

Historical Overview of Federal Policies and Events

Overview of Early Events Affecting Indian Country

- **Prior to 1492** – The people who occupied this territory were independent nations and viewed themselves as having separate territories and histories. There was earlier European contact that occurred during Norse voyages but major exploration of this New World did not begin until after 1492. The first European contact acknowledged independent nations.
- **1492** – This first recorded documentation of Spanish contact with the New World.
- **1519** – Aztec Empire, first written documentation of the Aztec people.
- **1534** – After the knowledge of the “New World” became known other countries set sail to establish territories and claim riches for their homeland. The first recorded French contact was this year.
- **1607** – Jamestown established.
- **1620** – Pilgrims at Plymouth Rock; Manifest Destiny became the method of choice for the emerging new government. The immigrants determined that it was their responsibility and right as a lawful people to take and use the land and its resources regardless of who was living on the land at the time. This was especially true if those living on the land were considered to be uncivilized and uneducated by the “dominant” culture.
- **Prior to 1684** – Tribes were viewed as independent nations by foreign entities with the exception of Spain. Spain viewed the native occupants as citizens and subject to Spanish rule. As contact increased and alliances were formed, the reaction by the new explorers began to change.
- **1684** – The beginning of the exploration of the New World and expansion of settlement.
- **1776** – Establishment of the New Democracy and the Declaration of Independence as a nation separate from the British. It should be recognized that the U.S. is a nation that many Native people served their country in World War I and II, Korea, Vietnam, Desert Storm and the Middle East conflicts. Military service is acknowledged as honorable and patriotic.



- **1794** – Jay Treaty, November 9, 1794 - between the U.S. and Great Britain. Art. III guaranteed rights of British subjects, American citizens and "also the Indians dwelling on either side of said boundary line" to freely cross and recross the U.S. - Canadian border.
- **1832** – Law prohibiting drinking of alcohol by Indians.
- **1855 – Court of Claims** - established by Congress to allow private parties to sue the United States for violation of contracts. A number of Indian tribes and individuals subsequently filed suits for treaty violations involving the taking of land. As the suits progressed, Congress perceived the danger of potential Indian claims and amended the Court of Claims statute to exclude those deriving from treaties. Another century would pass before any systematic process would be available for hearing claims of illegal land taking.
- **1871** – Congress enacted laws to terminate making of treaties with Indian tribes. In addition, Congress enacted laws establishing Indian schools, tribal police, and tribal court systems.
- **Indian Wars**
- **1879 – Carlisle Indian School was established** by Henry Pratt, a Civil War veteran, whose initial goal was complete assimilation. "Kill the Indian and save the man" was his motto. Regimentation, reading, writing, arithmetic, the manual trades, and home economics were drilled into the students until the school was closed in 1918 (BIA 1988; O'Brien 1989; Szasz and Ryan 1988). Many students stayed at least 5 years, losing their language and all cultural ways of Indian life during this time. After receiving education at Carlisle many returned to the reservation to find no work for the trades they learned.
- **1880 – 1930 - Assimilation and Allotment** - The drive to assimilate Indians into the mainstream of American life by changing their customs, dress, occupations, language, religion and philosophy has always been an element in Federal-Indian relations. In the latter part of the 19th century and the early part of the 20th century, this assimilationist policy became dominant. A major thrust of assimilation was education, thus the boarding school movement. Allotment was advocated as a means of further civilizing Indians by converting them from a communal land system to a system of individual ownership.
- **1887 – Dawes Act** - In 1887 Congress passed the Dawes Act (also known as the General Allotment Act). Each family head was to receive 160 acres, and a single person was to receive 80 acres. Title to land was to be held in trust for at least 25 years. If an allottee was declared competent to handle his own business affairs, the agent could recommend a fee patent prior to 25 years.
- **1920** – Law sanctioning Native American Church, however in practice, American Indian people were not allowed to engage in Native religion and the use of peyote



was still seen as a criminal violation. The Native American Church beliefs and practices were challenged until the U.S. Supreme Court determined religious practices are protected (1989).

- **1924 – Granting of U.S. citizenship to American Indians** - Some individuals and certain tribes had citizenship prior to this date, but with this law it became inclusive for all American Indians within the state boundaries. This created a problem for tribes that straddled borders with Mexico and Canada.
- **1928 – Merriam Report** - this report to Congress outlined the harsh treatment of boarding school authorities to Indian children. This report focused on the way many boarding schools disciplined children but was unsuccessful in attempts to make meaningful changes.
- **1930 – Congressional Hearing on the Status of American Indians.**
- **1930 – Sen. Elmer Thomas (D-Oklahoma)** headed a congressional investigation on child abuse in boarding schools. The results were devastating and many deaths of students from abuse went unreported.
- **1934 – Johnson O’Malley Act** - This act, as amended in 1936, permitted the government to contract with states, territories, corporations, private institutions, agencies, and political subdivisions to provide education and other services to American Indians (Cohen 1982). Despite this act, thirty years later Indian education remained far below national standards.
- **1930 – 1945 - Indian Reorganization Act** - This act ended the destructive land allotment system which had begun in earnest in 1887. Allotment had progressively dismantled numerous reservation land bases and forced affected tribes to have less resources available to its members. This act was purposely designed to help re-establish self-government and restore to tribes sufficient powers to represent tribal interests in a variety of political and economic circumstances. Tribal governments became formal organizations and traditional forms of tribal governing was discouraged. Much of the bureaucratic stranglehold and paternalism of the Bureau of Indian Affairs was continued.
- **1945 – 1960 - Termination of Trust Relationship Period** - Termination is used to describe a specific policy toward Indian affairs, the popularity for which peaked in Congress in 1953 and resulted in the infamous House Concurrent Resolution 108. The policy goal of HCR 108 was to end the federally recognized status of Indian tribes and their trust relationship with the United States “as rapidly as possible.” Many of the policy’s naive but sometimes well-intentioned supporters were convinced they were finally going to solve “the Indian problem” through yet another form of forced assimilation; making the Indian people become just like “other citizens.” More than 200 tribes were terminated, meaning that their rights based on their status as American Indians were eliminated by the U.S. government and those



individuals no longer had status as American Indians and were no longer eligible for services offered to other tribes.

