

National Indian Law Library

NILL No. 013309 / 1998



NATIVE AMERICAN RIGHTS FUND

ANNUAL REPORT 1998



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Boulder, CO 80302

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**COVER ART & ARTIST:** - *"Dressed To Kill"* - Earl Biss, world famous Crow Indian artist and long time NARF supporter, passed away on October 18, 1998. Earl V. "Bee" Biss, whose Indian name was Pichilixaxish (Spotted Horse) was born on September 29, 1947, in Renton, Washington, a son of Earl Biss, Sr. and Dorothy DuShane. Earl was raised by his grandparents on the Crow Nation in Montana. Earl attended the Santa Fe Institute of American Indian Arts. He was a student of Indian artists Alan Houser and Charles Loloma and a contemporary of T.C. Cannon, Kevin Red Star and Doug Hyde. He later studied art throughout the United States and Europe. Earl established galleries in Red Lodge, Montana; New York City; Santa Fe, New Mexico; Aspen, Colorado; and, in South America. NARF dedicates this Annual Report in memory of Earl Biss. **Prints of "Dressed To Kill" are available at NARF's Boulder Office. Please call Rose Brave at (303) 447-8760 to place your order.**

### Photographs:

Smithsonian Institution, Washington, D.C.  
Western History Collections, University of Oklahoma Library.  
Ray Ramirez (with the exception of Board and staff photographs).

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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 28 years, the Native American Rights Fund 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 federal 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





# CHAIRMAN'S MESSAGE



A friend of the family recently returned from a trip to Israel and presented me with a t-shirt she had purchased in Jerusalem. It pictured an old, tired looking Indian chief in a war bonnet with his arms crossed speaking to President Benjamin Netanyahu in front of a backdrop map of Israel. The caption said, "Bibi, let me tell you about giving up land for peace." Essentially,

the message of the experienced Chief to Bibi was, "It doesn't stop there, so be careful what you agree to."

Serving on the NARF Board of Directors has given me a greater appreciation of the Chief's hard won wisdom. There certainly is no lack for examples of the truth of his warning for us today.

All of this causes me, from time to time, to ruminate on the overall picture of Native people in contemporary America. Thinking in the larger picture, outside of the day to day minutiae of effort, enables me to sort out what's important for the long term survival of our people as nations. I find myself cutting through the myriad of issues, fancy language, legal tangles, and rhetoric I get mired in, to look carefully at some basics. It refreshes my vision and hope.

I think about the struggles and tragedy of our history. The tremendous expenditure of energy to overcome and survive genocide in America. I know that the word "genocide" is harsh, and perhaps overused, but how else does one describe this fact, that in 1492 there were estimates of 12 to 25 million Natives in this land, whereas by 1880 there were remaining only about 250,000 surviving Natives in the United States. Though we now number around 2 million, that is still less than one percent of the U. S. population.

Yet, against these long odds, our past and present leaders have performed marvelously. We owe so much to their vision and hope as they have enabled us to continue the fight for survival. I honor them.

I guess if I boiled it down to what is really important in the big picture, I have to say that honoring the memory of brave leaders and nurturing the next generation in love and security are the keys to cultural integrity and continuity for our people. I am so proud of our families who grow strong, confident children. I see those children dancing in our pow-wows and potlatches, taking part in our meetings, and contributing to our communities. They glow with young pride and energy. When I look at them I feel good about growing old (if God wills) because I can feel that they will carry on the purposes and visions of their grandfathers and grandmothers faithfully. Therefore, I honor the memory of my ancestors perseverance and the future of our children. As often as I can, I hug my children, depositing in their hearts the strength of my love, like the kiss of the sun on the flowers of the field. I don't know of a better way to forge into the future.

*Will Mayo*

Chairman





# EXECUTIVE DIRECTOR'S REPORT



The Native American Rights Fund continued to provide advice and representation to Indian tribes, organizations and individuals on issues of major significance in 1998 and this assistance once again resulted in several significant legal developments for Native Americans.

In *Kiowa Tribe of Oklahoma v. Manufacturing Technologies*, the United States Supreme Court ruled that Indian tribes retain their sovereign immunity from suit without their consent even in off-reservation transactions where they do not waive that immunity. NARF filed an *amicus curiae* brief in the case supporting the Kiowa Tribe on behalf of the Cheyenne-Arapaho Tribes of Oklahoma, the Mashantucket Pequot Tribe of Connecticut and the National Congress of American Indians.

After several years of effort, NARF filed a petition for federal recognition of tribal status with the Bureau of Indian Affairs on behalf of the Shinnecock Tribe of New York. The Tribe's reservation, established in 1859, is located on Long Island near Southampton, New York.

The Cheyenne-Arapaho Tribes of Oklahoma received \$1.1 million in settlement of *Cheyenne-Arapaho Tribes of Oklahoma v. United States* in the Court of Federal Claims. NARF successfully represented the Tribes in their claim against the federal government for illegally extending the terms of three tribal oil and gas leases at below market rates without tribal consent and in breach of the federal trust responsibility to manage Indian trust lands prudently.

NARF assisted the Oglala Sioux Tribe of South Dakota with the adoption of a Tribal Environmental Review Code that provides a tribal review process for any project that may impact the reservation environment. In recognition of this work, the Environmental

Protection Agency presented NARF with an Outstanding Environmental Achievement Award.

The Rocky Boy's Water Rights Settlement Act was introduced in Congress for approval after successful negotiations that spanned several years among the Clinton Administration, the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Reservation represented by NARF. If approved, the \$50 million settlement would recognize tribal water rights, establish a water administration system, develop water supply projects, create an economic development fund and plan for future water needs.

