alex, *In re*.
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1099
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1266
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sion.
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1228
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federated Tribes of the Umatilla Res., Hoopa
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the Umatilla Res., Ft. McDermitt and Fallon
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Res., 1965.

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Cook, John v. Board of Education of Salmon
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Council, Inc., 1968, d. 1970.

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mentary School District No. 3.
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try, Inc.
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For sets or a complete monograph, write:

Dr. George E. Fay
Museum of Anthropology
University of Northern Colorado
Greeley, Colorado 80631

Constitutions and By-Laws of individual Tribes available through the Library.

For more detailed information on the Library's holdings write to:

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extension 67



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fer decision of the Court of Appeals. Besides being a forum very close to the politically charged issue of power plant construction in the Southwest, the court to which the case was transferred is the same court which ruled adversely in the National Environmental Policy Act case which seeks to stop further governmental approvals of power plant construction in the Southwest. The strip mines on Hopi lands are, of course, the source of fuels for the power plant complex.

Attorney General Need Not Represent Indians in Water Claim.

Some time ago the Federal District Court in San Diego ruled that the U.S. Attorney was not required to represent the Rincon and La Jolla Bands of Mission Indians in Southern California in their claim against a city and a water company which had been infringing on their water rights for over 75 years. The ruling was part of the San Luis Rey River water rights litigation which is continuing in the district court.

An appeal was taken on the particular ruling by Fund attorney Bob Pelcyger. Last week the Court of Appeals for the Ninth Circuit affirmed the decision of the District Court holding that requirement of 25 U.S.C. § 175 that the U.S. Attorney "shall represent Indians in all cases at law and in equity" did not make it mandatory for him to do so in this case where the government was also defending an

Indian Claims Commission matter against the same Indians who brought the lawsuit. The court ruled the potential conflict of interest makes it unnecessary for the U.S. Attorney to act under the circumstances.

BLM Chaining of Pinon Juniper Trees Stopped.

For some time Fund attorneys Bruce Greene and Yvonne Knight have been assisting Western Shoshone Indians in Nevada in their attempts to stop the Bureau of Land Management from tearing out Pinon Juniper trees to increase grazing yield of lands which historically belonged to the Shoshones.

By drawing a huge chain between two bulldozers, hundreds of trees can be uprooted very quickly. This has been done in part of the area which the Western Shoshones traditionally used for gathering pinon nuts which the trees produce. Objections have been made administratively to the Bureau of Land Management and after the matter was called to the attention of Senator Kennedy, the matter was among the subjects into which he inquired during hearings of his Subcommittee on Administrative Practices and Procedures.

The Bureau of Land Management has recently issued an order stopping all Pinon Juniper chainings pending further study into the matter.

Southwest Energy Complex Challenged in the Court of Appeals.

The United States Court of Appeals for the Ninth Circuit recently granted

Fund attorney Bruce Greene's motion for expedited consideration of an appeal from an adverse ruling by a Federal District Court judge in Phoenix. This suit challenges federal authorizations issued to effectuate the construction of six large coal burning, electric generating plants located on or near Indian reservations in the Southwest on the grounds that the National Environmental Policy Act has not been followed.

The Fund has pressed the federal government for over one year to study the cultural and environmental impact of their proposed actions before irrevocable decisions are made. The case is set for argument in San Francisco on July 13, 1972 before a three-judge court of appeals.

Indian Students Ordered Reinstated in Nebraska School.

A Federal District Court judge in Omaha, Nebraska ordered two Winnebago youths who had been expelled from school immediately reinstated. His temporary restraining order was upheld after a full hearing of the matter two weeks later.

The judge found that removal of the students from school had been for minor infractions and was undertaken without the students being afforded the due process which they are guaranteed under the United States Constitution. The students are represented by Fund attorneys Charles Wilkinson and Dan Taaffe.

Fund Assists Family of Yellow Thunder.

The murder of Raymond Yellow Thunder received extensive attention in the press. The situation in Gordon, Nebraska and on the nearby Pine Ridge Indian Reservation became extremely tense after Yellow Thunder was found dead several days after he was forced into the trunk of a car, taken to an American Legion hall where a dance was in progress and forced to dance Indian style without his trousers.

While there was little doubt that he was murdered, rumors concerning mutilation of his body and the circumstances surrounding his death abounded. At the request of the deceased man's family, the Fund's Deputy Director John Echohawk and attorney Bruce Greene went to Gordon and the Pine Ridge Reservation to help resolve the situation. An eminent pathologist



from Denver was engaged to perform a second autopsy on the body which was exhumed. The cause of death and the condition of the body were reaffirmed and an explosive situation in the area, which had attracted thousands of Indians from the Sioux reservation and from throughout the country, was calmed.

The Fund now represents the family of the victim and a decision as to what action shall be taken against the persons causing his death and other parties will await the outcome of a criminal trial now in progress.

Brief Filed in Reservation Gambling Case.

An amicus curiae brief in the Ninth Circuit Court of Appeals was filed by the Fund supporting the right of an Indian tribe to exercise a local option to allow certain forms of gambling within their reservation just as a county can exercise such an option. The case arose in California which is a Public Law 280 state and concerns the Rincon Band of Mission Indians. Fund attorney Robert Pelcyger, assisted by UCLA Professor Monroe E. Price, prepared the brief.

Dam Construction Stopped by Umatilla Tribe and Individual Yakima Indians.

A suit brought by the Fund on behalf of the Umatilla Tribe and several individual Yakima Indians resulted in an injunction on March 30, 1972 against further construction of dams along the Lower Columbia River.

The Army Corps of Engineers was in the process of modifying and increasing the size of several giant dams on the Columbia in order to increase the amount of electrical power which would be available during peak use periods. Raising the dams would have a serious effect on the anadromous fish in the Columbia, upon which many of the Indian plaintiffs depend for their

livelihood. Furthermore, several fishing sites would be flooded periodically.

No Act of Congress specifically authorized taking the Indian property rights and thus the chief judge of the Federal District Court in Portland found that the Indians' treaty rights would be violated. He also ruled that the National Environmental Policy Act had not been complied with by the Army Corps of Engineers. Reid Chambers, of counsel to the Fund, represented the plaintiffs.

Brief Filed in Oneida Case.

An amicus curiae brief was filed in a case in which Oneida Indians claim that the transactions by which the State of New York took their land in 1795 was in violation of the Non-Inter-course Act. The lower court found that it had no jurisdiction to hear the matter since it was merely a question of property rights and therefore the state court should hear the case.

The Fund's brief supports the position of the Indian plaintiffs that a federal question was raised and that the court should have jurisdiction.

The brief which was filed in the Second Circuit Court of Appeals was prepared by Fund attorneys Peter Aschenbrenner and David Getches.



Steering Committee Of The Native American Rights Fund

Charles Lohah, Chairman. Mr. Lohah is an Osage Indian from Oklahoma. He is an Assistant Professor at the Baltimore-Washington Campus of Antioch College, where he is in charge of the Indian Studies Program. He is a former County and District Court Judge of Oklahoma.

David Risling, Jr., Vice-Chairman. Mr. Risling is a Hoopa Indian from California. He was Chairman of the Board of Trustees of California Indian Legal Services for four years, and still serves as a member of the CILS Executive Committee. He is a Professor and Coordinator of Ethnic Studies at the University of California at Davis and a former President of the California Indian Education Association.

La Nada Means, Executive Committee member. Ms. Means is a Shoshone-Bannock Indian from Idaho. She is a graduate student at Idaho State University and has been active in Indian affairs on her home reservation at Fort Hall, Idaho, and previously in the San Francisco Bay area.

Alfonso Ortiz, Executive Committee member. Dr. Ortiz is from the San Juan Pueblo in New Mexico. He is a Professor of Anthropology at Princeton University and an authority on Indian culture.

Wendell Chino. Mr. Chino is Chairman of the Mescalero Apache Tribe and is a past president of the National Congress of American Indians. He presently serves on the Executive Board of the National Tribal Chairmen's Association.

Fred Gabourie. Mr. Gabourie is a member of the Seneca Tribe of the Iroquois Nation of the Six Nations Reserve, Ontario, Canada. He practices law in Los Angeles and is a member of the Board of Trustees of California Indian Legal Services.

Leo Haven. Mr. Haven is a Navajo Indian and the Director of the Dinebeilna Nahiilna Be Agaditahe Legal Services Program serving the Navajo Nation. He has been active in Navajo tribal affairs and is an experienced tribal court advocate.

Phillip Martin. Mr. Martin is a member of the Mississippi Choctaw Tribe in Philadelphia, Mississippi. He was recently elected Tribal Chairman of the Choctaws.

Francis McKinley. Mr. McKinley is a Navajo and Ute. He is Director of the National Indian Training and Research Center at Tempe, Arizona. He has assisted in the development of Indian education programs for the Office of Economic Opportunity.

John Stevens. Mr. Stevens was Governor of the Passamaquoddy Tribe in Maine for nineteen years. He is now State Commissioner of Indian Affairs.

Richard Trudell. Mr. Trudell is a Sioux from South Dakota. He recently graduated from the law school at The Catholic University of America. Formerly president of the American Indian Law Student Association, he now is employed by the Robert F. Kennedy Memorial.

Staff Of The Native American Rights Fund

David H. Getches is the Fund's Director. He has carried the primary responsibility for the

Fund's development. Prior to assuming the directorship of the Fund in June 1970, he spent three years in the field as a co-director of one of California Indian Legal Services field offices. During that time he developed special competence in criminal and civil jurisdiction over Indians and Indian education problems and has specialized in Indian treaty fishing rights. Before joining CILS and following his graduation from the University of Southern California School of Law, Mr. Getches was in private practice.

John E. Echohawk is the Deputy Director of the Fund. Mr. Echohawk is a Pawnee, and was the first graduate of the University of New Mexico's special program to train Indian lawyers and has received national prominence in that capacity. He was an officer of the American Indian Law Students Association while in law school and has specialized in resource law and jurisdiction problems since joining the Fund.

STAFF ATTORNEYS

L. Graeme Bell is the staff attorney in the Fund's Washington, D.C. office. A graduate of Harvard Law School, he taught law and procedures at Columbus School of Law at the Catholic University of America prior to joining the Fund, and also helped to develop the Indian law program at Catholic University. During law school he was an intern with DNA on the Navajo reservation.

Joseph J. Brecher has extensive experience in the fields of environmental policy and law. He is the author of the first handbook on environmental law for lawyers and is involved in most of the litigation the Fund is handling in conjunction with the Four Corners Power complex and other environmental destruction of Indian lands. Mr. Brecher is a graduate of New York University Law School.

Thomas W. Fredericks, a Mandan Indian from the Fort Berthold Reservation in North Dakota, is the most recent addition to the Fund's staff. A 1972 graduate of the University of Colorado School of Law, Mr. Fredericks was treasurer of the American Indian Law Students Association. He was a tribal administrator for the Standing Rock Sioux Tribe at Fort Yates, North Dakota from 1966-1969. His special areas of interest are administrative and natural resource law. Mr. Fredericks is presently preparing for the Colorado Bar exam.

Bruce R. Greene has acquired extensive experience in administrative law, having been legal advisor for two years to a Commissioner of the Federal Power Commission. He acts as one of the Fund's experts in its National Environmental Policy Act suits, as well as a wide variety of other matters. He graduated valedictorian and Order of the Coif at Hastings School of Law where he served as Editor of the Hastings Law Journal.

Yvonne T. Knight, a Ponca, is the first Indian woman law school graduate from the University of New Mexico's Indian law program and one of the few Indian women lawyers in the country. Her areas of special emphasis include Indian education and economic development.

Robert S. Pelcyger, a graduate of Yale Law School and a Fulbright Fellow, specializes in water rights and jurisdiction problems. He gained prior experience with DNA, the Navajo legal services program, and as a Director of the Escondido Office of California Indian Legal Services where he practiced Indian law for three years.

Leland J. Pond is an Assiniboin Indian and a graduate of the UCLA School of Law. Mr. Pond was instrumental in the organization of the Rocky Boy Indian School, which is one of the few Indian controlled schools in the country. Prior to joining the Fund, Mr. Pond worked with

the United Scholarship Service as the community coordinator for their Indian Correction Program. Mr. Pond is presently preparing for the Colorado Bar exam.

Thomas L. Smithson recently joined the Fund's staff as the head of the Indian Law Back Up Center. His experiences as the only attorney on the Pine Ridge Reservation in South Dakota during the past three years make him an invaluable asset to the Fund and all of the legal services programs across the nation which the Back Up Center serves. Mr. Smithson is a graduate of the University of Michigan School of Law.

Daniel J. Taaffe compiled an impressive academic record while at Boalt Hall at the University of California, graduating in the top 5 per cent of his class. He acquired practical experience in Indian legal problems working summers with California Indian Legal Services. Since joining the Fund he has specialized in education law and prison reform.

Charles F. Wilkinson is in charge of the Fund's Indian education project and has developed several important litigation strategies in this field. Prior to joining the Fund he practiced privately with major law firms in Phoenix and San Francisco for five years. He is a graduate of Stanford University School of Law.

OF COUNSEL

Reid Peyton Chambers teaches administrative, property and Indian law at UCLA. He studied at Oxford University, Balliol College, prior to his graduation from Harvard Law School. Professor Chambers has been counsel on several important Indian lawsuits, most notably the Trans-Alaska Pipeline case, and has authored a monograph on the subject of governmental conflict of interest vis-a-vis Indians for the Administrative Conference of the United States.

Thomas N. Tureen has been involved with the problems of Eastern Indians for several years as director of the Indian Legal Services Unit for Pine Tree Legal Assistance in Maine. He is presently working on a special research project for the Fund relating to the problems of obtaining federal recognition for Eastern Indians and the relative value of state vs. federal status. Mr. Tureen's special emphasis in this study is obtaining valid information for Indian organizations and groups to use in the presentation of their claims, and in producing a definitive document and article which will be of use to Eastern tribes. Mr. Tureen is a graduate of George Washington University School of Law.

SUPPORT STAFF OF THE FUND

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Peri M. Bateman, Oglala Sioux, Legal Secretary.
Gail L. Benoist, Cheyenne River Sioux, Legal Secretary.

Janice C. Bray, Kiowa, Legal Secretary.
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 Ken Garry, David Wray, Vic Hart, Maintenance.

SUMMER LAW CLERKS

Michael D. Cox, Creek.
 Frank S. LaFontaine, Colville.
 Patrick A. Lee, Oglala Sioux.
 Barbara Larson Webb, Tlinget.
 Barbara J. Walkingstick, Cherokee.

Staff Positions Open

The Fund has immediate openings for experienced attorneys. With the exception of Indian law graduates, only candidates with three or more years of litigation experience will be considered.

The Fund is interested in applicants with expertise in Indian law, education law, taxation, and economic development. Federal court litigation experience is especially valuable.

Resumes and inquiries should be directed to either David H. Getches or John E. Echohawk at the Fund's offices in Boulder.

Historical engravings from the Dover Pictorial Archive by Clarence P. Hornung

Native American Rights Fund
 The National Indian Law Library
 1506 Broadway
 Boulder, Colorado 80302

In future issues of *Announcements*, legal services programs serving Indians are encouraged to publish notices of staff openings. The publication deadline is the 20th of each month and notices should be sent to *Announcements* at the Fund's offices in Boulder.

Native American Rights Fund Offices

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

Native American Rights Fund
 1506 Broadway
 Boulder, Colorado 80302
 Telephone (303) 447-8760

or to the **Washington D.C. office**,

Native American Rights Fund
 1712 N Street, N.W.
 Washington, D.C. 20036
 Telephone (202) 785-4166

Contributions to the Native American Rights Fund and The National Indian Law Library are tax deductible and should be sent to the main office in Boulder.

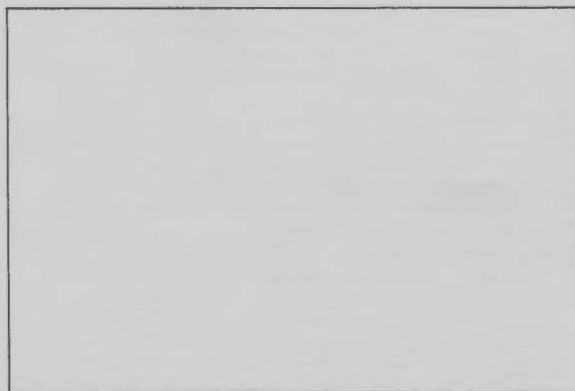
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ANNOUNCEMENTS

Volume 1, No. 2

July, 1972

Education v. Destruction

In many schools that Indian children are attending today, it would be better if the word "Indian" were never mentioned. In addition to shabby and overcrowded situations (which in many instances lack even the basic resources), the children are run through a system designed and run by white men which leads to personal, cultural and ethnic annihilation. By almost every standard they receive the worst education of any children in the country. The Indian drop-out rate is twice that of all other children in the country, and the average educational level for all Indians under federal supervision is five school years.

From the beginning in almost every treaty or negotiation between American Indian people and the United States government, one of the first conditions specifically asked for by tribes was education. The quality of the product which the government has ultimately produced has been abysmally poor. Rather than being a catalyst for self-realization and betterment, Indian education has been an instrument of destruction and a further example of the continuing string of broken promises by the government and other institutions of the dominant white society.

The Bureau of Indian Affairs operates boarding schools, day schools and in recent years, has begun to transfer by contract much of its responsibility for the education of Indian school children to local school districts. More than fifty percent of Indian children attend public school classes with non-Indians under these contracts between

the Bureau and the states. About two-thirds of the remaining children are sent to boarding schools (often enor-



From the autobiography of Running Antelope showing his killing of two Arikarees

mous distances from their homes). The remaining children, about fourteen percent, are served by the BIA day schools.

Because of the bureaucratic chain of command within the BIA itself, those persons who control Indian education policy are for the most part neither Indians nor educators. This, combined with the mediocrity of the entire educational system, has led to unbelievable abuses of Indian children whose parents have been deliberately excluded from the process. Only in the last few years have Indian parents, with the support of private foundations and the Office of Economic Opportunity, been able to begin to seek changes in Indian education.

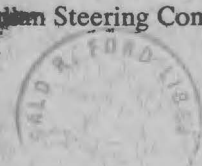
OEO Indian Education Support Project

In July 1971, the Native American Rights Fund, in conjunction with the Harvard Center for Law and Education, embarked on a two-year special program to provide research and legal assistance to Indian parents, tribes, and other organizations seeking to improve the quality of education available to Indians. Funding for this program, known as the Indian Education Support Project, has come from the Office of Economic Opportunity.

Lawyers can furnish significant and necessary research and support to communities engaged in improvement of Indian education through technical assistance as well as legal representation in lawsuits. In many instances, litigation, the more traditional function of lawyers, is not always the best

approach or solution to Indian education problems. For this reason the Fund and the Center use a variety of vehicles in their attempts to turn Indian education programs in this country into vehicles of support rather than destruction.

The Fund and the Center have consulted widely as to the priorities which they should be giving to their work under this special Indian Education Project. They have worked with Indians whose duties are primarily nationally oriented in the educational field, as well as with those Indians involved in "grass root" community efforts. Priorities under this project have also been discussed on several occasions with the all-Indian Steering Committee of the Fund.



