

National Indian Law Library

NILL No. 013309/1997



The Fourth Horse
by the artist

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Main Office

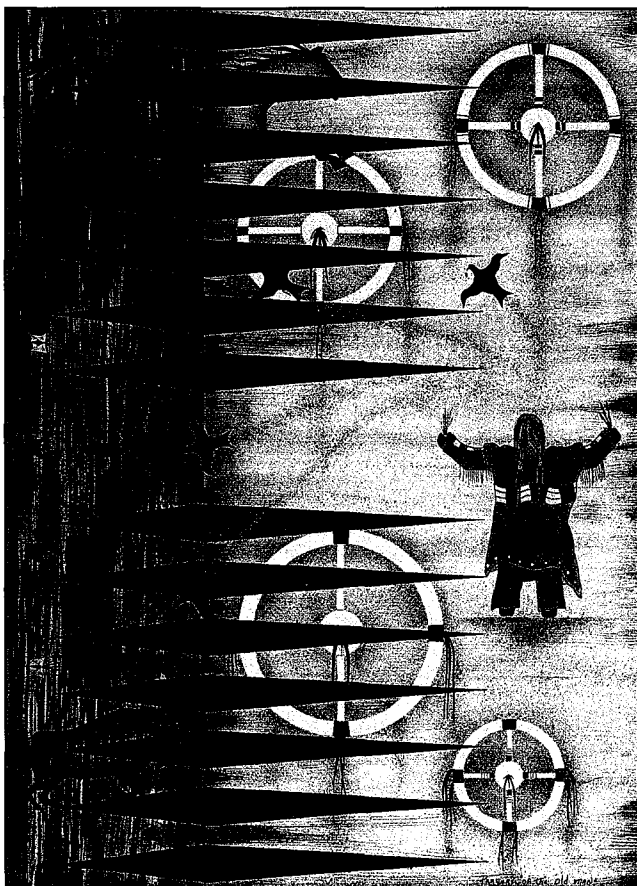
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ART: Cover - "He Found Two Horses"; Back Cover - "Early In Line Dancing"; Contents Page - "Prayers of the Old Man"

ARTIST: Ed Defender was born on the Ft. Peck Indian Reservation in Northeastern Montana and is an enrolled full-blood Standing Rock Sioux. He was raised by his great-grandparents and grandparents in traditional Native American ways. He exhibits his work at various art shows and galleries across the country, mostly in the Northern Plains area where people recognize and appreciate his subject style. He recreates memories through his artwork, telling tales and using modern, colorful watercolors on paper, creating scenes and contemporary situations. Ed is noted for his brilliant colors and his "Indian" humor in titles of his works. Ed lives in Albuquerque, New Mexico, with his wife Sue and his two Golden Retrievers, Diane and Louise.

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Tax Status

The Native American Rights Fund (NARF) is a nonprofit, 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. 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. NARF was founded in 1970 and incorporated in 1971 in Washington, D.C.



INTRODUCTION

The 15 attorneys, support staff and Board of Directors at the Native American Rights Fund (NARF), the national Indian legal defense fund, form a modern-day warrior society. For these dedicated people, the Indian wars never ended; they merely changed venue. Law books have replaced the chiseled arrow and the historical battlegrounds of the last century have been transported to courtrooms near and far from their Boulder, Colorado base including the highest court in the land. But the will to fight, and the reasons, remain unchanged. The survival and strengthened sovereignty of the nation's 557 federally recognized tribes of 1.8 million Native Americans are due, in no small measure, to the battles waged and won by NARF.

For the past 27 years, the Native American Rights Fund (NARF) has represented approximately 200 Tribes in 31 states in such areas as tribal jurisdiction and recognition, land claims, water rights, hunting and fishing rights, Indian religious freedom, and many others. In addition to the great strides NARF has made in achieving justice on behalf of Native American people, perhaps NARF's greatest distinguishing attribute has been its ability to bring excellent, highly ethical legal representation to dispossessed Tribes. NARF has been successful in representing Indian tribes and individuals in cases that have encompassed every area and issue in the field of Indian law. A brief review of NARF's origin will give a better understanding of NARF's role in the struggle to protect Native rights in today's society.

The Founding of the Native American Rights Fund

In the 1960's, the federal government and private philanthropists began to address the inability of underserved populations to access the justice system. The federal government funded a network of legal services programs to serve a variety of populations and it soon became apparent through the work of those programs that there were several population groups among those needing legal services which had unique needs.

Native Americans, whose lives have long been governed by the hundreds of treaties, thousands of federal statutes, numerous regulations and administrative rulings and hundreds of cases which make up the specialized body of law known as federal Indian law, were one such group whose needs demanded a specialized legal practice with a national purview.

The Native American Rights Fund was formed in California in 1970 to address the need for a central, national perspective in the practice of federal Indian law. NARF began as a pilot project of the leading Indian legal services program, California Indian Legal Services. Funding was provided by the Ford Foundation.

The need for NARF's services was quickly established, and in 1971, NARF moved its growing staff to Boulder, Colorado, a location more central to Indian country. Since the beginning, the national scope of legal work undertaken by NARF as a nonprofit organization has been supported by foundation and government grants; corporate, individual, and tribal contributions; and client fees.

The accomplishments and growth of NARF over the years confirmed the great need for Indian legal representation on a national basis. This legal advocacy on behalf of Native Americans is more crucial now than ever before. NARF strives to protect the most important rights of Indian people within the limit of available resources. One of the initial responsibilities of NARF's first Board of Directors was to develop priorities that would guide the Native American Rights Fund in its mission to preserve and enforce the status of tribes as sovereign, self-governing bodies. The Board developed five priorities that continue to lead NARF today:

- Preservation of tribal existence
- Protection of tribal natural resources
- Promotion of Native American human rights
- Accountability of governments to Native Americans
- Development of Indian law

EXECUTIVE DIRECTOR'S REPORT

1997 marked the 27th year that the Native American Rights Fund has provided legal advice and representation to Indian tribes, organizations and individuals on issues of major significance to Indian people throughout the United States. Once again, the legal assistance provided by NARF resulted in several important legal victories for Native American people during the year.

In *Mustang Production Company v. Harrison*, the United States Supreme Court let stand a federal appeals ruling that affirms the sovereign right of the Cheyenne and Arapaho Tribes of Oklahoma to tax the oil and gas production of companies doing business on individual Indian land allotments within their former reservation boundaries. NARF has represented the Tribes' Tax Commission which will collect some \$5 million in back taxes and over \$1 million annually in the future for the Tribes.

NARF participated with the Tribal Working Group on the Endangered Species Act in successful negotiations with the Departments of Interior and Commerce that resulted in a Secretarial Order harmonizing the federal Indian trust responsibility, the government-to-government relationship that exists between the tribes and the federal government, and the Endangered Species Act. The Secretarial Order establishes a new protocol for dealings between the federal government and tribal governments in the administration of the Endangered Species Act.

The Chippewa-Cree Tribe of the Rocky Boy's Reservation in Montana reached agreements to settle its water rights claims with the State of Montana and the United States after ten years of studies and negotiations by NARF. The settlement, which must be approved by Congress, provides for recognition of tribal water rights, a joint Tribal/State water administration system, \$30 million for construction or enlargement of several dams and an economic development fund, and an additional \$15 million to be set aside for the federal contribution to any future project to deliver water to the Reservation.

On behalf of the Native Village of Kluti Kaah, NARF was successful in negotiating the first co-management agreement of its kind between Alaska tribes and the

Alaska Department of Fish and Game. It allows five Ahtna villages to manage fisheries within their traditional hunting and fishing areas and issue permits to Village members for caribou and moose. It settles *Kluti Kaah Native Village of Copper Center v. Rosier*, where NARF asserted violations of state hunting and fishing subsistence law by failure to provide an adequate moose season and sought to establish that subsistence include consideration of customary and traditional uses of a resource.

Implementing the American Indian Religious Freedom Act Amendments of 1994, NARF convinced the Department of Defense to issue interim regulations recognizing and controlling the sacramental use of peyote

by Native Americans in the military who are members of federally recognized tribes. Of approximately 9,600 Native Americans in the military, a few hundred are members of the Native American Church who need this protection of their religious freedom. NARF represents the Native American Church of North America.

In one of the largest class action lawsuits pending against the federal government, the federal court in Washington, D.C. certified that NARF and its co-counsel represent a class of some 500,000 past and current Individual Indian Money

account holders seeking redress for government mismanagement of trust accounts through which billions of dollars of Indian money has flowed over the years. The lawsuit seeks an accounting of funds due account holders, repayment of funds lost due to mismanagement, and creation of an adequate trust accounting and management system.

Through these and other important case developments in 1997, NARF illustrates that Native Americans can receive justice if they are provided with representation. Since 1970, NARF has provided this access to justice in major cases and has made the legal process work for the benefit of Indian people. We thank you for your interest and your support of our program of national Indian legal representation on the critical issues and encourage you to help us maintain it.

John E. Echohawk, Executive Director





CHAIRMAN'S MESSAGE

I am writing this message in a hotel room in the Washington, D.C. area in December, 1997. It seems to be increasingly necessary to make the long trip from Alaska more often these days. There has been a lot of activity on major issues that affect Indian country.

I remember the speech that Senator Daniel Inouye, Vice-Chairman of the Indian Affairs Committee, gave at the National Congress of American Indians (NCAI) convention last month when he urged Native leaders to be proactive with legislative proposals. He spoke relative to "means testing" proposed by our Congressional adversaries before tribes could receive federal assistance. I believe that he has given a lot of careful thought to what tribes can do about their issues. We have seen an increasing trend in Congress to address tribal issues through the "rider" process. This process gives little or no time for tribes to respond when a rider containing harmful provisions is attached to an appropriations bill at the last minute. I suppose that is one reason why they are used. The process forces tribes into a purely reactive mode in which there is minimal opportunity to positively have input in the development of public policy. It is disturbing to witness this devolution of public process, but nevertheless, it is here.

Senator Inouye felt that tribes must turn this around by taking the initiative in the putting forward legislation on issues that have been raised in a negative attempt to bring changes.

The question of competing strategies is before us. Should tribes assist and negotiate with Congress knowing that we do not control the politics or do we bet that we can successfully oppose another inside attempt to pass harmful law? Either way, the national Indian community needs to engage in the further discussion before Congress reconvenes.

Challenges are being brought forward on other fronts as well. My purpose for this trip to

D.C. is an example. NARF is providing legal representation to the Venetie Tribe of Northern Alaska. The case asks the question: Is there Indian country in Alaska? This case affects all the tribes in Alaska with the exception of Metlakatla. On December 10, 1997, the oral arguments are being heard before the United States Supreme Court. I am here listening to that proceeding.