In *Bear Lodge Multiple Use Association v. Babbitt*, the United States District Court in Wyoming ruled that the National Park Service does not violate the Constitution by asking mountain climbers to voluntarily refrain from climbing Devils Tower during the month of June to avoid intruding on Native American religious ceremonies occurring at that time. NARF filed an *amicus curiae* brief on behalf of the National Congress in the case emphasizing how the Park Service is already accommodating other religious groups within national parks.

NARF was successful on behalf of the National Congress of American Indians and in conjunction with the National Indian Education Association in having President Clinton sign the first comprehensive Executive Order on Indian education in history. In an effort to improve Indian education, it requires the Administration to develop a comprehensive Indian education policy in consultation with tribal leaders and Indian educators within two years.

In *Cobell v. Babbitt*, a class action lawsuit filed by NARF and private co-counsel on behalf of some 500,000 past and current Individual Indian Money account holders seeking redress for government mismanagement of trust accounts, the federal court in





# BOARD OF DIRECTORS



The Native American Rights Fund has a governing board composed of Native American 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.

**Board of Directors Photo:**

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

Washington, D.C. denied the federal government's motions to dismiss and set a date for trial. 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.

These and many other important case developments in 1998 show that Native Americans can receive justice if given the opportunity to be represented by counsel through NARF. In hundreds of cases since 1970, NARF has provided this access to justice and made

the legal process work for the benefit of Indian people who may have otherwise gone unrepresented. We thank all of you who have supported our work and hope that you will continue your support.

*John E. Echohawk*

Executive Director





# NATIONAL SUPPORT COMMITTEE

The National Support Committee assists NARF with its fund raising 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 42 volunteers on the Committee are committed to upholding the rights of Native Americans.

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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)  
Ada Deer (Menominee)  
Harvey A. Dennenberg  
Michael J. Driver  
Richard Dysart  
Lucille A. Echohawk (Pawnee)  
Louise Erdrich (Turtle Mountain Chippewa)  
James Garner  
Sy Gomberg  
Will H. Hays, Jr.  
Alvin M. Josephy, 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)  
Richard Trudell (Santee Sioux)  
Thomas N. Tureen  
Aíne 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 1998, 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.

***"We are still here, just as our ancestors were, and the views of nine black robes 10,000 miles away cannot change that."*** Gideon James, Native Village of Venetie

In February 1998, the United States Supreme Court issued a ruling in *State of Alaska v. Native Village of Venetie*, reversing the 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. In its ruling, the Supreme Court held that Venetie's former reservation fee lands and all other Alaska Native Claims Settlement Act (ANCSA) lands do not qualify as "Indian country" and that Venetie could not impose a tax on a non-Indian construction company doing business on its land even though Venetie's land is owned by the tribal government. The particular conflict that gave rise to the litigation in this case involved the application of ANCSA to the Venetie Tribe of Neetsaii' Gwich'in Indians -- a remote Athabascan Tribe that inhabits a vast area north of the Arctic Circle and hundreds of miles away from any of Alaska's major population centers. Accessible year-round only by air, boat, snowmobile or dogsled, tribal members largely live a traditional life based on hunting, fishing and trapping. The Tribe was asserting that it possesses the same rights as Indian tribes of the contiguous United States.

On behalf of the Alaska Inter-Tribal Council which consists of 168 member tribes, NARF filed an *amicus curiae* brief in *John v. Baker*, a case involving a child custody dispute between two Natives before the Alaska Supreme Court. The Alaska Supreme Court had ordered supplemental briefs addressing whether a tribe can have sovereignty over its members even if the tribe does not occupy Indian country and how Public Law 280 affects tribal jurisdiction in



Alaska. NARF argued that tribes possess the inherent authority to decide issues of child custody irrespective of land tenure, and that Public Law 280 did not divest tribes of concurrent jurisdiction over their members.

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 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 and a decision is now pending. NARF also represented the Tribe as *amicus curiae* in *Lewis County v. Allen*, where the Ninth Circuit ruled in December, 1998, that the Nez Perce Tribe of Idaho did not have tribal court jurisdiction over civil actions arising on a reservation brought by tribal members against state officials in their individual capacities.

NARF is representing the National Congress of American Indians (NCAI) and working with the National American Indian Court Judges Association (NAICJA) in developing a model tribal law that provides adequate and timely notice to tribes of cases in tribal court that question tribal sovereignty and jurisdiction. NARF developed a working draft model law that was approved by NCAI at its annual convention

in October, 1998. The draft model has been circulated to tribes, tribal attorneys, and other Indian organizations for review and comments. NARF will be reviewing all comments and preparing a revised working draft for NCAI's Mid-Year Conference in July, 1999.

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 on trust land within the jurisdiction of another tribe. NARF filed position statements on behalf of seven claimants before the Oklahoma Tax Commission. The Tax Commission has not ruled on any of the position statements, but has ruled unfavorably in other similar cases before it.

In *State of Arizona v. Blaze Construction*, NARF filed an *amicus curiae* brief in support of Blaze Construction Company in the United States Supreme Court. Blaze is an Indian owned construction company which contracted with the BIA to construct and repair reservation roads in Arizona. The State of Arizona has imposed taxes on this construction activity claiming that Blaze should be taxed like any other federal contractor. NARF argued that Blaze should not be taxed because the activity takes place wholly within Indian country where special rules of preemption apply, and that Blaze is an Indian contractor. NARF argued that these factors tip the balance of interests against state taxation.