- **1950 – 1968 - Relocation** - During this period several programs were initiated through the Bureau of Indian Affairs that relocated American Indians from their reservation or tribal area to an urban setting. The intent was to move this population into the mainstream economy by resettling them in industrial or commercial areas in major cities. The outcome was that most individuals had limited marketing skills and could not compete with the working poor in those urban communities. As a result, this relocation project did not have the desired outcome, rather families migrated to and from reservation settings or became enmeshed in the new social service programs offered by federal or state funded programs. A few families were successful but for the majority of Indian families the relocation into a metropolitan environment did not prove to be beneficial. It was out of these generations of families who remain in the urban areas and the natural migration from rural to urban, that urban Indian centers and clinics emerged.
- **1953 – Public Law 280** - This law gave six states mandatory and substantial criminal and civil jurisdiction over Indian country within their borders. The “mandatory” states were Alaska (added in 1958, except Metlakatla Reservation), California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except Warm Springs Reservation), and Wisconsin (Canby, 1981). This law also permitted other states to acquire similar jurisdiction in Indian Country. The choice was up to the state and did not require tribal approval. It was later changed in 1968 to require tribal consent. Ten additional states opted to accept some degree of jurisdiction and to date, some of these states have now returned at least part of their jurisdiction to the federal government (Cohen, 1982). These ten states who opted to accept some degree of jurisdiction are Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah and Washington. The authority they assumed varied from limited jurisdiction over things like air and water pollution only (Arizona), to slightly greater jurisdiction over criminal offenses and civil causes of action arising on highways (South Dakota), to full Public Law 280 jurisdiction (Florida) (Cohen, 1982).
- **1954 – Indian Health Service** - IHS established a policy which disallowed health services to Indian women who married non-Indian men. It did not disallow services to Indian men who were married to non-Indian women. It was based on the assumption that if an Indian woman married a non-Indian that he would be able to care for her and their children without assistance from federal programs.
- **1956 – Vocational Training Act** - This act was passed to respond to the movement of large numbers of Indians away from reservations to obtain work in urban areas and provide vocational training to Indians that was previously denied. The intent of this “relocation” policy was to assimilate Indians into the mainstream, however relocation left many to fend for themselves in urban areas that were unfamiliar to them. The implications of this policy was the further breakup of Indian families with



no services for those living off-reservation (health care, education, etc.) and there was no training and/or education to prepare adults for jobs in the urban areas. As a result, there was more stress and no support systems such as extended families and relatives, for relocated families. Poverty in the urban areas was used as a reason for non-Indian social workers and agencies for removing Indian children from their homes and placing with more affluent white families.

- **1968 – Indian Civil Rights Act** - This act was passed as the first major piece of legislation enacted during the post-termination era that dealt specifically with Indian matters. A relevant and significant part of the act prohibited states from assuming jurisdiction over Indian Country, under Public Law 280, without first obtaining tribal consent (Deloria and Lytle, 1983). “Self determination” is a catch-all term that covers a variety of concepts including tribal restoration, self-government, cultural renewal, reservation resource development, self-sufficiency, control over education, and equal or controlling input into all policies and programs arising from the Native American-federal government trust relationship (Waldman, 1985). Tribes have the power to initiate the process of controlling the nature of the programs available to them from federal programs. Some assumed this act actually hindered tribes rather than helped them.
- **1972 – Indian Education Act** - This legislation established funding for special bilingual and bicultural programs, culturally relevant teaching materials, proper training and hiring of counselors, and establishment of an Office of Indian Education in the U.S. Department of Education. Most importantly, the act required participation of Native Americans in the planning of all relevant educational projects (Cohen 1982; O’Brien 1989).
- **1975 – Indian Self-Determination and Education Assistance Act (Self-Determination: Contracting and Compacting)** - This act authorizes federal agencies to contract with and make grants directly to Indian tribal governments for federal services, much like it does with state and local governments. This act is often referred to in “Indian Country” as “638” legislation, because it was passed as Public Law 93-638. Through grants and contracts, the act as amended, encourages tribes to assume responsibilities for federally funded Indian programs formerly administered by employees in the Departments of Education, Interior, and Health and Human Services. Tribes decide if they wish to participate in a particular program. If they do, then funds and management decisions are subject to tribal control. It means that participating tribal governments can now control their own housing, education, law enforcement, social services, health and community development programs (American Indian Lawyer Training Program 1988; Cohen 1982; Kelly 1988; O’Brien 1989).
- **1976 – Indian Health Care Improvement Act** - In 1954 Congress transferred the badly ailing Indian Health Services out of the BIA and into the Public Health Service. Improvement of the amount and quality of medical services available to Native Americans was the reason behind the transfer, and it worked. But, as with the BIA,



the IHS has had its share of problems regarding waste, mismanagement, and fraud. The Indian Health Care Improvement Act, as amended, established two broad goals for the IHS. They are, 1) to raise the health status of American Indians and Alaska Natives to the highest possible level, and 2) to encourage the maximum participation of Indians in the planning and management of IHS services.

- **1978 – American Indian Religious Freedom Act** - The passage of this act was designed “to insure that the policies and procedures of various federal agencies, as they impact upon the exercise of traditional Indian religious practices, are brought into compliance with the constitutional injunction that Congress shall make no laws abridging the free exercise of religion.”
- **1978 – Indian Child Welfare Act (ICWA)** - The passage of the Indian Child Welfare Act of 1978 is an important milestone in congressional action to protect and maintain Indian families and tribes. The intent of the act is to stabilize Indian families by reducing the number of Indian children removed and placed in non-Indian adoptive and foster homes. The act established minimum federal standards for removal of Indian children and outlines procedures that aid in their placement in homes reflecting Indian culture as well as establishing programs within tribal systems to prevent the removal of Indian children from their homes. As with many legislative acts, there was not mandated funding.
- **1988 – Indian Gaming Regulatory Act (IGRA)** - The stated multiple purposes of this act are: 1) to provide a legislative basis for the operation and regulation of gaming by Indian tribes; 2) to establish a National Indian Gaming Commission as a federal agency to meet congressional concerns and protect gaming as a means of generating tribal revenue; 3) to promote economic development, self-sufficiency, and strong tribal governments; 4) to shield tribes from organized crime; and, 5) to assure fairness to operators and players.
- **1989 – OVC Discretionary Grant Program in Indian Country** - In 1989, the Office for Victims of Crime (OVC) within the Department of Justice, Office of Justice Programs, began funding a discretionary grant program, providing money to states to fund on-reservation victim assistance programs through the Victim Assistance in Indian Country (VAIC) program. This was in response to the multiple victimization that occurred in Indian Country.
- **1990 – The Indian Child Protection and Family Violence Prevention Act (P.L. 101-630)** - The purpose of this act is to require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse. This law establishes a reliable database for statistical purposes and to authorize a study to determine the need for a central registry for reported incidents of abuse. It called for the establishment of treatment programs on Indian reservations for victims of child sexual abuse and provides training and technical assistance related to the investigation and treatment of cases of child abuse and neglect. It also established Indian Child Resource and Family Services Centers in each Bureau of Indian Affairs Area Office, which consists of multidisciplinary teams of personnel with experience