Recently there has been considerable documentation of widespread misuse of federal funds which should be spent for the education of Indian students. In many instances, the problem can be corrected by a vigorous involvement of Indian parents. The Fund has worked with several parent groups in establishing parent advisory councils to advise school districts on the use of Title I and Johnson-O'Malley funds. (These and other special federal Indian education programs are explained in

The Fund is preparing to litigate two major misappropriation cases, *Natonabah v. Gallup-McKinley Board of Edu-*

The Fund recently filed *Fielder v. Board of Education*, an action which sought to reinstate two Winnebago students who had been expelled from

Indian Tuition at Fort Lewis College

Prior to 1970, any qualified Indian student could attend Fort Lewis College in Durango, Colorado, free of charge of tuition. This right is based on a 1910 agreement between the United States and the State of Colorado through which federal land containing an Indian school was transferred to the state for educational purposes. Colorado has recently sought to limit tuition free Indian education at

The BIA is in the process of revising the regulations for the administration of the Johnson-O'Malley Act. The new regulations should emphasize the need for parental involvement, as well as the need for programs which em-



The Coalition has been working on the loosening of the bureaucratic log-

Cherokee Alphabet					
D _a	R _e	T _i	Ꮘ _o	Ꮚ _u	i _v
S _{gu} Ꮝ _{he}	F _{gc}	Y _{gi}	A _{go}	J _{gu}	E _{gv}
Ꮟ _{ha}	Ꮢ _{he}	Ꮣ _{hi}	F _{ho}	Ꮣ _{hu}	Ꮤ _{hv}
W _{la}	Ꮡ _{le}	Ꮡ _{li}	G _{lo}	M _{lu}	Ꮥ _{lv}
Ꮖ _{nia}	Ꮣ _{me}	H _{mi}	Ꮤ _{mo}	Y _{mu}	
Ꮣ _{na} t _{hna} G _{nar}	Ꮥ _{ne}	h _{ni}	Z _{no}	Ꮥ _{nu}	Ꮣ _{nv}
T _{qua}	Ꮥ _{que}	Ꮡ _{qu}	Ꮥ _{qu}	Ꮥ _{qu}	E _{quv}
U _{ia} Ꮥ _i	4 _{ic}	B _{ic}	F _{so}	Ꮡ _{ru}	R _{sv}
U _{sa} W _{is}	Ꮡ _{de} Ꮥ _{de}	Ꮥ _{de} Ꮥ _{de}	Ꮥ _{de}	S _{du}	Ꮡ _{dv}
Ꮥ _{du} Ꮥ _{du}	L _{de}	C _{de}	Ꮥ _{du}	Ꮡ _{du}	P _{dv}
G _{na}	T _{na}	h _{ni}	K _{na}	J _{na}	C _{na}
G _{na}	Ꮥ _{na}	Ꮡ _{ni}	Ꮥ _{na}	Ꮡ _{na}	Ꮥ _{na}
Ꮥ _{na}	B _{na}	Ꮥ _{ni}	Ꮥ _{na}	G _{na}	B _{na}

Sounds represented by vowels.

n as <i>is</i> in <i>father</i> or short as <i>a</i> in <i>trial</i>	o as <i>aw</i> in <i>law</i> or short as <i>a</i> in <i>not</i>
e as <i>is</i> in <i>sale</i> or short as <i>i</i> in <i>met</i>	a as <i>ay</i> in <i>fat</i> or short as <i>u</i> in <i>pull</i>
i as <i>is</i> in <i>pie</i> or short as <i>i</i> in <i>pit</i>	y as <i>u</i> in <i>but</i> nasalized.

Consonant Sounds.

g nearly as in English, but approaching to k. d nearly as in English but approaching to t. k h l m n p s t z w y, as in English. Syllables beginning with g, except Ꮝ have sometimes the power of k. Ꮣ Ꮣ Ꮣ are sometimes sounded, as, Ꮣ Ꮣ Ꮣ; and syllables written with k, except Ꮥ, sometimes vary to Ꮥ.

jams and the contracting policies between Indian schools and the BIA, and in the organization of the Congressional watchdog group on Capitol Hill. In addition, they have been called as witnesses in Senate hearings regarding funding for all Indian schools throughout the country and have assisted in the revision of federal regulations and contract procedures.

The Coalition was formally organized in December, 1971, and has established temporary headquarters at the Fund's offices in Boulder.

Rocky Boy

Both the Fund and the Coalition were contacted by parents at the Rocky Boy Reservation in Montana concerning the establishment of a new-Indian controlled school district. The reservation had already established a separate elementary school district, pursuant to state law. Because of the success of the elementary school district, the tribe has made the decision to attempt to establish a high school district; this step is necessary because the present high school district is completely controlled by a non-Indian school board. Leland Pond and Daniel Taaffe of the

Fund have met with tribal leaders and are now in the process of determining which alternatives are available. A major problem will be the construction of a new educational facility on the reservation; Fund attorneys and Coalition personnel are now in the process of seeking funding for that purpose.

Busby

Fund research associate Leland Pond and Harvard Center attorney Daniel Rosenfelt successfully completed negotiations concerning a community-controlled school in Busby, which is located on the Northern Cheyenne reservation in Montana. The BIA agreed to increase its original funding figure of \$615,000 to \$795,000, an increase of \$185,000 which is satisfactory to the Busby School Board. Of equal importance is the fact that the Busby negotiations resulted in the BIA redrafting its form contract to reflect more accurately the needs of the Busby community. Hopefully, the Busby negotiations will serve as a precedent for the BIA's continuing to permit innovative contractual features which will meet the individual needs of community controlled schools.

Coalition Positions Open

The Coalition has openings for the following positions and persons should submit their resumes to Birgil Kills Straight, President of the Coalition, at 1506 Broadway, Boulder, Colorado 80302. Positions are available for a Program Director, Administrative Assistant, a Staff Attorney, an Education-Community Development Specialist, and a Secretary-Bookkeeper.

Further information about the Indian Education Community Support Project and legal assistance may be obtained by writing to:

Mr. Charles Wilkinson
Native American Rights Fund
Indian Education Community
Support Project
1506 Broadway
Boulder, Colorado 80302

or:

Mr. Daniel Rosenfelt
Harvard Center for Law and
Education
38 Kirkland Street
Cambridge, Massachusetts 02138



Dighton Rock, Massachusetts

Other Recent Native American Rights Fund Case Developments

Progress for the Passamaquoddy Tribe

Since the early part of the nineteenth century, the Passamaquoddies in the state of Maine have been regarded as "state Indians." The federal government has not recognized the existence of the tribe, nor has it protected tribal resources or provided any federal services. The tribe has suffered many wrongs at the hands of the state includ-

ing taking its land without compensation and mismanagement of its funds.

Earlier this year, the tribe wrote to Commissioner Bruce seeking acknowledgement of the federal government's long neglected responsibility to the Passamaquoddy Tribe, and more specifically, urging the United States to bring suit against the State of Maine to redress the tribe's grievances. Commissioner Bruce agreed with the tribe's

position and recommended that the Department of the Interior request the Justice Department to file suit immediately since a statute of limitations would bar filing the suit after July 18, 1972. Since then, nothing has happened.

Early in June, the Passamaquoddy Tribe filed suit in the U. S. District Court in Maine against the Interior

and Justice Departments to require that the Federal government act in its behalf against the state of Maine. On June 16, 1972, the District Court ordered the government to decide what it was going to do by June 22, 1972. The government adamantly refused to file suit and on June 23, the District Court ordered the Secretary of the Interior and the U. S. Attorney General to file a protective action by July 1. It is believed to be the first time a court has ordered the government to file suit on behalf of Indians.

The suit is being handled by Fund attorneys Thomas N. Tureen (working with Pine Tree Legal Assistance in Calais, Maine) and Robert S. Pelcyger. Stuart Ross of the Washington, D. C. law firm of Hogan and Hartson is also representing the tribe on a *pro bono* basis.

Davis v. Warden, Nevada State Penitentiary

An amicus curiae brief on behalf of the Pyramid Lake Paiute Tribe has been filed by the Fund in the Nevada Supreme Court supporting a writ of habeas corpus for two Pyramid Lake Paiute Tribal members. The tribal members were convicted of attempted murder for beating a white person within the boundaries of the Pyramid Lake reservation. The State of Nevada has been asserting jurisdiction over tribal members on the basis of Public Law 280 which gives the state jurisdiction over most Indian country in Nevada. However, when Public Law 280 was applied to the State of Nevada, the Pyramid Lake reservation was excepted from the extension of jurisdiction by the governor.

The State has argued that the exception for Pyramid Lake was improper. As amicus curiae the tribe, represented by the Fund, has asserted that the Nevada State Court had no jurisdiction to try and convict the two petitioners. The case was taken under consideration by the Nevada Court on June 6, 1972, and a decision is now awaited.

The brief was prepared by Fund attorney Daniel Taaffe.

Brief Filed Against Federal Court's Attempt to Relitigate Issue Resolved by Tribal Court

At the request of the Eighth Circuit Court of Appeals, Native American

Rights Fund filed an amicus curiae brief in a criminal case arising on the Rosebud Sioux Reservation. After an auto accident which resulted in one death, an Indian driver was acquitted by the tribal court of driving while intoxicated. He was later convicted in federal court for manslaughter "as a result of driving while intoxicated."

The Fund argued that although a tribe has inherent power to punish offenses, federal statutes have regulated Indian criminal justice so completely that the tribal court and the federal court are arms of the same sovereign. Thus, the federal court was bound by the tribal court's findings on driving while intoxicated.

Brief Filed in Supreme Court Tax Case

Recently, the United States Supreme Court granted certiorari in the Mescalero Apache personal property tax case. The New Mexico State Court of Appeals held that personal property owned and used by the tribe in the operation of a ski resort on land leased from the U. S. Forest Service was taxable by New Mexico.

Fund attorney L. Graeme Bell III has filed an amicus curiae brief arguing that the Mescalero Apache Tribe is an instrumentality of the federal government for the economic development of the Indian people, and, as such, is exempt from state taxation.

Secretary of Interior Aids San Luis Rey Bands

The Secretary of the Interior and five Indian bands (La Jolla, Rincon, San Pasqual, Pala and Pauma) along the San Luis Rey River are allied together against the Escondido Mutual Water Company in a proceeding that is pending before the Federal Power Commission. Mutual has had an F.P.C. license since 1924. The current license expires in 1974, so Mutual has applied to the Commission for a new fifty year license. The Indians and the Secretary oppose the new license, principally on the grounds that the license enables Mutual to take the Indians' water away from their reservation. In addition, the Indians and the Secretary are seeking damages and cancellation or revision of Mutual's current license.

The Indians' case got a big boost last month when the Secretary of the

Interior recommended that the United States take over or recapture the project when the current license expires or, in the alternative, that the Commission issue a non-power license to the Indian Bands. This was only the second time that the Secretary recommended recapture of a F.P.C. license and the Bands' competing application for a non-power license was the first one filed with the Commission. The Secretary also insisted on the immediate imposition of nine conditions in the operation under the existing license to make more water available to the Indians and to protect their resources.

The Fund represents the Rincon and La Jolla Bands. Robert S. Pelcyger and Bruce R. Greene are handling the case.

Information On Federal Indian Education Programs

THE JOHNSON-O'MALLEY ACT

The Johnson-O'Malley Act of 1934 is the only federal education program which uniquely benefits Indians. The law, as currently administered, is intended to provide federal money to states to enable them to educate eligible Indian children. Children of at least one-quarter Indian ancestry whose parents live on or near an Indian reservation under the jurisdiction of the BIA are eligible for assistance.

The Johnson-O'Malley Act has been the federal government's primary means of transferring responsibility for Indian education to the public schools. It is designed to accomplish three things: To get the federal government out of the business of educating Indian children; to further the long established practice of turning over responsibility for Indian education to the states and local districts through financial inducement; and to "civilize" Indians, the historical goal of Federal Indian legislation. It was thought that in public schools "daily contacts" with the white children would facilitate their "civilization" and thereby contribute to the "enlightenment" of adult Indian parents.

TITLE I FOR INDIAN CHILDREN

Apart from the Johnson-O'Malley Act designed specifically to benefit Indian children, poor and educationally

deprived American Indian children are also entitled to aid under Title I of the Elementary and Secondary Education Act.

Title I is a discriminatory act. It provides benefits to one category of children and denies benefits to all others. Such discrimination in the allocation and educational resources has been a common occurrence in the history of American education. What makes Title I significant is that for the first time discrimination favors *poor* and *culturally deprived* children. To Indian children, this means that Title I funds should be spent on supplemental programs designed to meet their special and different needs.

Under Title I, the United States Commissioner of Education makes lump sum payments to state departments of education, which in turn approve and fund projects for educationally disadvantaged children proposed by local school districts. The federal government does not require particular projects or administer any projects; rather, local school administrators have broad discretion to select and implement those programs which, in their view, will achieve the purposes of the Act. Title I is not supposed to be used for general aid.

Approved projects must conform to regulations and program guides promulgated by the U. S. Office of Education. The state educational agencies must give assurances to the Federal government that Title I funds are being spent in conformity with the law. The state is responsible for paying funds, approving project applications, monitoring, auditing, and evaluating the effectiveness of the projects. Similarly, the U. S. Office of Education must insure that Congressional and Federal administrative policies are being carried out by state and local education officials. The Commissioner of Education may suspend payments to any state which fails to meet its statutory and administrative obligations.

"UNDER NO CIRCUMSTANCES SHALL THOSE UNABLE TO PAY BE CHARGED FOR THEIR LUNCHES"

The new School Lunch Act (P.L. 91-24), signed into law on May 14, 1970, is now in full effect. It makes major reforms in the national school

lunch program and establishes the right to free or reduced price meals for every child whose family income is below the poverty level or whose family cannot afford to pay. This law must be obeyed by every school district that receives commodities or money from the Department of Agriculture for its lunch program.

The new law and regulations re-emphasize the laws against discrimination and making children work for their lunch. Both practices are strictly illegal. Indian children receiving free and reduced price lunches cannot be made to:

- work for their meals;
- use a separate lunchroom, serving line or entrance;
- eat a different meal or eat the meal at a different time;
- use tickets, tokens or any other means of paying to identify them as needy children; or
- have their names announced, posted, published or revealed in any way to other teachers or students.

IMPACT AID AND INDIAN CHILDREN

The presence of Indian children qualifies a public school district for federal money under the Impact Aid legislation because their parents live and/or work on federal property. The two Impact Aid laws—P.L. 874 and 815—were passed by Congress in the 1950's primarily as a result of military and defense activities of the federal government. Their purpose was to provide federal financial assistance when federal activities, mostly related to the military installations, created a financial burden on local school districts. Congress' intent was to compensate school systems for the loss of part of their tax base from federal installations which were established in the community.

There are two categories of Impact Aid assistance: P.L. 874 provides funds to local school districts for general operating expenses paid in lieu of local taxes, and P.L. 815 provides for school construction in districts where there are federally-connected children. Indians were not included in P.L. 874 when it was first enacted into law. They were excluded at the request of state directors in Indian education who feared that districts in their states

would lose Johnson-O'Malley funds if they used Impact Aid money. In 1958 Congress decided to permit "dual funding," a concept which allowed a school district to receive payments from both Impact Aid and Johnson-O'Malley, on the theory that Impact Aid would provide general operating funds in lieu of taxes and Johnson-O'Malley would support special programs for Indians.



Painted Petroglyph, Southern Utah

National Indian Law Library Educational Holdings

The following is a list of the present holdings of the National Indian Law Library which relate to Indian education cases or other education matters. The complete catalogue of the documents available in each case is too lengthy to be included in this newsletter. If you are interested in receiving the Catalogue of Current Holdings, the Catalogue of Documents, or the Subject Catalogue please fill out the Subscription and Catalogue Request Form on the last page of this issue. The number shown in the upper left hand corner is the Library's acquisition number. Please include this number when ordering. Copying costs of \$.03 per page are charged, except to legal services programs, Indian clients and tribes, and public interest law firms. When requesting materials, please direct your inquiries to:

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Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
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1285

An Even Chance.

Report, NAACP Legal Defense & Educational Fund, Inc., with the Center for Law & Education, Harvard, 1971.

1092

Benson, Gloria v. Board of Education of Independent School District No. 22. N.M., D.N.M., 1971.

1318

California Indian Education.

Report of the First All-Indian Statewide Conference on California Indian Education, Ad Hoc Committee on California Indian Education.

1324

California Indian Education Association v. Rogers C. B. Morton. Cal., E.D. Cal., 1972.

1214

Cochiti Pueblo v. Bernalillo Municipal School District Board of Education, Sandia Pueblo v. Bernalillo Municipal School District Board of Education. N.M., D.N.M., 10th Cir., Cochiti Pueblo, Sandia Pueblo, San Felipe Pueblo, Santa Ana Pueblo, Santo Domingo Pueblo, 1969, d. 1971.

1113

Cook, John v. Board of Education of Salmon River Central School District No. 1. N.Y., 2nd Cir., St. Regis Mohawk, d. 1970.

1277

"Cultural Integrity and American Indian Education."

Article, Arizona Law Review. Ross, Richard M., 1969.

1093

Denetclarence, Thomas v. Board of Education of Independent School Dist. No. 22. N.M., D.N.M., Navajo, 1971.

1309

The Education of American Indians, A Compendium of Federal Boarding School Evaluations. Subcommittee on Indian Education of the Committee on Labor and Public Welfare, United States Senate.

1969.

Available from: Government Printing Office.

1276

Felder, William v. Board of Education of Winnebago School District No. 17. Neb., D. Neb., 1972.

1287

Gallup-McKinley County Board of Education, In re the Protest of.

N.M., State Bd. of Ed., Navajo, 1969.

1286

Garcia, Emily v. Bernalillo Municipal School District Board of Education. N.M., D.N.M., 1969.

1044

Guadalupe Organization, Inc. v. Tempe Elementary School District No. 3. Ariz., D. Ariz., Yaqui Indians, 1971.

1231

"Indian Education."

Special issue, Inequality in Education. Harvard Center for Law and Education, 1971.

1311

Indian Education: A National Tragedy—A National Challenge.

Report of Committee on Labor and Public Welfare Special Subcommittee on Indian Education, U. S. Senate.

1969.

Available from: Government Printing Office.

1102

Jose, Ben v. Gallup-McKinley County School Board. N.M., Dist. Ct., Navajo, 1969.

1027

Modesto, Kevin v. San Jacinto Unified School District. Cal., Super. Ct., 1969.

1022

Natonabah, Joe v. Board of Education of Gallup-McKinley School District. N.M., D.N.M., Navajo, 1971.

1294

New Rider, Norman v. Board of Education of Independent School District No. 1. Okla., N.D. Okla., Pawnee, 1972.

1246

Ramos, Kathleen v. Kenneth F. Fare, Ramos, Kathleen v. John C. Montgomery. Cal., S.D. Cal., U.S. Sup. Ct., 1969, d. 1970.

1200

Tahdoahpippah, Cornell v. John W. Thimmig. Colo., D. Colo., 1971.

1284

Who Should Control Indian Education?

Report, Far West Laboratory for Educational Research & Development. McKinley, Francis; Bayne, Stephen, and Nimnicht, Glen, 1970.

1302

Wilber, Lillian v. Board of Education of Joint School District No. 8. Wis., W.D. Wis., Menominee, 1972.

The line directly below the title gives the state, court(s), tribe(s) and date(s) when applicable. The court, except where shown as a Federal Court, tribal court or administrative agency, is a court of the state indicated at the beginning of the line. The courts listed are not meant to be a history of the case, but only refer to the documents in the library files. The date is that of the earliest document in the case in our files. The date preceded by the letter "d." indicates the date on which the case was settled or decided. If no date preceded by the letter "d." is shown, then the case is undecided, on appeal in another court, or the decision is unreported and we have no record of it. If only a date preceded by the letter "d." is shown, then all of the litigation in our file occurred during the year of the decision. The symbol (C---) indicates a connected or consolidated case.

Although the Library has made every effort to make our files as complete and accurate as possible, there may be errors which we rely upon you to help us correct.

1005 Acquisition Number

Wisconsin v. Richard Gurnoe.

Wisc., Cir. Ct., Sup. Ct., Chippewa, 1970, d. 1972

State Courts Tribe Dates

(C. 1006).—Connected or consolidated case

Indian Tax Cases

Mr. Kirke Kickingbird of the Institute for the Development of Indian Law has requested the assistance of the National Indian Law Library in gathering materials necessary to the Institute's

preparation of a compilation of cases involving state taxation of Indians. This work may also include the publication of a proposed strategy for the handling of state taxation questions at the trial court level.

Please send to the Library any and all cases not previously sent which bear on the question of the power of a state to tax Indians or their property, whether in Indian country or not. The Library would also appreciate knowing about cases which are in the planning or drafting stages so that strategies and new developments can be shared across the country.

The following is a list of cases involving state taxation of Indians currently held by the Library.

1328

Applebee, Minnie, In re. Minn., Dist. Ct., Chippewa, 1972.

1292

Confederated Salish and Kootenai Tribes v. John C. Moe. Mont., D. Mont., Salish, Kootenai, 1972.

1291

Day, Joseph v. Montana. Mont., Dist. Ct., 1972.

1180

Frank, William, Jr. v. George Kinnear. Ore., D. Ore., Nisqually, d. 1971. Wash., W.D. Wash., Nisqually, 1972.

1039

McClanahan, Rosalind v. State Tax Commission. Ariz., Ct. App., Navajo, 1970.

1105

Mescalero Apache Tribe v. Franklin Jones. N.M., U.S. Sup. Ct., Mescalero Apache, 1971.

1272

Montileaux, Floyd A. v. Board of County Commissioners of Shannon County. S.D., Cir. Ct., Oglala Sioux, 1972.

1326

Moore, Frederick J. v. Ernest H. Johnson. Maine, Super. Ct., Passamaquoddy, 1971.

1327

State Tax Commission v. Rocky Mountain Hall. Wyo., State Admin. Proceeding, Arapaho, Shoshone.

1269

Whirlwind Soldier, Homer v. Dale Carlson. S.D., D.S.D., Sioux, 1972.