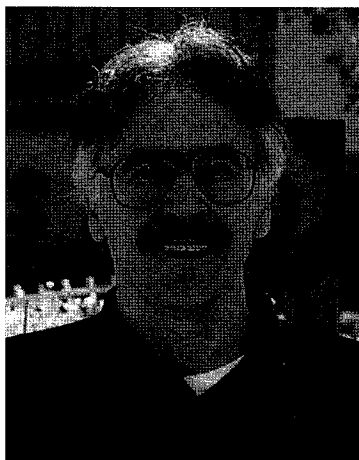
NARF Attorney Heather Kendall-Miller will present Venetie's arguments. The State of Alaska is opposing the tribes. The Venetie Tribe is a remote community that is rich in cultural heritage, with a strong legacy of independence and self-determination. Though the people make a good living from the land by harvesting caribou and other wildlife, they did not have money to wage the 12 year legal battle with the State of Alaska. When NARF took the case for Venetie, it was a welcome and deeply appreciated development in their protracted struggle for tribal sovereignty.

The support of tribes across the nation has been heartening for Venetie. At the recent NCAI convention in Santa Fe, past NCAI Treasurer Jerry Hope rose to challenge delegates to give a contribution to the cash strapped Venetie Tribe. In the next half and hour, tribes had contributed over \$20,000 to the delight of convention delegates. It was a most joyful and emotionally moving display of Indian solidarity and a real high point of the week.

I will always remember the look of encouragement and humble thankfulness on the faces of the small Venetie tribal delegation.

I believe it is such giving hearts as was evidenced by the NCAI delegates in Santa Fe that reveals the key to our success in the future. By standing up for each other and working together we give each other added strength to keep on going.

Will Mayo, Chairman



THE BOARD OF DIRECTORS

The Native American Rights Fund has a governing board composed of Indian leaders from across the country — wise and distinguished people who are respected by Indians nationwide. Individual Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as their tribal affiliation, to ensure a comprehensive geographical representation. The NARF Board of Directors, whose members serve a maximum of six years, provide NARF with leadership and credibility and the vision of its members is essential to NARF's effectiveness in representing its Native American clients.

Left to Right (sitting) - **Mary T. Wynne** (Rosebud Sioux - Washington); **Kathryn Harrison** (Confederated Tribes of Grand Ronde - Oregon); **Rebecca Tsosie** (Pasqua Yaqui - Arizona); *(standing)* **Wallace E. Coffey** (Comanche - Oklahoma); **Mike P. Williams** (Yup'ik - Alaska); **Gilbert Blue**, Vice-Chairman (Catawba - South Carolina); **David Archambault** (Standing Rock Sioux - North Dakota); **Ernie Stevens, Jr.** (Wisconsin Oneida - Wisconsin); **Roy Bernal** (Taos Pueblo - New Mexico); **Rev. Kaleo Patterson** (Native Hawaiian - Hawaii); and, **Will Mayo**, Chairman (Native Village of Tanana - Alaska). *Not pictured:* **Judy Knight-Frank** (Ute Mountain Ute, Colorado) and **Cliv Dore** (Passamaquoddy, Maine).





THE NATIONAL SUPPORT COMMITTEE

The National Support Committee assists NARF with its fundraising and public relations efforts nationwide. Some of the individuals on the Committee are prominent in the field of business, entertainment and the arts. Others are known advocates for the rights of the underserved. All of the 41 volunteers on the Committee are committed to upholding the rights of Native Americans.

Richard A. Hayward, NSC Chairman
(Mashantucket Pequot)
Owanah Anderson (Choctaw)
Edward Asner
Katrina McCormick Barnes
Debra Bassett
David Brubeck
U.S. Senator Ben Nighthorse Campbell (Northern
Cheyenne)
Harvey A. Dennenberg
Michael Driver
Richard Dysart
Lucille A. Echohawk (Pawnee)
Louise Erdrich (Turtle Mountain Chippewa)
James Garner
Sy Gomborg
Will H. Hays, Jr.
Alvin M. Joseph, Jr.
Charles R. Klewin
Nancy A. Klewin
Wilma Mankiller (Cherokee)
Chris E. McNeil, Jr. (Tlingit-Nisga'a)
Billy Mills (Oglala Sioux)
N. Scott Momaday (Kiowa)
Amado Peña, Jr. (Yaqui/Chicano)
David Risling, Jr. (Hoopa)
Pernell Roberts
Walter S. Rosenberry III
Leslie Marmon Silko (Laguna Pueblo)
Connie Stevens
Anthony L. Strong (Tlingit-Klukwan)
Maria Tallchief (Osage)
Andrew Teller (Isleta Pueblo)
Verna Teller (Isleta Pueblo)
Studs Terkel
Ruth Thompson
Tenaya Torres (Chiricahua Apache)

Thomas N. Tureen
Aíne Unger
John Unger
Rt. Rev. William C. Wantland (Seminole)
Dennis Weaver
W. Richard West, Jr. (Cheyenne)



THE PRESERVATION OF TRIBAL EXISTENCE

Under the priority of the *preservation of tribal existence*, NARF's activity emphasizes enabling Tribes to continue to live according to their Native traditions; to enforce their treaty rights; to insure their independence on reservations; and to protect their sovereignty. Specifically, NARF's legal representation centers on federal recognition and restoration of tribal status, sovereignty and jurisdiction issues, and economic development. Thus, the focus of NARF's work involves issues relating to the preservation and enforcement of the status of tribes as sovereign, self-governing bodies. Tribal governments possess the power to regulate the internal affairs of their members as well as other activities within their reservations. Conflicts often arise with states, the federal government, and others over tribal sovereignty. During 1997, NARF handled several major cases that affected the sovereign powers of tribes.

Tribal Sovereignty

Several of these cases represent part of an on-going and extremely important effort to protect the viability and integrity of tribal courts nationally. Tribal judicial systems are under ceaseless attack from those who do not wish to be held accountable for their conduct while on Indian reservations. Tribes look to the federal courts to uphold the right of tribes to provide a forum for the resolution of civil disputes which arise within

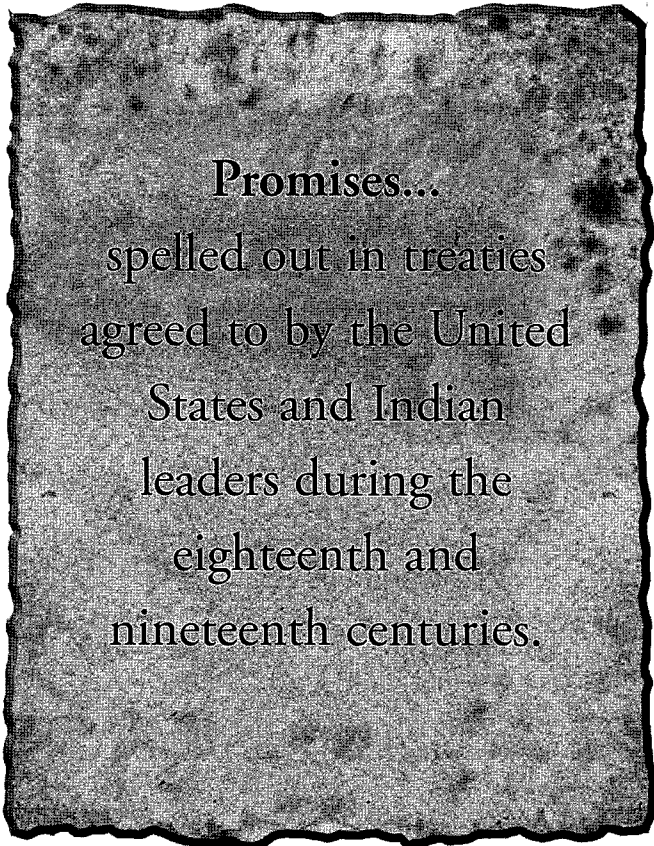
their territories, even when those disputes involve non-Indians.

NARF believes that protection of tribal jurisdiction is a long and well-documented struggle dating to the very beginnings of this nation's founding. The question is whether the original people of this land will be allowed to define and protect their way of life in those situations where outsiders seek to avoid accountability in tribal courts for their actions while on Indian lands.

In *Strate v. A-1 Contractors*, the United States Supreme Court agreed to review a decision by the U.S. Court of Appeals for the Eighth Circuit. The case involves the jurisdiction of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota to decide a personal injury case between two non-Indians on the reservation. A non-Indian resident of the reservation married to a tribal member was involved in an automobile collision on a state highway within the reservation

with a non-Indian owner/employee of a landscape construction company located off the reservation but conducting business on the reservation under a subcontract with the Tribe. The Court of Appeals, in an 8 to 4 ruling, held that the tribal court does not have jurisdiction over the case, reversing a previous federal district court ruling that favored the tribal court's jurisdiction.

NARF argued that tribal courts should have jurisdiction along with state courts over



Promises...
spelled out in treaties
agreed to by the United
States and Indian
leaders during the
eighteenth and
nineteenth centuries.



motor vehicle torts that threaten the reservation community, even if they occur on state highways with rights-of-way across reservation lands. However, in April, 1997, the United States Supreme Court ruled that a state highway right-of-way across Indian land is the equivalent of non-Indian land. In its opinion, the Court relied on a previous case, *Montana v. United States*, which held that Indian tribes generally lack civil authority over non-Indians on non-Indian land within reservations, unless the non-Indians enter consensual relationships with the tribe or its members, or their activities threaten or directly affect the tribe's political integrity, economic security, health or welfare. Remarkably, the Court held that neither the non-Indian's subcontract with the Tribe nor the other non-Indian's marriage within the Tribe met these tests.

In March, 1997, the United States Supreme Court denied review in *Mustang Production Company v. Harrison*, which means that the August, 1996 ruling by the United States Court of Appeals for the Tenth Circuit will stand. That decision affirms the right of the Cheyenne and Arapaho Tribes of Oklahoma to tax oil and gas production on individual Indian land allotments. The allotments, 160 acre land parcels held in trust by the federal government for members of the Tribes, are scattered throughout nine counties in western Oklahoma. The parcels are virtually all that remains of the Cheyenne and Arapaho 4.5 million acre reservation which the federal government opened up to non-Indian settlement in 1890. The oil and gas companies involved in the production must now pay taxes on their produc-

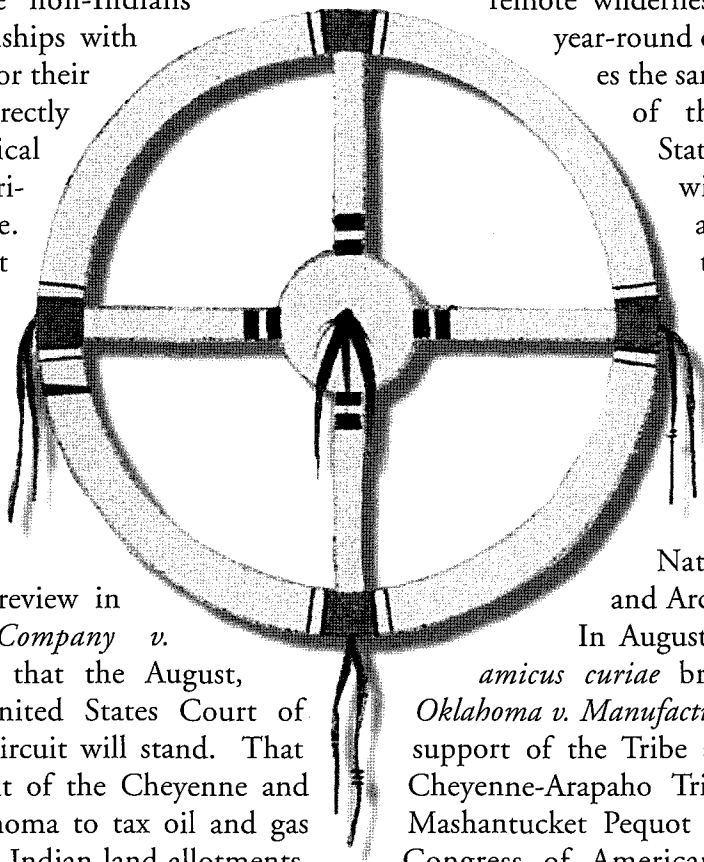
tion from allotments to the Tribes. The tax money that has been at issue in this case - about \$5 million - will be released to the Tribes.