and training in the prevention, identification, investigation, and treatment of child abuse and neglect. In addition, it provides for the treatment and prevention of incidents of family violence, establishes tribally operated programs to protect Indian children and reduces the incidents of family violence in Indian Country and authorizes other actions necessary to ensure effective child protection on Indian reservations. However, no funds were appropriated for the establishment of treatment programs, training, technical assistance or the Resource and Family Services Centers. However, without mandated funding this legislation was severely impacted.

- **1990 – Native American Graves Protection and Repatriation Act (NAGPRA)** - This act mandates that all agencies and private museums which receive funding from the federal government have five years to inventory their collections of Native American human remains and related funerary objects. After they have completed their inventories, they are required to notify tribes where the materials originated, or from whose land the materials came. If a tribe requests that remains and objects be returned, that request is to be honored. This law establishes that Native American tribal groups own or control human remains or ceremonial and burial items which are discovered on tribal and federal lands. They also have the right to determine the disposition of such discovered remains and items.
- **1990 – Native American Languages Act** - This act declares a U.S. policy “to preserve, protect, and promote the rights and freedoms of Native Americans to use, practice, and develop Native American languages.” This officially reverses the scattered policies of the 19th and 20th centuries that so devastated Native languages.
- **1994 – Federal Crime Control Bill** - This bill amends the Omnibus Crime Control and Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety. It also develops and strengthens effective law enforcement and prosecution strategies to combat violence against women and children, and develops and strengthens victim services in cases involving violent crimes against women.
- **1998 – OVC began direct funding to tribes** - OVC began direct funding to tribes, eliminating the state pass-through of the past decade (OVC, 1997). Today, many American Indian victim assistance programs do receive some funding from state VOCA monies as well as VAIC grants. Since its inception in 1989, the VAIC program has funded 52 reservation based victim service programs in 19 states.



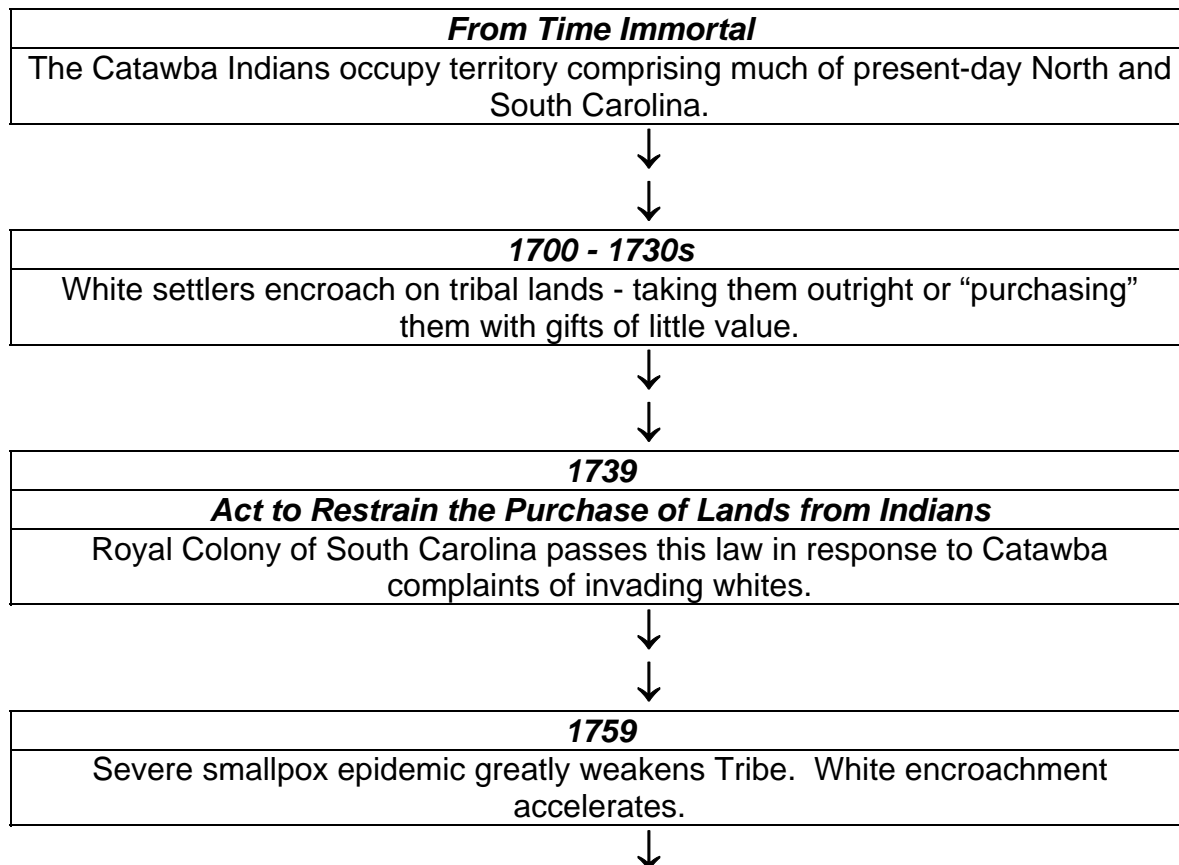
Case Histories

A Grim History of Injustice

When the Catawba Tribe of South Carolina signed their first treaty with the white man more than two centuries ago, they were seeking, and believed they would receive, the justice promised them. But the promises were empty and the treaty soon broken. Time and again, the Catawbas were manipulated and deceived, cheated and lied to...until finally their lands were stolen, and they were reduced to the poorest of the poor.