New Staff Of The Native American Rights Fund

SPECIAL COUNSEL

Vine Deloria, Jr. Mr. Deloria is a Standing Rock Sioux and former Executive Director of the National Congress of American Indians. He is the author of *Custer Died for Your Sins* and *We Talk, You Listen*. Mr. Deloria will be with the Fund as Special Counsel for the summer of

1972, and will be working primarily on a study of termination and remedies available to terminated tribes.

NEW SUPPORT STAFF OF THE FUND

Connie M. Benoist, Cheyenne River Sioux, Legal Secretary.

Francis Lee Brown, Cherokee, Summer Law Clerk.

Elaine Eagle, Oglala Sioux, Research Assistant, National Indian Law Library.

Bernadine Quintana, Oglala Sioux, File Supervisor.

Staff Positions Open

The Fund has immediate openings for experienced attorneys. With the exception of Indian law graduates, only candidates with three or more years of litigation experience will be considered.

The Fund is interested in applicants with expertise in Indian law, education law, taxation, and economic development. Federal court litigation experience is especially valuable.

Illustrations from *The North-Americans of Yesterday* by Frederick S. Dellenbaugh

Native American Rights Fund
The National Indian Law Library
1506 Broadway
Boulder, Colorado 80302

Resumes and inquiries should be directed either to David H. Getches or John E. Echohawk at the Fund's offices in Boulder.

Legal services programs serving Indians are invited to publish notices of staff openings. The publication deadline is the 20th of each month.

Native American Rights Fund Offices

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

Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
Telephone (303) 447-8760

or to the **Washington, D. C. office**,

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The National Indian Law Library

ANNOUNCEMENTS

Volume I, No. 3

August 1972

Sovereignty Redefined

A series of divergent and apparently unconnected incidents may coalesce in the Supreme Court of the United States during its coming term requiring a contemporary redefinition of the relationships between Indian tribes and the federal government.

Originally the United States represented to its citizens and to other foreign nations that it stood and intended to stand in a protectorate relationship with the aboriginal tribes of the North American continent.

Following the creation of the Northwest Territory in 1787, Congress defined federal Indian policy as one of respecting Indian life and customs and never confiscating Indian lands without first declaring a just war against them. However, the lack of a formal declaration of war did not hamper the United States government or any of its constituent states from engaging in hostilities, and the only practical effect of the Ordinance of 1787 was to provide uplifting sentiments for presidential campaign speeches.

The role of the individual states in supporting and defending the laws of the United States has been less than exemplary. In terms of Indian sovereignty the movement by state governments has been one of undercutting federal laws protecting Indian treaty and statutory rights. In the 1830's the object of state agitation was the removal of indigenous Indian tribes from the then existing states to the deserts in the West where, it was thought, none but an Indian could survive.

In the 1850's the new states of the Great Plains adopted a different ap-

proach to Indian affairs by assuming the position that there was no basic difference between Indian tribal members and the non-Indian citizens of the respective states. The purpose for making such an assertion was not an indication that a racial millenia was shortly due, but rather a cleverly disguised method of preparing the ground for state intrusion into the trust status of tribal lands and enterprises. Beginning with the **Kansas Indians** case of 1866, state governments began to assert their right to jurisdiction over domestic and self-governing functions of Indian tribes, primarily in the field of taxation and criminal law. Kansas lost in 1866 and New York lost in the same year, ostensibly foreclosing state efforts to render their taxes valid against Indian tribes and individuals so long as the political entity of the tribe was recognized by Congress.

The Power to Tax is the Power to Destroy

In the beginning, the Supreme Court's continual refusal to allow states to nullify treaties through the assertion

of state laws was not motivated by a desire to protect Indians' rights, but rather to assist the Federal government's struggle to protect its own sovereign rights against the states. Therefore, until about 1921, Indians were protected by a series of rulings which protected federal entities under theories of intra-governmental tax immunity. However, continual failure of other federal policies preserving federal Indian trust obligations often undermined whatever tax benefits were acquired.

As the federal government grew in strength and wealth, a re-evaluation was made by the courts and in many cases states were permitted to begin the taxation of Indians as long as that tax was non-discriminatory in nature. This was especially true in those cases filed during the depression years.

Even later, as the crunch of local tax needs hit state governments, tax departments were issued orders to find the tax loopholes in state laws and to close them. It was projected that by making state laws more difficult to sidestep, additional revenues would pour into state coffers. This would fulfill the political promises of "additional services without additional taxes" which nearly every western governor had recited as prelude to winning elections.

In 1953, as part of its general policy to terminate the federal services of Indian tribes, Congress passed Public Law 280 which purported to give specific states (Oregon, Nebraska, California, Wisconsin, and Minnesota), civil and criminal jurisdiction over most Indian tribes within their boundaries. The intended purpose of Public Law 280 was to facilitate the integration of Indians into the local and state structures which surrounded them. All



Indian Council



other states were authorized to assume similar jurisdiction, provided that the state legislatures so desired and those Indian people within the state agreed.

The existence of Public Law 280 together with increased local and state governmental revenue requirements resulted in increased assertion of state taxation over Indians.

Since 1956, the arguments against state taxation of Indians have focused for the most part on the recognition of Indians as a separate federal entity. Closely connected is the argument that Indians are a federal responsibility and therefore federal policies in regard to Indians must supercede the presence of the state. Although the argument is no longer being made that "to tax is to destroy," state taxation of Indians or tribes frustrates the clear federal policy and program of encouraging economic development and Indian self-sufficiency.

Recent years have seen a variety of tax cases directly affecting Indian tribes. The **Gahate** case in New Mexico in 1968, the **Brun** case in Minnesota in 1970, the **Tonasket** case in Washington state in 1971, and the **McClanahan** case in Arizona in 1971 all involved state taxation of individual Indians in some manner or another. The **Mescalero Apache** case, a New Mexico controversy, involves state taxation of a tribal enterprise. This proliferation of cases seems to indicate that the traditional demarcation between Indian tribes in their federally supported activities and state governments attempting to expand their taxation powers will this year come to a major turning point.

In the fall term the United States Supreme Court will hear three of these cases which are before it for final resolution. In all of these cases the Fund has filed briefs of *amicus curiae*.

Tonasket v. State of Washington

In **Tonasket v. State of Washington**, the controversy concerns the interpretation which the state of Washington has given Public Law 280, which confers state criminal and civil jurisdiction on selected Indian reservations.

Leonard Tonasket, a member of the Colville Confederated Tribes, established a retail business selling cigarettes and other merchandise on the Colville Indian Reservation. The

enterprise was financed through federal and tribal economic funds established to encourage economic Indian self-sufficiency. In February of 1967, agents of the Washington State Tax Commission entered the Colville Indian Reservation, seized a great number of cigarettes from Leonard Tonasket and placed him under arrest for failing to register with the Tax Commission, for possessing unstamped cigarettes and for selling unstamped cigarettes, all allegedly in violation of Washington State law. Although the State of Washington has criminal and civil jurisdiction over the Colville Indian Tribe, it is not clear that the imposition of state taxation in this instance is authorized by Public Law 280.

The Washington State Supreme Court has interpreted Public Law 280 as conferring on applicable states the power to enforce on Indian tribes all state laws except those expressly excluded by its provisions. In this case, the Washington Court repudiated every other court opinion interpreting Public Law 280 and ignored longstanding policies of the federal government undertaken in furtherance of its special trust responsibilities for Indians.

As *amicus curiae*, the Fund has argued that Congress did not intend Public Law 280 to confer on the states the legislative power to destroy the traditional Indian immunities from taxation. The Fund's brief was prepared by Daniel H. Israel.

McClanahan v. Arizona Tax Commission

McClanahan v. Arizona Tax Commission involves the attempt by the State of Arizona to tax the income of a Navajo on the Navajo Reservation. The Fund has argued as *amicus curiae* that the Navajo Tribe retains all the sovereign powers it has always possessed, and that Arizona has never been given taxing power by Congress. This case does not require an interpretation of the precise scope of Congressional authorization of state taxing power under Public Law 280, for Arizona has never undertaken state criminal and civil jurisdiction. It is clear, however, that whatever taxing authority, if any, that Congress intended to confer upon a state taking affirmative action to assume juris-

diction under Public Law 280, Arizona, failing to take any affirmative legislative action lacks the power to impose any tax.

The Fund's brief in this case was prepared by Thomas L. Smithson and John E. Echohawk.

Mescalero Apache Tribe v. Bureau of Revenue, State of New Mexico

In the case of the **Mescalero Apache Tribe v. Franklin Jones, Commissioner of the Bureau of Revenue, State of New Mexico**, the state has argued that it has powers of taxation over the Mescalero Apache Tribe because it is operating a ski-resort business on non-reservation land.

The Fund has argued that the Mescalero Apache Tribe is in fact protected from taxation in this instance because the tribe and its business activities constitute a Federal instrumentality and because such taxation would violate the strong federal policy of encouraging economic development and self-sufficiency on the part of the tribe. The project itself has been supported by federal funds and takes place on federal Forest Service land. The purposes of the federal government's economic development program for the Mescalero Tribe would be defeated if the revenue from the tribe's operation of the ski resort were to be taxed by the state.

The Fund contends that the benefits which the Mescalero Apache Tribe, as a federal instrumentality, may gain from its ski resort enterprise will decrease or disappear entirely if it is taxed by the state of New Mexico.

The Fund's brief of *amicus curiae* was prepared by L. Graeme Bell of the Washington, D.C. office.

"Great nations like great men should keep their word"

Justice Hugo Black

For the Supreme Court to uphold the states of Washington, Arizona, and New Mexico would drastically reduce the sovereign immunity of Indian tribes. Regardless of the resolution of these important cases, Indian tribes must begin to demand a formal and precise definition by Congress of the rights and powers of the states to intrude upon their affairs. Rights exist only when there is power to

enforce them or commitment by government to live by its own laws. The **Kansas Indians** case has already enunciated the basic principles preserving Indian sovereignty which

the United States government agreed to in the presence of Indian tribes. Therefore, until there is a formal extinguishment of the separate sovereignty of an Indian tribe re-

quiring Congressional authorization and Tribal consent, state governments are bound by the United States constitution to respect the special rights of Indians.



Trading with the Indians

Indian Claims Set By Statute Of Limitations

In the future, claims brought on behalf of Indians by the federal government will be subject to a six-year statute of limitations. All previous claims in the past have been subject to a statute of limitations which was scheduled to run on July 18, 1972. After much activity, in a special floor action, Congress approved a 90-day extension of the statute of limitations, which will now expire on September 17, 1972. The Fund has been attempting to alert legal services programs, private attorneys, Indian tribes and BIA area directors of the need for filing claims before this deadline. Prior to Congress making the extension on July 17, 1972, the Fund filed several actions across the country:

- A case in Idaho to recover land lost by tax sale following an improperly assessed tax several years ago.

- Cases in Iowa and Nebraska on behalf of the Winnebago Tribe relating to lands claimed by them which are occupied by private parties.
- A lawsuit on behalf of the Muckleshoot Tribe against a power company for infringing the tribe's water rights.
- A claim on behalf of the Walker River Paiute Tribe against a railroad for trespassing on their property for decades.
- A case on behalf of two Southern California tribes against a water company which has violated their water rights for over seventy years. (See the section *California Indian Water Rights* on p. 4 of this issue).

In the Walker River and Muckleshoot actions, the federal government was persuaded to also file cases along

with the Fund on July 17.

Pyramid Lake

A pretrial conference was recently held in the Pyramid Lake Tribe's lawsuit against the Secretary of the Interior. The case involves the Secretary of the Interior's operating criteria for the Truckee and Carson Rivers which allocate the water of these rivers between the Newlands Reclamation Project and Pyramid Lake. The tribe is contending that the Secretary of the Interior's operating criteria have allowed excessive and wasteful amounts of water to go to the Newlands Project in violation of his obligation as trustee to protect and preserve the property of the Pyramid Lake Tribe.

At the pretrial conference, the court stated that the tribe had established a

convincing case that the Secretary of the Interior was indeed violating his trust responsibility to the tribe. The court ruled that the burden of proof had now shifted to the Secretary of the Interior to defend and prove to the court's satisfaction that any more water was required for the Newlands Project than the amount recommended by the tribe's expert and the Bureau of Indian Affairs. Up until now, the Newlands Reclamation Project had been limited to 406,000 acre feet of water per year, but the tribe's expert and the Bureau of Indian Affairs contend that no more than 300,000 acre feet is required to satisfy the beneficial needs of the project.

The Secretary of the Interior has indicated that he will make up his mind some time before September 15, 1972. If the Secretary does not adopt the tribe's recommendations, a trial will take place sometime between September 15 and November 1, at which the Secretary will have to justify any departures from the tribe's recommendations.

The suit is being handled by Robert S. Pelcyger of the Fund's staff, with the assistance of Robert Stitzer, tribal attorney.

Alaska Supreme Court Supports North Slope Borough

When the Mobil Oil Company attempted to stop an election on the North Slope of Alaska which ratified the establishment of a borough (county government) and the election of Eskimo borough officers, a new tactic was tried. Mobil Oil sought an injunction against the certification of the election, and when they were turned down in this attempt by the Fifth District Court in Anchorage on the day after election, they immediately appealed to Alaska Supreme Court. Fortunately, the Alaska Supreme Court upheld the lower court's decision and allowed the borough election to be certified.

Further proceedings in the case challenging the legality of the North Slope Borough's formation will take place in October. In the meantime, the new borough assembly is proceeding to establish the fundamental county government structure. The Fund's Directing Attorney David H. Getches represents the Alaska Natives Arctic

Slope Association, and the cities of Wainwright, Barrow, Point Hope and Kaktovik, as well as several individual Alaskan Native people.

U.S. District Court Reverses Order On Long Hair Issue

As previously reported the issue of an Indian's right to wear his hair in a traditional style is being litigated in the case **New Rider v. Board of Education** in the United States District Court for the Northern District of Oklahoma. Judge Luther Bohanan originally issued a preliminary injunction preventing suspension of three Pawnee boys from school. At that time, the court held that the boys' right to wear their hair long was protected by the United States Constitution. On June 5, 1972, at the time of the hearing on the requests for permanent injunction, the Pawnee Board of Education had in effect a dress code which permitted Pawnee Indian students to wear long braided hair. The custom of wearing long, braided hair by males of the Pawnee Tribe is very closely tied to the customs and beliefs of the tribe and inasmuch as the dress code of the Board of Education permitted the male students to wear their long hair braided, the court considered their dismissal as presenting no constitutional question inasmuch as their hair was long, but not long enough to be braided.

Following the court's order of dismissal on June 5, 1972, the Pawnee Board of Education revoked its dress code for Pawnee Indian male students and amended the rule to require all students to conform to the regulation hair length, thus requiring them to cut their hair whether wearing braids or not. Upon reconsideration the court vacated its order for dismissal and ordered the case to trial on August 7, 1972. Yvonne Knight of the Fund staff is in charge of this litigation.

Natonabah v. Board of Education

Natonabah is an action against the Gallup-McKinley Board of Education, the Department of Instruction of the state of New Mexico, the United States Office of Education, and the Bureau of Indian Affairs. The plaintiffs, who are Navajo and Zuni parents, allege violations of Title I, violations of the Johnson-O'Malley Act, and dis-

crimination against Indians in the distribution of local education funds. This is the first action ever to come to trial on many of these issues.

The case was tried to District Court Judge Howard Bratton in Albuquerque, New Mexico from July 19 through July 21, 1972. Judge Bratton directed all attorneys to file post-trial briefs on August 11, 1972. Oral argument will be held on August 17, 1972.

The plaintiffs were represented jointly by the Fund, by the Harvard Center on Law and Education and by DNA, the Navajo Legal Services organization. Charles F. Wilkinson is the Fund attorney handling the case.

California Indian Water Rights

Two new cases were recently filed in the federal court in San Diego in the San Luis Rey water rights controversy. Both actions involve claims for damages and were filed before the statute of limitations expired on July 18 that would have barred damage actions by the United States after that date. (The statute of limitations was, at the last minute, extended by Congress for another 90 days.)

The first suit was filed by the Rincon and La Jolla Indians against the Vista Irrigation District. The suit claims that Vista has been trespassing on the lands of the Rincon and La Jolla Reservations and has been unlawfully and illegally diverting waters of the San Luis Rey River away from the Indians. The suit asks for damages in the millions of dollars and for an injunction to prevent the Vista Irrigation District from taking any more water from the San Luis Rey River.

The second suit was filed by the United States on behalf of the Rincon, La Jolla, Pala, and San Pasqual Mutual Water Company and the Vista Irrigation District. The suit claims that both Escondido Mutual and Vista have violated their contractual obligations to the Rincon and Pala Indians and that the two companies have trespassed on the lands of three of the Indian reservations. The government suit also asks for damages in an unspecified amount.

These two new cases will probably be consolidated with the lawsuit filed about three years ago by the Rincon and La Jolla Indians against the Escondido Mutual Water Company. The current legal controversy also involves

three consolidated proceedings pending before the Federal Power Commission and an action against the United States for damages in the Indian Claims Commission. A hearing in the Federal Power Commission cases is expected next fall or early winter.

Robert S. Pelcyger, of the Fund's staff, is in charge of these suits.

Eastern Indians

As previously reported in June of 1972, the Passamaquoddy Tribe of Maine filed suit in the U.S. District Court in Maine against the Interior and Justice Departments to require the federal government to act in its behalf against the state of Maine. On June 23, the United States was ordered by a federal court in Maine to file a lawsuit on behalf of the Passamaquoddy Tribe for their claims against the state before July 17, 1972. The government reluctantly filed the case and when additional pressure was brought to bear on them on behalf of the Penobscot Indians,

the government filed in that case also. The United States apparently will be appealing the order requiring it to represent the Maine Indians. It should be noted that the Passamaquoddy and Penobscot Indians along with most other remnants of Eastern Indian tribes do not have special recognition as Indians from the federal government.

Appeals Court Rejects Oneida Suit

The Oneida Indians of New York sued two counties in that state for infringement of their land rights under the Non-Intercourse Act. The Act restricts dealings with Indians related to their land and requires that negotiations for contracting be handled through the United States.

Based on this statute, Indians attempted to assert their claims in federal court. The federal court denied them jurisdiction, saying that no federal question was raised.

Based on procedural technicalities relating to jurisdiction, the Second Circuit Court of Appeals in New York upheld the district court's rejection of the lawsuit. The Fund was **amicus curiae** in the Appeals Court and is presently consulting with the attorneys for the Oneida Nation concerning what action should be taken next. The brief of **amicus curiae** filed by the Fund was prepared by David H. Getches and Peter Aschenbrenner.

Coordination of Indian Welfare Litigation Sought

The Secretary of the Interior has obtained a 30 day extension to file a motion for rehearing in the case, **Ruiz v. Morton**, and the decision of the Court of Appeals has been stayed in the meantime. The Court held earlier that the plaintiffs, Papago Indians residing 15 miles outside the Papago Reservation, were entitled to BIA general assistance under the mandate of the Snyder Act (25 U.S.C. § 13) which authorized the Secretary to spend appropriations "for the benefit, care, and assistance of the Indians throughout the United States."

The BIA's denial of benefits on the basis of residency alone was unauthorized and improper. State general assistance and emergency relief were denied because plaintiff was a striker. Lawyers with similar cases are requested to contact attorney Sarah Barlow, Columbia Center on Social Welfare Policy and Law, (215) 622-1210, or Fund attorney Thomas L. Smithson before filing.

Cheyenne River Indian Country Restored

South Dakota Legal Services, Inc. of Rosebud, South Dakota, reports that the U.S. District Court for South Dakota, has decided **United States ex rel. Condon v. Erickson** favorably. The court, following **Seymour v. Superintendent** and **City of New Town, North Dakota v. U.S.**, holds that the Act of May 29, 1908, opening a portion of the Cheyenne River Indian Reservation to homesteaders did not diminish that Reservation. As a result exclusive tribal and federal jurisdiction is restored to this area of "Indian country."

The amicus brief by Richard Smith and Art Bunce of South Dakota Legal Services is available from the Library.



Tecumseh's Speech

National Indian Law Library Law Review Holdings

as of August 1, 1972

The National Indian Law Library, with the aid of the University of New Mexico Law Library, has now compiled an extensive collection of law review articles on Indian topics. These articles date from 1950 to the present and have been listed by Acquisition Number under the main subject headings of the Library's General Index of Indian Law. Following the subject list the articles have been arranged by acquisition number, with title, author and publication information.

