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NATIVE AMERICAN RIGHTS FUND

ANNUAL REPORT 1999



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Photographs:

Photographs show many
of the past and present
members of NARF's
Board of Directors, attor-
neys and staff for the past
thirty years.

Tax Status:

The Native American Rights
Fund (NARF) is a nonprofit,
charitable organization incorpo-
rated 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 founda-
tion" 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 Native American Rights Fund (NARF) was founded in 1970 to address the need for legal assistance on the major issues facing Indian country. The critical Indian issues of survival of the tribes and Native American people are not new, but are the same issues of survival that have merely evolved over the centuries. As NARF enters a new century, it can be acknowledged that many of the gains achieved in Indian country over the past 30 years are directly attributable to the efforts and commitment of the present and past clients and members of NARF's Board and staff. However, no matter how many gains have been achieved, NARF is still addressing the same basic issues that caused NARF to be founded originally. Since the inception of this Nation, there has been a systematic attack on tribal rights that continues to this day. For every victory, a new challenge to tribal sovereignty arises from state and local governments, Congress, or the courts. The continuing lack of understanding, and in some cases lack of respect, for the sovereign attributes of Indian nations has made it necessary for NARF to continue fighting.

As the struggle continues, NARF strives to safeguard the legal and sovereign rights of tribes and Indian people within the limit of available

resources. NARF's success is directly attributable to the many financial supporters that NARF has had throughout the years.

Contributors like the Ford Foundation have been with NARF since the beginning. The Rockefeller Foundation, the General Service Foundation, the John D. and Catherine T. MacArthur Foundation, the Carnegie Corporation of New York, the Skadden Fellowship Foundation, the Santa Fe Natural Tobacco Company, the XYZ Corporation, and Virgin Records have consistently contributed towards NARF's efforts. Federal funding from the Administration for Native Americans for NARF's governance, economic and social development efforts in Indian country has been almost continuous. Many tribes such as the Mashantucket Pequot, the Cow Creek Band of Umpquas, the Winnebago Tribe of Nebraska, the Shakopee Mdewakanton Tribe, the Mashpee Wampanoag Tribe, the Confederated Tribes of Grande Ronde and many other tribes have been consistent contributors to NARF. NARF is also indebted to the thousands of individuals who have had faith in NARF and have given their financial and moral support to NARF's efforts on behalf of tribes and Indian people.



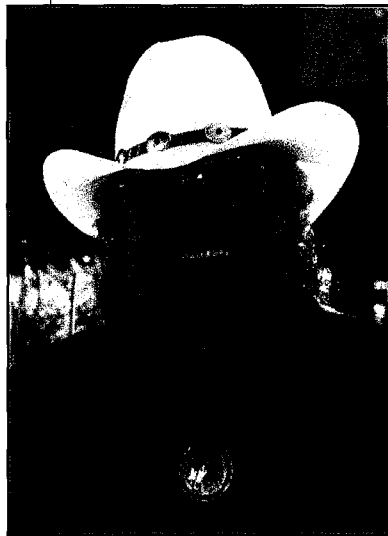
As established by NARF's first Board of Directors, the priorities that guide NARF in its mission to preserve and enforce the status of tribes as sovereign, self-governing bodies still continue to lead NARF today:

- 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

As we enter the year two-thousand, the new millennium, we as Native Americans have reason to rejoice as we consider some of the goals we have achieved as a people. But we also must realize that there are many areas in the lives of our people that need changes.

We must be united as never before so that when we speak, we speak as one. We as Native people must stay involved in the political process, locally and on



the state and federal levels, so as to be aware of all that is going on and be in a position to respond to any adverse political endeavors and support any legislation that will enhance the lives of our people, health wise, politically and spiritually.

We cannot be idle, we must be busy, we must write letters, make telephone calls and whenever necessary, make personal

contact with those who are in a decision making position. We also must show love and a genuine concern for each other.

We as tribal leaders have a great responsibility to our people and a moral obligation, if you will, to seek those things that will enrich the lives of our people and help them to reach their full potential, not only as individuals, but as tribes and nations.

May those of us who serve our people be blessed with the guidance and inspiration that is needed to lead our Native people into the new millennium and may we do so with integrity, wisdom and spirituality that will bring only those things that are good.

Chief Gilbert Blue,
Chairman

EXECUTIVE DIRECTOR'S REPORT

As the Native American Rights Fund enters its 30th year of providing litigation and advocacy on behalf of Native Americans on our most significant issues, we are proud of our past accomplishments on behalf of Native Americans and continue to work hard on the many serious issues confronting us now. During 1999, our legal assistance again

resulted in several important developments affecting Native Americans.

In an important tribal court jurisdiction case, a federal appeals court ruled in *Nevada v. Hicks* that the Fallon Paiute-Shoshone Tribal Court has jurisdiction over a case filed by a tribal member against state wildlife officers for civil rights violations. The officers had confiscated possessions of the tribal member in criminal investigations on two occasions that resulted in no charges and had returned the possessions in damaged condition. NARF represents the Tribe in the case.

In *Baker v. John*, the Alaska Supreme Court for the first time recognized the existence of tribes in Alaska with inherent powers of self-government over tribal members and upheld tribal court jurisdiction in a child custody case. NARF had filed an *amicus curiae* brief on behalf of the Alaska Inter-Tribal Council.