For two hundred years and over eight generations of families, the Catawbas have fought, and failed, to regain the lands that are theirs by law. These lands, or fair compensation for what was illegally taken from them, are their key to a future of dignity and self-sufficiency.

The following is a shameful history of injustice suffered by the Catawbas as recorded and reported by the Native American Rights Fund (NARF).





1760
<i>Treaty of Pine Hill</i>
Catawbas are driven to relinquish their territory to England in exchange for a 144,000 acre tract of land and protection from white settlers.



1763
<i>Treaty of Augusta</i>
Catawbas again agree to “remain satisfied with the Tract of Land Fifteen Miles Square” and British again promises the Catawba shall not be molested by any of the King’s subjects within said “lines.” Despite both treaties, white encroachment continues. No action taken to remove intruders from Catawba land.



1780
After fighting in the Revolutionary War on the side of the colonies, the Catawba appeal to Congress and President Washington to protect their lands.



1790
<i>The Nonintercourse Act</i>
The First Congress enacts a law prohibiting the sale of Indian land without the consent of the federal government.



1800 - 1830
In response to pressure from white settlers for Indian lands - and in violation of federal law - the State of South Carolina enacts a series of statutes authorizing lease of Catawba lands to non-Indians.



Late 1830s
Nearly all of the Catawba’s lands are leased to non-Indians. Tribe faces starvation as rents are paid with old horses and cows, clothing and bed quilts.





1840
<i>Treaty of Nation Ford</i>
In complete violation of the Nonintercourse Act, the State of South Carolina signs a treaty with the Catawbas in which they relinquish all of their land in exchange for a promise of \$16,000 and a new reservation with "arable lands fit for cultivation."



1840 – 1843
Catawbas wander homeless while the State transfers land title to white leasees but fails to fulfill its treaty obligation to the Tribe.



1843
The State of South Carolina creates a "new" reservation for the Tribe by spending \$2,000 to buy back from white settlers 680 of the most agriculturally undesirable acres from the Catawba's original lands.



1843 – 1988
For the next one and a half centuries, the Tribe mounts numerous efforts to regain possession of land taken from them deceitfully and illegally.



1848 – 1854
Congress appropriates funds for removal of Catawba Tribe to territory west of the Mississippi. Catawbas oppose relocation.

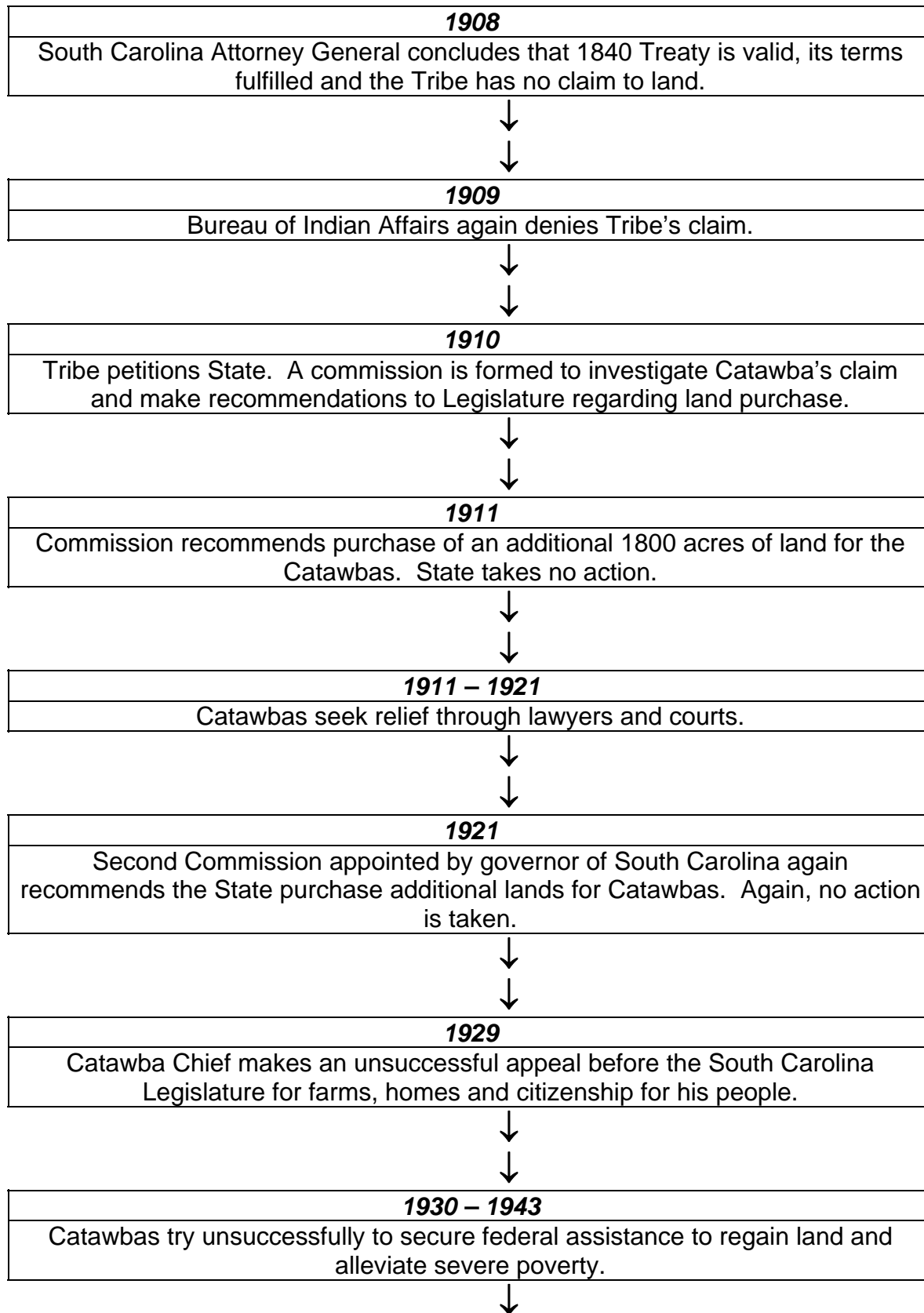


1880's
Tribe retains lawyers to investigate its land claim.



