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NARF North: Alaska Office Opens

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The
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Native American Rights Fund
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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.

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Then the Secretary of Interior designated six reserves 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 Committee 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 to 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 selections by the 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 selections by the state. The controversy intensified in 1968, when the existence of massive oil deposits at Prudhoe Bay was confirmed. In his 1968 "superfreeze," Secretary Udall extended the ban against state selections to all forms of entry, including mineral leases to corporations. These freezes on the public lands, which then constituted over 96 percent of all land in the state, effectively stymied much development in Alaska.

The freezes produced a stalemate 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 along with money payments totaling $962.5 million. This allowed state selections and mineral development to resume. To complicate matters, however, the "(d) (2)" provision of ANCSA authorized the Secretary of Interior to withdraw 80 million acres of land that might merit inclusions in the four "national interest" systems (national parks, wildlife refuges, forests and wild and scenic rivers). The issue of national interest lands was resolved in 1980 when the Alaska National Interest Lands Conservation Act (ANILCA) was signed into law. ANILCA allocated more than 103 million acres, mostly former Bureau of Land Management lands, to the federal conservation systems mentioned above. The settling of the boundaries for the national interest lands has clarified the areas available for final selections by the State and by Alaska Natives.

THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

ANCSA amounted to one of the greatest land transactions 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 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. 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 of 1991.

These are the basic provisions of ANCSA:

1. Alaska Natives were entitled to select about 40 million acres of federal public domain lands. Twenty-two million acres will be transferred to the approximately 200 village corporations designated in ANCSA. Twelve regional corporations, which generally follow ethnic lines, are entitled to select 16 million acres. No lands will be selected by a thirteenth regional corporation, which is comprised of Natives living outside of Alaska. The remaining two million acres are set aside for pending Native allotment applications, historic sites and other purposes; if any of the two million acres are not conveyed, they will be allocated to the regional corporations based on population. As noted, the village and regional corporations are chartered under state law.

2. The regional corporations hold subsurface rights to all lands held by the village corporations, as well as to land selected by the regional corporations themselves.

3. An 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 over an 11-year period and $500 million from annual revenues collected by the state and federal government from mineral leases on lands in Alaska. Payments from the Alaska Native Fund are made to the regional corporations; pursuant to a detailed formula, approximately 50 percent of all money from the Fund must be redistributed from regional corporations to their stockholders and to village corporations within each region.

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 otherwise disposed of until December 18, 1991. On that date all stock in regional and village corporations will be cancelled 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, were revoked by ANCSA.

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 corporations, which are not developed or leased to third parties, are exempt from state and local real property taxes for 20 years. Originally, the period was to expire on December 18, 1991, but in 1980 ANILCA extended the exemption period to 20 years from the vesting of title pursuant to ANCSA or to the date of issuance of an interim conveyance or patent, whichever is earlier.

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.

9. In 1980, in ANILCA, Congress adopted provisions 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.

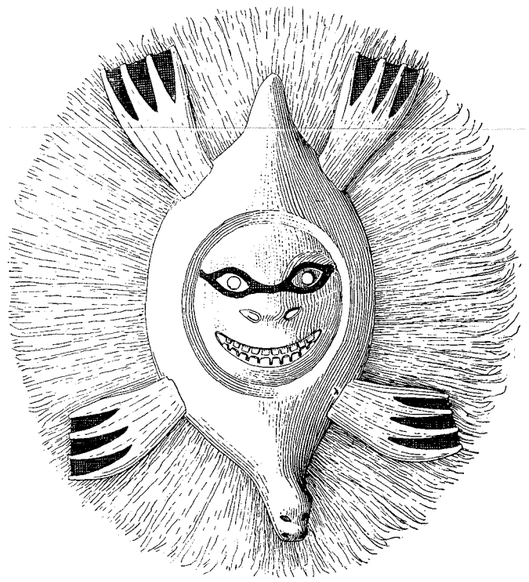
10. Several specialized federal statutes affect subsistence hunting and fishing by Alaska Natives. The En-

dangered Species Act of 1973 and the Marine Mammal Protection Act of 1972 provide strict protections for animals covered by the Acts, but both Acts include provisions allowing for special consideration for Alaska Native subsistence uses. The International Whaling Commission regulates the taking of whales and, again, special provisions have been made for Eskimo whaling. The Migratory Bird Treaties and the Fur Seal Convention also are administered to take account of Native subsistence uses.