- 001072
"Indians: Better Dead Than Red?"
Southern California Law Review.
Fall, 1969.
- 001133
"Needed: A System of Income Maintenance for Indians."
Arizona Law Review.
Wolf, Roger C., 1968.
- 001163
"Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians."
(book review).
Maine Law Review.
Getches, David, Muckleshoot, Puyallup, Nisqually, 1971.
- 001165
"State Power and the Passamaquoddy Tribe: A Gross National Hypocrisy?"
Maine Law Review.
O'Toole, Francis J.; Tureen, Thomas N., 1971.
- 001171
"Participation By Off-Reservation Indians in Programs of the Bureau of Indian Affairs, and the Indian Health Service."
Montana Law Review.
Sclar, Lee, Summer, 1972.
- 001177
"The Indian Bill of Rights and the Constitutional Status of Tribal Governments."
Harvard Law Review.
1969.
- 001216
"Indian Hunting and Fishing Rights II."
George Washington Law Review.
Hobbs, Charles A., 1969.
- 001217
"Indian Hunting, Fishing, and Trapping Rights: The Record and the Controversy."
Idaho Law Review.
Burnett, Donald L., Jr., 1970.
- 001218
"Constitutional Rights, Tribal Justice, and the American Indian."
Journal of Public Law.
Kerr, James R., 1969.

Please use the acquisition number when ordering articles from the Library. In those instances where applicable, articles have been catalogued under more than one subject heading.

Copies of all Library holdings are available to anyone requesting them. Minimal xeroxing costs of \$.03 per page are charged, except to legal services programs, Indian clients and tribes, and public interest law firms. When requesting materials, please direct your inquiries to:

- 001219
"Constitutional Rights of the American Tribal Indian."
Virginia Law Review.
Clinger, W.F., 1965.
- 001220
"Lawyers on the Reservation: Some Implications for the Legal Profession."
Law and the Social Order.
Price, Monroe E., 1969.
- 001221
"State Taxation on Indian Reservations."
Utah Law Review.
Davies, Glen E., 1966.
- 001277
"Cultural Integrity and American Indian Education."
Arizona Law Review.
Ross, Richard M., 1969.
- 001278
"Indian Taxation: Underlying Policies and Present Problems."
California Law Review.
Perez, Richard L., 1971.
- 001279
"Indian Tribal Claims Before the Court of Claims."
Georgetown Law Journal.
Wilkinson, Glen A., 1966.
- 001280
"Red, White, and Gray: Equal Protection and the American Indian."
Stanford Law Review.
MacMeekin, Daniel H., 1969.
- 001281
"The States Versus Indian Off-Reservation Fishing: A United States Supreme Court Error."
Washington Law Review.
Johnson, Ralph W., 1972.
- 001282
"Too Little Land, Too Many Heirs—The Indian Heirship Land Problem."
Washington Law Review.
Williams, Ethel J., 1971.
- 001295
"Civil Rights for the American Indian: Is the Ervin Bill the Final Answer?"
Albuquerque Bar Journal.
Ashly, Philip R., Parrish, L. Lamar, June, 1968.

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Indian Claims Commission				001360								
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001419				Probate				Staff Attorney Daniel H. Israel Mr. Israel is a graduate of the University of Michigan Law School. He has				
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had experience in private practice in New York City and taught at the University of Washington. Prior to joining The Fund, Mr. Israel was a staff attorney of the Colorado Rural Legal Services program. His work with the Fund will be in the areas of taxation, economic development and poverty law.

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ANNOUNCEMENTS

Volume 1, No. 6

November-December 1972

The War Of Ghosts, 1902-1972

Wovoka was a Nevada Paiute. He was also an Indian messiah whose revelations gave new hope to tens of thousands of Indians from Nevada to South Dakota near the end of the 1800's.

Fearful whites called Wovoka's new religion the "Ghost Dance" because part of his doctrine held that dead Indians were on hand to help living Indians in their hour of extremity. His followers gathered in protective circles and danced the "Ghost Dance", dreaming of Wovoka's promised millenium when, he said, their abundance of land, game, peace of spirit, and dead brothers would be returned to them.

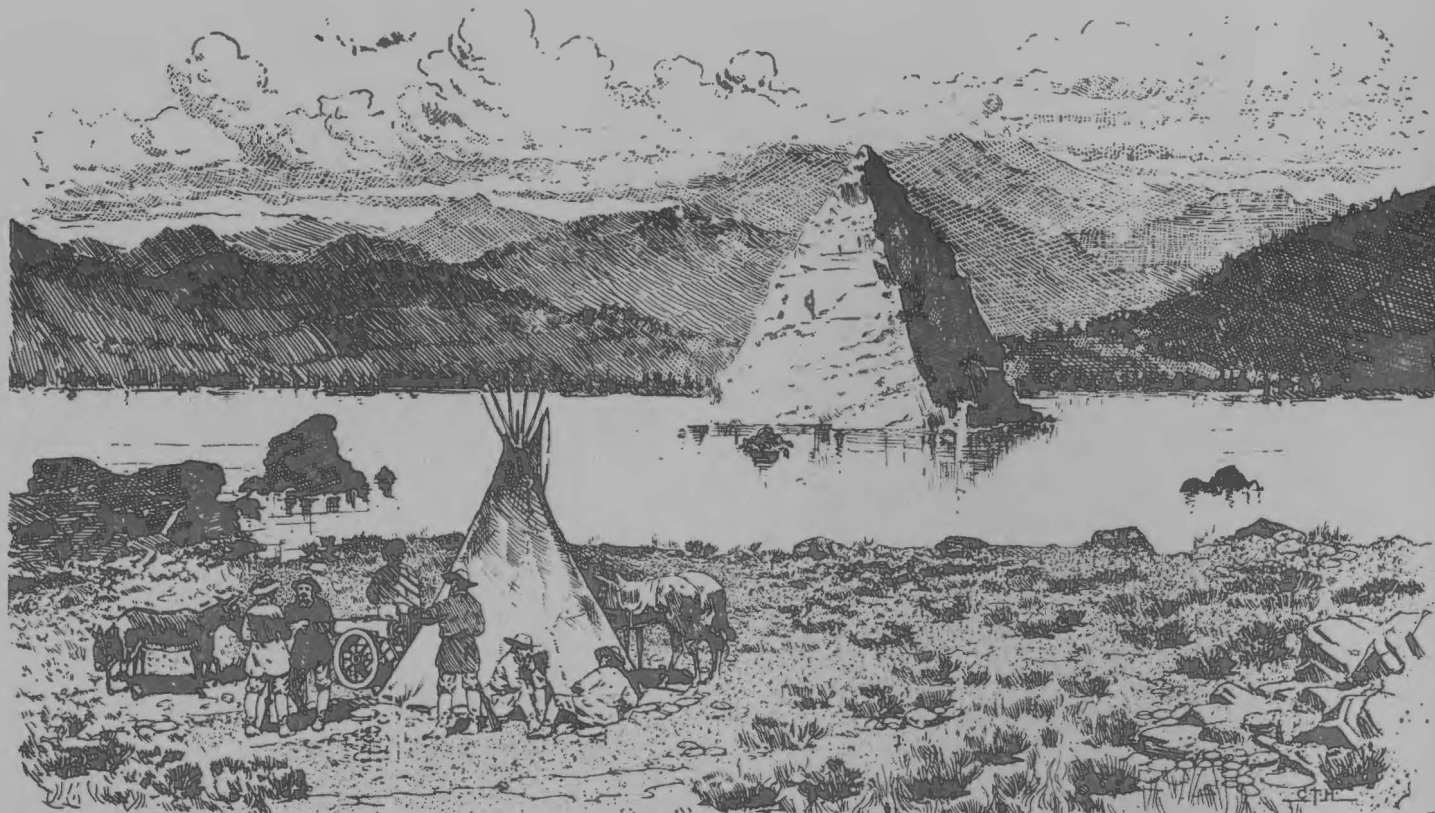
The American military viewed the Ghost Dance as a war dance and used everything they had to suppress it — including the Hotchkiss guns at the massacre of Wounded Knee. The backs and hearts of Wovoka and his followers were broken and the century came to an end without the Indian millenium and without the return of the Indian ghosts.

Wovoka grew up near and had many followers at the Pyramid Lake Paiute Indian Reservation. The Paiutes at Pyramid Lake maintained a rather remarkable survival rating for the 19th century. This is not to say that they were not mistreated, that their women were not outraged, nor that their men were able to escape the experience of massacre. But neither were they systematically exterminated as many of the Eastern tribes had been, nor were they subjected to the total cultural and physical genocide that occurred within Nevada and just across the border in California as the gold rush proceeded.

Although the Paiutes' land base was greatly reduced when they were confined to the Pyramid Lake Reservation in 1859, the fact that they were permitted to remain culturally intact where their ancestors had been for centuries, and to have in addition complete and exclusive access to the



Wovoka, Nevada Paiute, 1858-1932



John Fremont's Sketch of Pyramid Lake, 1844

beautiful desert lake (whose fishing, shores, and other wildlife provided such an abundant and complete livelihood) was as close to a non-millennium as any of Wovoka's Ghost Dancers ever got - whether they danced in Nevada, South Dakota or anywhere in between.

The partial millenium did not last a 1000 years; it did not even last a half of a century. It did not end in a biblical explosion and the nature of what began thereafter is even today still not totally comprehensible. To the Paiutes it must have seemed as if the Great White Spirit, in a terrifying and torturous trick, challenged Wovoka's spirits and called for a new dance. This one was to be a war dance and this time it was to be danced by white ghosts. In this "War of Ghosts" the enemies of the Pyramid Lake Paiutes have been so illusive, remote and indistinguishable, and finally so powerful, that the survival of the Paiutes during the 20th century is an astounding tribute to Indian courage and tenacity.

It would be difficult to imagine even Wovoka's Indian spirits prevailing through these last 70 years of treachery.

The Cui-ui Eaters

For centuries the Paiutes and other Indians spoke of Pyramid Lake as the "Lake of the Cui-ui Eaters" in reference to a unique species of fish, *Chasmistes cupis*, that isn't found anywhere else in the world. The Lake was not given its second name until January 1844 when Lieutenant John C. Fremont and his party of explorers moving Southward from Oregon came upon it unexpectedly.

Fremont named it for as he described it "a very remarkable rock in the lake ... it rose according to our estimate, six hundred feet above the water; and, from the point we viewed it, presented a pretty exact outline of the great pyramid of Cheops."

He described what they saw in his diary as a "sheet of green" breaking "upon our eyes like the ocean. The waves were curling in the breeze and their dark-green color showed it to be a body of deep water. For a long time we sat enjoying the view... It was set like a gem in the mountains."

Fremont did not know how prophetic his "gem-like" description was to become. Part of the reason the

Pyramid Lake Paiutes survived the catastrophes of the 1800's was the fact that the wealth they had was subtle. A desert lake, 30 miles long, surrounded by barren mountains, even with its abundant fishing appeared to be of little value to the new government or advancing white settlers.

The lack of demand for that particular kind of asset made the Pyramid Lake Paiutes the beneficiaries of a generosity by the white government which was unusual for the times. However, in the 1900's when the demand for water (and therefore for the particular kind of asset or "gem" that the Pyramid Lake Paiutes had been promised was to be theirs in perpetuity) increased, the generosity ended and the War of Ghosts began. Since then the lake's waters have been as ruthlessly robbed from the Pyramid Lake Paiutes as gold was from their brothers and neighbors a century before.

Pyramid Lake is a remnant of a vast inland sea which once covered nearly 9,000 square miles of western Nevada. As the climate became slightly warmer and drier, the inland sea slowly receded, leaving smaller lakes behind. Some of the people known as the

Northern Paiute Indians were living at one of these, Pyramid Lake, in 1844 when John Fremont arrived. Dwelling in caves and straw huts, the Indians lived on an abundant supply of Lahontan cutthroat trout and Cui-ui's, and supplemented their diet with piñon nuts and other gathered foods.

The Truckee River, which begins at

Lake Tahoe, (100 miles to the Southwest) is the only significant source of water for Pyramid Lake.

Although the lake has no outlet, it loses about 5 feet of water a year by evaporation, and the Paiutes have depended on the Truckee River for centuries to maintain the lake's level

and to provide a spawning ground for the lake's fishery. When the federal government set aside the lake in 1859 for the Paiutes as the main part of an otherwise barren reservation, it was with the intent that the lake and its fishery should provide them with their major — and traditional — means of existence.

A Declaration of War-The Reclamation Act

For the first several decades of the 1900's the Paiutes did not know that war had been declared against them on June 17, 1902. They had been living relatively securely on the Pyramid Lake Reservation, which surrounds the lake, for almost half a century. The fresh wounds that were being inflicted were at first as unfelt and invisible as the ghostly enemies who dealt them out. A trader, named Fred Crosby, who used to purchase Lahontan trout and Cui-ui fish from the Paiutes recalled that then:

"...the Indians lived in harmony with nature and one another, and all reaped the benefits of ever-present supply of the large, beautiful native fish ... There was never a hungry person on the reservation, they loved that kind of work - that way of making a living, and they had a dignity, which went away after the last run [of Lahontan trout] in 1937...."

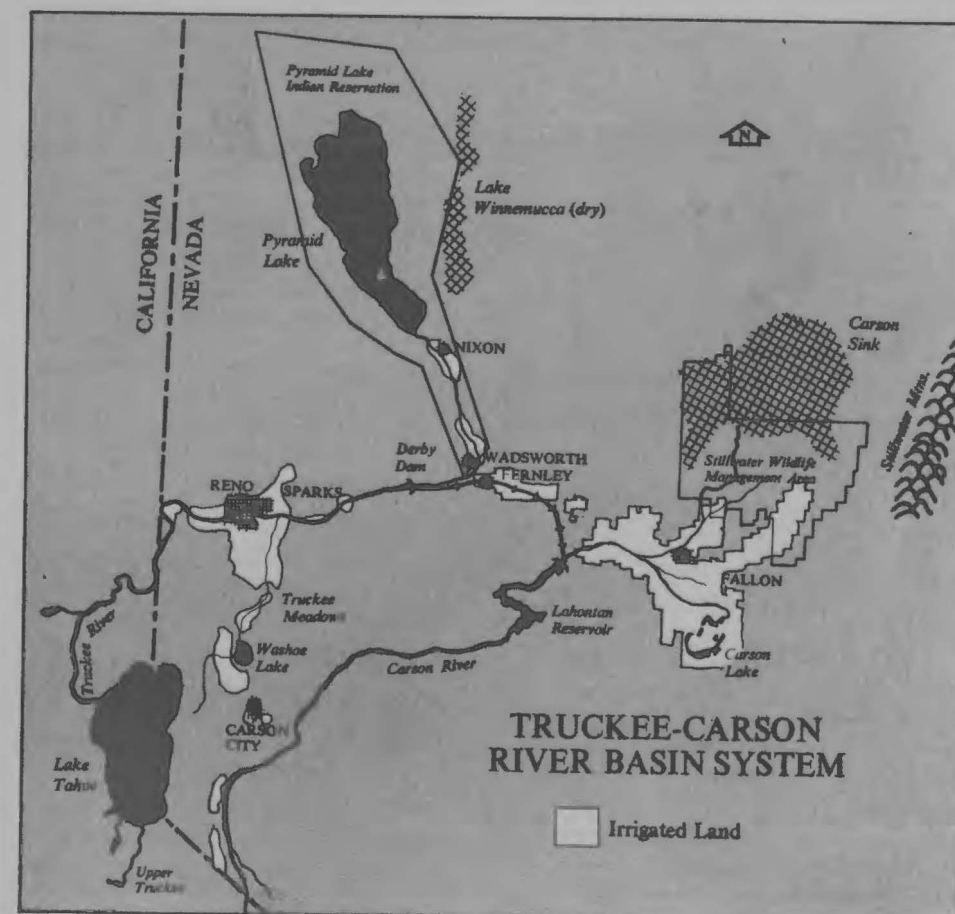
It was on June 17, 1902 that the United States Congress passed the Reclamation Act. No one envisioned it as a weapon or the declaration of war that it was. It seemed to be an innocuous kind of law—sell public lands and use the proceeds to reclaim and improve other, less desirable, lands for the benefit of the nation's small farmers in water-short areas. The law gave the Indians' trustee and guardian, the Secretary of the Interior, authority to initiate projects. Less than one year later the Secretary began the Newlands Irrigation Project which called for the diversion of the bulk of the Truckee River to irrigate arid non-Indian land south-east of the lake near Fallon, Nevada. (See map)

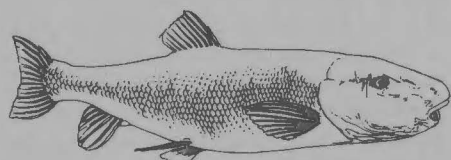
By 1905 the Bureau of Reclamation of the Department of Interior had built Derby Dam across the Truckee River. A large proportion of the waters which had been flowing into Pyramid Lake for centuries suddenly was diverted into a canal (the Truckee

Canal) and sent away to desert lands which were to be turned into farms for non-Indians. The dam site was less than 10 miles from the reservation. A greater irony was that the Department of Interior, which holds the trustee responsibilities in the name of the U. S. Government for all Indians, was the "general" in charge of the battle. A remote guardian—whose face changed and still changes with each new administration, and sometimes more often—implemented a project which spelled disaster for his Paiute wards. The guardian neither sought their approval or consent; he did not even bother to notify them of the event or its

implications on their lives. Thus the Paiutes' water was stolen from them like land, gold, culture and lives had been in another century. The only difference was that the subtlety surrounding the robbery was more in keeping with the current social mores of the "civilization" that surrounded the Paiutes.

Non-Indians had come to the Indians' continent. They had taken almost all of the Indians' lands, and now they had made a law which appeared harmless, but which according to the character of the man implementing it, permitted white men to use the money from the sale of the lands originally taken from Indians and to make what Indian land did remain, useless.





Lahontan Cutthroat Trout

The promises of protection and guardianship disappeared into the complexities of law as if they had been made by an apparition.

Derby Dam, described as a killer by the Paiutes, extinguished Pyramid Lake's sister, Lake Winnemucca, first. Lake Winnemucca had been filled with the overflow from Pyramid Lake, and her flocks of geese, ducks and other waterfowl moved on to other feeding grounds. Then Pyramid Lake began to die.

"Fish prepared and preserved in several different ways provided the main course of most families' daily food. With the normal flow of the river, prior to its diversion upstream, the banks and backwashes provided moisture to thick growths of willows, which gave shade to holes in the river where the trout and cui-ui fish gathered by the hundreds, making them easy to catch, both by the fishermen and wives who would then prepare the day's meal. The backwashes were a haven for ducks and mudhens who became so fat on the rich natural food that they were caught by hand and women would go home with a gunny sack full. 'Buck-berry' bushes abounded and families spent week-ends harvesting the berries that were eaten either fresh or made into jams and jellies that were kept on hand for year-around consumption. As the level of the river gradually lowered, all of the water fowl, berrybushes and easily-caught fish disappeared and only barren, unshaded banks were left exposed."

Jose A. Zuni,
Superintendent
Nevada Indian Agency, 1972

Because of the diversion of the Truckee River, the surface of Pyramid Lake dropped more than 80 feet, exposing a bleached bathtub ring of calcium carbonate deposits and extensive sand flats. The fish and wildlife resources upon which the Indians historically depended for their food disappeared. The Lahontan cutthroat trout fought furiously, but eventually were completely prevented from spawning up the Truckee River by a sand bar which formed at the mouth of the river as the lake level dropped, and they ultimately disappeared from the lake. The mountain sheep which

formerly roamed the mountains surrounding the Lake left, and the white pelicans nesting on Pyramid Lake's Anaho Island lost more than half of their population.

The doubling of the lake's salinity level in a fifty year period due to evaporation and loss of the Truckee waters made the survival of marine life difficult. This, combined with the blockage of upstream spawning of the trout, had a deadly impact on the lake's productivity as a fishery. Even the unique Cui-ui became threatened with extinction.

The First Cease-Fire

Some scientists believe that the Paiute Indians might once have had to contend with the American Mastodon, whose remains have been found in the lake's depression. If so, it may explain how the Paiutes trained and therefore how they have managed to maintain themselves in the War of Ghosts.

In 1859 the Commissioner of the General Land Office, had set aside the Pyramid Lake Reservation for the Paiutes who had always been there and for other Paiutes who came to join them, as white settlers encroached on the river bottoms and gold fields elsewhere in Nevada. The setting aside of the reservation gave the Paiutes priority rights as of 1859 to the waters needed to maintain the lake and its fishery.

As had been the case in almost every area of the country, in the next few years non-Indian settlers ignored the law and squatted on the Paiutes' lands near what is now the town of Wadsworth. The squatters occupied good farming lands alongside the Truckee River. The Paiutes, following the doctrine of their brother Wovoka, did not harm the settlers. Like Wovoka they acted out of the necessity of cheerful acceptance of the intrusion of non-Indians. Further, at the time the squatters arrived, Pyramid Lake was still full of fish and the Paiutes were not yet being forced to turn to ranching to survive.