A settlement of a land claim providing over 6,000 acres of land for the San Juan Southern Paiute Tribe was approved by the Tribe and the Navajo Nation and is now being considered by Congress. NARF has represented the Tribe in litigation over a disputed area in northern Arizona also claimed by the Navajo Nation and the Hopi Tribe.

The first Indian water rights settlement passed

by the Republican-controlled Congress during the Clinton administration was achieved by the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana represented by NARF. The \$50 million settlement quantifies the Tribe's water rights, establishes a water administration system and provides federal funding for the development of water projects to serve the present and future needs of the Tribe.

Subsistence fishing rights for Alaska Natives in rural Alaska were finally secured when a Congressional moratorium expired and was not extended which had been blocking implementation of the *Katie John v. United States* decision won by NARF in 1995. The federal government took over management of the subsistence fisheries from the state in all navigable waters in which the United States has reserved water rights under a 1980 federal law recognizing subsistence fishing rights.

In *Bear Lodge Multiple Use Association v. Babbitt*, a federal appeals court dismissed a challenge to a federal management plan by mountain climbers who were asked to voluntarily refrain from climbing Devil's Tower in Wyoming, a National Monument and a sacred site for many tribes, during Native American ceremonies every June. NARF had filed an *amicus curiae* brief in the case on behalf of the National Congress of American Indians.

On behalf of a group of twenty-seven Alaska Natives who speak Native languages, NARF was successful in obtaining a preliminary injunction against the State of Alaska from implementing the Alaska Official English Initiative passed by Alaska voters in 1998. *Alakayak v. State* asserts that Alaska's English-only law is unconstitutional because it violates constitutional rights to free speech, equal protection and due process.

An evaluation of the Education Code and Department of the Rosebud Sioux Tribe of South Dakota cited major improvements in high school graduation and school drop-out rates for Indian children and attributed those improvements to the Code. NARF drafted the Code adopted by the Tribe in 1991 which asserts tribal authority through the Department over all reservation schools concurrently with the state and federal governments.

In *Cobell v. Babbitt*, a class action on behalf of 500,000 individual Indian money account holders whose funds are held in trust by the federal government, a federal district court found that the United States had breached its trust duties to the account holders and will oversee the federal government's efforts to fix the broken trust accounting and management systems. Earlier in the year, the court held three federal officials in contempt of



court for failure to produce trust documents required by court order. NARF is co-counsel in the case with private attorneys.

In these cases and hundreds of others over the last 30 years, the Native American Rights Fund has provided access to justice for Native American people across the country on some of the most important Native American issues of our time and has proven that the legal system can work for Indian people. We could not have achieved this success without the financial support that we have received from contributors throughout the nation. We thank all of you who have assisted us and encourage you to continue your support so that we may continue to make progress on behalf of Native American people.

John E. Echohawk,
Executive Director

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 Native Americans 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.

Pictured here left to right, top to bottom

Gilbert Blue
Chairman
Catawba - South Carolina

Cliv Dore
Vice-Chairman
Passamaquoddy - Maine

David Archambault
Standing Rock Sioux - North Dakota

Roy Bernal
Taos Pueblo - New Mexico

Wallace E. Coffey
Comanche - Oklahoma

Nora Helton
Fort Mojave - California

Ho'oiipo Pa
Native Hawaiian - Hawaii

Sue Shaffer
Cow Creek Band of Umpqua - Oregon

Ernie Stevens, Jr.
Wisconsin Oneida - Wisconsin

Rebecca Tsosie
Pasqua Yaqui - Arizona

Mike P. Williams
Yup'ik - Alaska

Mary T. Wynne
Rosebud Sioux - South Dakota

Not Pictured:
Kenneth P. Johns
Athabaskan - Alaska

NATIONAL SUPPORT COMMITTEE

The National Support Committee (NSC) 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.

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

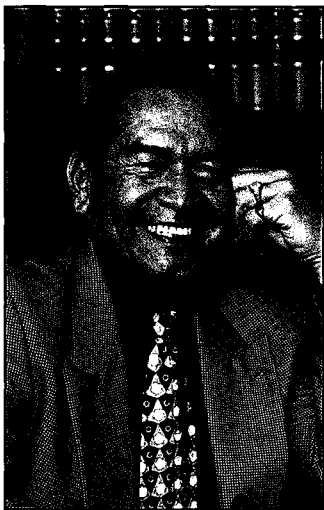
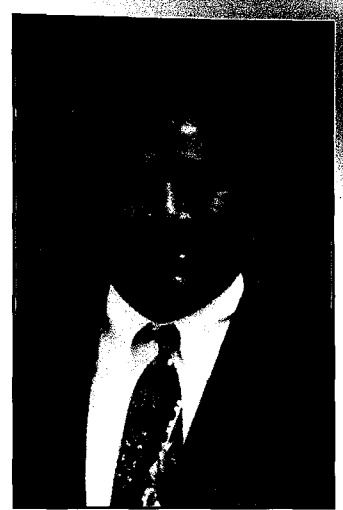
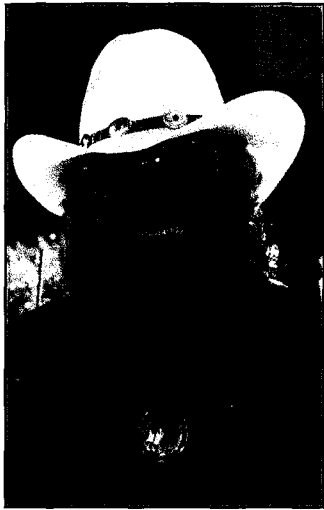
Thomas N. Tureen

Aine 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 1999, NARF handled several major cases that affected the sovereign powers of tribes.