11. ANCSA is ambiguous concerning the nature of the relationship between the United States and Alaska Natives. The Act states that it is not intended to establish any "permanent racially defined institutions" or "lengthy wardship or trusteeship," but those phases are not elucidated elsewhere in ANCSA or in the legislative history. Although all reserves except one were revoked, no attempt was made in ANCSA to limit the authority of the many Native villages that had organized pursuant to the IRA or their inherent tribal authority. In any event, ANCSA is apparently premised on the idea that the federal-Indian trust relationship, which existed before ANCSA as to Alaska Natives, was to continue in effect: the provisions of ANCSA "constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the state of Alaska." Since ANCSA, federal agencies such as the Bureau of Indian Affairs and the Indian Health Service have continued to provide special Indian services to Alaska Natives. Further, in all new major Indian legislation since ANCSA, Congress has specifically included Alaska Natives, villages and corporations among those Indian entities eligible for programs. Thus, the special federal-Indian trust relationship applies to Alaska Natives, but its exact application is uncertain.

In summary, it is probably correct to say that the most spectacular aspect of the ANCSA is its focus on the corporate ideology. At the same time, elements of traditional federal Indian policy and law remain. Land title may be in corporate ownership, but the Native governments that predated ANCSA remain in existence. Special hunting and fishing rights have been created, not be a reservation system but by an amalgam of state and federal statutes. Federal services are provided to Alaska Natives in much the same manner as they are provided to Indians in the Lower 48 states. Nevertheless, as discussed in the next section, Native villages cannot yet define their post-ANCSA status with much certainty: several of the crucial elements of this unique legal system remain undefined.

While NARF has always performed some services for Alaska Natives, work in Alaska has typically been on important issues, but it has remained relatively small as a



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 spite of these and 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 governments unresolved under ANCSA and Native dependence upon subsistence hunting and fishing constantly under attack by non-Native commercial and sports interests, NARF has perceived an urgent need for legal assistance to be available to all Alaska Natives. It also has become absolutely clear that effective representation of Alaska Natives cannot be conducted from the Lower 48 states. An office in Alaska is essential for NARF to effectively serve its Native clients. Consequently, NARF opened a two-attorney office in Anchorage on October 1, 1984.

There are numerous barriers to the delivery of legal services to Alaska Natives. One is the sheer size of the State of Alaska: Alaska's 365 million acres constitute about 16 percent of all land within the territorial United States and, if superimposed upon the Lower 48 states, would range from

southern California to Florida and from the Canadian border to Texas. The climate is severe: rain and heavy mist characterize southeastern Alaska, while interior Alaska produces winter temperatures of 50 degrees below zero, high winds and snow. Over 60 percent of the Native population lives in rural Alaska, and over 90 percent of all rural villages in Alaska are unconnected to any road system. Some villages are inaccessible, even by plane, for months at a time.

The social and economic conditions among Alaska Natives also contribute to the difficulty of meeting their legal needs. The income of Alaska Natives remains far below income earned by non-Natives, while over half of all adult Alaska Natives have not graduated from high school. Unemployment among adult Natives exceeds 50 percent. Lawyers and their Native clients commonly face each other across a broad cultural gap: many Alaska Natives are deeply traditional, and many rural villagers speak only their native languages. Subsistence living remains a hallmark of the villages; over one-half of rural Alaska Natives obtain half or more of their food from subsistenced activities, including fishing for salmon and hunting for moose, caribou, bear, seals and whales.

These physical and cultural barriers to legal representation of the rural Alaska villages have been exacerbated by a complex legal structure. Individual villages are subjected 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 of self-government. 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 passage. Income, education and employment levels have all improved slightly. In a few villages the material progress is substantial. Yet for most Alaska Natives the honest promise of ANCSA remains only that—a promise. Further, the progress of recent years is counterbalanced by the legal and social complexity spawned by ANCSA. Worse yet, the benefits of ANCSA do not extend to children born after October 13, 1971, and Native control of regional and village corporations, which in turn control the Native land base, could come to an end in 1991. In that year, shares in the corporations have become transferable to non-Natives, jeopardizing Native control of its entire land base.