Then for some reason in 1924, Congress, at the request of the Secretary of the Interior, said the squatters could acquire legal title and buy the Indian lands, and an arbitrary

price was set on them. Many of the squatters paid for the lands they were on, but five families defaulted after the first payment. By 1935 the Lahontan trout were struggling to make their last runs, and the Indians finally were realizing that their fishery was gone. The Paiutes, (who had never been asked about the proposed sale and therefore had never consented to it), asked gently that the Secretary retrieve the farming lands that had not been paid for, and in 1936 the government started eviction proceedings against the remaining squatters.

In 1937 Nevada's Senator Patrick A. McCarran introduced the first of his many bills into Congress relating to the squatters. He asked that the Secretary of Interior be granted permission to give these lands, or, at least to sell them for practically nothing to the squatters, who according to him weren't squatters at all, but authorized successors in interest. He contended that the Pyramid Lake Reservation had not been established until 1874. The Secretary and the BIA said 1859. The squatters had arrived sometime in the interval.

The squatters, buoyed by McCarran's type of reasoning, went to the United States District Court to stop the evictions and won. The Secretary appealed the decision to the Court of Appeals and won a reversal. The Paiutes were relieved when the Supreme Court refused to hear further appeal from the squatters. Although the Courts had taken a position in favor of the Paiutes - the unseen weapon this time was the fact that the government could not enforce its own decisions. It could not get a United States Marshal to serve the eviction papers. The marshals all relied on Senator McCarran for their appointments.

This battle in the War of Ghosts resulted finally in a temporary, unproductive cease fire. The Indians fenced the disputed lands into their reservation, and the ranchers cut off the water from the Truckee irrigation ditches which fed the land. Without water, the land began to dry out, and the Indians' cattle (introduced by the Bureau of Indian Affairs as a part of their subsistence when the fishery disappeared) continued to die on the range in winter for lack of the hay the deadlocked acres might have produced.

The Death Decree — Orr Ditch

By 1939 the Lahontan fishery was destroyed. The Secretary of Interior, through the Bureau of Indian Affairs, submitted a plan to Congress which called for monies to create a channel in the Truckee River which would permit the Lahontan trout to spawn upstream. Whatever hopes this action raised for the Paiutes were soon taken away in an ironic twist of fate. Some work on the channel had been completed when a sudden flood washed it all out. The work was never started again. World War II began and the funds that might have been given to the Indian's fish channel were absorbed by the machinery of yet another war on another continent.

Near Fallon, the Newlands Irrigation Project was also in trouble. The project as originally planned was intended to irrigate more than a million acres of desert with water from the Truckee and the Carson Rivers. (See map p. 3)

However the Bureau of Reclamation sponsors had grossly overestimated the amount of water available, and, further, they had failed to analyze chemically the soils intended to be irrigated. Only after the killer Derby Dam had been built did the Bureau of Reclamation find that the land was too salt-laden for profitable production. Instead of a million acres of farmland, less than 60,000 acres were put under cultivation.

In 1944, as claims to the use of Truckee River water increased (not only from the farmers in the Newlands Project, but also from growing towns like Reno and Sparks), a water rights decree was issued by the Federal District Court which is now known as the *Orr Ditch Decree*. This decree provided a legal cover to the destruction of Pyramid Lake. The United States represented the Newlands Project and the Paiutes in the litigation. The government asked for no water rights at all for Pyramid Lake and got none. Since the Bureau of Indian Affairs had decided to turn the Paiutes into farmers, the United States did ask for irrigation water for the Indians, and the court recognized their right to a meager amount under the provision that it could only be used for irrigation, stock or domestic purposes.

The weapons of the non-Indians in the War of Ghosts were becoming even more inanimate than the killer Derby Dam. A court decree, in an adjudication sought by their guardian, was telling them they could not have water for their lake, but they could have water for their farm lands. To make matters worse, the amount of water they could have was based on the amount of land they had under cultivation; and since they had only been able to irrigate a strip along the bottomlands, they could therefore only draw one-fifth of what the court had set aside for them. The Paiutes might have wished for the return of the Mastodon, or for something more comprehensible like the guns and bombs being used in the war on the next continent.

"A more pernicious system of religion [the Ghost Dance] could not have been offered to a people who stood on the threshold of civilization."

James McLaughlin
Indian Agent, 1890

In 1955 the Lake, like the Paiutes, was still struggling for its life. It was sustaining itself on water from springs and underground sources below Derby Dam and from leaks in the killer itself. The Lake was also benefiting from large amounts of floor water which the Newlands project could not use and which were allowed to flow into the lake. However, in the *Orr Ditch Decree* the courts had said the Paiutes were not entitled to the floodwater. In 1955 the Bureau of Reclamation and the Secretary of Interior introduced the Washoe Project. The Washoe Project included plans to build flood-control dams on the headwaters of the Truckee and Carson Rivers, and the proposed legislation for it specifically stated that none of the floodwaters would be made available to the Paiutes.

"You must not hurt anybody or do harm to anyone, you must not fight. Do right always..."

Wovoka, 1889

Wovoka had died in 1932. His grave stone in Schurz, Nevada listed him only as Jack Wilson, which was the Anglo name given to him by the non-

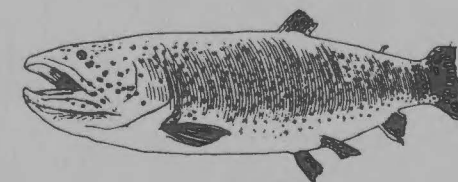
Indian farmers he went to work for after his father died. So in 1955 as the War of Ghosts proceeded, the results were finally too alarming and visible for the Pyramid Lake Paiutes not to lay aside a portion of Wovoka's doctrine. They moved cautiously, uncertain of where the resistance to their destruction should be applied. It turned out to be the Interior and Insular Affairs Committees of both the House and Senate, which were then considering the Washoe Project.

"It is hence not an exaggeration to state that there has been placed before you a plan by which the solemn protocol of our highest lawmakers is directed toward the deprivation of the property rights of an inconsequential few... The tribe doesn't wish anybody ill. The tribe wants water."

Testimony of Mr. James MacInnis,
counsel to the Paiute Tribe of
Pyramid Lake before the Com-
mittee of Interior and Insular Af-
fairs, H.R.

6028, Reno, Nevada
November 12, 1955

One of the arguments the tribe used was to tell the government's representatives that a lot of white persons would benefit if just a little more water were allowed to flow into Pyramid Lake. They did so by reminding the lawmakers that more than 1000 persons per month used to go to the lake for the pleasure of fishing and that they might once again be able to do so if sufficient water were available to restore the fishery. It is doubtful that Wovoka's peaceful slumber in Schurz was disturbed by the "aggressive" stance of the Paiutes.



Pyramid Lake's Unique Cui-ui

Following the Paiutes' testimony, both committees responded with reports that noted officially for the first time that the crisis at Pyramid Lake was due largely to acts of the federal government. When the Washoe Project bill was finally passed in 1956, it directed that facilities be provided to increase water releases to Pyramid Lake and to restore its fishery.

The Allies and The Second Cease-fire

In the War of Ghosts, as in all wars, each side had its allies. The federal government's allies were the Nevada and California state governments. While the Paiutes were moving up their first lines of defense against the Washoe Project, the states of Nevada and California had begun working on an Interstate Compact to divide between them all the water of the Truckee and Carson Rivers. Since the Truckee River flows through California before entering Nevada, the Paiutes were at odds with California whose legislature had advocated less than a 100 years earlier that all of the Indians in their gold-rich state be transported out.

The Paiutes, thinking that they had won a partial victory because their appeals had changed the final legislative version of the Washoe Project, soon found that whatever encouragement and strength they gained from the success, was sucked away in the years it took to obtain appropriations and to move the other complex mechanisms of the federal government toward implementation of the project. It still has not been implemented. As if the frustration resulting from the time lag, between hearing that the little they had asked

for had been given and seeing it become a reality, was not enough; the victory turned out to have been just one more apparition. In 1963 when the Bureau of Reclamation finally unveiled the working design of the Washoe Project, the Paiutes' water was not there.

The angry Paiutes advanced quickly and the then Secretary of the Interior, Stewart Udall, responded with yet another undistinguishable weapon, the "task force". Secretary Udall appointed its members and instructed them to examine the claims of everyone. The product of a "task force battle" was a "report". This task force report, released in 1964 in spite of protests by the Paiutes and an increasing number of outside supporters, only produced some rather confusing modifications in the Washoe plan and suggestions that the Newlands Project could use water more economically. In particular the report failed to recommend that a specific grant of water be made to the lake. Instead it said only that the government should use "every effort to maintain the greatest practicable flow of water into Pyramid Lake" — the kind of recommendation the Paiutes should have recognized could and would become instantly in-

visible. The report also did not recommend that the Secretary go to court to seek an adjudication of the Indians' rights.

The Paiutes logically might have been apprehensive had the report made such a recommendation, especially if they recalled the government's performance in court on their behalf in the past. In the end the Paiutes accepted Udall's promise that the Interior Department could and would salvage the excess water, eliminate the waste of water and improve regulations and controls at the Newlands Project. Believing that the "saved" water would be allowed to flow into their Lake, the Paiutes retreated from the Washoe Project battle under the conditions of a cease-fire.

They soon realized that the Secretary's promise was just another ghost. Some water was "saved", but the Interior Department refused to assert that it had the right to deliver it to Pyramid Lake and the Paiutes saw it disappear into the lands of non-Indians.

By 1968 the Paiutes' defenses were spread thin. They had been on guard for so long that their resources were badly depleted. It is hard to imagine how they must have felt when the proposed Inter-State Compact, which California, Nevada and the omnipresent representatives of federal government had been working on for thirteen years, was revealed. It limited the Paiutes to the water allotted under the *Orr Ditch Decree* in 1944 and, if that was not enough, it precluded the government and the Paiutes from ever going to court to obtain any additional water.

The Inter-State Compact weapon was even too offensive for the Interior Department. The Department objected, in part, because it was not willing to turn over the fate of the water rights it had in Nevada (and which previously it had used so freely) to the states. Since the Compact had to be ratified by Congress to be effective, the Interior Department threatened that Congress would never approve it as it had been proposed. The Nevada Legislature, ignoring the threat, gave its approval to the Compact.

A Proposal For Overkill

War makes strange bed fellows. The Paiutes suddenly found an unexpected ally in the form of the California State Assembly Committee on Natural Resources and Conservation. After reviewing the Compact, this committee refused to approve it unless it was rewritten to provide for the preservation of Pyramid Lake. Because Nevada remained obstinate and refused to compromise on this portion of the Compact, one of the most improbable sequences of the War of Ghosts took place. In the summer of 1969, in the middle of Lake Tahoe still another Secretary of the Interior, Walter J. Hickel, met with the Governors of California and Nevada in the cabin cruiser of Reno gambler William Harrah.

"It was the same logic used by the Army to destroy a Vietnamese village- 'we had to destroy the village to save it.' It naturally followed that the only way to save Pyramid Lake was to drain it."

Vine Deloria, Jr.
Standing Rock Sioux, 1970

After 90 minutes the three gentlemen agreed that engineers should assist the killer Derby Dam by draining Pyramid Lake down another 152 feet, which, they said, would put it at a level at which it would be "stable." What remained would have been a stable salt

bed. Why didn't they meet on a cruiser in the middle of Pyramid Lake? Had they done so, perhaps Secretary Hickel and Governors Reagan and Laxalt might have been more rational. Although in a War of Ghosts it may be deemed logical simply to make the object of the conflict disappear! This battle plan was so outrageous that the three generals were forced to bring out a weapon more familiar to the Paiutes -

The Logistics Of War

To fight a war one must have many kinds of resources. It is evident the Paiutes had very impressive human resources. Their perseverance and endurance speak for themselves. Economically, it was a different story. The War of Ghosts had taken its toll. In 1970 almost 70 per cent of the Pyramid Lake Paiutes were unemployed and more than 50 per cent of their families had incomes under \$2,000 per year. The tribe had been attempting to use legal representation as a weapon since the beginning of the Washoe Project battle, but funds to pay attorney fees were scarce.

In 1970 the Paiutes had given up hope that the Secretary of Interior would ever go to court to seek the return of the water which he had taken away from their lake.

another task force. The Indians chose not to send a representative to the "negotiating table", especially since Nevada's Governor claimed he had the right to tell them whom they should send. They felt the task force was a trap and that the inevitable result, a "report", was destined to be written against them since the task force was dominated by their now recognizable enemy, the Bureau of Reclamation.

Which Secretary? What Legislation? What Survey? Which Year? What Senator? Which Patent? How many acre feet per year? What Promise? Who Comprehends? Which enemy? What battle? Where is the War?

The tribe had struggled with its meager resources to keep itself in lawyers. It hadn't been easy. The problems were so complex and diverse that many attorneys were not capable of representing them, or were not interested, or found that they would have a conflict of interest if they attempted the representation. In addition the enemy had the psychological advantage of being the Paiutes' guardian at times and their Judas at others.

Once again, however, the Paiutes found some unexpected allies in California. California Indians had their own OEO legal services program. It had a reputation for being one of the best in the country, so when the Paiutes' dedicated local Nevada counsel heard that California Indian Legal Services attorneys were involved in extensive water rights litigation on behalf of some of Southern California Indian bands, he sought information and advice for the Paiutes. The contact was made, and a new battle in the War of Ghosts began. This time the Paiutes were on the offensive - they drew up the battle plan.

The Pyramid Lake Paiutes had learned the hard way that when Indians litigate, a great deal is at stake because of the *Orr Ditch* adjudication, which had amounted to the legalized destruction of their lake. In addition it was difficult for them to not recall that even

The Ghost Dance-Rigid



The Ghost Dance - Inspiration



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Pyramid Lake Paiute Tribe of Indians,
Plaintiff,

v.

Rogers C. B. Morton, Secretary of the Interior,
Defendant.

Civil Action No. 2506-70

MEMORANDUM OPINION

This is an action by a recognized Indian tribe challenging a regulation issued by the Secretary of the Interior. The matter came before the Court for trial without a jury following an extended period of pretrial activity during which issues were narrowed and efforts to resolve the controversy by negotiation failed. Claiming that the regulation should be set aside as arbitrary, capricious, and an abuse of the Secretary's authority, the Tribe invokes applicable provisions of the Administrative Procedure Act, 5 U.S.C. § 706. A declaration of rights and affirmative injunctive relief is also sought on the ground the Secretary has unlawfully withheld and unreasonably delayed required actions, 5 U.S.C. § 706 (1).

The Court's jurisdiction to review the challenged regulation under the Administrative Procedure Act is not contested. The Tribe is an aggrieved party directly affected by the regulation and is proceeding in good faith. The controversy is ripe and immediate. All administrative remedies have been exhausted and the Secretary's action is final.

The regulation was signed by the Secretary on September 14, 1972, appears in the *Federal Register*, 37 Fed. Reg. 19838, and became effective November 1, 1972. It is designed to implement pre-existing general regulations¹ by establishing the basis on which water will be provided during the succeeding twelve months to the Truckee-Carson Irrigation District, which is located in Churchill County, Nevada, some 50 miles east of Reno. The Tribe contends that the regulation delivers more water to the District than required by applicable court decrees and statutes, and improperly diverts water that otherwise would flow into nearby Pyramid Lake located on the Tribe's reservation.

This Lake has been the Tribe's principal source of livelihood. Members of the Tribe have always lived on its shores and have fished its waters for food. Following directives of the Department of Interior in 1859, which were confirmed by Executive Order signed by President Grant in 1874, the Lake, together with land surrounding the Lake and the immediate valley of the Truckee River which feeds into the Lake, have been reserved for the Tribe and set aside from the public domain. The area has been consistently recognized as the Tribe's aboriginal home. See *United States v. Sturgeon* 27 F. Cas. 1357 (No. 16,413) (D. Nev. 1879), *aff'd*, 27 F. Cas. 1358; *United States v. Walker River Irr. Dist.*, 104 F.2d 334 (9th Cir. 1939).

Recently, the United States, by original peti-

¹ 43 C.F.R. § 418 (1972).

tion in the Supreme Court of the United States, filed September, 1972, claims the right to use of sufficient water of the Truckee River for the benefit of the Tribe to fulfill the purposes for which the Indian Reservation was created, "including the maintenance and preservation of Pyramid Lake and the maintenance of the lower reaches of the Truckee as a natural spawning ground for fish and other purposes beneficial to and satisfying the needs" of the Tribe. *United States v. States of Nevada and California*, (No. 59 Original, October Term 1972) complaint at 14.

Appended to this Memorandum Opinion is a map which shows the available sources of water supply in relationship to Pyramid Lake and the District. The area involved is a water shortage area characterized by seasonal and yearly variations in available supply. Beneficial irrigation for farming and other uses within the District are accommodated through some 600 miles of main water ditches and drains and the water is ultimately parcelled out through 1,500 delivery points. The water fed into this system comes from the Carson River following storage in Lahontan Reservoir and by diversion of water from the Truckee River at Derby Dam where it passes through the Truckee Canal to be stored in the Lahontan Reservoir for subsequent or simultaneous release. The Secretary entered into a contract with the District in 1926 and this contract is still in effect (Def. Ex. 2).

As the map so clearly shows, any water diverted from the Truckee at Derby Dam for the District is thereby prevented in substantial measure from flowing further north into Pyramid Lake. The Lake is a unique natural resource of almost incomparable beauty. It has no outflow, and as a desert lake depends largely on Truckee River inflow to make up for evaporation and other losses. It is approximately five miles wide and twenty-five miles long and now has a maximum depth of 335 feet. Although the Lake has risen a few feet in recent years, it has dropped more than 70 feet since 1906. A flow of 385,000 acre feet of water per year from the Truckee River into the Lake is required merely to maintain its present level. The decreased level and inflow have had the effect of making fish native to the Lake endangered protected species, and have unsettled the erosion and salinity balance of the Lake to a point where the continued utility of the Lake as a useful body of water is at hazard.²

The regulation under attack is the most recent of a series of regulations issued from year to year

² Native fish which naturally spawn in the Truckee can no longer do this and the Lake must be stocked at least until 1974 when construction to permit the fish again to pass into the river for spawning is to be completed.

since 1967 pursuant to general policies established by the Secretary (see 43 C.F.R. Part 418 (1972) and Def. Ex. 3). The Tribe contends that the Secretary's action is an arbitrary abuse of discretion in that the Secretary has ignored his own guidelines and failed to fulfill his trust responsibilities to the Tribe by illegally and unnecessarily diverting water from Pyramid Lake.

The focus of the inquiry has been to determine whether the 378,000 acre feet of water which the regulation contemplates will be diverted from the Truckee River at Derby Dam may be justified on a rational basis. This determination must be made in the light of three major factors which necessarily control the Secretary's action: namely, the Secretary's contract with the District, certain applicable court decrees, and his trust responsibilities to the Tribe. The Secretary and the Tribe are in substantial agreement that these are the factors to be weighed. The issue, therefore, comes down to whether or not the Secretary's resolution of conflicting demands created by these factors was effectuated arbitrarily rather than in the sound exercise of discretion.

The Court has carefully reviewed the processes by which the Secretary arrived at the disputed regulation. The Secretary had before him various written recommendations from interested agencies and experts, including responsible expert studies presented by the Tribe.³ There was a wide variation in these recommendations suggesting diversion of water in varying amounts ranging from 287,000 acre feet to 396,000 acre feet. All purported to be made on the basis of guidelines and policies previously set by the Secretary. After reviewing these written submissions, the Secretary conferred with the Assistant Secretary for Reclamation and the Assistant Secretary for Indian Affairs and made what one of these Assistants characterized as a "judgment call." It is affirmatively stated that the Secretary did not accept the recommendation of any particular person or group. The record, therefore, is completely devoid of any explanation or indication of the factors or computations which he took into account in arriving at the diversion figure of 378,000 acre feet. The grounds of his action are therefore not disclosed and there is no way of knowing the basis on which his conclusions rested. Since the record is as complete on this score as it ever can be, the Government has failed to meet its burden of establishing that this decision was anything but arbitrary. See *Citizens*

³ Commissioner of Indian Affairs, Bureau of Reclamation, Geological Survey, the Fish and Wildlife Bureau, Clyde-Criddle-Woodward, Inc., and Woodward-Clevenger & Associates, Inc., among others.

¹⁰ *Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971); *Environmental Defense Fund, Inc. v. Ruckelshaus*, 142 U.S. App. D.C. 74, 439 F.2d 584 (1971); *DeVito v. Shultz* 300 F. Supp. 381 (D.D.C. 1969).

