1984

NARF North: Alaska Office Opens

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NARF NORTH: ALASKA OFFICE OPENS

Editor's Note:
This fall the Native American Rights Fund opened an office in Anchorage, Alaska, to better serve Alaska Natives. The new office was made possible by the transfer of two attorney positions from the main office in Boulder, Colorado. The following article outlines the history of Alaska Natives, the difficulties that they face, and the reasons for NARF's new office. The article was prepared by Charles F. Wilkinson, Of Counsel to NARF and Visiting Professor of Law at the University of Colorado Law School.

A BRIEF HISTORY

The aboriginal inhabitants of Alaska, who first settled there at least 11,000 years ago, can be divided into three groups. Aleuts inhabit the Alaska Peninsula and the Aleutian Islands in southwestern Alaska. Western and northern Alaska is inhabited by Eskimos. Ethnologically, Aleuts and Eskimos are not considered Indians but they have always been treated as such for the purposes of federal Indian policy. The final category of Alaska Natives is comprised of Indians. There are three groups of Indians—Tlingits and Haidas in southeastern Alaska, and Athabascans, who live in interior Alaska.

Exclusive aboriginal possession was not broken until the arrival of the Russians in the mid-1700’s. Russia claimed Alaska, but its settlements were always small and scattered. The average Russian population of Alaska was only about 550 persons and the only substantial permanent settlements were at Kodiak and Sitka. The United States succeeded to Russia's interests when Alaska was purchased by the Treaty of 1867. The rights of the aboriginal inhabitants were mentioned only briefly in Article III of the Treaty, which provided that “the uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes in that country.” There was no reference at all to the aboriginal land title of Alaska Natives.

The United States pursued a somewhat different policy in regard to Alaska Natives than it did in regard to Indians in the Lower 48 states. Because of the vast spaces and minimal population pressure, there was no comprehensive attempt to make treaties or otherwise to establish reservations for Alaska Natives. When a civil government was established in Alaska by the Organic Act of 1884, no definitive statement was made as to the rights of Alaska Natives, except that the Natives were not to be disturbed in their occupancy of land. The Annette Island Reserve was created in 1891 for the members of the Metlakatla Indian community. From 1891 through 1936, a number of reserves were established in Alaska by executive order.

CONTENTS: Vol. 10, No. 2

NARF Legal Developments ......................... 9
NARF Publications and Resources ................ 10
Of Gifts and Giving ................................. 11
Then the Secretary of Interior designated six reserve
pursuant to the Indian Reorganization Act (IRA) of 1934,
which was made applicable to Alaska in 1936. In all, 23
Native reserves had been established in Alaska by 1943 (as
will be noted later, all of these, except the Annette Island
Reserve, were revoked by ANCSA in 1971). These reserves,
which ranged from about 17 acres to 1,400,000 acres (at
Venetie), affected few natives and less than one percent of
all aboriginal land in Alaska.

NATIVE TOWNSITES ESTABLISHED
AFTER 1926 TOWNSITE ACT
The reserves, therefore, were the exception rather than
the rule. In almost all cases, the United States had no formal
land dealings with Alaska Natives who, under federal law,
held a right of occupancy to the lands on which they lived
and hunted. As a House of Representatives Interior Com­
mitee report stated in 1971, "the great bulk of the
aboriginal titles claimed by the Natives [had] not been
taken or extinguished by the United States. The United
States [had] simply not acted."

The absence of any federal policy to resolve Alaska
Native aboriginal land rights continued even when Alaska
achieved statehood in 1959. In the Alaska Statehood Act,
Congress gave the new state the right to select 102 million
acres of land from the public domain, by far the most
generous land grant given any state. The Statehood Act,
however, contained no provision concerning Native land
rights. In 1966, when state officials began selecting lands
to which Alaska Natives claimed a prior right, Secretary of
the Interior Stewart Udall imposed a freeze on further land
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In his 1968 "superfreeze," Secretary Udall extended the ban against state selections to all forms of
entry, including leasing. The freeze froze on federal
lands held by the village corporations, as well as to land
selected by the regional corporations themselves.