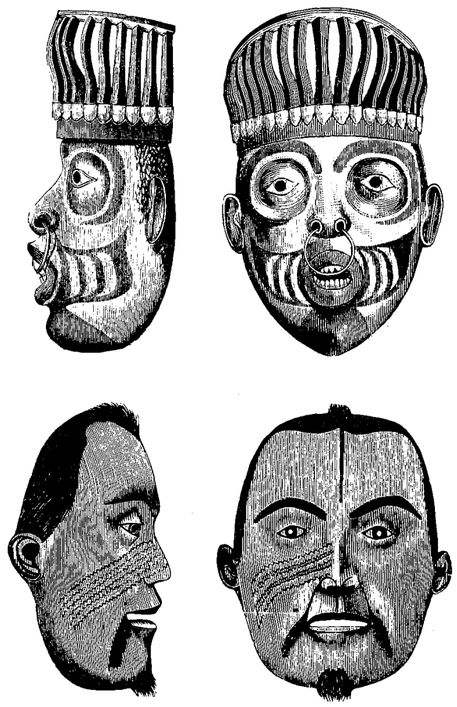
NARF'S ROLE

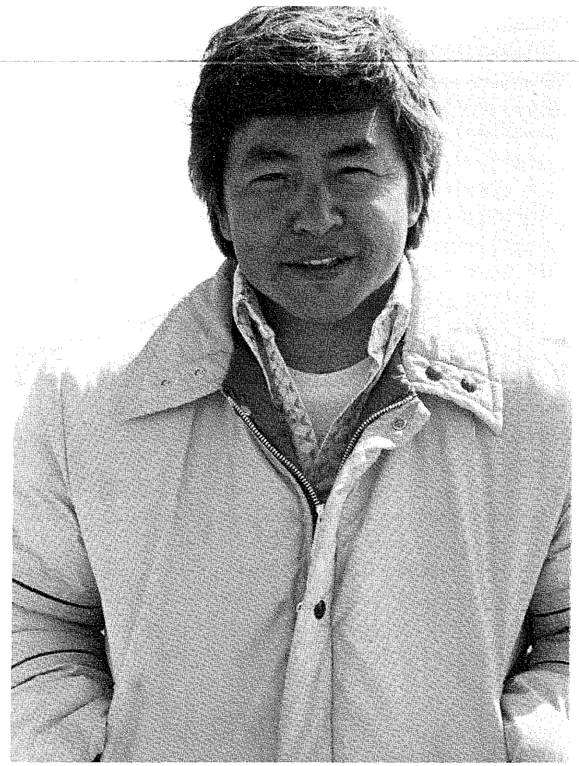
NARF plans to focus upon three major areas in Alaska: clarification and protection of tribal powers of self-government, resolution of issues relating to the 1991 deadline, and protection of subsistence uses. A discussion of these goals follows.

A. *Governmental Status*

Until 1971, Alaska Natives governed themselves, either by IRA tribal councils or traditional governing entities. ANCSA mandated the creation of village and regional corporations under state law without making any reference to the existing Alaska Native governmental structures. As a result, the ANCSA corporations and the traditional Alaska Native governments exist side by side. To date there has been no resolution of the overriding question of how the traditional and IRA Alaska Native governments relate to the new corporations, to the state of Alaska, and to the United States.

Alaska Natives in the villages have been presented with a host of arguments and options. Some advocates believe that the traditional and IRA Native governments have no powers at all—that state law provides the exclusive source





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 away 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 entails 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 liasion 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 rural Native organizations and chaired 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 delicacy to all of these issues. Plainly, 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 on the great issues that they now face.

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.

Steering Committee

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Bernard Kayate, Vice-Chairman .... Laguna Pueblo
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George Kalama ..... Nisqually
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Lois Risling ..... Hoopa-Yurok
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Harvey Paymella ..... Hopi-Tewa

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Deputy Director: Jeanne S. Whiteing (Blackfeet-Cahuilla)

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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.

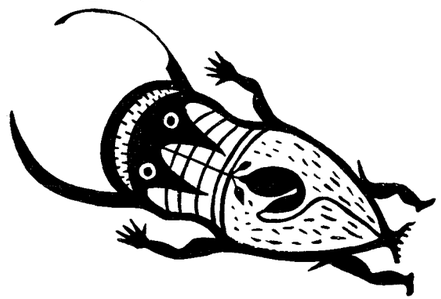
In the first case, *Blackfeet v. Groff,* the Ninth Circuit Court of Appeals ruled in an *en banc* decision that the State of Montana has no authority to tax tribal royalties from reservation oil and gas production. The *en banc* decision represented an unusual rehearing of a three-judge panel decision 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 taxation of tribal royalty interests of all tribes, and may have an impact on the issue of state taxation of producers' interests from oil and gas production. Oral argument is scheduled for January 15, 1985. In the Supreme Court, the case name will be *Montana v. Blackfeet Tribe.*

In the second case, *Klamath Tribe v. Oregon Department of Fish and Game,* the Ninth Circuit upheld Klamath hunting, trapping and fishing rights on almost 700,000 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.*



FLORIDA COURT RULES IN FAVOR OF SEMINOLE TRIBE

In 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 ORIELLES 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 ricing 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 land by NSP to the Band and payment of $250,000, 2) conveyance of a perpetual flowage easement over 525.5 acres of tribal land by the Band to NSP and relief to NSP of any obligation to pay annual charges, and 3) authorization for the Band to construct and operate a hydro-electric power plant at the dam and establishment of NSP's obligation to buy the power output from the plant for a minimum of thirty years.

The settlement which was entered into among the Band, NSP, and the Secretary of the Interior, the Secretary of Agriculture, and the Wisconsin Department of Natural Resources, was approved by the Federal Energy Regulatory Commission which also exempted the Project, including the Band's hydro facilities, from a FERC license.