In other *amicus* matters, in May 1998, the United States Supreme Court ruled in favor of the Kiowa Tribe of Oklahoma in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*



reversing a previous Oklahoma Court of Appeals ruling involving off-reservation sovereign immunity. The Oklahoma Court of Appeals had ruled that since the Tribe engaged in commerce outside its tribal territory, its sovereign immunity from suit without its consent did not apply. NARF had filed an *amicus curiae* brief supporting the Tribe on behalf of the Cheyenne-Arapaho Tribes of Oklahoma, the Mashantucket Pequot Tribe of Connecticut, and the National Congress of American Indians, arguing that Indian tribes are sovereign entities with all inherent powers of sovereignty which have not been taken away. The Supreme Court agreed, resulting in the dismissal of a series of law suits against the Kiowa Tribe that sought to subject tribal revenues and assets to state court jurisdiction.

In *Cass County, Minnesota v. Leech Lake Band of Chippewa Indians* the issue was whether the state can tax lands repurchased by the Band that once belonged to the Band but passed out of ownership under certain provisions of the General Allotment Act of 1887. The Band sought declaratory and injunctive relief and the refund of taxes, interest, and penalties paid on land that the Band had reacquired in fee simple. NARF filed an *amicus curiae* brief on behalf of the National Congress of American Indians arguing that Indian tribes are sovereign entities whose lands are immune from state taxation, including these reacquired lands. In June, 1998, the United States Supreme Court held that the repurchase of land by an Indian tribe does not cause the land to reassume the original tax-exempt status and therefore any such lands are subject to state and local taxation.

### **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 responded to proposed findings against federal acknowledgment issued by the Bureau of Indian Affairs (BIA) under their acknowledgment regulations. The Tribe has their petition for federal recognition pending before the Bureau of Acknowledgment and Research and is now waiting for a final decision on its petition. In the meantime, the Tribe will be seeking Congressional recognition during the 106th Congress once it secures a sponsor in the Senate to complement sponsorship in the House.

After several years of preparation, NARF submitted a petition for federal recognition on behalf of the Shinnecock Tribe of New York in September, 1998. The Tribe's reservation, established in 1859, is located next to Southampton, New York on Long Island. A petition for federal recognition is also being prepared and will be filed by NARF on behalf the Pamunkey Tribe of Virginia. On behalf of the Mashpee Wampanoag Tribe of Massachusetts, NARF responded to a notice of obvious deficiency in the Tribe's petition for federal recog-



dition and the BIA has now placed the Tribe on ready for active consideration status. NARF completed and submitted a petition for federal recognition on behalf of the Little Shell Tribe of Chippewa Indians of Montana and the BIA placed the Tribe's petition on active review status in 1997.

In *Miami Nation of Indians v. Babbitt*, NARF is challenging the Bureau of Indian Affairs's failure to recognize the Miami Nation as an Indian tribe. The government put together an administrative record for purposes of judicial review under the Administrative Procedures Act of the BIA's decision not to recognize the Tribe. NARF made a motion to have certain documents included that the government

used in its decision not to recognize the Tribe but had not included in the administrative record. The court granted the Tribe's motion. The government subsequently moved to protect certain documents that it claimed were privileged. NARF and the Tribe opposed this motion and the court ruled that three of the document groups were privileged and three were not and must be turned over as part of the administrative record. The Tribe and the government are now deliberating on whether to appeal this decision.





# THE PROTECTION OF TRIBAL NATURAL RESOURCES

*“From a Native point of view, the world was created and graced with natural life. Being graced meant to receive unqualified life and love. We owe no human for this life. Our table and its feast is from divine origin.”*

Ted Strong, Executive Director, Columbia River Inter-Tribal Fish Commission

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 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. A preliminary appraisal report of these losses has been completed as have the settlement studies and the mapping of the claim area. The start of damages litigation had been postponed so the parties could explore settlement options.

In April 1998, the Tribe and the United States submitted their respective proposed modifications to the court. The primary modification sought by the Tribe is changing the conclusion of the opinion to say that the 1954 Alabama-Coushatta Termination Act extinguished federal trust duties rather than the aboriginal title itself. The United States agreed with the Tribe's proposed modifications. The United States seeks to have the court reverse itself and overturn their previous opinion. If the court declines to reverse itself, the Tribe and the government will proceed to again attempt to agree on a damages figure without going to trial. After a damages figure is arrived at, the matter will be referred to Congress for the enactment of settlement legislation. Settlement discussions with the United States are proceeding.

NARF represents the Keewattinosagaing or Northern Lakes Pottawatomie Nation of Canada, a band of Potawatomes descended from the historic Potawatomie Nation, which from 1795 to 1833 signed a series of treaties with the United States. These treaties pro-



vided, among other things, the payment of certain annuities. The ancestors of the present-day Canadian Potawatomie fled to Canada following the signing of the final treaty, the Treaty of Chicago in 1833, because they did not want to be moved west of the Mississippi. They were never paid their annuities. In 1993, NARF brought suit on behalf of the Tribe in the Court of Federal Claims, by way of Congressional reference, to seek redress of these failed payments. After five years of fact-finding, discovery and briefing of this case, the Tribe and the United States have agreed in principle to the settlement of this case. NARF is now working towards finalization of these settlement terms.

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, settlement was reached and included in a final judgment in April, 1998 from the United States Court of Federal Claims in favor of the Tribe for \$1,100,000. Previously, damages claims against the oil companies were settled following the finding by the district court that the United States had breached its fiduciary duty to the Tribe.