The United States Supreme Court decided in June, 1997 to hear *State of Alaska v. Native Village of Venetie*, a Ninth Circuit Court of Appeals decision which upheld Venetie's "Indian country" status under federal law and thus its right to govern its own affairs. The Ninth Circuit ruling affirmed that Venetie — a tribe situated in remote wilderness Alaska and accessible

year-round only by plane — possesses the same rights as Indian tribes of the contiguous United States. The Supreme Court will now definitively address for the first time the powers of Alaska Native villages, which have governed themselves since time immemorial. Oral arguments were held in December, 1997. NARF represents the

Native Village of Venetie and Arctic Village in this case.

In August, 1997, NARF filed an *amicus curiae* brief in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.* in support of the Tribe and in representing the Cheyenne-Arapaho Tribes of Oklahoma, the Mashantucket Pequot Tribe and the National Congress of American Indians. This case involves the question of whether the sovereign immunity from suit accorded to Indian tribes as a matter of federal law bars an action brought in state court to recover money damages for a breach of contract arising out of commercial activity undertaken by a tribe outside of Indian country. An Oklahoma Appeals Court ruled that the Kiowa Tribe did not have sovereign immunity from suit in state court in an action based on a



contract entered into outside of Indian country. The United States Supreme Court has taken the case to decide whether the Oklahoma court erred in rejecting the Tribe's claim of sovereign immunity and will hear oral argument in January, 1998.

In *Nevada v. Hicks*, two officers of the Nevada Division of Wildlife, on two separate occasions, searched the residence and confiscated possessions of a member of the Fallon Paiute-Shoshone Tribe. The tribal member resides on his Indian allotted land within the Fallon Paiute-Shoshone Indian Reservation in Nevada. It was determined that the tribal member committed no crime so his possessions were returned, but in a damaged condition. As a result, the tribal member sued the officers in Fallon Paiute-Shoshone Tribal Court for the violation of his civil rights. The officers contested the jurisdiction of the Tribal Court in both the Tribal Court of Appeals, which affirmed the Tribal Court's jurisdiction, and the Federal District Court for Nevada. NARF represented the Tribe in the Federal District Court which ruled in October, 1996 that the Tribal Court did have jurisdiction to hear the case. The State appealed this ruling to the U.S. Court of Appeals for the Ninth Circuit.

In *Oklahoma Tax Commission v. Goodeagle*, NARF has undertaken representation of several individual Indians in Oklahoma who are challenging the taxation of their income by the State of Oklahoma. In these cases, the tribal members work on their own tribe's trust land, but live on trust allotments within the jurisdiction of another tribe. While Oklahoma does recognize it lacks

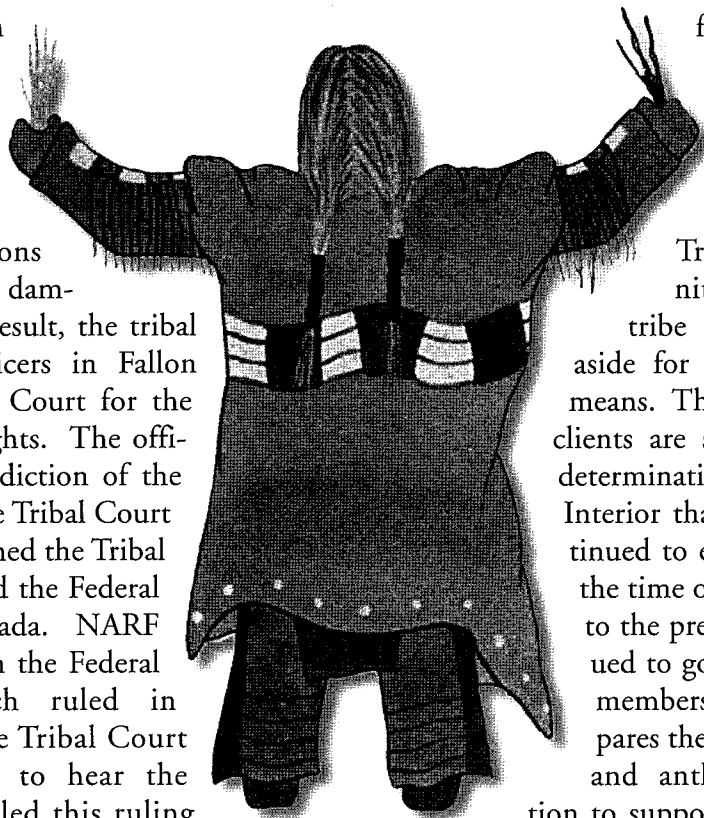
jurisdiction to tax the income of tribal members who live and work within their own tribe's trust land, it does assert jurisdiction to tax where the member either lives or works in trust land within the jurisdiction of another tribe.

Federal Recognition of Tribal Status

NARF currently represents six Indian communities who have survived intact as identifiable Indian tribes but who are not federally recognized. These Indian tribes, for differing reasons, do not have a government-to-government relationship between themselves and the federal government.

Traditionally, federal recognition was accorded to a tribe through treaty, land set aside for a tribe, or by legislative means. The majority of these NARF clients are seeking an administrative determination by the Department of Interior that they, in fact, have continued to exist as Indian tribes from the time of significant white contact to the present day and have continued to govern themselves and their members. NARF, therefore, prepares the necessary historical, legal, and anthropological documentation to support a petition for acknowledgment. For more than 100 years, these Indian communities have been foreclosed from the benefits of a formal federal relationship with the federal government. Through administrative acknowledgment, NARF is now trying to bridge that gap.

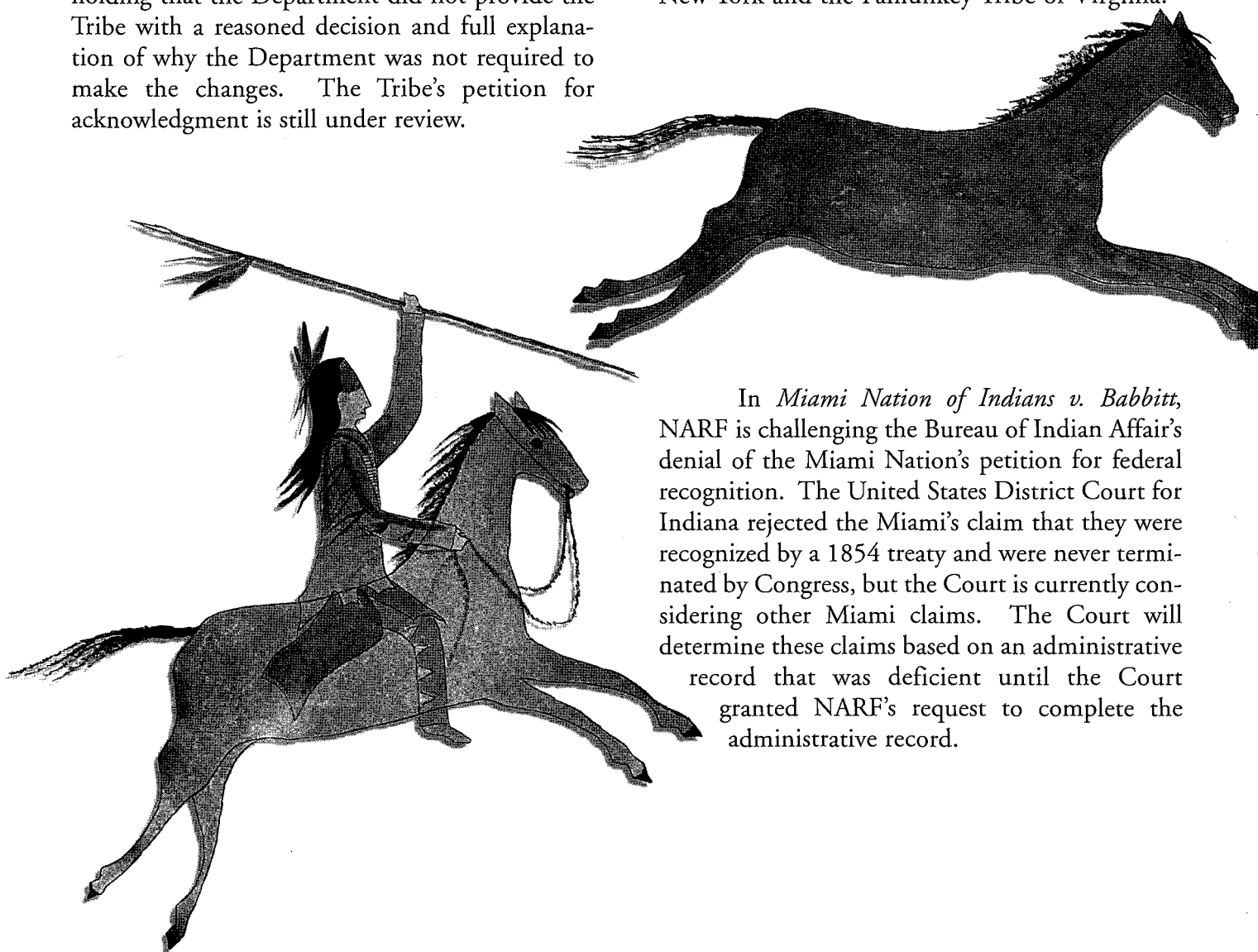
On behalf of the United Houma Nation of Louisiana, NARF is responding to proposed findings against federal acknowledgment issued by the Bureau of Indian Affairs (BIA) under their





acknowledgment regulations. The Tribe had asked the Department of Interior to revise those regulations based on the 1994 amendments to the 1936 Indian Reorganization Act. The Department declined and the Tribe filed suit in the Federal District Court for the District of Columbia. In July, 1997 in *United Houma Nation v. Babbitt*, the Court ruled in favor of the BIA stating that they were not required to change the regulations. However, the Court remanded the other issues to the Department of the Interior holding that the Department did not provide the Tribe with a reasoned decision and full explanation of why the Department was not required to make the changes. The Tribe's petition for acknowledgment is still under review.