Tribal Sovereignty

Several of these cases represent part of an ongoing 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.

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

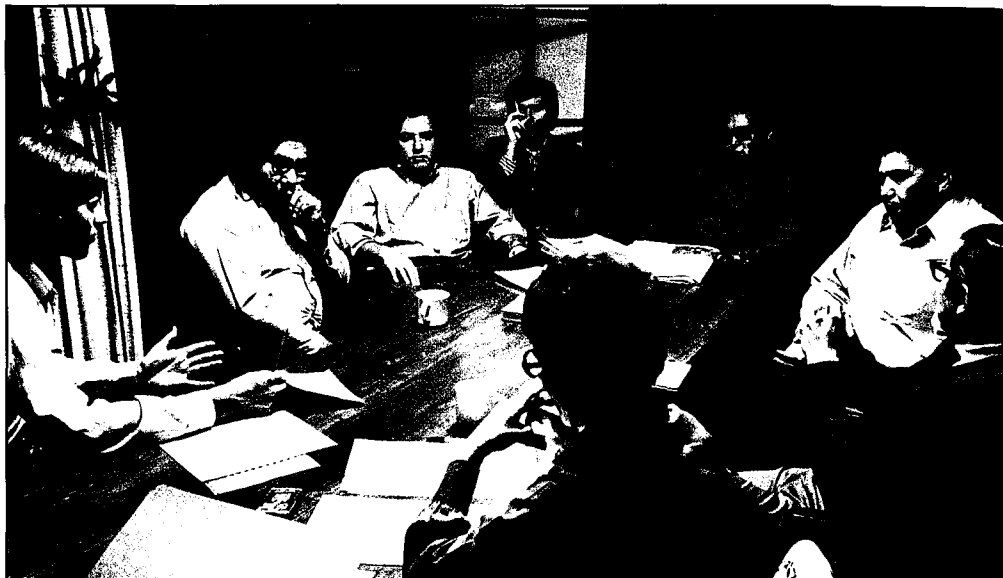
Court for the violation of his civil rights. The officers contested the jurisdiction of the Tribal Court in both the Tribal Court of Appeals, which affirmed the Tribal Court's jurisdiction, and the U.S. District Court for Nevada which also affirmed Tribal Court's jurisdiction. In November 1999 the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's holding that the Tribal Court had jurisdiction and that the suit against the state officials in their individual capacities was not barred by the state's sovereign immunity. The State of Nevada has filed a petition for a rehearing in the U.S. Court of Appeals for the Ninth Circuit.

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. After comment by tribes, tribal attorneys, and other Indian organizations, NARF submitted a final draft to NCAI. In October 1999 NCAI approved a final Model Tribal Notice Law for dissemination to tribes to consider adopting or enacting. NCAI also approved the development of a Model State Notice Law that would give tribes timely and adequate notice of cases in state

courts that question tribal sovereignty and jurisdiction.

In September 1999 the Alaska Supreme Court entered a ruling in the *Baker v. John* case recognizing the existence of federally acknowledged tribes in Alaska possessing inherent powers of self-government over members. The case is of particular significance in that it represents a major departure from past state court precedent that held that tribal powers do not exist in Alaska. It was also significant in that the Court specifically reviewed the nature and scope of tribal powers in Alaska and whether the sovereign adjudicatory authority of Native tribes exists outside the confines of Indian country which the United States Supreme Court in 1998 ruled did not exist in Alaska. NARF had filed an *amicus curiae* brief in the case on behalf of the Alaska Inter-Tribal Council.

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 has filed position statements on behalf of seven claimants before the Oklahoma Tax Commission.

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. In March 1999 the Supreme

Court held that Arizona could tax a private company's proceeds from contracts with the federal government even where those contracts were exclusively for the building of roads on Indian reservations.

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 Bureau of Indian Affairs (BIA) 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 BIA under their acknowledgment regulations. The Tribe has their petition for federal recognition pending before the BIA's Branch of Acknowledgment and Research and is now wait-

ing for a final decision on its petition. In the meantime, NARF is assisting the Tribe in revising its constitution to strengthen its tribal government and to improve its chances for federal recognition.

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. The Tribe was placed on a one year active review status, however, the BIA continued granting itself six-month extensions. Although the due date for the findings of tribal status was in February 1998, the extensions continued through February 1999, exactly two years after the petition was placed on active review. In November 1999 the Department of Interior notified the Tribe that it expects to issue its proposed findings in early 2000.

In *Miami Nation of Indians v. Babbitt*, NARF is challenging the BIA's decision not to recognize the Miami Nation as an Indian tribe. The U.S. District Court for Indiana rejected the Miami's claim that they were recognized in an 1854 treaty and were never terminated by Congress, but the Court is currently considering other Miami claims. The Court will determine those claims based on an administrative record that was deficient until the Court granted

NARF's request to complete the administrative record.