NARF represents the Stockbridge-Munsee Tribe, now located in Wisconsin, in land claims against the State of New York and two of its counties in a Nonintercourse Act land claim. The Tribe claims a six-mile square area in upstate New York, near Syracuse. Previously, the court stayed the case, pending United States Supreme Court rulings in the *Seminole and Cour d'Alene* cases. These cases held that the Eleventh Amendment to the Constitution bars tribal suits against states. The *Seminole* decision was issued and NARF is in the process of briefing its impact on the land claim. NARF succeeded in

asking the Department of the Interior to request the Department of Justice to intervene in the land claim litigation on behalf of the United States. The Department of the Interior sent the litigation request to the Department of Justice and the Department of Justice is now reviewing the matter.

NARF continued representing the San Juan Southern Paiute Tribe in the consolidated cases of *Masayeva v. Zab 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 found that the San Juan Southern Paiutes had established exclusive use to 75 acres and had an interest, along with the Navajo Tribe, to another 48,000 acres of land. The court refused to partition San Juan Southern Paiute land. The Tribe has appealed those findings to the Ninth Circuit of Appeals. Briefing has been completed and oral argument continues to be held up while settlement negotiations are carried on.

NARF continued its work with the Klamath Tribe of Oregon on their Economic Self-Sufficiency Plan which was mandated by Congress in 1986 in the Klamath Tribal Restoration Act which reversed the Tribe's 1954 termination by Congress. The Klamath Tribe has reinvigorated its efforts to finalize the Economic Self-Sufficiency Plan and has sought additional funding to support the cost of preparing and finalizing a professionally formulated forestry and resources management plan (what is referred to as a Stewardship Plan). These efforts have precipitated meetings with the Department of the Interior staff and BIA staff. The Tribe will be reconstituting its internal organization to work on the issue of reacquiring former ancestral tribal reservation lands.



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, 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. Interior Secretary Bruce Babbitt and Commerce Secretary Bill Daley signed the Order in 1997 establishing a new protocol for dealings between the federal government and tribal governments in the administration of the Endangered Species Act. NARF continues to monitor implementation of the Order.

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 developed a Tribal Environmental Review Code (TERC) for the Tribe, which was enacted by the Tribe in April 1998. The TERC provides a review process for any developer, tribal or non-tribal, whose project may adversely affect the environment. NARF is now working with the Tribe to develop a Safe Drinking Water Code for the Tribe. Safe drinking water is the primary envi-

ronmental concern for the Tribe. In a special recognition ceremony in July, 1998, the United States Environmental Protection Agency (EPA) presented the Native American Rights Fund with an "Outstanding Environmental Achievement Award". NARF accepted the award for their work on the development of a Tribal Environmental Policy Act and Tribal Environmental Review Code for the Oglala Sioux Tribe of South Dakota. The Oglala Tribal President nominated NARF for the EPA award.

***"NARF has done an outstanding job working with the Tribe in developing a document that could have the potential to change the environment on the Pine Ridge Reservation in a positive way. No thanks can ever be enough for what NARF has done for the Oglala Sioux Tribe."***

John Yellowbird Steele, Oglala Tribal President

### **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 focus 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 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. In April 1998, a bill to provide for the settlement of the water rights claims of the Chippewa Cree Tribe was introduced in the United States Senate. The bill ratifies the Compact between the Tribe and the State of Montana. The Compact quantifies the Tribe's on-reservation water rights and establishes a water administration system designed to have minimal adverse impacts on downstream non-tribal water users. Accordingly, \$25 million in the budget of the Bureau of Reclamation is earmarked for development of specified on-reservation water supply projects. Funds are also provided for administration of the Compact (\$3 million) and for economic development (\$3 million).

In addition, the bill authorizes the initial steps of a more extensive process of obtaining a long-term drinking water supply for the Tribe that can only be provided for by the importation of water to the Reservation. Toward that end, the bill authorizes: (1) an allocation of 10,000 acre feet of storage water to the Tribe in Tiber Reservoir, a federal storage facility; (2) seed money (\$15 million) toward the cost of a future project to import drinking water to the Reservation; and (3) funds (\$1 million) for the Secretary of the Interior to conduct a feasibility study to identify water resources available to meet the Tribe's future drinking water needs. The bill

also authorizes funds (\$3 million) for a regional feasibility study to evaluate water resources over a broader area of North Central Montana. Although hearings were held, the bill did not get passed. The Tribe, State of Montana, and the Clinton Administration intend to reintroduce the Rocky Boy's Water Rights Settlement Act in the 106th Congress in 1999.

NARF continued its extensive involvement in water settlement negotiations on behalf of the Klamath Tribes to adjudicate the Tribes' reserved water rights to support its 1864 treaty hunting and fishing rights. NARF attorneys represent the Klamath Tribes in water settlement negotiations which have been established as an Alternative Dispute Resolution (ADR) process within the State of Oregon's Klamath Basin Water Rights Adjudication. NARF was central in establishing the ADR and in developing the framework for this process. NARF worked closely with the Tribes to develop settlement principles and proposals for internal tribal review and development, and in developing settlement positions and strategies for the Tribes. In addition, NARF continues to monitor the development of Bureau of Reclamation water management plans for Klamath Lake as necessary to protect tribal water rights and to facilitate on-going settlement discussions.

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 continued legal and technical research to prepare the Tribe's water rights claims for litigation. NARF, together with Department of Justice lawyers, prepared and filed a comprehensive memorandum of law with extensive affidavits in opposition to the objectors motion for summary judgment. Argument was held in October 1998. Efforts to promote the Tribe's regional settlement concepts in conversations and meetings with federal officials (Departments of Interior, Justice, and Commerce) and



representatives of the State of Idaho, private water users in Idaho, other Columbia River Stevens Treaty tribes, regional environmental groups, the Columbia River Inter-Tribal Fisheries Commission, the Northwest Power Planning Council, and numerous consultants to other interested parties, have been productive. The parties have retained the services of an experienced mediator and are currently engaged in a series of meetings designed to determine by the end of the year whether settlement is a realistic possibility.