On behalf of the Mashpee Wampanoag Tribe of Massachusetts, NARF responded to a notice of obvious deficiency in its petition so BIA has placed the Tribe on ready for active consideration status. NARF completed a petition for federal recognition on behalf of the Little Shell Tribe of Chippewa Indians of Montana and BIA placed the Tribe's petition on active review status in February, 1997. Petitions for federal recognition are being prepared and will be filed by NARF on behalf of the Shinnecock Tribe of New York and the Pamunkey Tribe of Virginia.

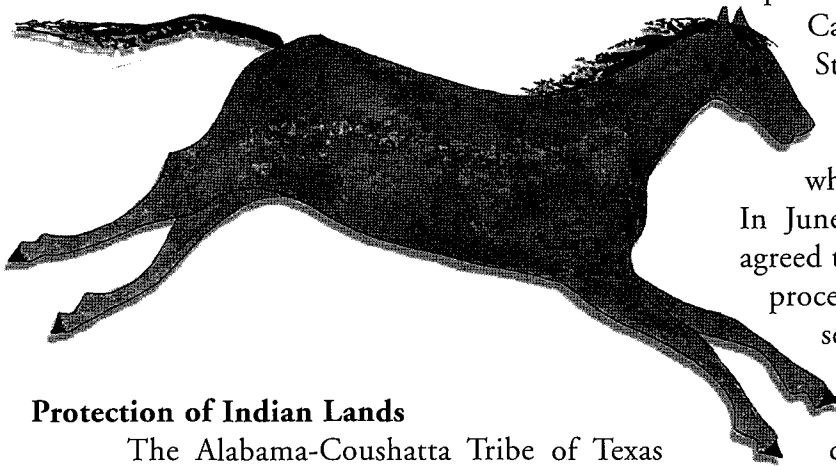


In *Miami Nation of Indians v. Babbitt*, NARF is challenging the Bureau of Indian Affairs' denial of the Miami Nation's petition for federal recognition. The United States District Court for Indiana rejected the Miami's claim that they were recognized by a 1854 treaty and were never terminated by Congress, but the Court is currently considering other Miami claims. The Court will determine these claims based on an administrative record that was deficient until the Court granted NARF's request to complete the administrative record.

THE PROTECTION OF TRIBAL NATURAL RESOURCES

The land base and natural resources of Indian nations continue to be critical factors in the preservation of Indian sovereignty. Through control over tribal lands and resources, Indian tribes can regain a degree of economic self-sufficiency necessary for Indian self-determination. There are approximately 56 million acres of Indian-controlled land in the continental United States which constitutes only 2.3 percent of their former territory. Three-fourths of this acreage is tribally owned and one-fourth is individually owned. Additionally, there are about 44 million acres in Alaska which are owned by Natives after the 1971 Alaska Native Claims Settlement Act.

The federal government, has in many instances, failed to fulfill its trust duty to protect Indian tribes and their property rights. The Native American Rights Fund concentrates much of its legal representation on cases that will ensure a sufficient natural resource base for tribes.



Protection of Indian Lands

The Alabama-Coushatta Tribe of Texas seeks compensation for the loss of millions of acres of fertile forest that they once occupied in southeast Texas. The Tribe has been represented by NARF since 1981 in their quest to prove that their ancestral land was illegally taken from them by settlers. In July, 1996, the United States Court of Federal Claims ruled in *Alabama-Coushatta Tribe of Texas v. United States* that the

United States should compensate the Alabama-Coushatta Tribe for the loss of 3.4 million acres of ancestral land illegally taken without federal approval between 1845 and 1954. This land includes all or part of 12 southeast Texas counties and has been the center for oil, gas and timber production. NARF continues to conduct extensive research on the law of compensation for the loss of use and occupancy of the land, including fair rental value and profits from oil, gas and timber produced over the years. Settlement discussions with the United States are proceeding.

NARF represented the Keewatinosagaing or Northern Lakes Pottawatomi Nation of Canada before the United States Court of Federal Claims on their claim against the United States for compensation for outstanding treaty entitlements. Under a Congressional reference resolution passed by the United States Senate, the Court is asked to report to the Senate on the treaty claims of the Canadian Pottawatomi against the United States. The Court rejected the notion proposed by the government that the Tribe constituted a group of "happy migrants" when they left the United States after 1838. In June, 1997 the Tribe and the government agreed to pursue a settlement and are now in the process of developing documents necessary to settle this matter.

In *Cheyenne-Arapaho Tribes of Oklahoma v. United States*, a claim for damages against the United States for illegally extending the terms of three tribal oil and gas leases in Oklahoma at below market rates without tribal consent and in breach of the federal government's fiduciary duty to manage Indian trust lands prudently, is pending in the U.S. Court of Federal Claims. The United States has agreed to review a settlement proposal and NARF is preparing such a pro-



posals while briefing schedules before the Court are being worked on.

The Stockbridge-Munsee Tribe of Wisconsin, represented by NARF, has a land claim to 26,000 acres in New York pending in federal district court in New York against the State of New York and various local governments. The claim is based on the 1790 Non-intercourse Act as amended which invalidates any Indian land transactions which were made without federal approval. Negotiations on all Indian land claims in New York are planned and will include this claim. The United States will now enter an appearance, as trustee, on behalf of the Tribe. With the United States as a party, the State of New York will be prevented from asserting its Eleventh Amendment immunity from suit.

NARF continued representing the San Juan Southern Paiute Tribe in the consolidated cases of *Masayesva v. Zah v. James* and *Navajo Tribe v. U.S. v. San Juan Southern Paiute Tribe*, cases involving the Navajo and Hopi Tribes in a dispute over an area of land in northern Arizona claimed by all three tribes. An Arizona federal district court held in 1992 that the San Juan Southern Paiutes had established exclusive use to 75 acres and joint use with the Navajo Tribe to another 48,000 acres of land. Those findings have been appealed to the Ninth Circuit of

Appeals. Briefing has been completed and oral argument continues to be held up while settlement negotiations are carried on. An extension of time until February, 1998, was granted to allow continued settlement negotiations.

NARF continued its work with the Klamath Tribe of Oregon on their Economic Self-Sufficiency Plan (ESSP) which was mandated by Congress in 1986 in the Klamath Tribal

Restoration Act which reversed the Tribe's 1954 termination by Congress. The ESSP's chief recommendation is the return of federally-held tribal lands, along with the assessment of the costs of termination of the government-to-government relationship and the loss of the tribal reservation lands to federal management. The ESSP is being coordinated with the Tribe's efforts to negotiate a settlement of their water rights claims.

NARF has played a key role in the implementation of federal environmental law and policy that recognizes tribal governments as the primary regulators and enforcers of the federal environmental laws on Indian lands. NARF will continue to work with tribes, the National Tribal Environmental Council and other Indian organizations to maintain the progress that has been made with the Environmental Protection Agency and other federal agencies. As a member of the Green Group,

Promises...
through treaties which
guaranteed that Indian
tribes would maintain
their sovereignty within
their reservation
homelands.

the coalition of national environmental organizations, NARF will continue to coordinate efforts and to educate the environmental community on the role of tribal governments in environmental law and policy.

NARF participated with the Tribal Working Group on the Endangered Species Act in negotiations with the Departments of Interior and Commerce over a Secretarial Order. The purpose of the Order is to harmonize the federal Indian trust responsibility, the government-to-government relationship that exists between the tribes and the federal government, and the Endangered Species Act. In June, 1997, Interior Secretary Bruce Babbitt and Commerce Secretary Bill Daley signed the Order establishing a new protocol for dealings between the federal government and tribal governments in the administration of the Endangered Species Act.

The Oglala Sioux Tribe of South Dakota is faced with major environmental problems. It wants to remedy those problems and mitigate the environmental impact of new development on the reservation. NARF is in the process of developing a Tribal Environmental Policy Act (TEPA) for the Tribe. The TEPA will provide a review process for any developer, tribal or non-tribal, whose project may impact the environment. The process will allow the Tribe to temper or avoid harm to the environment.

Water Rights

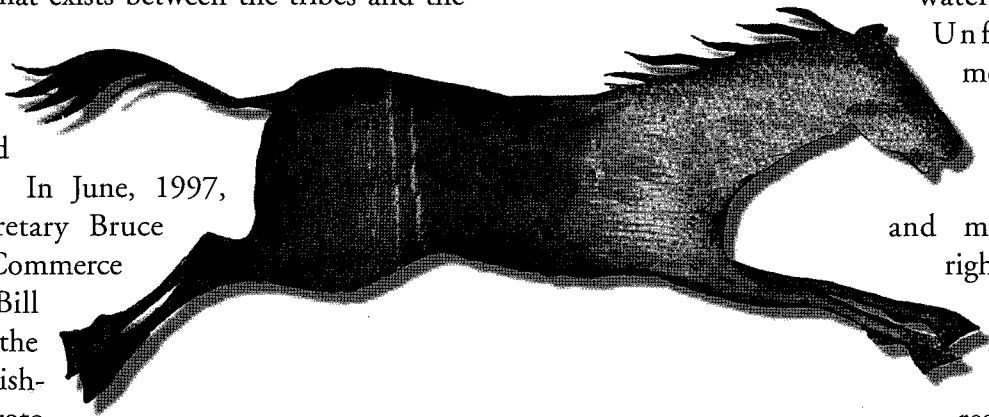
Establishing tribal rights to the use of water in the arid west continues to be a major NARF

involvement. Under the precedent established by the United States Supreme Court in 1908 in the case of *Winters v. United States* and confirmed in 1963 in *Arizona v. California*, Indian tribes are entitled under federal law to sufficient water for present and future needs, with a priority date at least as early as the establishment of their reservations. These tribal reserved water rights are superior to all state-recognized water rights created after the tribal priority date, which in most cases will give tribes valuable senior water rights in the water-short West.

Unfortunately, most tribes have not utilized their reserved water rights and most of these rights are unadjudicated or unquantified. As a result, tribal

water claims constitute the major remaining water allocation issue in the West. The major need in each case is to define or quantify the exact amount of water to which each tribe is entitled. NARF pursues these claims on behalf of tribes through litigation or out-of-court settlement negotiations.

In April, 1997, after 10 years of extensive technical studies, and five years of intensive negotiations, the Chairman of the Chippewa-Cree Tribe of the Rocky Boy's Reservation and the Governor of Montana signed an historic water rights 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. However, with few exceptions, all provisions of the Compact are subject to approval by the United States



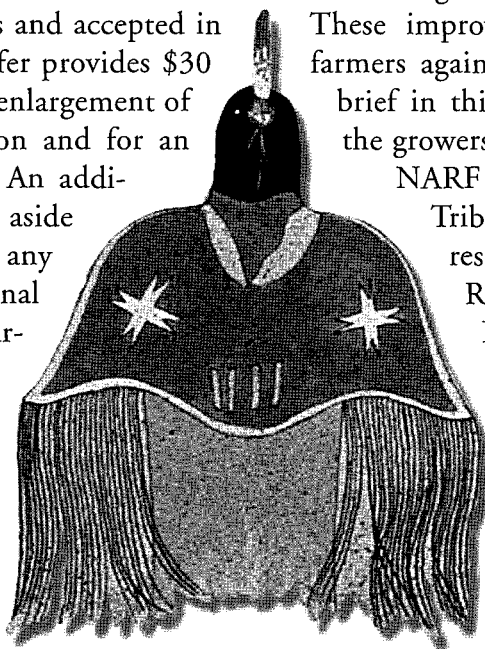


Congress. The Compact provides for 9260 acre-feet of water per year from the Big Sandy Creek and its tributaries, and 740 acre-feet per year from Beaver Creek. The Tribe reserves the right to divert from surface water flows for irrigation and other uses from the Lower Big Sandy Creek, Gravel Coulee, 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. An offer to settle was received from the United States and accepted in principle by the Tribe. The offer provides \$30 million for the construction or enlargement of several dams on the Reservation and for an economic development fund. An additional \$15 million is to be set aside for the federal contribution to any future project to deliver additional water to the Reservation. All parties are now engaged in drafting federal legislation incorporating the settlement.