NARF has submitted a petition for federal recognition on behalf of the Shinnecock Tribe of New York and responded to a BIA technical assistance letter explaining omissions or deficiencies in the petition. On behalf of the Mashpee Wampanoag Tribe of Massachusetts, NARF responded to a notice of obvious deficiency in the Tribe's petition for federal recognition and the BIA has now placed the Tribe on ready for active consideration status.

After many years of research and documentation, the Pamunkey Tribe is now finalizing its petition for federal recognition. The petition will likely be filed with the BIA later this year. The Pamunkey Indians have remained in their tribal homeland along the Pamunkey River in eastern Virginia throughout recorded history. Their territorial rights have been formally and continuously recognized by the colonial and state governments of Virginia since the mid-1600's.

THE PROTECTION OF TRIBAL NATURAL RESOURCES

The land base and natural resources of Indian nations continue to be critical factors in the preservation of tribal existence. 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 55 million acres of Indian-controlled land in the continental United States which constitutes only 2.3 percent of their former territory. About 45 million acres are tribally owned and 10 million acres are individually owned. Additionally, there are about 44 million acres in Alaska which are owned by Natives after the 1971 Alaska Native Claims Settlement Act.

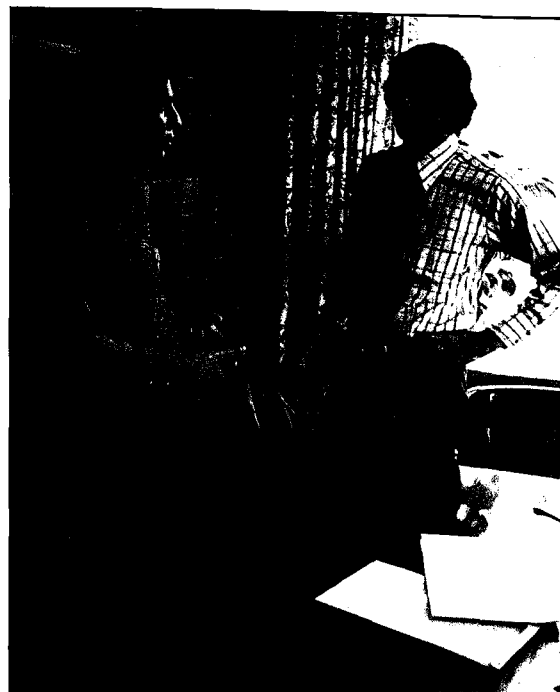
The federal government, has in many instances, failed to fulfill its trust duty to protect Indian tribes and their property rights. The Native American Rights Fund concentrates much of its legal representation on cases that will ensure a sufficient natural resource base for tribes.

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 U.S. 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. In 1998, the Tribe and the United States submitted their respective proposed modifications of the 1996 opinion to the court following unsuccessful settlement negotiations. 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. After the Court of Federal Claims completes the case, the matter will be referred to Congress for the enactment of settlement legislation.

NARF represents the Stockbridge-Munsee Tribe, now located in Wisconsin, in land claims against the State of New York and two of its counties based on the lack of federal approval required for Indian land transactions. 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 related cases that eventually held that the Eleventh Amendment to the Constitution bars tribal suits against states. Therefore, NARF convinced the Department of the Interior to request the Department of Justice to intervene in the land claim litigation on behalf of the Tribe. The Department of Justice continues to review the matter.

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 provided, 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. Settlement terms have now been finalized and are being processed by the Department of Justice and the Tribe for approval.



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 involv-

ing 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 appealed those findings to the Ninth Circuit of Appeals. The appeal has been held up while settlement negotiations have proceeded. After negotiations, the San Juan Southern Paiute Tribal Council approved a settlement in January 1999 establishing a reservation of over 6,000 acres for the Tribe. The matter was considered by the full Navajo Tribal Council in July 1999 and approved. The settlement now must be approved by Congress.

NARF continued its work with the Klamath Tribes 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 Tribes secured funding from the BIA to retain national experts in forestry management and planning to formulate a report on management of the Tribes' forests. The experts report was completed in September 1999. The Tribes also secured BIA funding to prepare an Integrated Resource

Management Plan to be incorporated into the proposed final ESSP report to the Secretary of the Interior. NARF continues to coordinate the ESSP work with the Tribes' water rights claims settlement negotiations in order to maximize any opportunities that these two issues have for complimenting one another.

NARF represents the Native Village of Tuluksak in Alaska in their quest to have the land owned by the Village corporation transferred over in fee simple to the Village tribal council. The Department of Interior would then be petitioned to place the land into trust on behalf of the Village. However, the Department of Interior has issued proposed regulations that would bar the acquisition of title in trust in Alaska. NARF and the Village have responded to the proposed regulations and, in the meantime, NARF has continued with the actual land transfer conveyance until the final rule on the proposed regulations are issued.

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, a 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.

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 1998. The TERC provides a review process for any developer, tribal or non-tribal, whose project may adversely affect the environment. In 1999 NARF assisted the Tribe in securing funding from the US Environmental Protection Agency for the development of a safe drinking water code. The Tribe is also working on developing water quality standards for the Reservation waters and will be working with EPA to develop a prototype partnership for these kind of joint efforts.