1905
The Bureau of Indian Affairs refuses a formal request by Tribe for assistance and refers them to the State of South Carolina.







1943
<i>Memorandum of Understanding</i>
A glimmer of hope appears when the Catawba Tribe, the State of South Carolina and the Department of the Interior agree to the creation of a new reservation for the Catawbas under federal supervision. State wants to participate only on the condition that the Catawbas' land claim be extinguished, but the federal government refuses to agree.



1954 – 1962
<i>Termination Period</i>
Hopes of Catawbas are short-lived as Congress votes to end trust relationship between United States and all Indian tribes as soon as possible. The Catawba Tribe is one of 13 tribes terminated before termination policy is halted.



1958
Catawbas, unrepresented by counsel, initially refuse to consent to termination, but are assured by Federal Government that their land claim will not be affected.



1959
<i>Catawba Division of Assets Act</i>
Reservation lands acquired in 1943 are distributed and federal Indian services cease. The Catawbas, still unrepresented by counsel, continue to rely on assurances of Bureau of Indian Affairs that their claim to lands taken illegally in the 1840 Treaty of Nation Ford still stands.

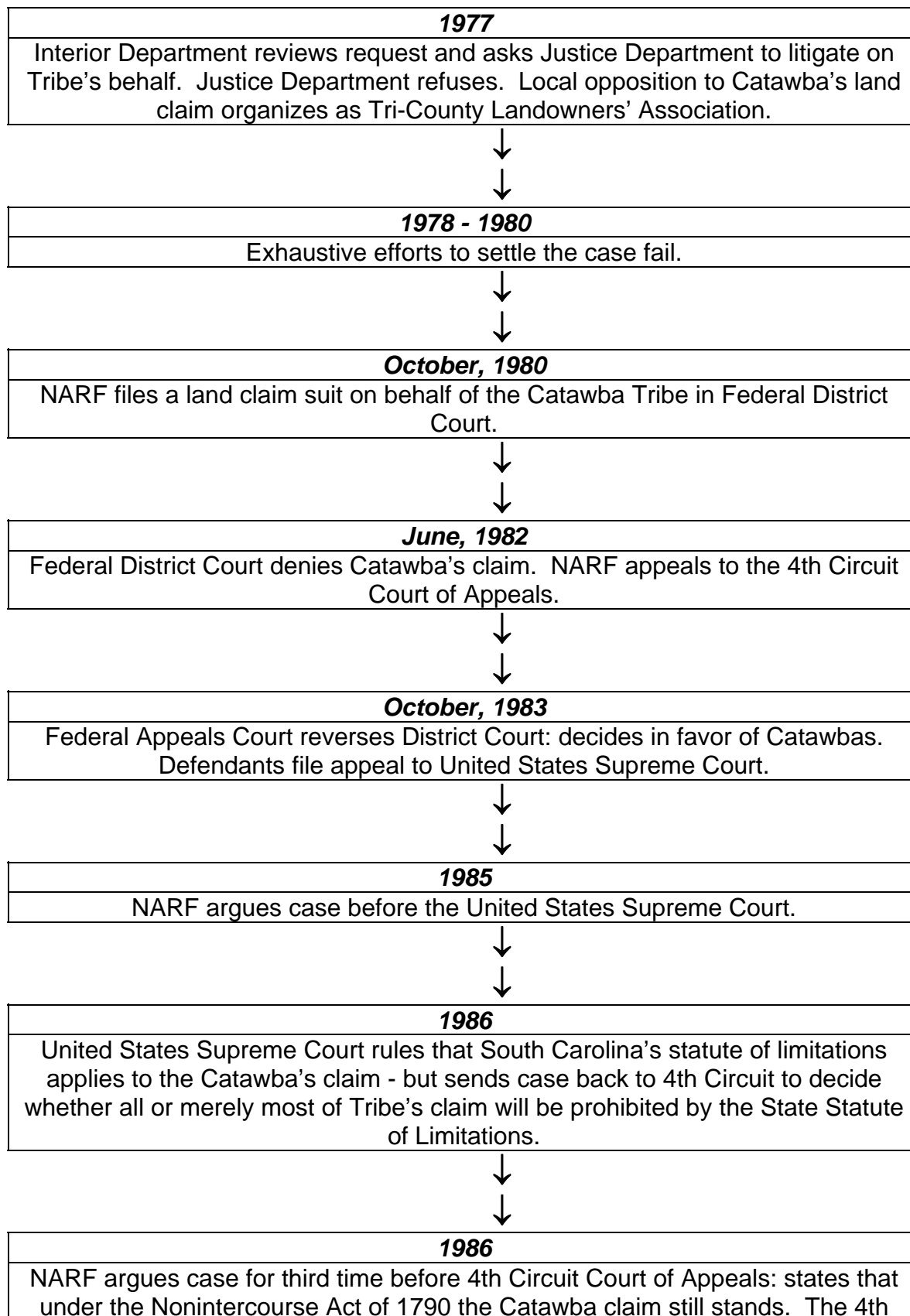


1975
Encouraged by legal victories of other Eastern Indian tribes, the Catawba Tribe turns to NARF (Native American Rights Fund).



1975 - 1976
NARF conducts extensive legal/historical research: determines the Tribe possesses a strong land claim and asks United States to represent the Tribe.





Circuit Court attempts to send the case to the South Carolina Supreme Court.



1987

South Carolina Supreme Court refuses to take the case; sends it back to the 4th Circuit Court of Appeals.



April, 1988

NARF argues the case for the fourth time before the 4th Circuit Court of Appeals.

USA Today, June 15, 1998 – The Catawba Indian Nation's bingo hall is on a pace to bring in nearly \$20 million during its first year records show. The parlor took in about \$6.6 million during the first four months of operation. Prizes reaching \$50,000 for a single game have 2,500 people packing the hall on Saturday nights.