NARF continues to assist the Klamath Tribe in obtaining and reviewing the hydrological, biological and other studies required to adjudicate the Tribe's reserved water rights to support its 1864 treaty hunting and fishing rights. NARF began work with the Oregon Department of Water Resources to develop a timeline for the adjudication, including the deadline for filing claims, and to fashion an appropriate settlement negotiations framework for exploring a comprehensive, basin-wide Indian water rights settlement. NARF continued its efforts to change management of Upper Klamath Lake by the Bureau of Reclamation (BOR) in order to better protect the Tribe's treaty-protected fishery, including two species of

fish which have been listed as endangered pursuant to the Endangered Species Act. This effort produced significant, favorable management changes, such as the development of written interim water management plan for 1997, adopting the lake levels proposed by the Tribe for fishery purposes, an agreement to develop a long-term water plan, and a decision by the BOR to re-initiate consultations under the Endangered Species Act to determine better ways to protect the endangered fishery of Upper Klamath Lake. These improvements prompted a lawsuit by farmers against BOR. NARF filed an *amicus* brief in this case which was decided against the growers.

NARF is also representing the Nez Perce Tribe of Idaho in efforts to secure their reserved water rights in the Snake River Basin adjudication in an Idaho state court. NARF has continued legal and technical research to prepare the Tribe's water rights claims which consist mainly of instream flow claims necessary to maintain their salmon and steelhead treaty-protected fisheries. Efforts to promote the Tribe's regional settlement concepts in meetings with federal officials from the Departments of Interior, Justice and Commerce, and representatives of the State of Idaho, the Columbia River Inter-Tribal Fisheries Commission, the Northwest Power Planning Council, and numerous consultants to other interested parties have failed to produce progress sufficient to permit the stay of litigation to continue. Although negotiations may resume, full-scale pre-trial litigation is now underway. There is a growing awareness, however, by the non-Indian people and governments of the region



that a systematic process for evaluating the future impact of the dams on the Lower Snake River in Idaho must be set up. Proposals are being studied that would recommend the breaching of the four Lower Snake River dams to restore the balance and recover the salmon and steelhead that these dams kill. It is believed that by doing so, the region's economy can still grow and can also eliminate the burden of the Endangered Species

Act. This proposal also recommends stopping the harvest of wild salmon and steelhead in the Columbia River for five years - one salmon life cycle - to allow salmon populations to build to a healthy number quickly. Only a minimal tribal religious and ceremonial catch would be allowed in the rivers.

NARF continued to assist the Tule River Tribe of California in securing its water rights. Most of the legal and technical work has been completed and NARF and the technical consultants are now working with the Tribe to determine the best strategy for securing their water rights. As funding of water settlements appears to be one of the obstacles to a successful settlement of Indian water rights cases today, NARF has been assisting the Tribe in identifying alternate sources of funding to pursue as part of its settlement strategy. One of the potential sources of funding may be the Bureau of Reclamation (BOR). The Tribe has met with the

Office of Native American Affairs within BOR and is currently creating a water development plan for the reservation with the assistance of NARF and its technical consultants.

NARF is represented on the Western Water Policy Review Advisory Commission which is composed of members appointed by the President and Congress. The Commission has undertaken a comprehensive review of federal activities in the 19 western states which affect the

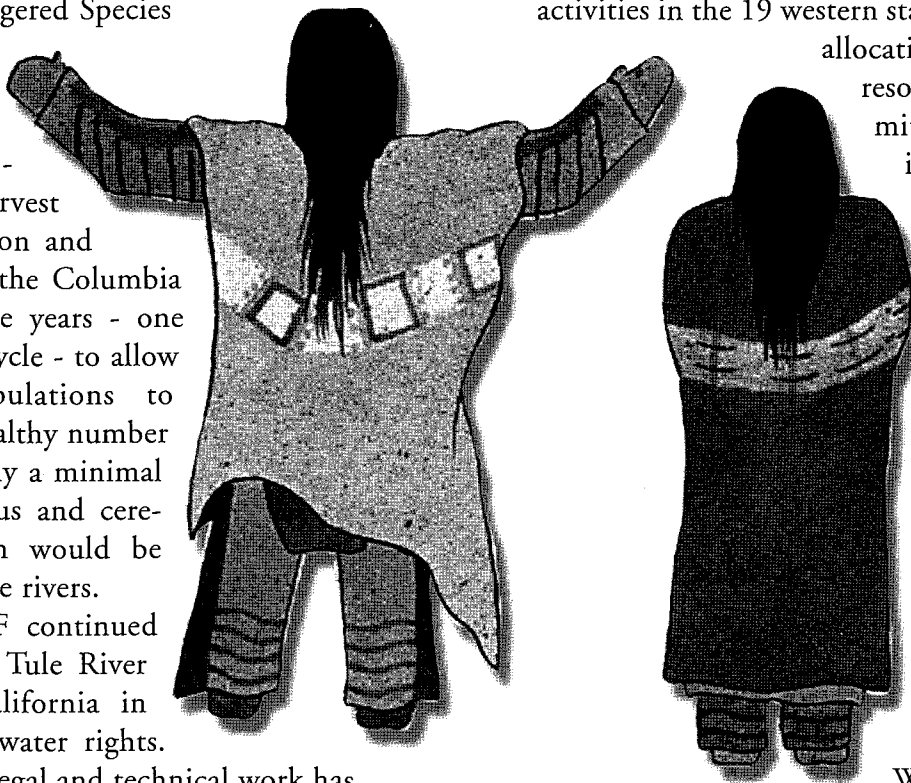
allocation and use of water resources and will submit a report of findings and recommendations to Congress. A draft report that includes favorable recommendations on Indian reserved water rights and other Indian water issues has been completed. NARF has also been involved extensively in the Federal/Tribal

Water Funding Task Force initiated by the

Interior Department and the Fifth Symposium on the Settlement of Indian Reserved Water Rights Claims co-sponsored by the Western States Water Council.

Hunting and Fishing

The right to hunt and fish in traditional areas, both on and off reservations, and for both subsistence and commercial purposes, remains a vital issue in Indian country. NARF has long



NARF Case Map

Major Activities 1997



Nez Perce Tribe -
Water Rights (Idaho)



Klamath Tribe - Water Rights
& Self-Sufficiency (Oregon)



Fallon Paiute-Shoshone Tribes -
Jurisdiction (Nevada)



Tule River Tribe -
Water Rights (California)



San Juan Southern Paiute Tribe -
Land Claim (Arizona)



NARF HEADQUARTERS
BOULDER, COLORADO



Cheyenne-Arapaho Tribes -
Taxation & Oil & Gas (Oklahoma)



Pele Defense Fund - Aboriginal Rights
(Hawaii)



Pai 'Ohana Association - Aboriginal Rights
(Hawaii)





Northern Cheyenne Tribe -
Education (Montana)



Fort Peck Tribes -
Education (Montana)



Pottawatomi Nation - Land
Claim (CANADA)



Chippewa-Cree Tribe - Water Rights
& Judgement Claim (Montana)



Little Shell Tribe - Recognition
& Judgement Claim (Montana)



Fort Berthold Reservation -
Jurisdiction & Education (North Dakota)



Turtle Mountain Reservation -
Judgement Claim (North Dakota)



Mashpee Wampanoag Tribe -
Recognition (Massachusetts)



Shinnecock Tribe -
Recognition (New York)



NARF WASHINGTON
D.C. OFFICE



Pamunkey Tribe - Recognition
(Virginia)



Stockbridge-Munsee Tribe -
Land Claim (Wisconsin)



Miami Nation - Recognition
(Indiana)



Rosebud Sioux Tribe - Education
(South Dakota)



Pawnee Tribe - Repatriation
(Nebraska & Oklahoma)



Houma Tribe - Recognition
(Louisiana)



Alabama-Coushatta Tribe -
Land Claim (Texas)



Oglala Sioux Tribe
Environmental and Welfare
Reform (South Dakota)

UNITED STATES OF AMERICA



Native Village of Elim -
Subsistence (Alaska)



Kenaitze Tribe -
Subsistence (Alaska)



Native Village of Venetie -
Taxation (Alaska)



NARF
ANCHORAGE OFFICE



Mentasta & Dot Lake (Barzulahtas) -
Subsistence (Alaska)



Native Village of Kluti Kaah -
Subsistence & Taxation



Native Village of Eyak -
Subsistence & Aboriginal
Title (Alaska)



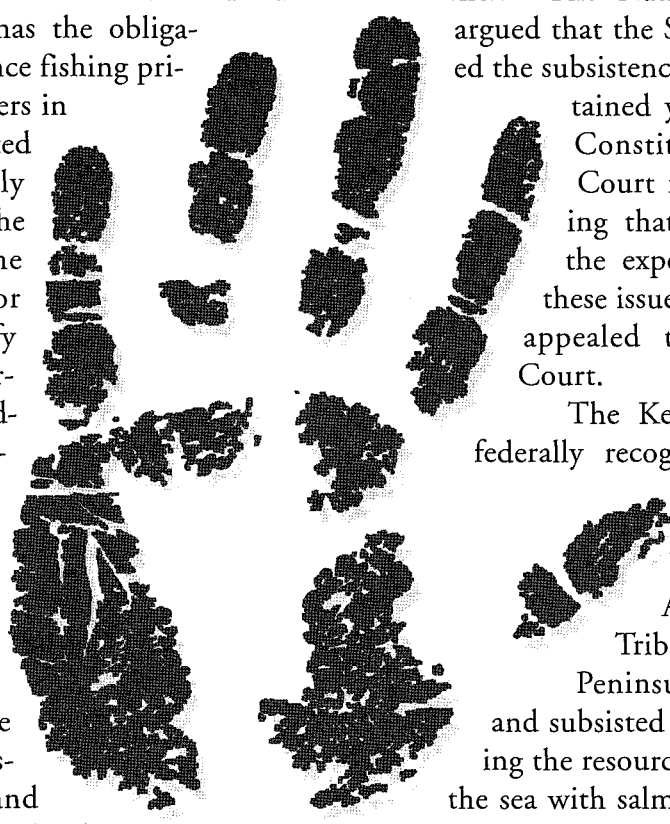
been instrumental in assisting tribes to assert hunting and fishing rights, which are guaranteed by treaty or other federal law.