One Alaska Native fund was established by ANCSA to
distribute $962.5 million to Native corporations. The
Fund is comprised of $462.5 million appropriated by Congress
in 1980. The remainder, approximately 50 percent of
all money from the Fund must be redistributed from
to regional corporations to their stockholders and
corporations within each region.

The reserved state made a staledate that led to the passage
of the Alaska Native Claims Settlement Act (ANCSA) in
1971. In return for relinquishing their claims to aboriginal
title to most of the state (365 million acres), Alaska Natives
agreed to receive land selection rights to 40 million acres
ing the lower 48 states. Land title was received, not in trust
by Indian tribes with governmental powers, but in fee by corporations
chartered under state law. The rights held by Natives
would become fully transferable, even to non-Natives, as

These are the basic provisions of ANCSA:
1. Alaska Natives were entitled to select about 40 million
acres of federal public domain lands. Twenty-million
acres will be transferred to the approximately 200 village
corporations designated in ANCSA. Twelve regional cor
porations, which generally follow ethnic lines, are entitled
to select 16 million acres. No lands will be selected by
an alaskan regional corporation, which is comprised of
Natives living outside of Alaska. The remaining two
million acres are set aside for pending Native allotment applica
4. Each Alaska Native alive on December 18, 1971, the
date on which ANCSA was passed, is entitled to own 100
shares in a regional corporation and, depending on his or
her residence, to become a shareholder in a village
corporation as well. Alaska Natives born after December
18, 1971 ("afterborns") can become shareholders only by
inheritance.
5. With very limited exceptions, corporate stock in
regional and village corporations cannot be sold or other
wise disposed of until December 18, 1991. On that date all
stocks will become fully transferable, even to non-Natives.

The Alaska Native Claims Settlement Act
ANCSA amounted to one of the greatest land trans
actions in history. In some respects it is similar to the
treaties that tribes in the Lower 48 states executed with the
United States: the tribes relinquished aboriginal claims to
vast amounts of land and, in return, received title to lesser
amounts of land. In some respects, however, the ANCSA
transaction is very different from treaty-making in theLower
48 states. Land title was received, not in trust by Indian
tribes with governmental powers, but in fee by corporations
chartered under state law. ANCSA made no provision for
special hunting, fishing or water rights. Children born after
the passage of ANCSA in 1971, would not become
shareholders in the corporations. Stock held by Natives
would become fully transferable, even to non-Natives, as

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and new shares issued. The new stock will be without the
restrictions on alienation now required of shares issued
under ANCSA. In ANILCA, Congress amended this
provision to allow corporations to provide for a first right to
purchase stock in the corporation or in the shareholder's
family.

6. All reserves previously set aside for Alaska Natives,
except for the Annette Island Reserve of the Metlakatla
Indian community (which was privatized in 1978), were
reverted.

7. All lands selected by the Native corporations are
received in fee simple with few restrictions on alienation.
State taxation, however, is limited: lands held by corpora
tions, which are not developed or leased to third parties, are
exempt from state and local real property taxes for 20 years.

8. ANCSA expressly provided "that any aboriginal
hunting or fishing rights that may exist, are hereby
extinguished." Subsistence hunting and fishing, however,
is protected by state law that gives subsistence uses preference throughout the state. In 1982 Alaska voters
rejected a referendum that would have eliminated the state
law preference for subsistence hunting and fishing.

that establish a preference for subsistence uses on federal
public lands in Alaska. These special protections under federal
law thus protect Alaska Native subsistence hunting and
fishing on most of the lands in the state, whether or not
subsistence uses continue to receive priority under Alaska
state law.