Case History

Chippewa-Cree Tribe, State of Montana Sign Historic Compact

This article is from the Native American Rights Fund Legal Review, Summer/Fall, 1997

I. Introduction

In 1916, the United States set aside the Rocky Boy's Reservation for the Chippewa Cree Tribe. However, the United States recognized that the 1916 reservation lacked sufficient land and water to make the reservation a viable homeland for the Chippewa Cree Tribe. During subsequent years, various federal efforts to obtain additional land and water for the Tribe and to develop the Tribe's agricultural projects were undertaken. However, these largely failed because of poor planning and implementation by the federal government, and because of the legal uncertainty over the nature and scope of the Tribe's water rights. While the federal government's efforts to secure land and water for the Tribe declined over the years, the Tribe continued to press forward in its quest for a viable permanent homeland. A critical part of this quest was to secure rights to sufficient water for its people and its economy. The Native American Rights Fund has represented the Tribe in this quest since 1987.

The Tribe's opportunity to obtain an adequate water supply for its future began in 1982 when the United States filed water rights claims for the Tribe in state water court. Subsequently, the United States, the Tribe and the State of Montana entered into negotiations to settle the Tribe's water rights claims. The Tribe fashioned a water rights settlement plan to further the ultimate goal of making the Rocky Boy's Reservation a self-sustaining homeland. The settlement plan consisted of four main elements: (1) quantification of on-reservation water and establishment of an administration program; (2) supplementation of the on-reservation drinking water supply to meet future population needs; (3) construction of on-reservation facilities to deliver drinking and irrigation water; and, (4) compensation for federal failure to protect the Tribe's water rights and Tribal release of claims against the federal government for such breach of trust. The Tribe's settlement plan is to be carried out through a Compact with the State of Montana settling issues of quantification and administration of on-reservation water supplies, and through congressional legislation ratifying the Compact, providing a source of water to supplement the short water supply on the reservation, authorizing the construction of an on-reservation distribution and irrigation system, and providing an economic development fund.

This article tells the story of the century long struggle of the Chippewa Cree Tribe to secure a rights to water for drinking and for sustaining the Tribe's agricultural economy.

II. Historical Background

Federal assistance to the Tribe in achieving the Tribe's water rights settlement goals has fallen far short of Tribal expectations. Unfortunately, as shown by the history



of the Rocky Boy's Reservation, this situation is consistent with previous conduct of the United States in carrying out its trust responsibilities to the Chippewa Cree Tribe.

A. The Establishment of the Rocky Boy's Reservation

The Rocky Boy's Reservation is located in north central Montana on several tributaries of the Milk River. The present reservation encompasses approximately 108,000 acres. The original reservation was established in 1916 by executive order setting aside a portion of the abandoned Fort Assiniboine Military Reservation. The Rocky Boy's Reservation was created as a homeland for a band of Chippewa people led by "Stone Man," also known as "Rocky Boy," and a band of Cree people led by "Little Bear."

Rocky Boy's band and Little Bear's band customarily migrated on a seasonal basis throughout the Milk and Marias River areas irrespective of the United States-Canadian boundary. The fact that the white man had created a boundary between the United States and Canada held no meaning for the bands. However, the unfortunate result of their seasonal migrations in disregard of the United States-Canadian boundary was that the United States, during the years in which reservations were being established for other Indian groups, regarded the two bands as Canadian Indians not entitled to federal benefits provided to American Indians. Hence, from about 1888 to 1916, the ancestors of the Chippewa Cree Tribe wandered throughout northern Montana homeless and struggling for existence under the most severe conditions. During this time, the Chippewa Cree pressed the United States for a permanent home for the bands. The bands were joined by certain influential citizens of Montana motivated by the desire to transfer the burden of providing assistance to the poverty-stricken bands to the United States.

Early efforts to locate lands on which to place the Chippewa Cree failed, due to opposition by non-Indians adjacent to the lands under consideration. Even the decision of the United States to place them on the old abandoned Fort Assiniboine Military Reserve was strenuously opposed. The citizens of Havre wanted Congress to grant them the choicest part of the old military reservation - the Beaver Creek valley with an ample supply of water - as a public park and playground. A War Department memorandum, dated October 1, 1891, illustrates the importance of the Beaver Creek valley to the viability of the Military Reservation:

[T]he post depended for its water supply solely upon the Beaver Creek...and...it was essential that not only the stream to its source but the whole valley of the same be retained under the control of the post authorities... [I]f the control of any part of the Creek should be given up, the post might as well be abandoned.

Consistent with this view, the federal agent charged with supervision of Rocky Boy's band said:



If they should pass the bill giving only the two south townships [not including the Beaver Creek valley] we will still have the Rocky Boy problem, as they will still have no home.

Nevertheless, buckling under political pressure, Congress gave the City of Havre the majority of the Beaver Creek valley even though it was located some distance away from the city boundaries. Congress gave the Indians just two townships and a portion of a third.

The Chippewa Cree tried to farm their reservation - described in Annual Reports as a "rough, dry unsettled section of old military reserve" and "not suited to farming." These reports, from 1918 through the 1930's, were replete with statements that the reservation was not suited to farming, that irrigation was difficult if not impossible, and that more water was needed. The reports indicated that farming would not lead to self-sufficiency; stock raising was felt to be the only feasible activity, provided enough winter feed was available. These reports provide a litany of crop failures due to drought, a short growing season, lack of equipment and horses, and a picture of dogged perseverance against these formidable odds.

Irrigation was essential to stock-raising as well. A 1937 Federal Report related that 1937 marked the sixth consecutive year of near complete crop failure, and that:

[t]he cattle industry received a severe blow this year when no feed was produced to carry the stock through the winter. The breeding stock was culled very closely and approximately fifty percent of them were put on the market. Three hundred fifty-six selected cows and one hundred thirty-eight steer calves were shipped to Dixon, Montana for winter feeding. Thirty bulls and three milk cows are the only Indian cattle remaining on the reservation. The livestock men were very discouraged.

The Commissioner of Indian Affairs lamented that the reservation was "entirely inadequate for the needs of the Indians for whose benefit it was set aside...." Due to the prevailing unfavorable crop and livestock conditions, and the lack of irrigable land and water, the Tribe and the United States began to look for ways to enlarge the reservation.

B. Federal Failure to Provide Adequate Water and Water Development Facilities on the Reservation

Unfortunately, the United States' efforts to acquire additional land and water for the Tribe were far from adequate. The federal supervising engineer investigated Chippewa Cree water rights and reported in 1926 that Indian rights were doubtful, and that diversions by the Chippewa Cree from reservation creeks should not be encouraged. The United States did not make an official determination as to whether this was legally correct; instead the United States deferred continually to non-Indian interests. Thus, an irrigation project for the Rocky Boy's Reservation was not a priority for the federal government.