NARF continued to assist the Tule River Tribe of California in securing its water rights. The Tribe and NARF continued to prepare a Comprehensive Water Development Plan for the Reservation which will ultimately form the basis of the Tribe's Water Settlement proposal to other users on and below the South Fork of the Tule River. The Tribe is in the final stages of preparing a Water Needs Assessment which will help in shaping an actual development plan and anticipates beginning study on the environmental impacts of an on-reservation storage facility and the potential for groundwater development on the Reservation. The Tribe is finalizing its formal request for a federal negotiating team to assist the Tribe.

NARF was represented on the Western Water Policy Review Advisory Commission which was composed of members appointed by the President and Congress. The Commission undertook a comprehensive review of federal activities in the 19 western states which affect the allocation and use of water resources and submitted a report of findings and recommendations to Congress in April, 1998. The report includes favorable recommendations on Indian reserved water rights and other Indian water issues. NARF has also been involved extensively in the Federal/Tribal Water Funding Task Force initiated by the Interior Department and the Ad Hoc Group on Indian Water Rights Settlements composed of the Western Governors Association, the Western Regional Council and 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 been instrumental in assisting tribes to assert hunting and fishing rights, which are guaranteed by treaty or other federal law.

***“Native communities simultaneously face attacks on their fundamental human rights to self-determination, to feed both family and spirit through subsistence hunting and fishing activities, and to be free from discrimination.”***

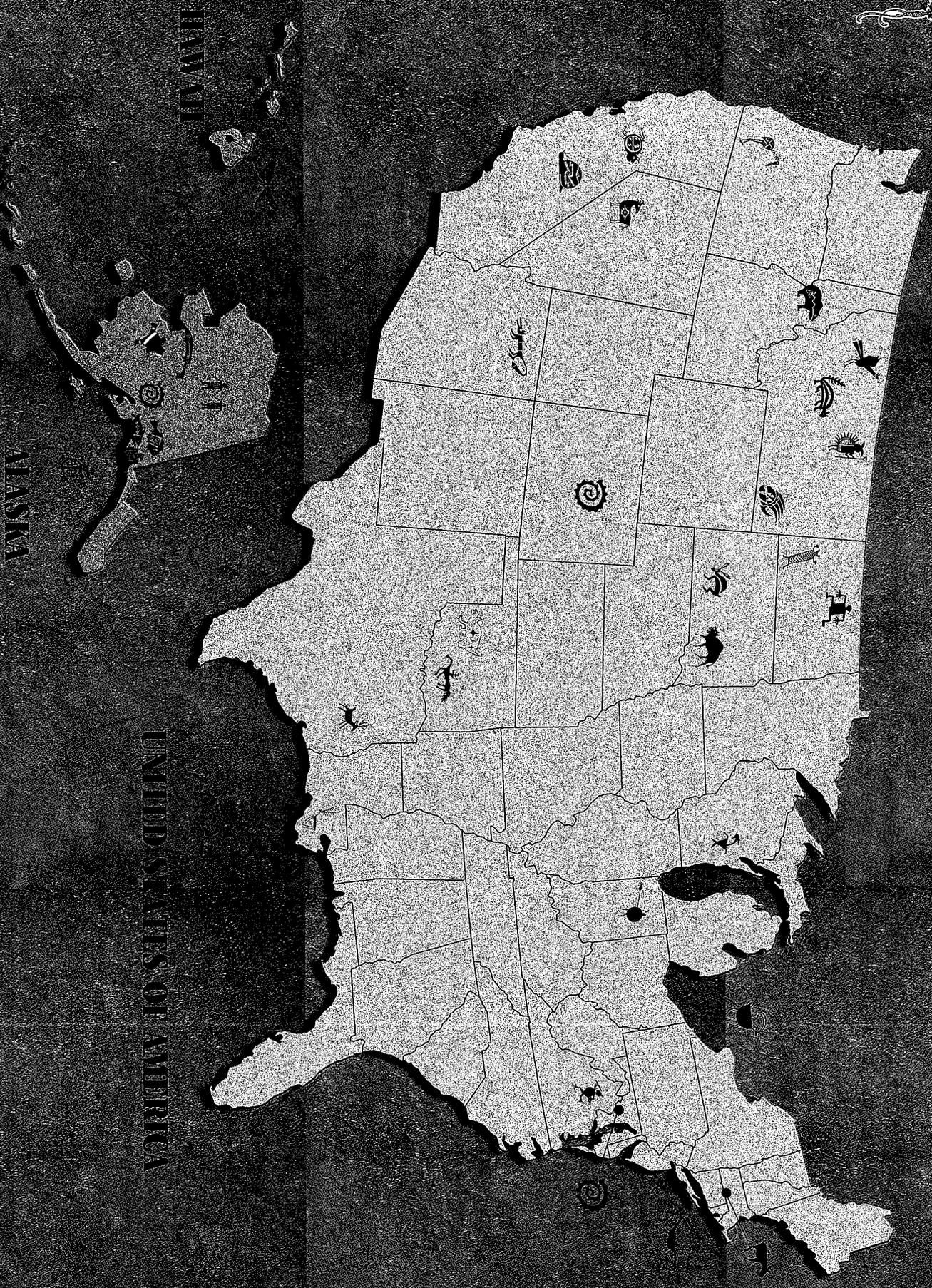
Heather Kendall-Miller, NARF Attorney

In 1995, the Ninth Circuit Court of Appeals ruled in *John v. Alaska* that Alaska Natives were denied their right to subsistence fishing under the 1980 Alaska National Interest Lands Conservation Act (ANILCA) by the State of Alaska and the federal government. The Ninth Circuit held that the federal government has the obligation to provide a rural 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