Furthermore, while the Secretary's good faith is not in question, his approach to the difficult problem confronting him misconceived the legal requirements that should have governed his action. A "judgment call" was simply not legally permissible. The Secretary's duty was not to determine a basis for allocating water between the District and the Tribe in a manner that hopefully everyone could live with for the year ahead. This suit is pending and the Tribe has asserted well-founded rights. The burden rested on the Secretary to justify any diversion of water from the Tribe with precision. It was not his function to attempt an accommodation.

In order to fulfill his fiduciary duty, the Secretary must insure, to the extent of his power, that all water not obligated by court decree or contract with the District goes to Pyramid Lake.⁴ The United States, acting through the Secretary of Interior, "has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards." *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942); *Navajo Tribe of Indians v. United States*, 364 F.2d 320 (Cl. Ct. 1966).

The vast body of case law which recognizes this trustee obligation is amply complemented by the detailed statutory scheme for Indian affairs set forth in Title 25 of the United States Code.⁵ Undertakings with the Indians are to be liberally construed to the benefit of the Indians, and the duty of the Secretary to do so is particularly apparent. It is not enough to assert the water and fishing rights of the Tribe by filing a suit in the United States Supreme Court.

The Secretary was obliged to formulate a closely developed regulation that would preserve water for the Tribe. He was further obliged to assert his statutory and contractual authority to the fullest extent possible to accomplish this result. Difficult as this process might be, and troublesome as the repercussions of his actions might be, the Secretary was required to resolve the conflicting claims in a precise manner that would indicate the weight given each interest before him. Possible difficulties ahead could not simply be blunted by a "judgment call" calculated to placate temporarily conflicting claims to precious water. The Secretary's action is therefore doubly defective and irrational because it fails to demonstrate an adequate recognition of his fiduciary duty to the Tribe. This also is an abuse of discretion and not in accordance with law.

The record before the Court clearly establishes the underlying defects and arbitrary nature of the challenged regulation. The Secretary erred in two significant respects. First, he disregarded interrelated court decrees, and, second, he failed to exercise his authority to prevent unnecessary waste within the District. The effect of this is to deprive the Tribe of water without legal justification.

⁴ The Secretary's own regulations recognize his trustee obligations. 43 C.F.R. §§ 418.1(b) and 418.3(a) (1972).

⁵ E.g., 25 U.S.C. §§ 174 and 476; see 43 U.S.C. § 614c.

Two decrees of the United States District Court for the District of Nevada, known as the Orr Water Ditch and Alpine Decrees, govern the amounts and conditions under which water shall be available for beneficial uses in the District. Maximums of roughly 4.5 acre feet and 2.92 acre feet measured at farm headgates are provided in the Orr and Alpine decrees, respectively. Approximately 60-75 percent of the water needed to serve the District's 60,000 acres of land is covered by the Alpine Decree, and the remaining needed water is covered by the Orr decree. The parties and this Court of course recognize that neither the Secretary nor this Court can adopt or require a regulation that would infringe upon these decrees, and their interpretation and application is, in a number of respects, uncertain. Nonetheless, regardless of ambiguities and inconsistencies, as the Secretary himself recognized in his own guidelines and regulations, 43 C.F.R. § 418.3 (1972), he was required to take both decrees into account. The evidence demonstrates conclusively that the Secretary formulated the regulation by totally ignoring the Alpine Decree and must have reached his calculations by relying solely on larger quantities provided by the Orr Water Ditch Decree.

In addition, the evidence conclusively showed that the regulation is wholly inadequate to prevent waste within the District, causing substantial and wholly unnecessary diversion of water from the Truckee River to the obvious detriment of the Tribe. It was amply demonstrated that water could be conserved for Pyramid Lake without offending existing decrees or contractual rights of the District through better management which would prevent unnecessary waste. The amount of exposed water can be reduced to limit evaporation. Better management will lessen seepage and overflow; users can be assessed for water taken; techniques exist for measuring water more effectively at headgates; land not entitled to water under the decrees and contract with the District can be prevented from taking the water; and by the mere employment of a few individuals the system can be so policed that it will function on a basis consistent with modern water control practices. All of this can be accomplished in spite of the fact that the District has an antiquated system. Failure to take appropriate steps, under the circumstances, by the regulation constitutes agency action unlawfully withheld and unreasonably delayed when viewed in the light of the Secretary's trust responsibilities to the Tribe, 5 U.S.C. § 706(1).

Under the contract between the Secretary and the District the Secretary has the right to require the District to conduct its affairs in a non-wasteful manner but no such action was taken or is contemplated in the regulation.⁶ The operations of the District are not tightly controlled and water is taken practically on demand without necessary safeguards to prevent improper and wasteful use. This failure to act must be given particular emphasis since the proof showed that the Secretary has not in the past enforced his prior yearly regulations affecting the

⁶ The regulation, even within its four corners, showed a disregard for close, careful management and control. The month-to-month operating criteria set out in the regulation were prepared to accommodate a diversion of 406,000 acre feet and were not modified or adjusted when the lesser diversion of 378,000 acre feet were provided. This alone could save some 30,000 acre feet for the Tribe.

District and has acquiesced in excessive water deliveries to the farms. Moreover, the absence of effective enforcement provisions in the challenged regulation must be considered in the light of a formal statement by the District that it will disregard the new regulation and will divert water as it chooses by giving instructions to its own water masters (Def. Ex. 9).

The regulation is arbitrary, capricious, an abuse of discretion and not in accordance with law. A different basis for determining the amount of water to be diverted at Derby Dam is required. There is need to consider appropriate relief. Obviously some standard for regulating the water flow to the District must be in effect. In the approaching winter months there will be less strain than will arise commencing in early spring. It therefore appears appropriate to permit the regulation to remain in effect until February 1, 1973, and to direct appropriate action in the interim which will place the management and distribution of the water under more appropriate control before serious seasonal demands become apparent.

Accordingly, the Court directs that on or before January 1, 1973, the Secretary shall submit to this Court a proposed amended regulation which is in conformity with the findings of fact and conclusions of law set forth in the Memorandum Opinion. The amendment shall provide, among other things, an effective means to measure water use, to minimize unnecessary waste, to end delivery of water within the District to land not entitled under the decrees, and to assure compliance by the District. Proper weight shall be given to both the Orr Water Ditch and Alpine Decrees and the amount of water diverted shall be wholly consistent with the Secretary's fiduciary duty to the Tribe.

In this connection, the Court has noted that the manner in which the Secretary chooses to manage and commit water stored in Stampede Reservoir will have an effect on the situation. Inasmuch as the contract between the Secretary and the Department of Agriculture relating to Stampede bears on this aspect of the problem, the Court notes that the contract is ambiguous in its terms and was made without consultation with the Tribe. This contract cannot be interposed as an obstacle to the Lake receiving the maximum benefit from the upper Truckee flow into Stampede which may be available under a reasonable and proper interpretation of the decrees. The Secretary's trust obligations to the Tribe are paramount in this respect.

In the event the amended regulation fails to assure at least the delivery of 385,000 acre feet of water to Pyramid Lake, the Secretary shall accompany the regulation with a full, detailed, factual statement of the reasons why this result has not been achieved, together with a specific itemized plan indicating what further action will be taken consistent with the Orr Water Ditch and Alpine Decrees to accomplish this result in the immediate future. New construction programs to be financed with Government funds not appropriated, effective four or five years from now, will not suffice.

Counsel shall submit an appropriate order consistent with these declarations, findings of fact and conclusions of law within ten days.

Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

November 8, 1972.





Ghost Dance Protective Circle

Continued from page 7

a favorable court order might be circumvented, as had been the case with the decision against the evicted squatters.

The tribe had spent thousands of dollars on legal assistance, but their attorneys had always become trapped in the quagmire of trying to figure out how to obtain more water for the tribe within an economically feasible adjudication. It had been concluded that the tribe probably could not go to court to sue for their first priority rights without suing every water user along the Truckee River. This type of suit would have involved thousands of water users and it was estimated that it would cost more than \$50,000 just to find out who was using what amount of water. In the *Orr Ditch* adjudication the Secretary had done just this. However, he had sued for the primary purpose of obtaining water for the Newlands Project and had rather incidentally put in a request for a small amount of irrigation water for the

Paiutes. The suit was originally filed in 1913; its complexity was so great that the final decree did not come until 1944, some 31 years later. A similar case, *U.S. v. Alpine Land and Reservoir Co.*, brought by the Secretary in 1925 (in which, by adjudicating the water rights on the Carson River, he was also attempting to obtain water for the Newlands Project) had only resulted in a temporary restraining order by 1950, twenty-five years later. That case is still pending.

The possibilities must have seemed so bleak to the Paiutes that it is to their great credit that they continued to work through the legal process. Their contact in January, 1970 with California Indian Legal Services (CILS) offered a hope more consistent with the realities facing the tribe. In addition to knowledge of Indian and water law, California Indian Legal Services was being asked by the Ford Foundation to develop a proposal for a planning grant to ascertain whether or not there was a

need for a broad national attack on Indian legal problems. This effort ultimately became Native American Rights Fund.

As the tribe worked with CILS attorney, Robert S. Pelycyer and their local counsel to develop a new litigation strategy, they also joined efforts to look for the monies necessary to cover the cost of the expert hydrologists and other witnesses they would need.

Ford Foundation Matérlel

In June, 1970, the Ford Foundation announced a \$155,000 planning grant to California Indian Legal Services. The grant was for the development of a new nationwide program to be known as the Native American Rights Fund. The funding proposal had outlined the overwhelming needs of the Pyramid Lake Paiutes and for the first time the monies for their defense would be made available to them.

The Pyramid Lake Tribe Of Paiute Indians

v.

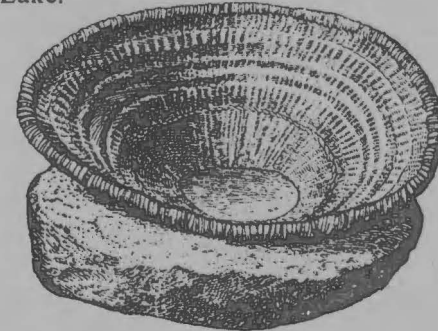
The Secretary Of Interior, Rogers C. B. Morton, et al.

The tribe's attorney and Pelycyer, who became a part of the staff of the Native American Rights Fund, recognized how critical time was to the tribe's and the lake's chances for survival, and took action that they felt would gain the most water in the shortest period of time by filing a suit in August, 1970 in the U.S. District Court for the District of Columbia. The suit was to be against the Secretary of the Interior invoking provisions of the Administrative Procedure Act, as well as the Secretary's trust obligations to the tribe.

For the most part, whatever amount of water made its way down the river past Derby Dam, the tribe could count upon to reach their reservation. Like the Newlands Project, the other primary water users were above Derby Dam.

In reviewing carefully the *Alpine* and *Orr Ditch* cases brought by the government, the tribe's attorneys noted that there was a discrepancy between what the courts had determined was the amount of water needed per acre to irrigate lands in the Newlands Project and the amount that was actually being delivered. There had been so much excess water delivered over the years that a marshland had built up adjacent to the Newlands Project, out of which had been created the Stillwater Wildlife Refuge.

Water that belonged to Pyramid Lake had been used to create an accidental refuge for the waterfowl that had had to flea the dead Lake Winnemucca and the dying Pyramid Lake.



The Reclamation Act of 1902 had given the Secretary the responsibility

for managing effectively the resources, (including water) of any project he undertook under the act. Between the time the Newlands Project began in 1903 and 1967, there were no controls whatsoever placed on the amount of water going to the Newlands Project. While measuring how much water is needed for an acre of farmland is a complicated process which has to take into account the fact that large amounts of water are lost in delivery and transmission, the Secretary's actions (or lack of action) were not those of a trustee for Indian water. Indeed in 1967, when the Department of Interior finally announced that it was going to promulgate regulations governing the amount of water to be diverted to the Newlands Project, it was motivated to do so because the Bureau of Reclamation was clamoring for more water in conjunction with the Washoe Project, rather than for restoring to the Paiutes what was rightfully theirs.

Although the portion of the Washoe Project, which was to have benefited from the "saved" water resulting from the controls asked for by the Secretary, was never built, the "saved" water also never appeared. It was yet another apparition in the War of Ghosts. It was soon discovered that the amount of water the Newlands Project had been "limited" to under the new regulations was essentially what it had been getting all along. Between 1967 and 1970, despite the fact that there were no new needs within the Washoe Project, the Secretary continued to allocate the same amount of water to Newlands.

As the litigation between the tribe and the Secretary proceeded, U. S. District Judge Gerhard A. Gesell tried without success to assist the two parties in bringing about a negotiated settlement. Judge Gesell urged the Secretary to review carefully all of the demands on the Truckee's waters and, before promulgating regulations for 1972, to consult with both the tribe and the court. In accordance with this, the government attorney wrote to the tribe's attorney and assured him that the Paiutes would be consulted before the new regulations were promulgated.

In April, 1972, the Secretary, without notice, published new regulations making the situation worse than before. Instead of limiting the Newland Project as he had since 1967 to a firm figure (however excessive it might have been), he said only that measures would be taken to insure that the water would be put to better use and listed no firm diversion ceiling. In effect, the Secretary was fighting with yet another unknown and invisible weapon. A few days later Native American Rights Fund attorneys went to court and obtained an order from Judge Gesell which discarded the new "non" regulations and re-imposed the previous ceiling. At the same time Judge Gesell decided that the case would have to go to trial.

I find it unfortunate that we have to proceed this way, but I don't know any other way to proceed, and I feel that I have been bamboozled. I suppose that is the politest word.

U.S. District Judge Gerhard A. Gesell, Addressing the Secretary of Interior's attorney, April 14, 1972

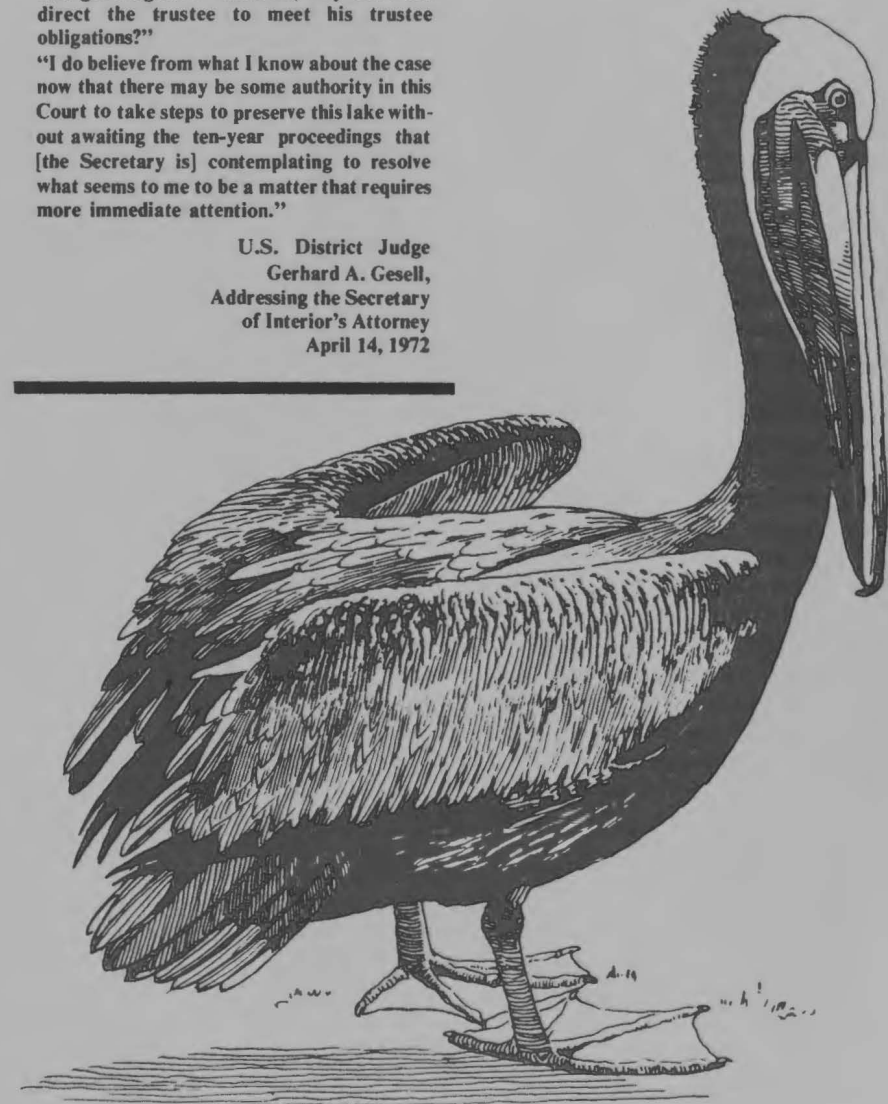
"Bamboozled" — even the Court appeared to be experiencing the peculiarities of the War of Ghosts. Judge Gesell had heard just before he expressed this sentiment one of the Secretary's last attempts to avoid the litigation brought against him by the tribe. As the hearing opened the Secretary's attorney announced that he had just been handed a copy of a letter from the Solicitor for the Department of Interior advising him that the Secretary of the Interior had decided that a law suit should be filed on behalf of the tribe, and that the Justice Department was "accordingly requested to bring appropriate action as soon as [they could] get the papers ready for the recognition and protection of a water right for the maintenance of Pyramid Lake." It had taken the Department of the Interior 70 years to decide this, but Judge Gesell seemed determined not to put the matter off any longer. Under his questioning the Secretary's attorney admitted that if new litigation were

filed by the Secretary to obtain water specifically for the maintenance of the lake it might take 10 to 15 years before a final decree were issued. The question raised by the Paiutes before Judge Gesell related only to the water the Secretary already controlled, and specifically that water which was being wasted by excessive irrigation and poor management in the Newlands Project. It was the tribe's assertion, in fact, that by instituting only the most basic kinds of water management and control systems on the Newlands Project that the resulting water savings would be almost enough to maintain the lake at its current level.

"I have before me a trustee, who has a constitutional and statutory duty to do something about [the maintenance of the lake], regardless of the wishes of the people that get irrigation water. So, why can I not direct the trustee to meet his trustee obligations?"

"I do believe from what I know about the case now that there may be some authority in this Court to take steps to preserve this lake without awaiting the ten-year proceedings that [the Secretary is] contemplating to resolve what seems to me to be a matter that requires more immediate attention."

U.S. District Judge
Gerhard A. Gesell,
Addressing the Secretary
of Interior's Attorney
April 14, 1972



Pyramid Lake Pelican

In June, a month before the scheduled trial, the Secretary set out a new plan for deciding what criteria would be used to decide how much water would go to the Newlands Project, and as a result how much would be permitted to flow into Pyramid Lake. The plan called for an elaborate system of consultation with the Bureau of Indian Affairs, the Bureau of Reclamation, the Truckee Carson Irrigation District (which has had the contractual responsibility for the day to day management of the Newlands Project since 1926) and with the tribe. The results were to be announced in September, and for this reason the trial date was postponed until October 24,

1972. In September the Secretary revealed his proposed new "voluntary" regulations, which were to replace his other new "non" regulations, which had been thrown out by the court.

His new "voluntary" regulations reduced the amount of water going to the Newlands Project from 406,000 acre feet of water per year (afy) to 378,000 afy, a savings of 28,000 afy. The uproar from the non-Indian farmers in the Truckee-Carson Irrigation District was predictable, but not understandable. The 406,000 afy allocation had originally been based on the presumption that there were 75,000 acres under irrigation in the project. According to the Bureau of Reclamation itself, there has never been more than 63,000 acres under irrigation at Newlands.

The 28,000 afy "voluntarily" made available to the tribe was literally a drop in the bucket; they needed at least 385,000 afy to stabilize the lake at its current level and had only been getting about 250,000 afy. The tribe's attorneys protested to the Secretary, but to no avail, and the matter went to trial before Judge Gesell. In October a 4-day trial was held in Washington, D.C. The case was argued for the tribe by its local attorney, Robert D. Stitser and Fund attorney, Robert S. Pelyger, assisted by Reid Peyton Chambers, of Counsel to the Fund.

On November 8, 1972, just a little more than two years after the tribe had filed suit, Judge Gesell issued his order. He called the Secretary's action "...an abuse of discretion and not in accordance with law," and said that "the effect was to deprive the Tribe of water without legal justification." He ordered the Secretary to submit to him by January 1, 1973 new proposed regulations which would provide that the "amount of water diverted [to the Newlands Project would] be wholly consistent with the Secretary's fiduciary duty to the Tribe."

Judge Gesell's memorandum opinion is reprinted in full on page 8. Not only is it an opinion which will help to insure the lake's present level until further adjudication is completed, it is also a tool that the Pyramid Lake Paiutes can share with all tribes in the struggle to preserve and protect Indian lands and resources.