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 adjudicated 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 the first Indian water rights settlement that had the support of the Clinton Administration, a state and a tribe, Congress passed in November 1999 an historic water settlement bill for the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. It quantifies on-reservation water rights, establishes a water administration system designed to have minimal adverse impacts on downstream



non-tribal water users, and calls for federal funding for the development of water projects to serve the present and future needs of the Tribe. In December 1999 President Clinton signed into law P.L. No. 106-163. The Act ratifies the Chippewa Cree/Montana Compact and authorizes \$50 million to be appropriated to implement the settlement. \$25 million in funding is earmarked for on-reservation water development projects, \$3 million in funding for the administration of the Compact, and \$3 million for economic development. In addition, the bill authorizes the initial steps of a more extensive process of obtaining a long-term drinking water supply for the Chippewa Cree Tribe - a process that is vital to the survival of the Tribe. NARF is now assisting the Tribe in their efforts to obtain federal legislation that will authorize funds to construct a water pipeline to the Reservation. The Tribe's water rights bill autho-

alized \$15 million in seed money for the importation of water and \$4 million for feasibility studies. The Tribe has formed a partnership with non-Indian communities for this project.

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 on former reservation lands in Oregon. Concerning tribal water rights claims in Upper Klamath Lake, a water settlement agreement in principle between the Klamath Tribes and 23 irrigation districts was reached this past spring. These parties subsequently briefed the federal

the United States Fish and Wildlife Service and commencing settlement negotiations with that agency. Work continued in developing a related upper basin water settlement proposal with a water quality component for private water users, water settlement negotiations on the Klamath Marsh and national forest lands, and an overall funding package for a comprehensive water settlement. At the Tribe's insistence, the water settlement has been substantially linked to tribal efforts to recover former reservation lands acquired by the federal government in the 1950s pursuant to the Klamath Termination Act which is a matter also being handled by NARF.

NARF represents the Nez Perce Tribe of Idaho in its water rights claim in the Snake River Basin. The Tribe's major claim is for sufficient in-stream flows to maintain its treaty rights to fish for salmon and steelhead that migrate down the Snake River to the Columbia River and out to the ocean before returning to spawn. NARF is involved in ongoing settlement negotiations that focus on the removal of four lower Snake River dams to obtain sufficient in-stream flows. In November 1999 the state district court rejected the Nez Perce Tribe's in-stream flow claims to water in the Lower Snake, Clearwater, Salmon and Weiser rivers. The court ruled that the fishing rights reserved by the

Tribe in the Treaty of 1855 and subsequent treaties did not include in-stream flow rights to water outside the reservation's boundaries. This decision has been appealed.

NARF continued to assist the Tule River Tribe of California in securing its water rights. Work focused on the preparation of 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. Preliminary meetings with each of the interested groups of water users along the South Fork of the Tule River were held to gather additional information for use in developing the settlement proposal.

NARF participated in the reactivation of the Ad Hoc Group on Indian Reserved Water Rights which advocates for out-of-court settlements of Indian reserved water rights claims. The Ad Hoc Group, which consists of the Western Governors' Association, the Western States Water Council, the Western Regional Council and NARF, sponsored two Congressional workshops on Indian water settlements in 1999, their first since 1993. NARF also co-sponsored with the Western States Water Council the Sixth Symposium on the Settlement of Indian Reserved Water Rights Claims in September 1999.



water settlement team, affected federal and state agencies and downstream Indian tribes as part of the process of fleshing out this component of the settlement. This process included developing a proposed settlement with

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.

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 decision requires the federal government to enforce the federal law giving a subsistence hunting and fishing priority for rural Alaska residents, who are mostly Natives, on all navigable waters in Alaska in which the federal government has reserved water rights. Alaska state law does not allow the State to administer the federal subsistence priority, so the Alaska Congressional delegation has been blocking federal implementation of the subsistence priority since 1996 to give the State time to change its law to allow the State to administer the subsistence priority. However, during a special legislative session in September 1999, the Alaska Legislature failed again to pass the necessary legislation. Therefore, the

federal government finally assumed management of subsistence fisheries in October 1999. The federal takeover was made possible by strong Alaska Native support. For the second straight year, NARF, the Villages and other supporting organizations held a demonstration in Anchorage in May 1999 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 *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 sock-eye 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 and NARF appealed to the Alaska Supreme Court. In October 1999 the Alaska Supreme Court entered a decision affirm-



ing the Superior Court's order on all counts.

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 1999 the Federal Subsistence Board voted to reconsider its earlier decision after NARF

intervened on behalf of the Kenaitze Tribe and asked the Board to declare the entire Kenai Peninsula rural for purposes of the subsistence priority in ANILCA. The Board agreed to render its decision on this request in May 2000.

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

same time prohibiting tribal members without IFQ's from fishing within their own aboriginal territory. In 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 United States

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. The Villages successfully obtained the necessary funding and approvals from the Alaska Board of Fisheries to conduct a test fishery which was successfully completed in 1998. During 1999, NARF testified on behalf of the Villages before the State Board of Fisheries in negotiations for a permanent fishery.



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

Supreme Court which decided review in June 1999. The question whether the Villages have nonexclusive aboriginal fishing rights is now back before the Federal District Court. The Villages's expert witnesses (anthropologists) are in the process of preparing their report, and NARF is in the process of briefing the remaining legal issues.