# MAJOR ACTIVITIES 1998 / NARF CASE MAP



UNITED STATES OF AMERICA

ALASKA

HAWAII



Northern Cheyenne Tribe  
Tribal Court (Montana)



Pawnee Tribes  
Education (Montana)



Pottowattomi Nation - Land  
Claim (CANADA)



Cherokee-Cree Tribe - Water Rights  
& Judgment Claim (Mississippi)



Little Shell Tribe - Recognition  
& Judgment Claim (Montana)



Fort Belknap Reservation -  
Jurisdiction & Education (North Dakota)



Sisseton Reservation -  
Judgment Claim (North Dakota)



NARF  
ANCHORAGE OFFICE



Wainwright & Dot laise (Baruineas) -  
Subsistence (Alaska)



Native Village of Kluane -  
Subsistence (Alaska)



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



Native Villages of Stribbins  
and St. Michael - Subsistence (Alaska)



Native Village of Igroq -  
Subsistence (Alaska)



Kenai Tribe -  
Subsistence (Alaska)



Native Village of Venetie -  
Taxation (Alaska)



Pete Dagnose Fund - Aboriginal Rights  
(Hawaii)



Nashua Wampanoag Tribe  
Recognition (Massachusetts)



Squamish Tribe  
Recognition (British Columbia)



Nylex Wapishan Tribe -  
D.C. OFFICE



Pamunkey Tribe - Recognition  
(Virginia)



Starchbridge-Mungas Tribe  
Land Claim (Mississippi)



Miami Nation - Recognition  
(Indiana)



Rosebud Sioux Tribe - Education  
(South Dakota)



Ojibwamiyaa Tribe -  
Commissioner of Goodwill -  
Taxation (Minnesota)



Haudenosaunee Nation - Recognition  
(Ontario)



Abolition Constitution  
Land Claim (Texas)



Nez Perce Tribe -  
Water Rights (Idaho)



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



Paiute Shoshone Tribes -  
Jurisdiction (Nevada)



Tule River Tribe  
Water Rights (California)



San Juan Southern Paiute Tribe  
Land Claim (Arizona)



Ozark Sioux Tribe -  
Environmental & Wildlife Reform



VIA RAILWORKERS  
FOR PER COLORADO



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



Tribal Musician Band -  
Cultural Rights (California)



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 October 1998, the Alaska Congressional delegation and the Secretary of the Interior privately negotiated a new moratorium that will once again prohibit the Department of the Interior from implementing the court mandate which requires the implementation of ANILCA's subsistence priority over fisheries in navigable waters. These negotiations took place without consulting Alaska Natives and to weaken rural subsistence rights. NARF, the Villages and other supporting organizations held a demonstration in Anchorage in May, 1998, where over 4,000 Alaska Natives and their supporters turned out, calling for implementation of the court decision in *John v. State* and opposing any amendments to ANILCA.

In January, 1998, the Alaska Legislative Council filed a new lawsuit in the Federal District Court for the District of Columbia challenging the subsistence provisions in ANILCA and bringing claims that essentially attempt to relitigate some of the *John v. State* issues. In *Alaska Legislative Council v. Babbitt*, federal attorneys have filed motions to dismiss the case based on jurisdictional issues. If the court retains jurisdiction over this case, NARF will be intervening on behalf of its Alaska Native clients in *John v. State* to defend the judgment obtained in the Ninth Circuit and the constitutionality of ANILCA's rural preference for subsistence users.

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 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 was appealed to the Alaska Supreme Court, argued in November, 1998, and is now awaiting decision.

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. In May 1998, the Tribe with NARF's assistance, was successful in obtaining a unanimous recommendation from the Southcentral Alaska Subsistence Regional Advisory Council that the Kenai area be designated as rural. This recommendation has been presented to the Federal Subsistence Board who will consider it sometime during their winter meetings.

In *Kluti Kaah Native Village of Copper Center v. Rosier*, NARF assisted the Village in 1997 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 includes consideration of customary and traditional uses of a resource. The Federal Board of Game Managers have proposed changing the existing criteria for establishing customary and traditional subsistence uses under ANILCA. NARF and the Village are developing alternatives to the current criteria and will offer their proposed alternatives to the Game Board through written and public testimony.

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 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-exclusive rights to the OCS. In September 1998, on appeal, the Ninth Circuit Court of Appeals ruled that claims for aboriginal title, including exclusive hunting and fishing rights, on the Outer Continental Shelf were barred by the federal paramountcy doctrine. The court, however,

expressly reserved the question whether Native Tribes might hold non-exclusive hunting and fishing rights. NARF unsuccessfully petitioned the Ninth Circuit Court of Appeals for reconsideration of its decision and will seek review by the United States Supreme Court. If that should fail, NARF and the Villages will go back to the District Court and attempt to establish non-exclusive rights. Non-exclusive fishing rights would be very important to the Villages, because they would permit village fishermen to fish the Outer Continental Shelf without Individual Fishing Quotas or other permits or licenses.

NARF assisted the Native Villages of Stebbins and St. Michael in pursuing a commercial pink salmon fishery in their traditional fishing area on the northwest coast of Alaska. After months of hard work the Villages successfully obtained the necessary funding and approvals from the Alaska Board of Fisheries to conduct a test fishery. The comprehensive test fishery began in July, 1998. The test fishery was successfully completed in August, 1998 and the Villages are currently in negotiations for a permanent fishery.