10. Several specialized federal statutes affect subsis
tence hunting and fishing by Alaska Natives. The En
The legal and social complexity spawned by ANCSA has been substantial. Worse yet, the benefits of ANCSA do not extend to children born after October 13, 1971, and Native control of regional and unitary services is unresolved under ANCSA and Native dependence on subsistence hunting and fishing is being attacked by non-Native commercial and sports interests, both illegal and legal. The critical law for Alaska Natives at this point is the historic ANCSA; Native corporations, also chartered under federal law and mandated by ANCSA: federally chartered tribal governments approved by the Bureau of Indian Affairs pursuant to the Indian Reorganization Act (IRA); and traditional tribal governments exercising inherent powers at all—that state law provides the exclusive source of self-governance. It is probable that no region in the United States faces so many varying, and often conflicting, units of governmental authority.

The critical law for Alaska Natives at this point is the historic ANCSA; enacted in 1971, ANCSA provided for the transfer of more than 40 million acres, and nearly one billion dollars, to Native corporations. Plainly, a measure of progress has been achieved since its inception in 1971, although income, education, and employment levels have all improved slightly. In a few villages the material progress is substantial. Yet for most Alaska Natives the percentage of NARF’s total national effort, NARF was instrumental in representing Alaska Natives in the establishment of the North Slope Borough. And in the area of education, NARF represented Alaska’s interests in the revision of the Johnson-O’Malley regulations in the mid-1970’s. Currently, among other projects, NARF is representing Alaska Natives seeking to establish federal tax exemptions under the Reindeer Industry Act of 1937. And, at the request of the Alaska Native Review Commission, NARF recently sent two attorneys to Anchorage to participate in the Commission deliberations on alternative means for protecting Native land ownership after 1991.

In some of these other efforts, involvement in Alaska thus far has been far more limited than is needed. With issues such as the status of IRA and traditional governmental resolutions under ANCSA, Alaska Natives are subject to some or all of these overlays of governmental authority: state-created city governments; state-created boroughs; federal land management agencies; Native regional corporations, chartered under state law and mandated by ANCSA; Native village corporations, also chartered under state law and mandated by ANCSA; federally chartered tribal governments approved by the Bureau of Indian Affairs pursuant to the Indian Reorganization Act (IRA); and traditional tribal governments exercising inherent powers, units of self-governance. It is probable that no region in the United States faces so many varying, and often conflicting, units of governmental authority.

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SECOND ALASKA NATIVE JOINS NARF STEERING COMMITTEE

Caleb Pungowiyi, an Iñupiat, was recently elected to NARF’s 13-member Steering Committee. Mr. Pungowiyi is the President of Kawerak, Inc., a nonprofit organization which administers a variety of programs and services to several Native villages in Alaska. Mr. Pungowiyi has served as President of Kawerak, Inc. since 1980. He has previously served as Regional Health Director for the region’s health corporation.

Caleb will be the second Alaska Native currently serving on the Steering Committee. The other, Chris E. McNeil, Jr., Tlingit, Vice President and General Counsel of Sealaska Corporation, serves as Steering Committee Chairman. Chris was recently named as one of 272 honorees in Esquire Magazine’s Registry of the “Best of the New Generation.”

of police power in Alaska’s rural areas. Others argue that Alaska Native villages are “Indian country” because they are “dependent Indian communities” within the meaning of current federal law; that being the case, they assert, state law generally does not apply and the traditional and IRA villages’ governments have regulatory jurisdiction in the villages and surrounding areas. Still others argue that the safest course is for village, and perhaps regional, corporations to transfer land to existing (or newly formed) IRA corporations and for the IRA corporations then to transfer the land to the United States in trust for the villages. The trust lands would then constitute Indian reservations and would be Indian country under federal law; this would allow the exercise of jurisdiction by the IRA governments.

None of these issues has yet been resolved by the courts or by Congress. Perhaps more importantly, Alaska Natives have not yet settled on the wisdom of these and other alternate courses of action. These are complicated issues involving a unique blend of Indian law and the special statutes relating to Alaska. Reasoned explication of the alternatives is at a premium and NARF can play a valuable role in helping to disseminate information and representation to those Native villages which are financially unable to hire counsel.