The Fund knows of no previous litigation brought by Indians that has



Ghost Dance Painting on Buckskin

obtained affirmative relief for the protection of Indian property from the U.S. Government as trustee and fiduciary. Other adjudications have centered around efforts to obtain damages after the fact for property that has already been lost, damaged, or mismanaged.

Many of Wovoka's followers danced the Ghost Dance in sacred "Ghost Shirts" which they believed no bullets could penetrate. The Paiutes have emerged with a potential for survival from the War of Ghosts, and unless the decision is reversed, they have also emerged with a legal victory that will provide armor for all their brothers, whether they be descendants of Wovoka's followers or not. It is an armor more suitable to the times and to the weapons of their enemies, and hopefully it will offer more protection than the Ghost Shirts did at Wounded Knee.

Is Peace At Hand?

The Pyramid Lake Paiutes learned too late that promises and agreements are only as trustworthy as the men who have the responsibility for their implementation.

The inconsistency which has plagued the Pyramid Lake Paiutes in the War of Ghosts is not found so much in the actual laws and decrees that have faced them, as it has been in the men who have administered them. If the Paiutes were able to push through the endless layers of bureaucracy in search of some single individual who held the authority to call a halt to the destruction of their lifeline — and providing they succeeded in meeting him face to face — they more often than not discovered that such a man is surrounded by an invisible lack of accountability. He cannot be held truly responsible for his

actions — because as all such men claim, such actions are beyond their control. Instead the Paiutes were told a committee, a report, a field, office, a memorandum, a "different interpretation" was the basis for the destruction of the lake.



Bighorn Sheep now gone from Pyramid Lake Reservation

United States of America v. States Of Nevada And California

On September 22, 1972, the Solicitor General of the United States filed an original complaint in the Supreme Court on behalf of the United States against the states of Nevada and California. This action, if the Supreme Court agrees to hear it, will finally adjudicate all rights to the waters of the Truckee River. In their complaint the United States government asked that a:

"decree be entered declaring the right of the United States for the benefit of the Pyramid Lake Paiute Tribe of Indians to the use of sufficient waters of the Truckee River to fulfill the purposes for which the Pyramid Lake Reservation was created, including the maintenance and preservation of Pyramid Lake and the maintenance of the lower reaches of the Truckee River as a natural spawning ground for fish and other purposes beneficial to and satisfying such use to be with a priority of November 29, 1859."

The suit is the product of a series of strange reversals in the War of Ghosts. The second task force, which was created after the deadlock on the Interstate Compact resulted in the proposal to "drain the lake to save it," had also recommended that the only way to solve the morass was to go to court for a final adjudication of all rights to the Truckee waters. The *Orr Ditch Decree* adjudication only involved the water users in Nevada. The government had not "appreciated" in 1913 the fact that the fishery of Pyramid Lake was being endangered — and was only seeking "a determina-

tion of individual water rights, primarily for irrigation, within Nevada, with no focus on California water releases or preservation of residual water for Pyramid Lake."

The Pyramid Lake Task Force report was the first reversal, the suit filed before Judge Gesell, the second, and the third was the fact that the Secretary of Interior asked the Justice Department to file a suit — a decision innumerable secretaries, assistant secretaries, and endless committees had been agonizing over for years. The government decided among the alternatives open to it to file an original action in the Supreme Court. Had there been different men with different assistants, the government might have proceeded differently. It could have moved to re-open the *Orr Ditch* case, or to have filed concurrent actions in the District Courts of Nevada and California, or to have done nothing as before. The Paiutes were understandably relieved that the government chose the course of action that it did. They feel that the past rulings of the Supreme Court have been ones which have been supportive of the right of the United States to withdraw waters on the public domain from private appropriation and to reserve them for federal uses. The 1908 decision in *Winters v. United States* and in the 1963 decision in *Arizona v. California* firmly established for Indian reservations the

fact that "whether or not any mention of water rights is made in the act withdrawing the lands, the reservation of sufficient waters to satisfy the purpose for which the lands were withdrawn is implicit."

The Supreme Court will decide whether or not to hear *United States of America v. States of Nevada and California* very soon. If the Court decides to hear the case their decision will have broad implications for the Paiutes and all American Indian tribes. The Supreme Court can only provide a "Declaration of Peace" and the Paiutes know this. The implementation of that peace, and thus the restoration of the Paiutes' right to life rests with men who are still not yet identified. These men who will have the responsibility for carrying out the Court's decree, will continue to be as fearful and unseen to the Paiutes, as Wovoka's Ghost Dancers were to the American government a century ago.

"My . . . father told me the earth was getting old and worn out, and the people getting bad, and that I was to renew everything as it used to be, and make it better."

"He told us also that all our dead were to be resurrected; that they were all to come back to earth, and that as the earth was too small for them and us, he would do away with heaven, and make the earth large enough to contain us all; . . . we must tell all the people we meet about these things."

Wovoka



The Ghost Dance - Praying

Contributions to the Native American Rights Fund

The Ford Foundation as previously indicated has provided the major impetus and core funding support for the development of the Native American Rights Fund. The litigation undertaken on behalf of the Paiutes and many other tribes would not have been possible without the kind of financial support and encouragement given by the Foundation and its staff.

Recently the Twentieth Century Fund requested a study of the impact of the major foundations on American Society (*The Big Foundations*, Waldemar A. Nielsen, Columbia University Press, 1972). Ironically, Mr. Nielsen's study concluded that programs funded by foundations like Ford had made no significant difference in American life. Measuring any kind of impact on American life is certainly not an easy undertaking, but from the perspective of the Paiutes their ability to shape their world and thereby to have an impact on the dominant society has been strengthened immeasurably by a Foundation program.

It took their courage, perseverance, and virtually all their financial

resources just to survive in the War of Ghosts, but the offensive moves in the legal battle simply could not have been made without the financial support provided by the Ford Foundation and other individual contributors. One such contribution, made by Richard and Maya Miller, financed a major portion of the hydrological studies necessary to determine just how ineffective the water management program in the Newlands Project has been. To date more than \$35,000 of the Fund's resources have been spent on the Paiute litigation costs. This figure does not include the time of Fund attorneys, like Robert S. Pelcyger who has had the primary responsibility for the development of the case. Mr. Pelcyger has devoted more than half of the past two years on the Paiute litigation.

The Tribe will continue to need the assistance of the Native American Rights Fund for some time to come. If the Supreme Court decides to hear *United States of America v. States of Nevada and California*, it is expected that the litigation may last a decade or longer. Contributions to the Fund will insure that work like that undertaken

on behalf of the Paiutes will continue to be available to them and to all other tribes who are engaged in their own ghost wars.

Enclosed is my contribution to assist the Native American Rights Fund in the assertion and protection of Indian rights and the orderly development of the body of law affecting Indians: (please print)

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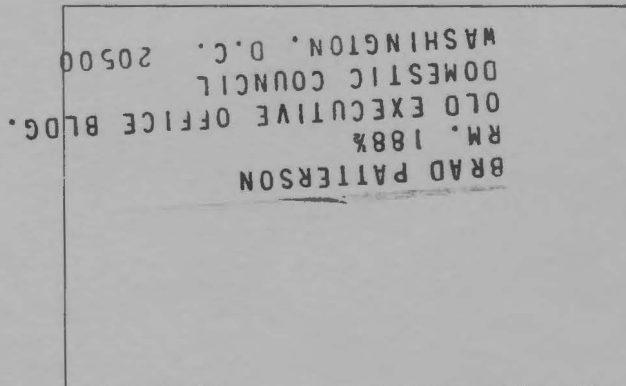
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June 18, 1974

MEMORANDUM FOR:

MORRIS THOMPSON

FRANK ZARB

FROM:

LEONARD GARMENT

SUBJECT:

Exchange of letters with
Doug Nash of NARF

I wanted to call this exchange to your attention.

I would appreciate BIA comments on any of these points, but especially on items 1, 5, 6, 7 and 9.

I would appreciate OMB comments on any of these points, but especially on items 1, 5, 6 and 9.

In particular I would like to see your suggestions for legislative proposals or administrative commitments to be included in an Indian Message II.

bcc: Paul O'Neill



June 18, 1974

Dear Doug:

I want first of all to thank you for your very solid and helpful letter of June 11 about Indian policy matters. It contains many points and suggestions meriting close attention by all of us.

Let me make some preliminary comments and in so doing outline what kind of follow-up we would intend.

1. I am favorably inclined on point 1.
2. A letter covering the subject of point 2 has, I am told, just been sent by BIA to Senator Jackson. I expect a copy of it shortly and believe it may take us further down the road on this tough question.
3. BIA still has the JOM regulations under consideration and Commissioner Thompson has assured me that I will have a chance to review them before they are again issued. As usual, some middle ground will probably have to be found and of course if S 1017 becomes law, the whole set of regulations will have to be reviewed.
4. My own personal position here has been to advocate signature of H.R. 7824, but this is a matter on which many persons are pressing their views on the President and of course he has not yet received the final bill from the Congress. It is therefore difficult to make predictions.
5. I have asked BIA and OMB to give me further information about the two colleges.
6. BIA tells me we should support the add-on for the Ojibwa school but I am asking OMB if this is confirmable.



7. I think Morris Thompson and Martin Seneca should take a new look at the heirship problem: how large is it in terms of acres and dollars? Do you think that any form of general enabling legislation might be developable?

8. We do support Interior's proposed regulations on water, as I indicated in my Albuquerque speech.

9. Perhaps you could be more specific as to your point 9. BIA tells me informally that most schools do have pretty clear assurance that their programs and budgets will be continued. What examples do you have to the contrary (which are not special cases deriving from unusual circumstances like those in point 6)? You are probably aware of the new budget reform act, now in final stages of consideration in Congress. I believe that re-sets the government's fiscal year to October 1, and mandates the completion of Congressional appropriations actions by that date. How would that affect the picture as you see it?

10. In view of the time constraints, Bradhas already taken the initiative on point 10 and is calling in the State Department's senior Fisheries Officer for a session Tuesday morning with Martin Seneca. First impressions are that both Indians and non-Indians in the Pacific Northwest share a common interest in the U.S. positions to be taken at Caracas concerning the protection of fisheries, but this meeting (the first between BIA, the White House and this particular office in State) will open up a useful dialogue in accordance with your observations.

11. We would be delighted to have the kind of meeting you describe, and as Tom Fredericks knows, have had several legal affairs sessions with Indian law representatives and officials of Interior and Justice. I await your further suggestions as to time and as to subjects (and therefore Agencies) to include.

I think I would at this point add a few items to your own list, such as (a) the standards by which we use the tool of the Indian civil rights act, and also (b) the whole question of tribal sovereignty. We have taken steps here to begin reviews of both those questions.



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When I hear further from Morrie and OMB, I will be back in touch with you again.

In closing I want to express my sharp regret at having to defer the Puget Sound trip, but unexpected changes are the price of life in these precincts and I know you will understand. If you are going to be away in July, let's aim at September.

Cordially,

Leonard Garment
Assistant to the President

Mr. Douglas R. Nash
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302

bcc: Paul O'Neill



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Staff Attorney
John D. Ross III

June 11, 1974

Mr. Leonard Garment
The White House
Washington, D. C. 20013

Dear Mr. Garment:

When we last talked in Albuquerque you asked that I provide you with information concerning problems and issues in Indian Country in hopes that you might be able to assist in securing favorable resolutions to some matters. Since that time, I have talked with all attorneys in our office in order to get a broader idea of problems in a variety of subject matter areas in the Indian law field. I have screened the numerous problems transmitted to me, both by letter and orally, in order to facilitate your review of them.

Necessarily, and for convenience purposes, certain types of problems are not included. Specifically, those areas that are now the subject matter of litigation and those areas discussed by the President in his July 8, 1970, message. The latter, as you know, received wide acceptance and support by Indian people and we would like to see those ideas implemented. We recognize, however, that those items not yet achieved require appropriate congressional action and also recognize the problems attendant in obtaining such action.

The items that are included herein are those in which favorable action would provide some long-range benefits and in which your assistance, if you deem such appropriate, would be most helpful. The problems listed below are discussed only briefly. Should you require additional information on any or all of them, I shall be more than happy to provide it.

1. I earlier mentioned the President's now-famous message of July 8, 1970, setting forth his administration's policy on Indian Affairs. Many have placed a great deal of reliance on that statement and, indeed, many have benefited from it. However, the numerous events of national and international significance that have transpired over the past four years have tended to lessen the impact of that message and the passing of four years time has tended to dilute its force and strength. In my opinion, a new Presidential message on Indian Affairs, equally strong and significant, speaking to relevant issues of today would be most welcome in Indian Country as a demonstration of continued support by this administration.



Native American Rights Fund

Mr. Leonard Garment

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June 11, 1974

2. It is my understanding that a policy decision is now being made which will establish criteria for the recognition of Tribes, groups or bands of Indians for the purpose of extending federal protection and federal services. Historically and legally, all groups that have never been recognized should be entitled to recognition. Likewise, those tribes who were terminated were frequently coerced or misled into voting their approval of such action and their status as federally recognized tribes should be quickly and fully restored. Many currently recognized tribes, at one time, opposed recognition or restoration of tribes fearing that the amount of federal monies received by recognized tribes would be less. It is my understanding that this type of opposition is now largely dissipated. Ideally, whatever criteria is established will be most liberal in affording these tribes a right that has long been denied them.

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I recognize that the O.E.O. Legal Services situation is currently before Congress and that the Legal Services Corporation Act of 1974 is a compromise between the original House version of the bill and the Senate version which had the support of the White House and Legal Services advocates. I would like to point out certain aspects of H.R. 7824 and the Conference Report (No. 93-1039) that must be retained if that bill is the version that ultimately is passed.

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Native American Rights Fund

Mr. Leonard Garment

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June 11, 1974

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This problem also touches the relationship between federal lawyers and Indians and, of course, the biggest problem is the conflict of interest. But even beyond that, government lawyers seem reluctant and slow to act when requested to render an opinion or initiate litigation on behalf of an Indian tribe, regardless of the urgency of the situation. On the other hand, they have filed actions as trustee for a tribe or tribes without any tribal request or consultation. Further, once an action is initiated, there is little, if any, effort made to consult with tribes and pursue the case along the lines desired by the tribe. We encounter these situations with frequency. Some form of executive directive contained, perhaps, in a new presidential message, would be of value in assuring proper representation of tribal interests by government lawyers.

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Mr. Leonard Garment

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7. There are two long-standing matters that would probably require a legislative solution.

Under the Indian Allotment Act parcels of reservation land were given to individual tribal members in trust. This Act also required that state law govern the distribution and descent of these properties. As a result, much of this property has passed through several generations of people under state laws of intestate succession and undivided ownership in original allotments has increased in a pyramidal fashion. Usually, there are so many undivided interests in a given parcel that no single person has a usable amount of land, and it is leased to non-Indian interests. I have seen BIA records documenting the infinitesimally small fractional shares in such lands and many times annual rental income for these individuals is as small as \$.01. Whatever value was originally attached to allotments has thus been lost in many instances. A program closely coordinated between the federal government and affected tribes, aimed at getting these lands into tribal hands where a benefit could be derived from them should be developed. Attempts at blanket legislation have failed in the past indicating a need for a program flexible enough to be adopted by tribes on an individual basis.

Another area in need of a legislative remedy is the exemption of all trust income from being considered as income or resources under all welfare laws. This kind of provisions is found in §1613(a)(5) of the Social Security Act which exempted shares of stock issued pursuant to the Alaska Native Claims Settlement Act.

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9. Federally funded programs, especially Indian education programs, suffer a common malady in the form of late announcements regarding their refunding. This problem stems from the governmental timetable and, as a result, it is not known until July and August whether these programs will even exist for the current year. This system does not allow any job security for the people involved and makes hiring and planning for the upcoming school year very difficult. Because of the number of programs affected, this is a very widespread problem although it has a particular impact on education programs. If you desire, I can investigate this further and develop some solid facts. One possible solution might be for Congress, OMB, and BIA to work on funding programs for two years and then revert to one year funding thus resulting in funding being done one year ahead of the year it is to be used.

110. The problem of the off-shore international fisheries has a profound effect on treaty Indian fishing especially in light of the U.S. v. Washington decision, relevant portions of which I provided to Mr. Patterson. This problem can be broken down into three specific areas - the highseas fishery, the off-shore troll fishery and the fishery which is under the jurisdiction of the International Pacific Salmon Fisheries Commission (I.P.S.F.C.) which takes place in the straits of Juan de Fuca and Northern Puget Sound. The basic concern in all areas is the same - the numbers of available fish have declined drastically over the past years and of the number that are available the Indians do not have an opportunity to catch their legal share due to overfishing by others elsewhere.

The Quinault Tribe provides a good example of the effect of the international high seas fishery on the Indian fishery since their reservation is on the Washington coast. In 1941, they had a catch of sockeye salmon totaling 500,000 fish. After World War II, the fishing efforts of foreign fleets increased reducing the Quinault catches to a present average of 10,000 fish. Tribal, federal, and state money used for fish hatchery projects are actually subsidizing foreign fishing.

Senator Magnuson introduced a bill (S. 1988) which would unilaterally extend U.S. jurisdiction to 200 miles. This bill was opposed by the State Department who hopes to obtain some type of multilateral agreement at the Law of the Sea Conference which will be held in Caracas, Venezuela, June 20 to August 23 of this year. However, the failure of participants to agree "upon the breadth of the territorial sea" at two earlier Law of the Sea Conferences in 1958 and 1960 tends to indicate that a positive resolution will not be forthcoming this year. I believe that Indian treaty fishermen would support whatever action would increase the number of fish returning to northwest waterways, however, time is a critical factor. Further, I believe it would be enlightening, if not very informative, for State Department officials to be aware of Indian interest, efforts, and rights in this area. Indeed, the Indian position should be included in the position of the United States at the Law of the Sea



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Mr. Leonard Garment

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June 10, 1974

Conference. To my knowledge, contact between the State Department and Indian fishing tribes has been non-existent. Anything you can do to open this line of communication would be mutually beneficial. Should efforts to reach a satisfactory agreement at the Conference fail, a bill such as S. 1988 would undoubtedly receive solid Indian support and, we would hope, the support of the White House.

The off-shore troll fishery is rapidly expanding even beyond the three mile limit, in fact, a majority of the troll catch of Chinook, coho, and pink salmon are caught beyond the three mile limit. The Canadian troll fishery intercepts more United States chinook and coho salmon than what the United States intercepts of Canadian fish of these two species. This has the same impact as the high seas net fishery and, hopefully, can be resolved by whatever means is utilized there. Again, I would urge that consultation with and input from Indian fishing tribes be undertaken by the State Department.

The international fishery under the jurisdiction of the International Pacific Salmon Fisheries Commission is a major concern to tribes adjacent to the Straits of Juan de Fuca and Puget Sound. I have supplied information on this matter to Mr. Patterson along with a recommendation that an Indian be appointed to fill a vacancy on the United States portion of that Commission. Such an appointment would give the Indian people the representation they need and deserve on the commission.

11. As you know, the Native American Rights Fund handles only matters that involve major issues of Indian law that are of national significance and, as you may suspect, many of the matters we handle often involve one of the many federal agencies. I am, under separate cover, sending you copies of our publication Announcements which will give you an idea of the kinds of matters we are involved in.

In many instances, a lot can be accomplished by a letter or phone call to one person within a federal agency. While many of the attorneys here know some people in Washington, D. C., there are many that we have never had an opportunity to meet. Would it be possible for you to arrange, at a mutually convenient time, for several NARF attorneys to meet with the heads of the Departments that have Indian programs or responsibilities and the persons within those Departments who are directly concerned with those programs and responsibilities? I would suggest that this include Interior, Agriculture, HEW, Justice, and any others that fall within this category. This would facilitate much of our work here and this benefit would, of course, be passed on to our clients throughout the country.

I wish to thank you for your interest in these problems as, I am sure, would the many people who face them daily and assure you that I will be more than happy to discuss or supply you with informa-



Native American Rights Fund

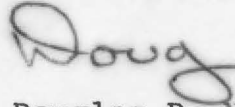
Mr. Leonard Garment

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June 11, 1974

tion on these or any other matters affecting Indian people whenever you desire. I will look forward to seeing and talking with you again.