In the 1930s and 1940s, the United States purchased land for the Rocky Boy's Reservation, adding approximately 45,000 acres to the reservation. Unfortunately, the additional lands did little to alleviate the reservation's water supply problems. The lands acquired were scattered, of poor quality, and were without significant water resources. The Chippewa Cree Tribe still could not raise enough crops for livestock feed to meaningfully improve reservation conditions. The United States recognized that the reservation was still wholly inadequate as a self-sustaining homeland.

Accordingly, in the 1930s, the United States took purchase options for the Chippewa Cree Indians on approximately 30,000 acres, utilizing funds appropriated from a federal program for the purchase of submarginal lands. The intent of this program was to take submarginal land out of commercial farm production forever. The program was ill-suited to the Chippewa Cree's needs. The government's decision to utilize the program as a way to obtain more lands for Indians was made worse by the poor land selections made, when better lands were available. The government planned to carve up the submarginal lands into subsistence farms for the Indians. But without water or sufficient irrigable land, even subsistence farming was doomed at the outset to failure. Before the options could be exercised and the purchases completed, however, funding for the submarginal land program failed. The federal government then attempted to exercise the purchase options under the Indian Reorganization Act, which allowed for lands to be purchased and added to reservations.

The Indian Reorganization Act did not require the purchase of submarginal lands. Nevertheless, rather than foregoing the submarginal purchase options and identifying lands for purchase better suited to the Indian's needs, the Indian Office exercised the ill-advised options taken under the submarginal land program. This decision was made against the recommendations of the Reservation Superintendent, and over the objections of the Indians and government personnel.

Subsequent purchases were made to consolidate the scattered submarginal lands in order to simplify fencing and alleviate jurisdictional problems. Very little attention was given to obtaining irrigable lands with water rights. In fact, good sources of water were sold or traded away in efforts to consolidate purchased land through land and lease exchanges.

In 1937, the United States developed a detailed land purchase plan, which involved collaboration of all units of the Indian Service. Even without consideration for a normal population increase of two percent annum, the plan called for the purchase of an additional 660,000 acres, including 16,000 acres of irrigated land, at a cost of \$5,040,000, to serve the then existing reservation population of 150 families and 400 eligible homeless families. The purchase area took in part of, and was intended to benefit from, the Milk River Irrigation System. While never followed, this plan has apparently never been discarded.

C. Federal Mismanagement of Tribal Resources

Having failed to provide the Chippewa Cree Tribe with a reservation with adequate land and water, the United States proceeded to mismanage the limited tribal resources on the reservation at great expense to the Tribe. An example is Bonneau Dam on the reservation which originally could have been designed and constructed



easily and at minor additional cost, to provide irrigation to the Tribe's croplands thereby enhancing the Tribe's self-sufficiency. Yet another example is the chronic under-performance of the Tribe's agricultural lands due, among other things, to lack of training, equipment, and water for irrigation. These same reasons underlay the failure to develop hundreds of acres of purchased lands for farming. The Tribe has suffered and continues to suffer, financially and otherwise, from the United States' mismanagement of its resources.

III. The Compact

In 1982, pursuant to state law, the federal government filed water rights claims in Montana water court for the Chippewa Cree/Montana Tribe. The Tribe then notified the State of Montana that the Tribe wished to negotiate a settlement of its water rights claims. At that point, the state water court stayed proceedings on the Tribe's claims pending settlement negotiations involving the Tribe, the state and the United States. The Tribe then commended the formidable task of negotiating a compact with the State of Montana and the United States which settles its water rights claims.

On April 11, 1997, after ten years of extensive technical studies, and five years of intensive negotiations, the Chairman of the Chippewa Cree Tribe and the Governor of Montana signed an historic compact between the two governments. The Chippewa Cree/Montana Compact accomplished the first element of the Tribe's settlement plan - it quantifies the Tribe's water rights and establishes a joint Tribe/State water administration system. The Compact was ratified by the Tribe on February 21, 1997 and was approved by the Montana Legislature on April 10, 1997. The Chippewa Cree Tribe thus became the third Tribe in Montana, after the Northern Cheyenne Tribe and the Assiniboine and Sioux Tribes of the Fort Peck Reservation, to agree to a water rights compact with the state. However, with few exceptions, all provisions of the Compact are subject to approval by the United States Congress.

The Compact establishes the Tribe's water rights to the Big Sandy, Box Elder, and Beaver Creeks on the reservation, and contemplates tribal rights to supplemental water for drinking. The Compact provides for 9260 acre-feet of water per year from the Big Sandy Creek and its tributaries, and 740 acre-feet per year from Beaver Creek. The Tribe reserves the right to divert from surface water flows for irrigation and other uses from the Lower Big Sandy Creek, Gravel Coulee, and from Box Elder Creek. On Beaver Creek, the Tribe reserves the right to divert from surface water flows for recreational uses, subject to a requirement that 280 acre-feet be returned to the stream.

The Compact also calls for Tribal administration of its water rights. The Compact specifies that any change in water use must be without adverse effect on other water users. To resolve disputes concerning water use between Tribal and non-tribal water users under the Compact, a pre-adjudication Tribal/State administrative process is established, and an adjudicatory process is established consisting of a Compact Board made up of three members: one Tribal, one local off-reservation, and one chosen by the other two.

The Department of the Interior ("Interior"), while supportive of the quantification aspects of the Compact, declined to sign the Compact for the United States primarily because the issues of a supplemental water supply for the Tribe had not been resolved.



With the signing of the Compact, Congressional legislation becomes the next step. This will necessarily involve continuing negotiations with Interior to obtain its support.