B. “1991 Issues”

The year 1971 was an epochal year for Alaska Natives, and 1991 may prove to be equally monumental. Already the number “1991” has taken on an ominous meaning among Alaska Natives: it is in that year that stock in both regional and village corporations is eligible to go on the market according to the terms of ANCSA. Obviously, there is the greatest potential for the transfer of both land and corporate control from Alaska Natives to non-Indian interests. Forty million acres of Native land are at stake.

Once again, a host of options are being discussed. The 1991 deadline can be left undisturbed. It could be extended, either indefinitely or for a fixed term. The shares could be made permanently non-transferable. Each individual corporation could be given the power by Congress to decide for itself whether it wished to restrict the transferability of its stock permanently, or for a fixed term. These are only a few of the choices presented.

Each of the alternatives in turn raises legal and policy issues of the greatest magnitude. Arguably, shareholders have a vested right to their stock and the right to transfer it in 1991; thus, there may be constitutional issues involved in any alteration of the 1991 deadline. Further, a distinction can be made between equity ownership in the corporations and voting power; perhaps transfer of the financial interest in the corporation should be allowed, but Alaska Natives should retain the power to guide the future policies of the corporations by their votes. Once again, it is Native Alaskans in rural areas who are most beset by the intricacies of these seemingly imponderable questions.

Careful research, explanation of the alternatives, and advocacy of the alternatives selected by our clients in rural Alaska is a major goal of NARF’s as the 1991 deadline approaches.

C. Subsistence Issues

Subsistence hunting, fishing and trapping remains a way of life for most Alaska Natives in most rural villages. It has a wide range of social and economic impacts. Hunting and fishing often involves a series of rituals that are central to a community’s way of life. The Alaska Supreme Court has found that in some cases traditional hunting practices include the free exercise of religion protected by the First Amendment.

The economic impact of subsistence hunting and fishing is far greater than is commonly appreciated. One study estimates that it would cost $19,000 annually to replace the protein obtained through subsistence hunting and fishing by a single Native household of four in rural north and northwest Alaska. Further, subsistence uses meet so many social and economic needs of rural Alaska Natives that they allow the ANCSA regional corporations to concentrate on economic development. If subsistence were not available to meet these needs of rural Alaska Natives, serious pressures would be placed on the regional corporations. The president of the Northwest Alaska Native Association Regional Corporation called the maintenance of subsistence “the single most important need of all the people.”

Issues involving the protection of subsistence uses arise in a variety of contexts. Negotiations and advocacy need to be conducted with state officials and with federal agencies who have authority to allow limited Native harvesting under laws such as the Endangered Species Act and the Marine Mammal Protection Act. In some cases the disputes and negotiations are at the international level, as with the harvesting of bowhead whales, which fall under the jurisdiction of the International Whaling Commission. There are also international ramifications to the harvesting of seals and of animals in the Porcupine caribou herd, which migrates between the United States and Canada. In some instances commercial development has caused severe impacts on the salmon runs or on the habitat of moose and caribou herds.

ADA DEER JOINS NARF STEERING COMMITTEE

Ada Deer, a Menominee and nationally-known Indian spokesperson, was recently elected to NARF’s 13-member Steering Committee. Ada received her B.A. in Social Work from the University of Wisconsin, Madison, becoming the first Menominee to graduate from that school. She went on to complete her Masters in Social Work at the Columbia University School of Social Work. Ada now serves as a lecturer with the University of Wisconsin at Madison with a joint appointment in the School of Social Work and the Native American Studies Program. She has previously served as a legislative liaison in NARF’s Washington, D.C. office and as Chairperson for the Menominee Restoration Committee. She presently serves as a national board member of Americans for Indian Opportunity, American Indian Scholarships, Inc., Council on Foundations, and Independent Sector, among others.
CONCLUSION

Events are fast coming to a head in Alaska. The Department of Interior has retained an independent contractor, based in Washington, D.C., to conduct a comprehensive study on the effects of ANCSA. A final report is expected later this year. The Alaska Native Review Commission, formed by grass roots native Native organizations and chair by Judge Thomas Berger of Canada, is conducting extensive field hearings throughout rural Alaska. The ANRC Report will probably be released in July 1985. Alaska Governor Sheffield has appointed a Task Force on Native sovereignty, comprised of both Natives and non-Natives, to study the many issues of governmental status in rural Alaska. The Task Force report is expected in early 1985. The Alaska Federation of Natives, long one of the leading Native organizations, is deep into a study of alternative courses of action concerning the 1991 deadline. Recently, the United Tribes of Alaska was formed to set

forth the view of village governments interested in maintaining their traditional lifestyles.