THE PROMOTION OF HUMAN RIGHTS

In 1999, NARF provided assistance in several matters involving religious freedom, cultural rights, education, child welfare and international law. NARF, on behalf of its clients, seeks to enforce and strengthen laws which are designed to protect the human rights 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 1998, NARF submitted comments on behalf of the Native American Church of North America for the promulgation of a final rule. The final rule would prohibit the ingestion of the sacrament within 24 hours of duty; ban the possession of the sacrament except the amulet known as the "Peyote heif," on bases, military vehicles, aircraft and vessels; and, require affected service members to notify their commanders after returning to base if they have used the sacrament. The Pentagon still has not issued a final rule in this matter.

NARF has worked 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. The work consisted 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.

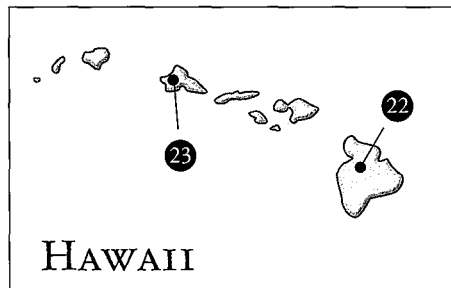
Devil's Tower ("Mato Tipila"), located in the Devil's Tower National Monument in Wyoming,



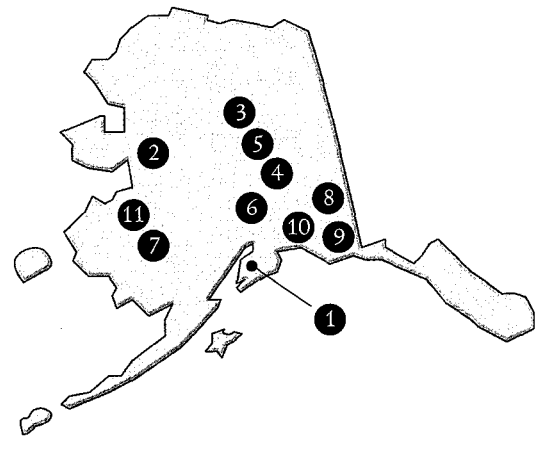
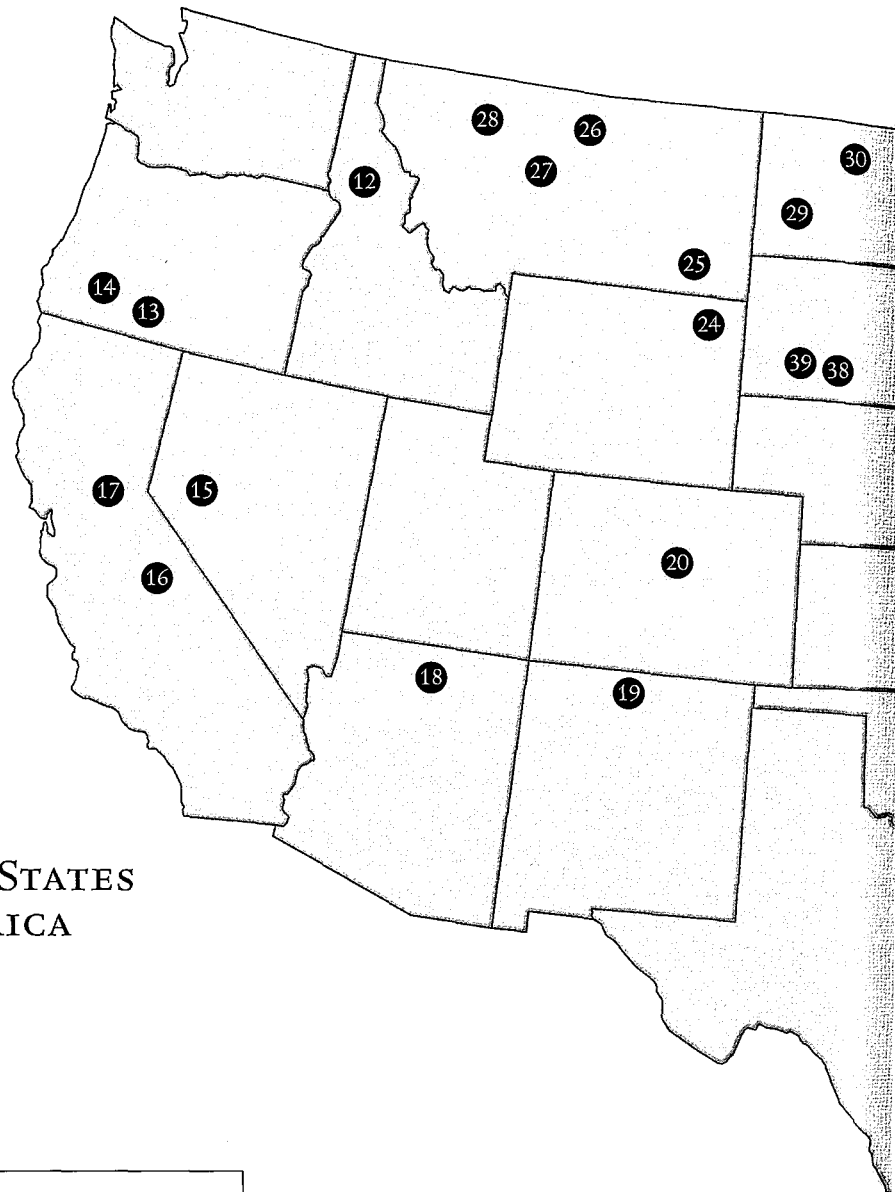
NATIVE AMERICAN RIGHTS FUND