In 1995, the Ninth Circuit Court of Appeals ruled in favor of two Athabaskan Villages, Mentasta and Dot Lake, that were denied their right to subsistence fishing under the 1980 Alaska National Interest Lands Conservation Act by the State of Alaska and the federal government. The Ninth Circuit held that the federal government has the obligation to provide a subsistence fishing priority on all navigable waters in Alaska in which the United States has a federally reserved water right. The Court instructed the Departments of Interior and Agriculture to identify those waters for the purpose of implementing federal, rather than state, regulation of subsistence activities. In 1996, the Department of the Interior announced their intention to amend the scope and applicability of the federal subsistence program to include subsistence activities on inland navigable waters in which the United States has a reserved water right. However, since 1996, Alaska's Congressional delegation has blocked this effort by placing a moratorium on the federal government's ability to implement the court's decision and encouraging the State to amend its laws so that it can administer the federal subsistence priority.

In *Elim v. Alaska*, NARF represents several Norton Sound area Alaska Native villages that

depend on Norton Sound chum salmon stocks for a subsistence fishery that is now in decline because the State allows those fish to be intercepted and harvested in the commercial sockeye salmon fishery at False Pass in the Aleutian chain. The suit asserts the legal priority that subsistence fishing has over commercial fishing under federal law. In April, 1997, the Alaska Superior Court denied the Village's requested relief. The Native Village of Elim had argued that the State Board of Fish violated the subsistence priority law and the sustained yield clause of the Alaska Constitution. The Superior Court rejected these claims stating that the Court "has neither the expertise nor skill to decide these issues." The case is now being appealed to the Alaska Supreme Court.

The Kenaitze Indian Tribe is a federally recognized tribal government whose members are direct descendants of Tanaina (Dena'ina) Athabaskan Indians. The Tribe has occupied the Kenai Peninsula region for centuries and subsisted by harvesting and gathering the resources offered by the land and the sea with salmon as the primary subsistence resource. Under the federal subsistence priority law, residents of rural areas are given a subsistence priority over sport and commercial hunters and fishermen. In 1991, the Federal Subsistence Board declared large portions of the Kenai Peninsula to be non-rural, including the entire Kenai area, which comprises the primary hunting and fishing grounds for members of the Kenaitze Indian Tribe. The Kenaitze Indian Tribe, with NARF's assistance, will be submit-



ting a proposal to the Regional Advisory Council and the Federal Subsistence Board seeking to have the Board reverse its non-rural determination with respect to the Kenai Peninsula and declare the entire Kenai Peninsula to be rural within the meaning of the federal subsistence priority law.

In *Kluti Kaah Native Village of Copper Center v. Rosier*, NARF assisted the Village in successfully negotiating a co-management plan with the State Board of Fisheries that allows five Ahtna villages to manage fisheries within their traditional hunting and fishing areas. This is the first co-management agreement of its kind to be entered into in Alaska between tribes and the Department of Fish and Game. The Native Village of Kluti Kaah is now duplicating its success in working with the State Board of Game by issuing permits to Village members for caribou and moose.

NARF argued that the Board of Game violated the state subsistence law by failing to provide an adequate hunting season to obtain moose for subsistence uses in the Copper River Basin and sought to establish that the subsistence priority include consideration of customary and traditional uses of a resource.

In *Native Village of Eyak v. Trawler Diane Marie, Inc.*, NARF asserts aboriginal title on behalf of Alaska Native tribes to the Outer

Continental Shelf (OCS) in Prince William Sound and the Gulf of Alaska. The issue presented is whether the Alaska Native Claims Settlement Act of 1971 extinguished aboriginal title outside the three mile limit. The lawsuit challenges the Department of Commerce's Individual Fishing Quota (IFQ) regulations for halibut and sable fish on the ground that they

authorize non-tribal members possessing IFQ's to fish within exclusive tribal fishing grounds without tribal consent, while at the same time prohibiting tribal members without IFQ's from fishing within their own aboriginal territory. In June, 1997, the United States District Court for Alaska issued a decision holding that the Native Villages of Eyak, Tatitlek, Chenega, Port Graham and Nanwalek were barred from claiming exclusive aboriginal hunting and fishing rights on the OCS but might assert non-exclu-

sive rights to the OCS. The decision is being appealed to the Ninth Circuit Court of Appeals.

Promises...
by the United States
government which
agreed to maintain a
unique trust relationship
with Indians protecting
land, rights and
resources.



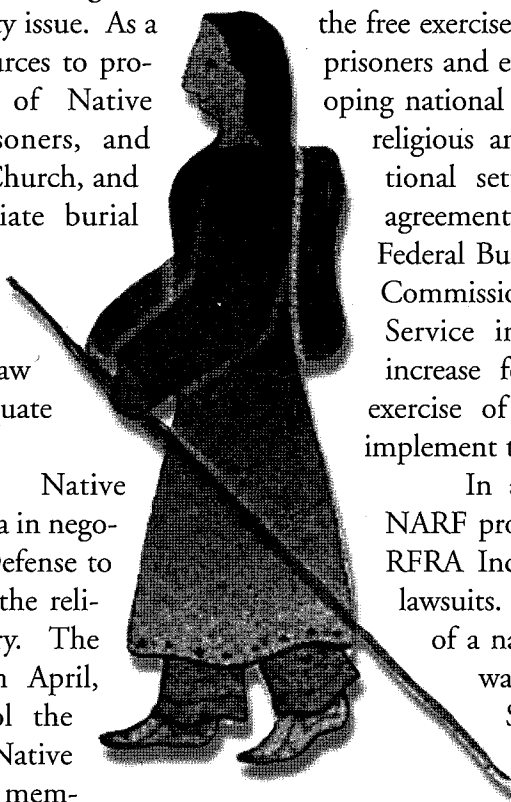
THE PROMOTION OF HUMAN RIGHTS

In 1997, NARF provided assistance in several matters involving religious freedom and education. NARF, on behalf of its clients, seeks to enforce and strengthen laws which are designed for the unique needs and problems of Native Americans in this area.

Religious Freedom

Because religion is the foundation that holds Native communities and cultures together, religious freedom is a NARF priority issue. As a result, NARF has utilized its resources to protect First Amendment rights of Native American religious leaders, prisoners, and members of the Native American Church, and to assert tribal rights to repatriate burial remains. Since Native American religious freedom affects basic cultural survival of Indian tribes, NARF believes that American law and social policy must provide adequate legal protection.

NARF represents the Native American Church of North America in negotiations with the Department of Defense to promulgate regulations governing the religious use of peyote in the military. The Pentagon issued interim rules in April, 1997 that recognize and control the sacramental use of peyote by Native Americans in the military who are members of federally recognized tribes. It is estimated that there are approximately 9,600 Native Americans in the U.S. military but only a few hundred are members of the Native American Church. For Native American Church members, peyote is viewed as a natural gift from the Creator and the Church believes in strong family values, personal responsibility and abstinence from drugs and alcohol at all times.



NARF works on prisoner religious freedom issues, on behalf of the Native American Church of North America, as part of a national coalition of Native prisoner advocates. This work consists of initiatives seeking increased federal protections for the free exercise of religion rights of Native prisoners confined in federal and state prisons. NARF is also developing a national litigation strategy for implementing the 1993 Religious Freedom Restoration Act (RFRA) to increase protection for the free exercise of religion by Native American prisoners and exploring the feasibility of developing national standards for protecting Native religious and cultural practices in correctional settings. NARF secured broad agreements from the Justice Department's Federal Bureau of Prisons, the U.S. Parole Commission, and Community Relations Service in 1996 to take measures to increase federal protection for the free exercise of religion and has worked to implement them.

In addressing other RFRA issues, NARF provided legal assistance in several RFRA Indian prisoner religious freedom lawsuits. Unfortunately, the development of a national RFRA litigation strategy was cut short when the United States Supreme Court struck this 1993 law down as unconstitutional in an unrelated case. Given that ruling, the development of Congressional legislation may become the most effective means to address this issue.

NARF has represented the Pawnee Tribe of Oklahoma on a number of repatriation claims against the Smithsonian Institution's National Museum of Natural History. These claims have resulted in three repatriations and reburials. The final claim was concluded in October, 1997, when 53 individuals and 173 funerary objects were repa-

triated and reburied by the Tribe. The repatriation followed the Tribe's successful 1996 appeal to the Smithsonian Institution's Native American Review Committee, the first such appeal before this Committee.

Devil's Tower ("Mato Tipi"), located in the Devil's Tower National Monument in Wyoming, is a sacred site for several Indian tribes. The National Park Service (NPS) issued a management plan that asked climbers to voluntarily refrain from climbing Devil's Tower during the month of June so that Native American ceremonies would not be intruded upon. The management plan also stated that licenses for commercial climbers would not be issued during the month of June. In *Bear Lodge Multiple Use Association v. Babbitt*, NPS was sued in the Federal District Court of Wyoming in response to this plan. The Court ruled that NPS's plan was unconstitutional and could not restrict climbing during the month of June. In February, 1997, working with the Department of Justice and the Medicine Wheel Coalition, NARF filed an *amicus curiae* brief, on behalf of the National Congress of American Indians, seeking to reverse the court's ruling. NARF showed that NPS has already established precedents in accommodating other religious groups within national parks. NARF believes that the current ruling will have adverse implications on the ability to protect Native American sacred sites on federal lands unless overturned.

In *Harjo v. Pro-Football, Inc.*, individual Indians have petitioned the United States Patent and Trademark Trial and Appeal Board seeking to cancel the pro-football Washington "Redskins" trademark on the grounds that the term is, and always has been, a deeply offensive, humiliating and degrading racial slur. NARF, in representing the National Congress of American Indians, the National Indian Education Association and the National Indian Youth Council, has filed an *amicus curiae* brief in support of the cancellation of the trademark.

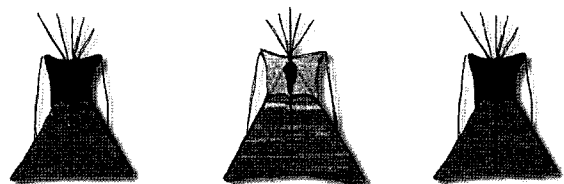
A NARF representative serves as a member of the Carter Center's International Human Rights Council, which is composed of about 25 prominent human rights advocates from nations across the world. The purpose of the Council is to render advice to President Carter and engage in various human rights initiatives. NARF continues to be actively involved.

Education

In the past and even today, most federal and state education programs circumvent tribal governments and maintain federal and state government control over the intent, goals, approaches, funding, staffing and curriculum for Indian education. For 27 years, the Native American Rights Fund has focused its educational efforts on increasing Indian self-determination and transferring control back to the tribes.

NARF has implemented an Indian Education Legal Support Project with its central theme of "tribalizing education." The goal is to give tribes more control over their most precious resource, their children, and help them to improve Indian education and tribal societies. Rather than focusing on traditional civil rights work such as racial discrimination claims, NARF's efforts are devoted to confirming the unique sovereign rights of Indian tribes based on principles of Indian law. To date these rights and principles have not been addressed adequately in the context of education.