IV. Congressional Action Sought to Ratify Compact and Provide Other Elements of Tribe's Settlement Plan

The Compact settles the quantification/administration element of the Tribe's settlement plan. The remaining three elements of the plan can only be resolved by congressional action. However, the Compact does contain provisions by which the state agrees to support federal legislation that will ratify the Compact, and authorize and appropriate funds to implement all elements of the Tribe's settlement plan, including facilities needed to implement the Compact, a federally funded project to supplement the drinking water supplies on the reservation, a domestic water delivery system, and an economic development fund. The settlement plan element that has proven to be the most problematic is that calling for supplementation of the Tribe's drinking water supply. The Tribe's technical analysis indicated that planning for a drinking water supplementation project would need to commence immediately and would need to involve the importation of water to the reservation from an off-reservation source. The Tribe's analysis also led to the conclusion that the importation project should utilize water from the Tiber Dam and Reservoir. Accordingly, the Compact contemplates an allocation of 10,000 acre-feet of water to the Tribe from the Tiber Reservoir and the construction of a pipeline from the Reservoir to the reservation. The Tribe considers a drinking water supplementation project so important that, in the Compact, the Tribe reserved the option to withdraw from the Compact if such a project is not constructed within a designated period of time.

The federal government initially indicated to the Tribe that the Interior could not support a pipeline project in the immediate future. The federal government reasoned that the Tribe's future drinking water needs could be served by retiring the Tribe's irrigated lands and using the saved water for drinking. The federal notion of using all available on-reservation water resources for domestic purposes, leaving the Tribe with no water for agricultural purposes, was immediately rejected by the Tribe. It flew in the face of the Tribe's past and on-going efforts to develop on-reservation agricultural enterprises in accordance with long-standing federal and Tribal reservation policies. It also threatened termination of jobs and products produced by the Tribal agricultural enterprises and relied upon by Tribal members.

Interior responded by offering to purchase land for the Tribe to replace the land retired to provide drinking water and to agree to a study of Tribal drinking water needs after a period of about forty years. After a joint Federal/Tribal evaluation of this proposed approach, the Tribe rejected it because the evaluation showed that the proposal to purchase replacement arable lands for the Tribe was not cost effective, would likely involve lands separated from the reservation thereby creating use problems, and threatened to raise significant political resistance from the State of Montana and other non-tribal interest. Furthermore, the Tribe rejected the federal proposal that contemplated a future study of water needs because the government could not guarantee that the needs identified by the study would be addressed.



In the Compact, the State of Montana pledged its support of the Tribe's settlement plan, including a project to supplement the Tribe's drinking water supply. The construction of a pipeline project to deliver water to the reservation from Tiber Dam and Reservoir, an off-reservation source, is the option identified by the Tribe's technical analysis as the best means of supplementing the Tribe's drinking water supply. In the course of discussing this option with the state and the federal government, it became apparent that many non-tribal communities with drinking water problems might be able to resolve their problems cost effectively by tying into the Tribe's pipeline. These communities expressed an interest in participating in the Tribe's proposed pipeline project. With the state acting as facilitator, the Tribe and representatives of the non-Indian communities formed an Ad Hoc Committee composed of three Tribal and three non-Indian members to evaluate and advance the concept of a regional pipeline project. Congress appropriated \$300,000 for the preparation of a feasibility study of the proposed pipeline project and other possible alternatives. The State of Montana appropriated funds for the completion of this study. The study is expected to be completed in the fall of 1997.

Meanwhile, the Tribe and the state are continuing to work with the Interior to find mutually acceptable ways of resolving Interior's concerns about the Compact and other issues related to the Tribe's larger settlement plan. Recently, Interior agreed to participate in the regional pipeline feasibility study and proposed to expand the number of water supply alternatives selected by the Ad Hoc Committee from the three originally chosen for final analysis proceeding selection of the preferred alternative. To expedite the process of responding to Interior's proposal, the Tribe and the state urged Interior to, 1) conduct a rapid review of existing information on the alternative involving utilizing an enlarged on-reservation reservoir as a source for supplemental drinking water, and indicate whether Interior agrees with the Tribe that this is not a feasible option; 2) agree to the formation of a joint working group, composed of representatives of the Tribe, the state, Interior and the Department of Justice, to discuss pending federal issues other than those associated with the importation issues; 3) agree to discuss alternative approaches to federal legislation, including combining or separating a regional drinking water system from the Compact, and alternative sources of funding; and, 4) continue, on a timely basis, substantive discussions with the Tribe on a settlement fund.

V. Conclusion

In the early years of this century, federal policy resulted in the opening of vast acres of former Indian reservations in the West, and encouraged non-Indian settlement and irrigation by constructing dams and reservoirs at federal expense to deliver, again largely at federal expense, water to non-Indian irrigators. During that era, the tribal water rights and tribal needs for facilities to utilize water were ignored by the federal trustee while non-Indians obtained cheap water for irrigation, including Indian water. Only after 1976 when the McCarran Amendment was held by the United States Supreme Court to subject tribal water rights to state adjudications for quantification, did the federal trustee formulate policies for the settlement of tribal water rights. Several such settlements have been completed. However, none have been completed during the tenure of the Clinton Administration.



In additional, at odds with federal policy to settle tribal water rights is the federal policy to balance the budget - with tribal programs and projects expected to absorb an uneven and unequal share of budget cuts while the disparity between the majority society and Indian societies continues to widen. This is but another example of the conflict of interest that has historically compromised the federal trustee's duty to provide for the best interests of Indian tribes. Non-Indian interests received their share of funds to put western water to use in an era of federal reclamation projects. Tribal needs for water and water facilities were ignored during those years. The federal government should not use the current budget policy as yet another excuse to ignore tribal water needs. The federal trust duty to protect tribal water rights should be given top priority under federal budgetary guidelines.

The Chippewa Cree/Montana Water Rights Compact, intended to permanently settle all existing water rights claims of the Chippewa Cree/Montana Tribe in the State of Montana, accomplishes one important element of the Tribe's settlement plan. The remaining three elements must be obtained through Congressional action. Because of the permanence of the settlement once secured by congressional legislation, the Tribe seeks a settlement that provides not merely for its present water needs, but also for its future water needs.

The Native American Rights Fund believes that the history of the United States' poor land choice decisions, poor land management, and failure to obtain water for the Rocky Boy's Reservation justifies a substantial federal contribution to the Chippewa Cree water settlement in the form of authorization of federal projects and an economic development fund. By agreeing to the Tribe's settlement plan, the United States would finally fulfill its trust responsibility to the Tribe to provide sufficient water to support the Rocky Boy's Reservation as a viable, self-sustaining homeland for the Chippewa Cree Tribe.