Each of these study processes is important in its own right. There is considerable overlap to all of these issues. Litigation is a device to be used carefully and tactically. Very likely the greatest amount of NARF's time will be spent in attempts to educate Native clients on their options, to ascertain areas of consensus, and to promote agreements with the State of Alaska and federal entities. This is a time for all of the concerned interests to work toward consensus, difficult though consensus may be. Events are moving quickly and the extraordinary lands, resources and traditions of Alaska Natives literally hang in the balance. NARF is determined to put forth its best efforts to provide quality legal assistance to rural Alaska Natives

The Native American Rights Fund

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

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

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

TAX STATUS. The Native American Rights Fund is a tax-exempt, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code, and contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

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

NARF LEGAL DEVELOPMENTS

SUPREME COURT WILL REVIEW BLACKFEET AND KLAMATH CASES

In the new term of the U.S. Supreme Court, which began October 1, certiorari was granted in two NARF cases. In both instances, the Court will review Court of Appeals decisions which are favorable to the tribes involved.

In the first case, Blackfeet v. Groff, the Ninth Circuit Court of Appeals ruled in an en banc decision that the State of Montana has no authority to tax tribal royalties from reservation oil and gas production. The en banc decision represented an unusual rehearing of a three-judge panel decision in the same case, which had earlier ruled against the Tribe.

The case involves the relationship between a 1924 statute which authorizes state taxation and a 1938 statute which was intended to comprehensively govern leasing on Indian lands, but which does not mention taxation. The majority of the Blackfeet leases were executed under the 1938 act and only a few were executed under the 1924 act.

The Ninth Circuit held that pre-1938 leases are subject to state taxation because the 1924 tax consent was not repealed by the 1938 Indian Mineral Leasing Act. However, leases made after 1938 are not taxable because the 1938 act did not carry forward or incorporate the tax consent.

The case, which was filed in 1978, will likely affect agreements with the State of Alaska and federal entities.

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Floridians Against Nuclear Power (FANP)

FLORIDA COURT RULES IN FAVOR OF SEMINOLE TRIBE

A longstanding NARF case, the Florida State Court recently ruled it had no jurisdiction to hear the State of Florida's case against the Seminole Tribe which sought to apply state sales tax to tribally-owned businesses on the reservation. In the alternative, the court also ruled that the State has no authority to impose such taxes. The case had been pending in the Court for several years before the recent ruling.

LAC COURTE OREILLES FERC CASE IS SETTLED

Settlement was recently reached by all parties in a case before the Federal Energy Regulatory Commission involving the application of Northern States Power Co. (NSP) for a new license for the Chippewa Reservoir Project located on the Chippewa River. The project inundated important rice-lands of the Lac Courte Oreilles Band, and a license was therefore opposed by the Band. The settlement provides for 1) conveyance of 4,500 acres of off-reservation land which had been ceded in 1901. The March 27, 1984 decision affirmed a federal district court decision which held that the Tribe's 1901 cession agreement with the United States did not abrogate the Tribe's treaty rights to hunt, fish and trap free of state regulation. Originally, the area had been erroneously excluded from the reservation boundaries due to survey errors. The Tribe later agreed to cede the area and received compensation for it, but the compensation did not cover the loss of hunting, fishing and trapping rights. This case is unique because most courts have been reluctant to find that hunting and fishing rights continue to exist on ceded or off-reservation lands without an express statement to that effect. The Court said the treaty rights are not necessarily incident to ownership of the land; they can continue to exist despite loss of title. Oral argument in the case will probably be scheduled for February 1985. In the Supreme Court, the case name is Oregon Department of Fish and Game v. Klamath Tribe.

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