Under the Project, NARF strives to strengthen tribal rights in education. This means



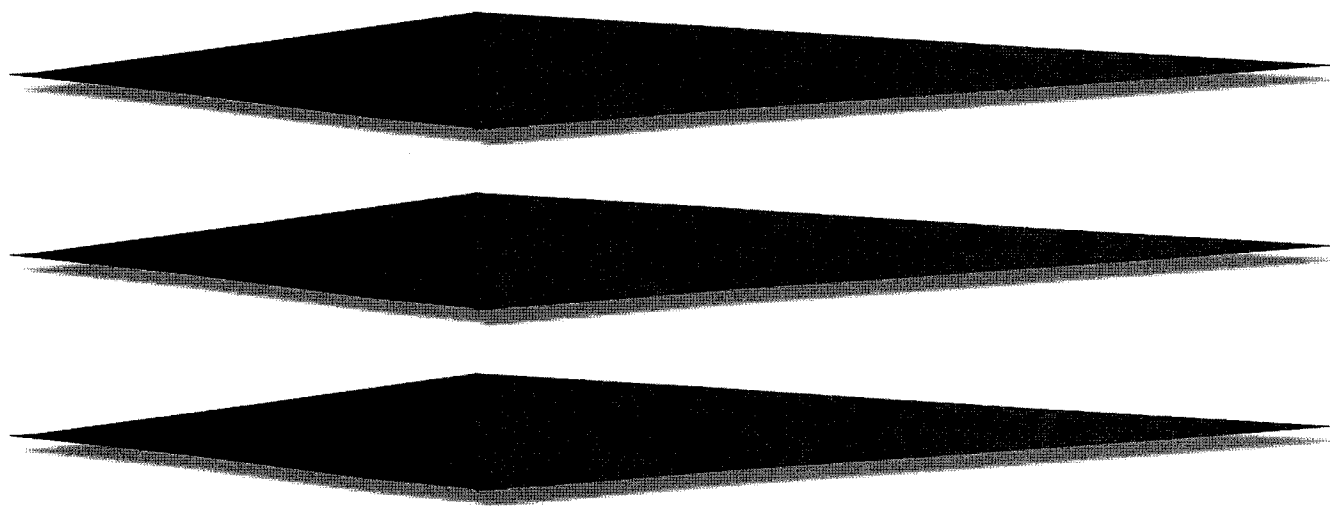


helping tribes gain control of the formal education of their members, regardless of the government that provides the education — federal, state, or tribal. As NARF continues to develop and successfully promote cutting-edge legal theories about tribal control of education, work continues in developing tribal education laws, such as education codes, policies, and plans; developing tribal-state agreements and compacts as necessary to implement tribal laws; reforming federal and state education laws and policies; and litigation to enforce tribal rights in education.

In its continued work with the Rosebud Sioux Tribe, NARF represented the Tribe in negotiating working agreements with the State of South Dakota on teacher certification and school accreditation. Great progress has been made with the State in the agreement on teacher certification. With oversight of the Tribal Education Department, the tribal college, Sinte Gleska University, developed four courses which the State Department of Education agreed will satisfy state requirements for teacher recertification. The courses are Indian studies, Rosebud Lakota History and Culture, Teaching Methodology for Lakota Students, and Teaching the Exceptional Child in

the Regular Classroom. Teachers on the Rosebud Sioux Reservation will be required by tribal law to have completed these requirements. NARF is working with the Tribe to secure funding to implement these courses.

NARF also represents the Assiniboiné-Sioux Tribes of the Fort Peck Reservation in Montana in implementing its tribal education code adopted in 1995. With the adoption of their Tribal Education Code, the Tribes have inherent authority to the maximum extent over formal education on the Reservation and the power to implement the policies and provisions of the Tribal Education Code through agreements with federal, state, and local governments. NARF is assisting the Tribes in implementing the first stage of the education plan which includes the development of curriculum for the implementation of Dakota and Lakota language instruction, instruction in and respect for Assiniboiné and Sioux culture, and tribal government history and structure. NARF is also assisting the Tribes with the process of developing a student tracking system, which will coordinate the achievement and attendance information of public school students who are tribal members, and to develop a Tribal teacher certification process.

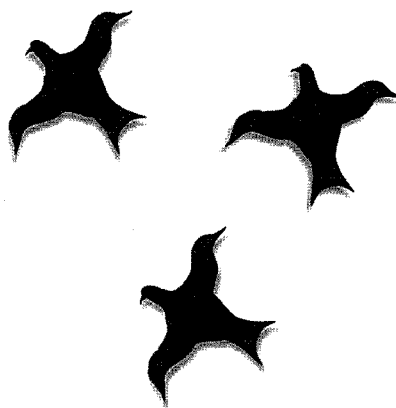


The Northern Cheyenne Tribe of Montana has also begun the process of developing a tribal education code with NARF's assistance. The Tribe has recognized the need for its educational systems to provide a relevant and quality education for tribal members who attend tribal, private, and public schools, and the tribal community college, Dull Knife Memorial College. Currently, over 50% of the enrolled members of the Tribe are under the age of 18 and the school drop out rate is at 52%. The Tribe has also gained approval from the State of Montana to establish a new high school district which would be centrally located on the Northern Cheyenne Reservation. The Tribe has an Education Commission and an Education Department, but they have a need for assistance with the long-range planning and regulation of education. Meetings have been underway with Tribal Council members, parents, school officials and Bureau of Indian Affairs representatives to develop a set of priorities and goals. Issues identified have included drop-out and truancy rates, relevant curriculum, databases and intergovernmental coordination.

NARF is also assisting the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota to establish a tribal education code. In elementary and secondary education, the Fort Berthold Tribes are served by five school districts, two of which are state public school districts. The other three districts operate under BIA grants and, by Tribal Council resolution, function according to state law and standards. The Tribes also operate a community college, a Head Start program, and several other education programs. While the Fort Berthold Tribes have an Education Committee and have had an Education Department since 1991, NARF is assisting them in expanding the Department's responsibilities and in developing a comprehensive education code. The drop out rate of tribal secondary students is well above 50%.

Thus, the Tribes would like to focus on improving student attendance and achievement by making curriculum more relevant to tribal students and involving parents and communities in the schools. Priorities and timelines for code development and implementation have been developed and the process is now underway.

NARF represents the National Congress of American Indians (NCAI) in their leadership efforts to prepare a comprehensive federal policy statement on Indian education to be presented to the Clinton administration for adoption. The policy statement addresses broad issues such as the government-to-government relationship between Indian tribes and the federal government and the primacy of tribal governments in Indian education. The policy statement was formally adopted in 1996 by NCAI and the National Indian Education Association (NIEA). NARF is now assisting NCAI and NIEA in presenting the policy statement to the Clinton Administration for its implementation by means of a Presidential Executive Order.





THE ACCOUNTABILITY OF GOVERNMENT'S

NARF works to hold all levels of government accountable for the proper enforcement of the many laws and regulations which govern the lives of Indian people. NARF continues to be involved in several cases which focus primarily on the accountability of the federal and state governments to Indians.

NARF, along with other attorneys, filed a class action lawsuit in 1996 against the federal government. The lawsuit was filed on behalf of 500,000 Individual Indian Money (IIM) account holders to seek redress for government mismanagement of trust accounts through which billions of dollars of Indian money has flowed over the years. The suit charges the federal government with illegal conduct in what is viewed as the largest and most shameful financial scandal ever involving the United States government. The lawsuit has three basic objectives: (1) to require the federal government to complete an accurate and reliable calculation, or accounting, of the moneys due IIM account holders; (2) to require the federal government to repay IIM account holders the money the federal government has lost through mismanagement or neglect; and (3) to compel the federal government to create an adequate trust accounting and management system. In February, 1997, the federal district court in Washington, D.C. certified the case as a class action. NARF and co-counsel then filed a motion for interim relief which asks the court to require that the federal government put in place certain practices to prevent further losses of individual Indian monies and loss of source documentation while the litigation progresses.

In a Court of Federal Claims action, NARF represents the Turtle Mountain Band of Chippewas in North Dakota, the Chippewa-Cree of the Rocky Boys Reservation in Montana and the Little Shell Tribe of Chippewas in Montana against the Bureau of Indian Affairs for mismanagement of the Pembina Judgment Fund. The Fund was estab-

lished in 1980 to distribute Indian Claims Commission awards to these tribes for lands and other rights taken by the United States. After a partial distribution to the tribes in 1988, the undistributed portion was held in trust by the Bureau of Indian Affairs. The litigation was stayed while the Bureau of Indian Affairs tried to reconcile all of its tribal trust fund accounts and is currently stayed as settlement negotiations proceed.

In addressing welfare reform, NARF assisted the Oglala Sioux Tribe in working with eight other South Dakota tribes to develop a model tribal Temporary Assistance For Needy Families (TANF) Plan. In shifting the responsibility to the tribes, TANF allowed for access to state funds that were expended on Native Americans in South Dakota under the old Aid to Families With Dependent Children program because the Tribe's federal grant would only fund the tribal TANF program at two-thirds the current funding level. However, the Governor of South Dakota refused to give the tribes access to these funds. Based on a cash flow analysis that showed that the Tribe would operate its own TANF program in the red without full funding, the Tribe ultimately decided not to assume the responsibility of operating its own TANF program.

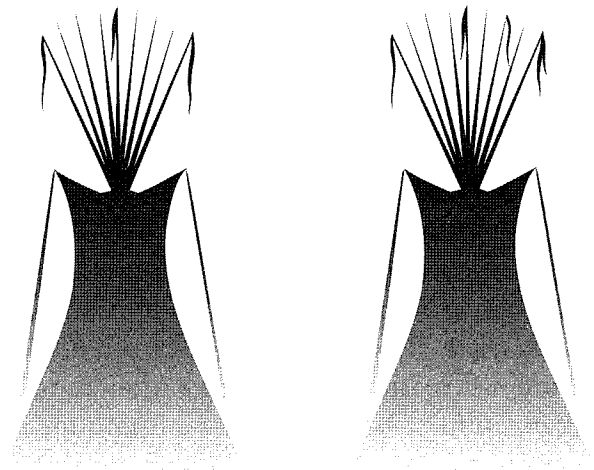
NARF is involved in Native Hawaiian legal issues primarily in support of the Native Hawaiian Legal Corporation, which NARF helped to organize in the early 1970s to address these issues. The Native Hawaiian cases are somewhat different than other NARF cases as there are no federally recognized tribes in Hawaii. The United States overthrew the sovereign Hawaiian government in 1893, pandering to business and military interests who sought control of the islands for strategic purposes. But prior to European contact in 1778, the Islands had a very complex and elaborate Native Hawaiian civilization. Over the years, Native Hawaiians have been making substantial progress in re-asserting Native Hawaiian rights.