# THE PROMOTION OF HUMAN RIGHTS

In 1998, 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 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. In February 1998, NARF submitted comments on behalf of the Native American Church of North America for the promulgation of a final rule. The final rule will prohibit the ingestion of the sacrament within 24 hours of duty; banning the possession of the sacrament except the amulet known as the "Peyote heif," on bases, military vehicles, aircraft and vessels; and, requiring affected service

members to notify their commanders after returning to base if they have used the sacrament.

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 secured broad agreements from the Justice Department's Federal Bureau of Prisons, the U.S. Parole Commission, and Community Relations Service to take measures to increase federal protection for the free exercise of religion and has worked to implement them. Negotiations to increase federal protection for the free exercise of religion has resulted in better federal prison policies, increased understanding of the issues by the United States Parole Board, and help from the Department of Justice mediators to resolve disputes throughout the country. NARF is now exploring the possibility of developing national corrections standards, like the federal standards, to be followed by all state departments of corrections.

***"Our traditional, cultural, and spiritual use of Mato Tipila is vital to the health of our nation and to our self-determination as a Tribe. Those who use the Butte to pray become stronger. They gain sacred knowledge from the spirits that helps us preserve our Lakota culture and way of life. They become leaders. Without their knowledge and leadership we cannot continue to determine our own destiny."*** Romanus Bear Stops, Lakota



Devil's Tower ("Mato Tipila"), 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 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. In April 1998, the United States District Court in Wyoming ruled that NPS's climbing management plan is constitutional. The Court held that NPS's policy has been carefully crafted to balance the competing needs of individuals using Devil's Tower National Monument while, at the same time, obeying the edicts of the Constitution. The Bear Lodge Multiple Use Association has appealed this ruling to the Tenth Circuit Court of Appeals. NARF filed an *amicus curiae* brief in August 1998 on behalf of the National Congress of American Indians.

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, filed an *amicus curiae* brief in support of the cancellation of the trademark. The *amicus curiae* brief was rejected by the Trial and Appeal Board. NARF is continuing to monitor this case.

NARF represents the Tuolumne Me-Wuk Band in California on providing the Tribe with a legal opinion on the Tribe's rights to regulate cultural and intellectual property. The Tribe is particularly concerned with misuse and misappropriation by non-tribal members of its traditional songs, symbols, ceremonies, and arts and crafts.

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 28 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 NARF's continued work with the Rosebud Sioux Tribe of South Dakota, the Tribe has implemented the Tribal Education Code provisions on teacher accountability by facilitating tribal involvement in evaluating the teachers of Lakota studies on the Reservation and integrating Lakota studies into the regular school curriculum. A draft Administrative Rules for the Implementation of the Rosebud Sioux Tribe Education Code has also been prepared. Also, as part of implementing the Tribe's Education Code, NARF and the Tribe sponsored two National Tribal Education Department Forums. The first one, in June 1998, was held in conjunction with the National Congress of American Indians meeting in Green Bay, Wisconsin where over 40 tribes attended the Forum. The second Forum was held in October 1998 in conjunction with the National Indian Education Association convention in Nashville, Tennessee, where over 100 people attended. NARF and the Tribe were able to teach and share the processes necessary to implement tribal education codes and get feedback on other tribal programs that are having success.

NARF also represents the Assiniboine-Sioux Tribes of the Fort Peck Reservation in Montana in implementing its tribal education code. Since the enactment of the Fort Peck Tribes' Education Code, the Tribal Education Department has worked toward implementation of the Code's provisions through cooperative agreements with the five public school districts within the boundaries of the Reservation. The initial focus has been on the establishment of a student tracking system to monitor the progress of Indian students in the public schools. The Tribal Education Department has met with the local school superintendents to explain the tracking system and its mutual advantages, and data exchange agreements are currently being negotiated. With enthusiastic support from the school districts, the Department is also seeking funding to establish a tribal truancy program. Once the tracking system and truancy programs are in place, the Department intends to shift its focus to curriculum and teacher certification. Although implementation of the code has not proceeded as quickly as planned, the strong working relationship that has developed between the public school districts and the Tribal Education Department is a critical step in the right direction.

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 regula-



tion 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. While the Fort Berthold Tribes have an Education Committee and an Education Department, 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 time lines for code development and implementation have been developed and the process is underway. The Fort Berthold Reservation's Department of Education has completed the first draft of the State of the Reservation Education Report and NARF will assist the Tribal Education Department prepare it for distribution. The Report will form the foundation for the development of the Tribal Education Code.

In August 1998, President Clinton delivered the first comprehensive Executive Order on Indian Education, providing national guidelines to improve the way federal agencies coordinate dozens of Indian education programs in public, federal, tribal, urban and rural area schools. The historic Executive Order on Indian Education was the result of more than four years of focused efforts by the Native American Rights Fund in representing the National Congress of American Indians and in concert with the National Indian Education Association. The Executive Order, developed out of a collaborative effort to better coordinate and implement federal Indian education laws and programs, focuses on improving Indian student academic

performance by increasing ownership of education within tribes and Indian communities, ensuring equitable access for Native Americans to federal education resources, and facilitating tribal, federal and state partnerships in Indian education. The Executive Order will also provide direction for new Indian education initiatives from Congress and the Administration, including budget appropriations. The Executive Order requires the Administration to develop a comprehensive Indian education policy in consultation with tribal leaders and Indian educators within two years. It also calls for a series of regional forums among tribal, federal, and state officials and educators to share information about effective education practices for Indian students. It also provides for a series of pilot schools, including public schools, that will receive comprehensive technical assistance to test new methods of teaching Indian students.