Best Regards,



Douglas R. Nash

DRN/ea



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Staff Attorney
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June 11, 1974

Mr. Leonard Garment
The White House
Washington, D. C. 20013

Dear Mr. Garment:

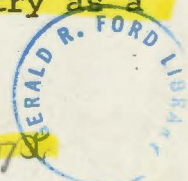
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*How message appealing
rec- water rights + surplus prop*



Native American Rights Fund

Mr. Leonard Garment

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Native American Rights Fund

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-3-

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Cow. etc
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June 11, 1974

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VI
W. Martin
Sawyer
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Indian Trust Services

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WRFS
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R. FORD

Mr. Leonard Garment

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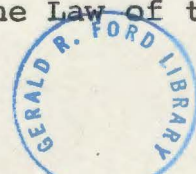
June 11, 1974

9. Federally funded programs, especially Indian education programs, suffer a common malady in the form of late announcements regarding their refunding. This problem stems from the governmental timetable and, as a result, it is not known until July and August whether these programs will even exist for the current year. This system does not allow any job security for the people involved and makes hiring and planning for the upcoming school year very difficult. Because of the number of programs affected, this is a very widespread problem although it has a particular impact on education programs. If you desire, I can investigate this further and develop some solid facts. One possible solution might be for Congress, OMB, and BIA to work on funding programs for two years and then revert to one year funding thus resulting in funding being done one year ahead of the year it is to be used.

10. The problem of the off-shore international fisheries has a profound effect on treaty Indian fishing especially in light of the U.S. v. Washington decision, relevant portions of which I provided to Mr. Patterson. This problem can be broken down into three specific areas - the highseas fishery, the off-shore troll fishery and the fishery which is under the jurisdiction of the International Pacific Salmon Fisheries Commission (I.P.S.F.C.) which takes place in the straits of Juan de Fuca and Northern Puget Sound. The basic concern in all areas is the same - the numbers of available fish have declined drastically over the past years and of the number that are available the Indians do not have an opportunity to catch their legal share due to overfishing by others elsewhere.

The Quinault Tribe provides a good example of the effect of the international high seas fishery on the Indian fishery since their reservation is on the Washington coast. In 1941, they had a catch of sockeye salmon totaling 500,000 fish. After World War II, the fishing efforts of foreign fleets increased reducing the Quinault catches to a present average of 10,000 fish. Tribal, federal, and state money used for fish hatchery projects are actually subsidizing foreign fishing.

Senator Magnuson introduced a bill (S. 1988) which would unilaterally extend U.S. jurisdiction to 200 miles. This bill was opposed by the State Department who hopes to obtain some type of multilateral agreement at the Law of the Sea Conference which will be held in Caracas, Venezuela, June 20 to August 23 of this year. However, the failure of participants to agree "upon the breadth of the territorial sea" at two earlier Law of the Sea Conferences in 1958 and 1960 tends to indicate that a positive resolution will not be forthcoming this year. I believe that Indian treaty fishermen would support whatever action would increase the number of fish returning to northwest waterways, however, time is a critical factor. Further, I believe it would be enlightening, if not very informative, for State Department officials to be aware of Indian interest, efforts and rights in this area. Indeed, the Indian position should be included in the position of the United States at the Law of the Sea



too vague

State Dept. may will brief.

June 10, 1974

Conference. To my knowledge, contact between the State Department and Indian fishing tribes has been non-existent. Anything you can do to open this line of communication would be mutually beneficial. Should efforts to reach a satisfactory agreement at the Conference fail, a bill such as S. 1988 would undoubtedly receive solid Indian support and, we would hope, the support of the White House.

The off-shore troll fishery is rapidly expanding even beyond the three mile limit, in fact, a majority of the troll catch of chinook, coho, and pink salmon are caught beyond the three mile limit. The Canadian troll fishery intercepts more United States chinook and coho salmon than what the United States intercepts of Canadian fish of these two species. This has the same impact as the high seas net fishery and, hopefully, can be resolved by whatever means is utilized there. Again, I would urge that consultation with and input from Indian fishing tribes be undertaken by the State Department.

The international fishery under the jurisdiction of the International Pacific Salmon Fisheries Commission is a major concern to tribes adjacent to the Straits of Juan de Fuca and Puget Sound. I have supplied information on this matter to Mr. Patterson along with a recommendation that an Indian be appointed to fill a vacancy on the United States portion of that Commission. Such an appointment would give the Indian people the representation they need and deserve on the commission.

11. As you know, the Native American Rights Fund handles only matters that involve major issues of Indian law that are of national significance and, as you may suspect, many of the matters we handle often involve one of the many federal agencies. I am, under separate cover, sending you copies of our publication Announcements which will give you an idea of the kinds of matters we are involved in.

In many instances, a lot can be accomplished by a letter or phone call to one person within a federal agency. While many of the attorneys here know some people in Washington, D. C., there are many that we have never had an opportunity to meet. Would it be possible for you to arrange, at a mutually convenient time, for several NARF attorneys to meet with the heads of the Departments that have Indian programs or responsibilities and the persons within those Departments who are directly concerned with those programs and responsibilities? I would suggest that this include Interior, Agriculture, HEW, Justice and any others that fall within this category. This would facilitate much of our work here and this benefit would, of course, be passed on to our clients throughout the country.

I wish to thank you for your interest in these problems as, I am sure, would the many people who face them daily and assure you that I will be more than happy to discuss or supply you with informa-



Native American Rights Fund

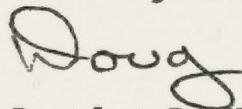
Mr. Leonard Garment

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June 11, 1974

tion on these or any other matters affecting Indian people whenever you desire. I will look forward to seeing and talking with you again

Best Regards,



Douglas R. Nash

DRN/ea



THE WHITE HOUSE
WASHINGTON



July 24, 1974

LG:

Justice (Jon Rose) must be doing a very careful review, deducing from this invited comment from NARF.

I don't recommend any more letters from you to Silberman than are necessary so I suggest that next time you see Larry informally, you compliment him on this review and suggest the possibility that when things are ready for any announcements to be made, we might consider tying them in with an Indian Message II which some of us are thinking about...

Sean



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Deputy Director
Thomas W. Fredericks

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18 July 1974

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Staff Attorney
John D. Ross III

Jonathan C. Rose
Associate Deputy Attorney General
Department of Justice
Room 4208
Washington, D. C. 20530

Dear Mr. Rose:

This letter is written in response to your letter to Mr. Echohawk of June 27, 1974, inviting comments and suggestions from us concerning the Justice Departments' responsibilities over federal laws pertaining to Indian people.

The major problem that we see in our dealings with the Justice Department in our Indian litigation is the lack of overall coordination. We suggest the establishment of an office within the Justice Department that would be responsible for overall coordination of the Department's Indian and Indian-related litigation that is conducted both by the Department of Justice in Washington and the various United States Attorneys' offices throughout the country.

The principle Indian-related work that the Department of Justice in Washington undertakes, with which we are familiar, is handled out of the Indian Claims section, the general litigation section, and the appellate section of the Lands Division and the Civil Rights division. I am sure the Criminal Division also has some responsibility in this area but we have not had any direct experience with its caseload. While it has been our experience that most of the Indian litigation, particularly the major cases, are handled out of Washington, D. C., there are also several cases, including, for example, United States v. Washington, probably the largest Indian fishing rights case that has ever been litigated, that have been handled almost exclusively by the United States Attorneys' offices. In some instances (notably not United States v. Washington) we have found it extremely difficult to work with local United States Attorneys. Whereas, for the most part, in recent years Department of Justice attorneys have welcomed and sometimes invited our participation, local U. S. Attorneys tend to resent it. They generally do not have very much experience in Indian litigation, they are not used to collaborating with private attorneys as is often the case in Indian related work, and they tend to be very jealous of their prerogatives.



Native American Rights Fund

Mr. Jonathan C. Rose

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18 July 1974

We have also encountered some problems in cases being handled by local U. S. Attorneys in trying to persuade them to take position that we consider advantageous to our Indian clients. Sometimes we have been successful in persuading one local U. S. Attorney to take a certain position but another U. S. Attorney operating in another part of the country stakes out a different position.

A person responsible for coordinating Indian litigation within the Department of Justice could ease both of these problems. From our standpoint it would certainly be helpful if we had someone in Washington to whom we could turn when we encountered some of these difficulties with local U. S. Attorneys. We recognize that there are some institutional problems here, with the U. S. Attorneys traditionally having freedom to litigate their own cases from Washington, but believe that a fairly high-ranking Justice Department official could sometimes help ease some problems.

Within the Department of Justice in Washington there is often a lack of coordination in its various Indian related activities. For example, there are now pending two cases, one in the Ninth Circuit and one in the Tenth Circuit, which involve basically the same question, namely, whether state statutes of limitation operate as a bar to an Indian claim against a non-Indian for damages when the Indian claims that his land illegally passed out of trust. In one of these case, the Justice Department was requested to and did file an Amicus Curiae brief taking the position that the statute of limitations should not bar the Indian claim. In the other case, the Justice Department was asked, but refused, to file an Amicus Curiae brief. I understand that it was a source of considerable embarrassment to the Justice Department attorney who argued the Ninth Circuit case when he was confronted with the Departments' Amicus Curaie brief in the Tenth Circuit case.

In another case with which we are familiar, the Pyramid Lake case, while the General Litigation Section of the Lands Division was contending that the Pyramid Lake Reservation was established in 1859 and therefore had a water rights priority as of that date, the Indian Claims Section was arguing that the Reservation was established in 1874. That problem was eventually resolved internally but not after conflicting formal statements of position were filed. We are fearful that Indian Claims Section's pleading may later come back to hurt the Tribe as a declaration against interest by the United States.



Native American Rights Fund

Mr. Jonathan C. Rose

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18 July 1974

The San Luis Rey water case involves a similar problem as between the General Litigation Section and the Indian Claims Section. Without going into all the complex details in that case, our general feeling is that the original Justice Department position was staked out by the Claims Section against the Indian interests and that since that time the attorneys within the General Litigation Section have tried to work out a position that is helpful to the Indians but at the same time is consistent with the Indian Claims Section's original position. There is no one within the Department who has been willing or has been able to look at the case anew and impose an overall resolution. It has been left for the individual attorneys to more or less work out as best they can on an ad hoc basis.

For these reasons we recommend that the Deputy Attorney General, or someone on his immediate staff, be given authority to direct, supervise and co-ordinate all of the Indian related litigation in the Department of Justice and in the United States Attorneys' Offices.

We also recommend the establishment within the lands Division of an Office of Indian Rights with responsibility of conducting both general litigation and appellate work (but not Indian Claims Commission or Court of Claims work) relating to Indian Affairs. This office should consist of a core group of from 5 to 7 at the outset, but should also be able to draw freely on attorneys within the General Litigation and Appellate Sections for their particular expertise in particular cases.

Establishment of a separate Indian Office within the lands Division would be beneficial in several respects. First, it could be likely to attract attorneys who have a particular interest in and feel for Indian legal problems. They would tend to be advocates for the Indian position. Second, they would develop a working relationship both with the Indian bar and with the Indian clients as well as with the attorneys in the client agency, the Interior Department. They would develop an overview of developments in the field and might be able to initiate litigation in some problem areas that particularly require clarification. (On this subject, an example of such a problem area is the meaning of Public law 280, this basic law, which allegedly defines the jurisdiction of several states in Indian Country, has been on the books since 1953 but no one knows what it means. The litigation that has developed, almost without exception, has been initiated by either legal services or private tribal attorneys.



Native American Rights Fund

Mr. Jonathan C. Rose

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18 July 1974

In short, the Office of Indian Rights within the Lands Division should be able to function as close as possible to the proposed Indian Trust Counsel Authority within the limits of current law with respect to the range of litigation activities now handled by the Lands Division. Of course, the office will not be able to exercise all of the functions of the proposed Trust Counsel without new legislation.

The budget of the Office of Indian Rights in the Lands Division should make provision for private attorneys to be retained as Special Assistant Attorneys General to litigate particular cases. This should only be necessary in a relatively few cases, where neither the Lands Division nor the tribal attorneys (if the Tribe intervenes and is independently represented) have the required expertise. One example of a particular area where Special Assistant Attorneys General may be needed is in the very specialized field of Indian hunting and fishing rights. To the best of our knowledge, the General Litigation Section of the Lands Division itself does not currently employ any attorneys with expertise in this area.

known
Our experience with the Solicitor General's Office, once it appointed an attorney, Harry Sachse, to do most of its Indian work indicates that the field of Indian law, and Indian people, benefit erroneously from concentrated attention by attorneys who are genuinely interested and expert in the field. We think that, to a very large extent, the decision of the Supreme Court the past two terms, both to hear an unusually large number of Indian cases and to render what are for the most part highly favorable opinions, are due to Mr. Sachse's efforts on behalf of the Solicitor General. Prior to the assignment of most Indian cases to Mr. Sachse, Indian cases were spread among all the attorneys in the Solicitor General's Office, in the way that Indian litigation is currently handled by the General Litigation and Appellate Sections of the Lands Division. The results were not nearly as good and it was much more difficult for private attorneys for Indians to establish contact with the important decision makers in the Department.

We also recommend that a committee or group consisting of the Deputy Attorney General (or someone from his office), the Director of the Indian Rights Offices in the Civil Rights Division and the Lands Division, and someone from the staff of the Solicitor General appointed by the Solicitor General, should meet for the purpose of reviewing all of the Departments' Indian litigation, including that conducted principally by United States Attorneys' Offices. This group should have the primary responsibility within



Native American Rights Fund

Mr. Jonathan C. Rose

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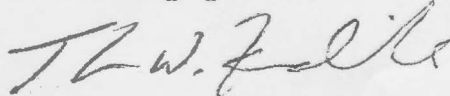
18 July 1974

the Department for establishing the direction and priority of the Departments' activities in Indian litigation.

Finally, with respect to the Department's non-litigation activities that affect Indian reservations and Indian people, for example, the programs and functions of the Law Enforcement Assistance Administration, the Federal Bureau of Investigation, the Community Relations Service and the Bureau of Prisons, we recommend the establishment of a compliance office to insure adherence to overall Administration Indian policy. Some Tribes have had difficulty in obtaining LEAA grants and have been held to apply through their respective states. The Bureau of Prisons has not recognized the cultural and religious needs of Indian inmates. There have been some complaints that the FBI has been lax in investigating crimes on remote Indian reservations. The compliance office would have the responsibility of communicating the peculiar needs of Indians to these agencies and of insuring that their programs and activities are responsive to those needs.

We appreciate the opportunity to offer these comments, suggestions and recommendations. Please let us know if we can be of any further assistance.

Sincerely yours,



Thomas W. Fredericks

TWF/mlw



September 6, 1974

Dear Mac:

I understand you and your colleagues at the Ford Foundation are now considering the application from the Native American Rights Fund for increased support. In that connection I thought it might be useful for you to have an indication of the value we attach to the NARF's efforts.

The NARF has helped make a watershed difference in recent American Indian history. Its careful work laid the ground for the landmark U.S. v Washington case in which the long, sorry story of abrogation of Indian fishing rights in the Pacific Northwest was reversed and rewritten. The Fund also was a central mover in the legislative drafting which accomplished the Menomine Restoration.

These are only two examples of the value of an institution such as the NARF, and are a testimony to the high professional competence of its staff and its legal work.

The quiet, solid, programmatic performance of independent institutions such as NARF will be even more important in the future. I am confident that continued support of this organization by the Ford Foundation would be welcomed by all who have a genuine interest in and concern for Indian affairs.

Sincerely,

Leonard Garment
Assistant to the President

Mr. McGeorge Bundy
President
The Ford Foundation
New York, New York

bcc: John Echohawk
Reid Chambers



Director
John E. Echohawk
Deputy Director
Thomas W. Fredericks

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Staff Attorney
John D. Ross III

1 August 1974

Bradley Patterson
White House Assistant for
Indian Affairs
Room 118
Executive Office Building
The White House
Washington, D.C. 20005

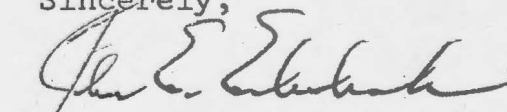
Dear Brad:

As you know, the Native American Rights Fund receives over half of its funding from the Ford Foundation. The three-year grant we received in 1971 will expire in a few months, and we have all turned some of our attention to the problem of getting the grant renewed. It is expensive to operate our program and our costs have greatly increased. Without an increase from Ford, our services are certain to be cut back.

At this crucial time, I think it is very important that the Ford Foundation hear directly from the people who are concerned about the significance of our work and the continued availability of our legal advocacy to Indian people throughout the nation. For that reason, I ask you to consider writing a letter to the Ford Foundation relating any experiences and opinions you might have that would assist in our quest for funds. If you do not feel comfortable doing so, or think it would be inappropriate, or simply do not have the time, I can understand. On the other hand, if you are able to do so, we here at NARF and our many Indian clients would be most grateful.

If you write to the Ford Foundation, you should send your correspondence to Mr. McGeorge Bundy, The Ford Foundation, 320 East 43rd Street, New York, New York 10017. We would appreciate your sending us a copy of whatever correspondence you have with the Ford Foundation.

Sincerely,


John E. Echohawk
Director

JEE/scp



September 9, 1974

Dear Cap:

One of the most effective, because professional, organizations in the country rendering service to Indian people is the Native American Rights Fund of Boulder, Colorado. I have come across numerous examples of their work and have found the caliber of their staff to be first-rate.

NARF is now, I am told, negotiating with Mr. Blue Spruce of your Office of Native American Programs, for a grant. On the merits alone, I wanted you to know I consider the Fund as an outstanding candidate for assistance from the Federal Executive Branch and hope that you and ONAP will give NARF's application sympathetic consideration.

Sincerely,

**Leonard Garment
Assistant to the President**

**Honorable Casper W. Weinberger
Secretary
Health, Education and Welfare
Washington, D. C.**

Central Files



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Deputy Director
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Staff Attorney
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28 August 1974

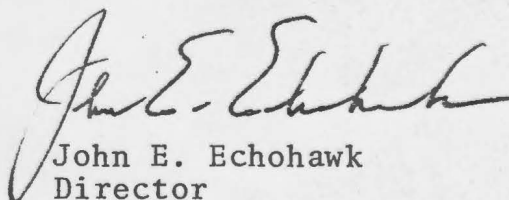
Mr. Bradley Patterson
White House Assistant
for Indian Affairs
Room 118
Executive Office Building
Washington, D.C. 20500

Dear Brad:

As you know, as a result of the recent Legal Services Corporation legislation, we will soon be losing our funding from OEO Legal Services which went to support the work of two attorneys in our Indian Law Back-Up Center which assisted local Indian legal services programs. Lloyd Meeds informed me of your concern over our loss in funding and your commitment to make individual contacts within the BIA and HEW to help us fund alternative sources of funding. We are currently in the process of negotiating with George Blue Spruce of ONAP on a grant to replace the Back-Up Center funding. In the meantime, if you have any other suggestions, they would certainly be welcome.

We appreciate your continuing interest and support of our legal efforts on behalf of American Indians.

Sincerely,


John E. Echohawk
Director

JEE/scp



Finished as far
as LG is concerned.

L.H.



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

OCT 7 1974

Honorable Leonard Garment
Assistant to the President
The White House
Washington, D.C. 20500

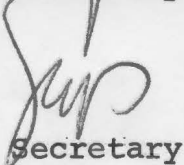
Dear Len:

Thank you for your letter of September 9 concerning the Native American Rights Funds (NARF) of Boulder, Colorado. I appreciate your favorable comments concerning their professional qualifications and expertise.

Dr. George Blue Spruce, Jr., Director of the Office of Native American Programs (ONAP) has informed me that NARF currently receives funds from that Office for an educational legal assistance project. NARF is intending to submit a proposal to provide technical assistance to Indian tribes to improve tribal governments to ONAP in the near future. Upon submission the proposal will be considered on its merits and reviewed to determine whether it fits into the overall technical assistance and budgetary plans of that Office.

If I can be of further assistance, please do not hesitate to let me know.

Sincerely,



Secretary





THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

OCT 7 1974

Honorable Leonard Garment
Assistant to the President
The White House
Washington, D.C. 20500

Dear Len:

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If I can be of further assistance, please do not hesitate to let me know.

Sincerely,

/s/ Cap

Secretary



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Deputy Director
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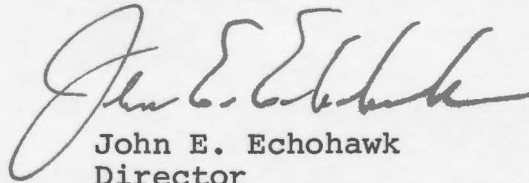
1 November 1974

Leonard Garment
Assistant to the President
Executive Office Building
Washington, D.C. 20500

Dear Mr. Garment:

Just this week, we formalized a renewal of our grant from the Ford Foundation. The new grant will allow us to maintain our present level of operations through June, 1976. Given the declining fortunes of the Ford Foundation, the new grant represents a significant commitment to NARF and to Indian legal affairs. The support we received from you and others familiar with the program was very important in our refunding negotiations. Thank you for your assistance.

Sincerely,



John E. Echohawk
Director

JEE/scp

cc: Bradley Patterson