In *Pele Defense Fund v. Campbell*, NARF and co-counsel Native Hawaiian Legal Corporation await a favorable ruling promised by a Hawaii state court in 1996 that would allow for traditional Native Hawaiian access rights to rainforest lands traditionally exercised by Native Hawaiians on those lands before they were exchanged in 1983 by the State of Hawaii for other lands in order to accommodate a geothermal developer. The decision is expected to be appealed to the Hawaii Supreme Court. The case was previously before the Hawaii Supreme Court in 1992 when it upheld the land exchange but remanded the case for trial on the traditional access rights issue. That ruling was precedent for a landmark 1995 ruling by the Court in *Public Access Shoreline Hawaii v. Hawaii County Planning Commission* which alerted government agencies of their responsibility under the Hawaii State Constitution to consider Native Hawaiian rights in all permitting rather than forcing traditional access practitioners to resort to litigation in order to continue such customary usage.

NARF represented Mahealani Pai, a Native Hawaiian, and the Pai 'Ohana Association ('Ohana means family) in an effort to resolve their claim to use and occupy their ancestral homelands within the boundaries of a national historic park on the Island of Hawaii. For generations, indeed going back before contact, the Pai 'Ohana have been the traditional caretakers of the land area now encompassed within the Kaloko-Honokohau National Historic Park, established in 1988. Their traditional responsibilities include protecting and maintaining the religious sites (which include burials), heiaus (shrines or temples), fishtraps, and the medicinal and subsistence plants of the area. The enabling legislation creating the park declared that it was established to preserve and perpetuate traditional native Hawaiian activities and culture. The National Park Service also has the authority to grant residential leases to the Pai 'Ohana, but

refused to do so, offering instead a series of short-term permits to remain in the Park. Negotiations broke down and the National Park Service evicted the Pai 'Ohana from their ancestral lands in February, 1997.

In *Fletcher v. United States* NARF filed an *amicus* brief on behalf of the Osage National Council, the newly elected legislative body of the reconstituted Osage Nation, in the United States Court of Appeals for the Tenth Circuit. The suit was brought to redress the massive disenfranchisement of Osage people that had resulted from Secretarial regulations interpreting the Osage Allotment Act. NARF argued to uphold the Osage Constitution and the continued operation of the Osage Nation, including the National Council based, in part, on the theory that the Osage people had the inherent right to form a constitutional government. In August, 1997, the Tenth Circuit denied the petition and the United States withdrew its recognition of the Osage National Council as established by the 1994 Constitution and re-recognized the Osage Tribal Council as the governing body of the Osage Tribe.





THE DEVELOPMENT OF INDIAN LAW

Are bones

The systematic development of Indian law is essential for the continued protection of Indian rights. This process involves distributing Indian law materials to, and communicating with, those groups and individuals working on behalf of Indian people. NARF has two ongoing projects which are aimed at achieving this goal.

The National Indian Law Library

The National Indian Law Library (NILL) is the only law library specializing in legal practice materials which are essential for practitioners of Indian law. An important component of NILL is its collection of pleadings filed in important Indian law cases, dating back to the 1950's. NILL houses legal pleadings in cases ranging from tribal courts to the United States Supreme Court. These pleadings are an invaluable resource for attorneys associated with tribes, and with Indian legal service programs, because these attorneys and programs are generally in remote areas of the country, without access to adequate law libraries. NILL fills the needs of the often-forgotten areas of the nation known as Indian country, where access to a telephone is at a premium. Hundreds of requests are received each year.

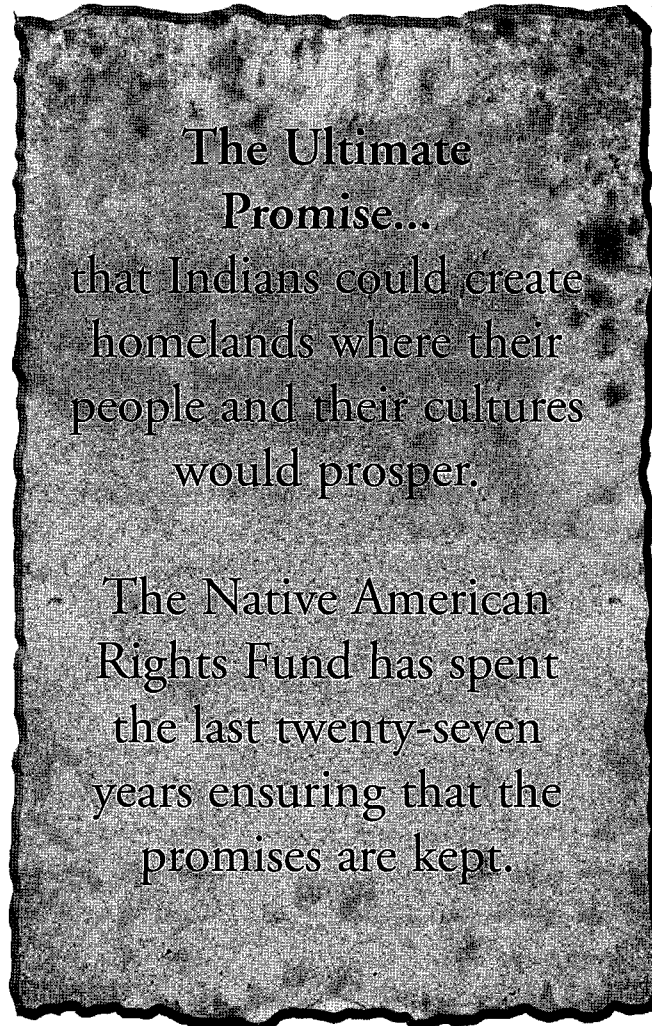
Another important component of the NILL collection is its tribal government documents repository. The repository houses over 400 tribal constitutions and codes. The goal of the Tribal Codes Project is to serve as a medium

through which tribal government officials can exchange information and improve the work of all tribal governments. Users of the tribal codes collection include authors of new codes, tribal lawyers and judges, and tribal council members. The demand for tribal code provisions reveals the work of tribes towards enhancing and enforcing their self-governance rights.

NILL has been working with the University of Oklahoma Law Center Library and participating Indian tribes to provide an Internet site containing copies of tribal constitutions and codes. This web page is now up and running

and has provided many tribal governments with an additional resource to check when drafting tribal self-government documents. The Native American Constitutions Digitization Project can be found at <http://thorpe.ou.edu>.

NILL also actively collects Indian law related documents. These documents cover a spectrum which includes books, pamphlets, fed-



eral government and agencies documents, state government and agencies documents, law review articles, scholarly reports, journal articles, newspaper articles, student reports, and conference and seminar papers.

Access to the contents of the NILL collection is provided through a computerized database. Numerous access points are assigned each record entered in the database. In addition to the basic author, title and subject headings, other access points include the Tribe involved, the jurisdiction, the parties to the lawsuit, the judges, the attorneys, the citation, the docket number and the NILL subject headings.

Indian Law Support Center

Since 1972 the Indian Law Support Center (ILSC) of the Native American Rights Fund had received funding from the Legal Services Corporation to serve as a national support center on Indian law and policy for the national Indian legal services community and the 32 basic field programs serving Native American clients. Literally hundreds of requests for assistance in all areas of Indian law have been answered annually. Because of the unique and complex nature of Indian law and the geographic remoteness of Indian legal services programs, complicated by the difficulty of attracting and maintaining experienced staff, ILSC performed a vital and cost-effective support function to Indian programs and other legal services providers across the country.

NARF was impacted by the federal budget-cutting in Washington in 1995 as Congress eliminated NARF's ILSC annual funding from the Legal Services Corporation. ILSC, which has been assisting Indian legal services field programs as a project of NARF, now functions at a greatly reduced level on NARF general support funds. Due to the loss of Legal Services

Corporation funding, ILSC has been unable to carry on at traditional levels its program of working with Indian legal services lawyers nationwide through advice, research, recent Indian legal information, litigation and training. ILSC has been able to continue mailings with Indian legal information and provide telephone advice and counsel. ILSC has also been able to advocate for continued funding for local Indian legal services from the Legal Services Corporation. ILSC has been unable to assist with litigation and training nor cover the cost of research materials from the National Indian Law Library.

Other Activities

In addition to its major projects, NARF continued its participation in numerous conferences and meetings of Indian and non-Indian organizations in order to share its knowledge and expertise in Indian law. During the past fiscal year, NARF attorneys and staff served in formal or informal speaking and leadership capacities at numerous Indian and Indian-related conferences and meetings such as the American Indian Resources Institute's Tribal Leaders Forums, the National Congress of American Indians and the Federal Bar Association.

NARF remains firmly committed to continuing its effort to share the legal expertise which NARF possesses with these groups and individuals working in support of Indian rights and to foster the recognition of Indian rights in mainstream society.



NATIVE AMERICAN RIGHTS FUND

1997 TREASURER'S REPORT

The Native American Rights Fund improved its financial position in fiscal year ending September 30, 1997. Total revenues, at year end, were \$8,043,020, against total expenditures of \$7,396,266. A comparison of revenue sources for FY97 and FY96 is shown below. Revenue from government grants continued to decline and represents only 15.6% of our total revenue in fiscal year 1997. Legal fee revenue also continues to decline. Conversely, accelerated fundraising efforts generated increases in revenue from foundation grants and individual contributions. Investment income has also risen sharply due to the ability to invest available funds and changes made in investment strategy.

A comparison of expenditures for FY 97 and FY 96 is also shown below. Expenditures increased by \$866,514 due primarily to increased activity in the individual Indian monies trust funds case. Total management and fundraising costs constituted 23.5% of total revenues in fiscal year 1997.

SUPPORT AND REVENUE COMPARISON

| | 1997 | | 1996 | |
|-------------------|--------------|----------|--------------|----------|
| | dollars | percents | dollars | percents |
| Government Grants | \$ 1,252,109 | 15.6% | \$ 2,458,022 | 31.5% |
| Foundation Grants | \$ 1,851,006 | 23.0% | \$ 981,602 | 12.6% |
| Contributions | \$ 3,172,394 | 39.4% | \$ 2,757,063 | 35.3% |
| Legal Fees | \$ 747,286 | 9.3% | \$ 1,256,375 | 16.1% |
| Other | \$ 84,371 | 1.0% | \$ 160,669 | 2.1% |
| Investment Return | \$ 935,854 | 11.7% | \$ 190,598 | 2.4% |
| Totals | \$ 8,043,020 | 100.0% | \$ 7,804,329 | 100.0% |

EXPENDITURE COMPARISON

| | 1997 | 1996 |
|---------------------------------|--------------|--------------|
| | dollars | dollars |
| LITIGATION AND CLIENT SERVICES | \$ 5,561,373 | \$ 4,631,905 |
| NATIONAL INDIAN LAW LIBRARY | \$ 148,506 | \$ 212,798 |
| TOTAL PROGRAM SERVICES | \$ 5,709,879 | \$ 4,844,703 |
| MANAGEMENT AND GENERAL EXPENSES | \$ 814,673 | \$ 730,806 |
| FUND RAISING | \$ 871,714 | \$ 954,243 |
| TOTAL SUPPORT SERVICES | \$ 1,686,387 | \$ 1,685,049 |
| TOTALS | \$ 7,396,266 | \$ 6,529,752 |

NOTE: Call or write NARF's Boulder Office if you are interested in receiving the 1997 Audited Financial Statements.

NARF Acknowledgement of Contributions: Fiscal Year 1997

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We would also like to thank all NARF staff members who contributed to the endowment.

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