- 1 Kenaitze Indian Tribe - Subsistence (Alaska)
- 2 Native Village of Elim - Subsistence (Alaska)
- 3 Native Village of Venetie - Taxation (Alaska)
- 4 Native Village of Akiak - Equal Protection (Alaska)
- 5 Native Village of Alakayak - Language Initiative (Alaska)
- 6 NARF ANCHORAGE OFFICE
- 7 Native Village of Tuluksak - Trust Lands (Alaska)
- 8 Mentasta & Dot Lake (Batzulnetas) - Subsistence (Alaska)
- 9 Native Village of Kluti Kaah - Subsistence (Alaska)
- 10 Native Village of Eyak - Subsistence & Aboriginal Title (Alaska)
- 11 Native Villages of Stebbins & St. Michael - Subsistence (Alaska)
- 12 Nez Perce Tribe - Water Rights (Idaho)
- 13 Klamath Tribes - Water & Self-Sufficiency (Oregon)
- 14 Cow Creek Band of Umpqua - Cultural Property Rights (Oregon)
- 15 Fallon Paiute-Shoshone Tribes - Jurisdiction (Nevada)
- 16 Tule River Tribe - Water (California)
- 17 Tuolumne Me-Wuk Band - Cultural Rights (California)
- 18 San Juan Southern Paiute Tribe - Land Claim (Arizona)
- 19 Jicarilla Apache Tribe - Education (New Mexico)

UNITED STATES OF AMERICA



ALASKA





MAJOR ACTIVITIES 1999 NARF CASE MAP

- 20 NARF HEADQUARTERS
BOULDER, COLORADO
- 21 Oklahoma Tax
Commission v. Goodeagle -
Taxation (Oklahoma)
- 22 Pele Defense Fund -
Aboriginal Rights (Hawaii)
- 23 Rice v. Cayetano -
Voting Rights (Hawaii)
- 24 Devils Tower - Religious
Freedom (Wyoming)
- 25 Northern Cheyenne Tribe -
Education (Montana)
- 26 Fort Peck Tribes -
Education (Montana)
- 27 Chippewa-Cree Tribe -
Water & Judgement Claim
(Montana)
- 28 Little Shell Tribe -
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Claim (Montana)
- 29 Fort Berthold Reservation -
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- 30 Turtle Mountain
Reservation - Judgement
Claim (North Dakota)
- 31 Pottawatomie Nation -
Land Claim (CANADA)
- 32 Mashpee Wampanoag
Tribe - Recognition
(Massachusetts)
- 33 Shinnecock Tribe -
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- 34 NARF WASHINGTON,
D.C. OFFICE
- 35 Pamunkey Tribe -
Recognition (Virginia)
- 36 Stockbridge-Munsee Tribe -
Land Claim (Wisconsin)
- 37 Miami Nation -
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- 38 Rosebud Sioux Tribe -
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- 39 Oglala Sioux Tribe -
Environmental
(South Dakota)
- 40 Houma Tribe -
Recognition (Louisiana)
- 41 Alabama-Coushatta Tribe -
Land Claim (Texas)

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. In *Bear Lodge Multiple Use Association v. Babbitt*, NPS was sued in the Federal District Court of Wyoming in response to this plan. In 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

curiae brief on behalf of the National Congress of American Indians. The Tenth Circuit Court of Appeals ruled in 1999 that Bear Lodge Multiple Use Association lacked standing to raise a challenge to the constitutionality of NPS's climbing management plan since it was voluntary and therefore let the ruling stand.

NARF was a leading proponent of the Native American Graves Protection and Repatriation Act (NAGPRA) which was signed into law in 1990. The Act requires federal agencies and private museums that receive federal funding to inventory their collections of Native American human remains and funerary objects, notify the tribe of origin, and return the ancestral remains and funerary objects upon request to the tribe. It makes clear that Indian tribes have ownership of human remains and cultural items which are excavated or discovered on federal or tribal land and that they alone have the right to determine disposition of Indian human remains and cultural remains discovered in these areas. The Act prohibits the trafficking of Native American human remains and cultural items where the items are obtained in violation of the Act and requires federal agencies and private museums that receive federal funds to create a summary of sacred objects in their possession. If a tribe can prove a right of posses-

sion to these objects then they must be returned upon request of the tribe. NARF continued to monitor NAGPRA claims and also provided guidance to several tribes seeking claims.

Cultural Rights

NARF represents the Tuolumne Me-Wuk Band in California on the Tribe's rights to regulate cultural and intellectual property. The Tuolumne Me-Wuk Band of Indians in California has been concerned with the increased misuse and misappropriation by non-tribal members of its traditional songs, symbols, ceremonies, and arts and crafts. The Tribe requested that NARF provide the Tribe with a legal opinion regarding the Tribe's rights to regulate its own cultural and intellectual property. This issue has been of concern for many tribes throughout the country and it is believed that a legal opinion regarding this issue will be of great benefit and value to all tribes. Congress passed and the President signed a law directing the United States Patent and Trademark Office (PTO) to study whether federal trademark law should protect tribal insignia. NARF filed two sets of comments on behalf of the Tribe with the PTO and testified at PTO hearings about whether and how this should be accomplished. NARF has prepared and issued a legal opinion to the Tribe



Devil's Tower National Monument while, at the same time, obeying the edicts of the Constitution. The Bear Lodge Multiple Use Association appealed this ruling to the Tenth Circuit Court of Appeals. NARF filed an *amicus*

and will now prepare for discussions with the Tribe.