In another education area, NARF has been contracted by the National Indian Education Association, the National Indian School Board Association, and the Association of Tribal Contract Schools to provide them with a legal opinion on the question of the nature and extent of the United States' obligation to fund improvements, repairs, and new construction of BIA funded schools, and on the question of what remedies, including judicial, administrative, and legislative, might be available to help resolve the facilities backlog problem. These education organizations are concerned about the growing backlog of needed construction for BIA operated schools, and BIA funded tribally operated schools, and the failure of the BIA to adequately address this problem. The legal opinion will assist the organizations in determining a strategy for working with the Administration and the 106th Congress to obtain the funds necessary to eliminate the construction backlog. In particular, the organizations are preparing to work for the reauthorization of the Elementary and Secondary Education Act of 1965 and to secure adequate funding authorizations for the Indian education programs funded by the Act.





# THE ACCOUNTABILITY OF GOVERNMENTS

***“...domestic treatment of indigenous peoples tells the world far more about the character of that nation than its announced policies and principles in the international arena.”***

Walter Echo-Hawk, NARF Attorney

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 *Cobell v. Babbitt* case 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 1997 the federal district court in Washington, D.C. certified the case as a class action. In April 1998, the Federal District Court

for the District of Columbia set a March 15, 1999 trial date for fixing the broken IIM trust management and accounting system. In November 1998, the Court opened the door for trial with a Memorandum of Opinion that denied the last of the federal government's motions to dismiss the suit. The Court rejected the government's numerous motions to dismiss the case in its entirety. The case will now proceed to trial and will be decided under long standing principles of traditional trust law. The United States, as trustee for individual Indians and tribes, will now be held to the same standards of conduct of any trustee managing or administering any trust.

***“The BIA has spent more than 100 years mismanaging, diverting and losing money that belongs to Indians. We don't have any political power to change it, so the government just continues to ignore us. We stand poised now to force the government to honor its legal obligation to manage our critical trust fund prudently. Century-old excuses and stonewalling will simply no longer work.”***

John Echohawk, Executive Director, Native American Rights Fund

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



the Tribes have been exploring the possibility of a negotiated settlement of the Tribes' claims since 1997. NARF has also been monitoring proposed legislation to settle tribal trust fund claims to be sure that such proposals support the settlement efforts of Pembina.

In addressing welfare reform, NARF continued to assist the Oglala Sioux Tribe by monitoring and participating in national efforts by the National Congress of American Indians to address barriers imposed on tribes under the current legislation. NARF previously assisted the 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 also participated with the National Congress of American Indians and the Native American Bar Association in a demonstration in front of the United States Supreme Court in October, 1998 sponsored by the National Association for the Advancement of Colored People and other minority bar associations to protest the Court's law clerk hiring record. Only a small percentage of law clerks have been minorities and no Native American has ever been hired as a law clerk.

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 Native 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 continues to wait for the court ruling.





# THE DEVELOPMENT OF INDIAN LAW

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. The Library serves both NARF attorneys and the general public. NILL handles close to one-thousand information requests per year and serves a wide variety of clientele throughout the nation. NILL is now planning to improve access by offering direct access to the NILL library catalog over the Internet in 1999.

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, federal 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.

## **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 National Congress of American Indians Executive Council, Midyear and Annual Conventions and the Federal Bar Association's Indian Law Conference.

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.



*Artic Village youths in traditional attire.*



*Young girls in Native Village of Venetie*



*Young girl from Artic Village.*



# 1998 TREASURER'S REPORT

Based on our **audited** financial statements for fiscal year ending September 30, 1998, the Native American Rights Fund reports total revenues of \$6,955,332 against total expenditures of \$6,819,026. Thanks to the continued generosity of our donors and other supporters, the Native American Rights Fund managed to weather a modest deficit position this fiscal year. Due to presentation requirements of our audited financial statements in terms of recognizing the **timing** of certain revenues, they do not reflect the fact that, based on NARF's internal reporting, operating expenses and other cash

outlays actually exceeded revenue by \$390,199. Fortunately, NARF's fiscal well-being was safeguarded by a healthy reserve fund.

A comparison of revenue sources for Fiscal Year 1998 and Fiscal Year 1997 is also shown below. Expenditures decreased by \$577,240 due largely to a shift in funding consultants for Fiscal Year 1998's case related activity. Total management and fund raising costs constituted 22.3% of total revenues in Fiscal Year 1998.

## SUPPORT AND REVENUE COMPARISON

	1998		1997	
	\$	%	\$	%
Federal Grants	\$ 1,487,468	21.4%	\$1,252,109	15.6%
Foundation Grants	2,120,804	30.5%	1,851,006	23.0%
Contributions	2,608,407	37.5%	3,172,394	39.4%
Legal Fees	805,838	11.6%	747,286	9.3%
Investment Income	<162,110>	<2.4%>	935,854	11.7%
Other	94,925	1.4%	84,371	1.0%
<b>TOTALS</b>	<b>\$ 6,955,332</b>	<b>100%</b>	<b>\$8,043,020</b>	<b>100%</b>

## EXPENDITURE COMPARISON

	1998	1997
	dollars	dollars
Litigation and Client Services	\$ 4,903,391	\$5,561,373
National Indian Law Library	198,961	148,506
<b>Total Program Services</b>	<b>5,102,352</b>	<b>5,709,879</b>
Management and General Expenses	818,705	814,673
Fund Raising	897,969	871,714
<b>Total Support Services</b>	<b>1,716,674</b>	<b>1,686,387</b>
<b>TOTALS</b>	<b>\$ 6,819,026</b>	<b>\$7,396,266</b>

*Note: This summary of financial information has been extracted from NARF's audited financial statements on which the accounting firm of Dollinger, Smith & Co. expressed an unqualified opinion. Complete audited financials are available, upon request, through our Boulder office or at [www.narf.org](http://www.narf.org).*





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