In March 1999 the Alaska State Superior Court granted a preliminary injunction that enjoined the State of Alaska from the operation and enforcement of Alaska's Official English Initiative, which was passed by state voters in November 1998. NARF filed *Alakayak v. State* in February 1999 on behalf of twenty-seven Alaska Native plaintiffs who speak Alaska Native languages. The *Alakayak* lawsuit claims that Alaska's English-only law is unconstitutional because it violates constitutional rights to free speech, equal protection, and due process. The case is currently stayed pending a decision by the Alaska Supreme Court on whether Alaskans for a Common Language can intervene.

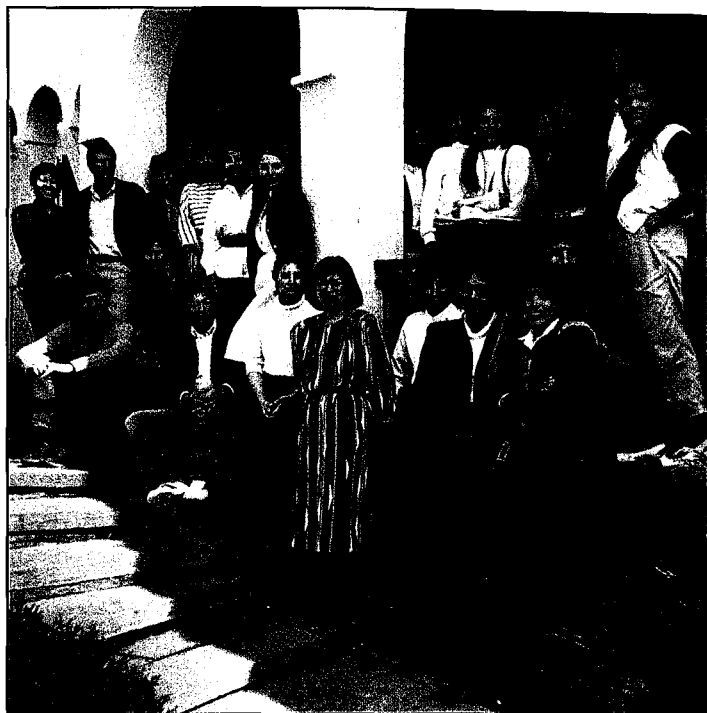
NARF filed an *amicus curiae* brief in the U.S. District Court for Colorado in *Cow Creek Band of Umpqua Tribe of Indians v. IMOCA Licensing America, Inc. and Sterling Consulting Corporation*. The Tribe filed suit against IMOCA, a Canadian corporation who purchased the long dormant "Indian Motorcycle" trademarks. The Tribe complained that IMOCA has been using the trademarks to sell products, which creates the suggestion that the goods are produced by Indians – a suggestion that is completely false.

NARF urged the Court to deny IMOCA's motion to dismiss and to hear the case, as it is important that the Indian Arts and Crafts Act and its regulations are addressed. The Act is designed to protect Indian markets by specifically prohibiting non-Indians from selling goods as genuine Indian-made goods when indeed they are not.

In *Harjo v. Pro-Football, Inc.*, individual Indians 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. In April 1999 the United States Patent and Trademark Trial and Appeal Board decided in favor of the Native Americans. The Washington team has filed an appeal.

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 29 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; reform-

As part of NARF's continued representation of the Rosebud Sioux Tribe of South Dakota in implementing its Tribal Education Code, NARF worked with the Tribe and its consultants in an evaluation of the Tribal Education Department and Code funded by the Carnegie Corporation of New York. The final evaluation report was submitted in April 1999. It showed that the Tribe had made substantial progress in increasing Indian high school graduation rates and decreasing drop-out rates. In a tribally-operated school that is 99% Indian, the graduation rate increased from 24% to 69% and the drop-out rate decreased from 36%

ation rates increased from 48% to 72% and drop-out rates decreased from 11% to 7.6%.

Also, with support of the National Indian Education Association and the National Congress of American Indians, the Tribe submitted its request to the Department of Education to amend the Family Educational Rights and Privacy Act (FERPA) to treat tribes as sovereign nations in terms of obtaining public school student records of tribal members. As tribal education departments set up student tracking systems, a number of public schools have used FERPA as a ground for not providing tribes with student records, although the law is clear that the federal, state, and local governments can obtain such records from the schools without advance parental or student consent. NARF will be assisting tribes and Indian organizations in working with the Clinton Administration to garner their support in amending FERPA to help tribes in this area which is critical to improving Indian education.

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 (TED) has worked toward implementation of the



ing federal and state education laws and policies; and litigation to enforce tribal rights in education.

to 7% for the period from 1990 to 1998. Over the same time period at the principal public school that is 90% Indian, gradu-

Code's provisions through cooperative agreements with the five public school districts within the boundaries of the Reservation. In order to generate a better understanding of and support for the Code, the TED and the five school districts have agreed to hold a series of meetings with school board members and the general public. Although the TED is continuing its effort to establish a student tracking system, it has encountered substantial difficulty in obtaining student records from the public schools. The public schools base their refusal on their interpretation of FERPA to provide student data on tribal members to the tribes without advance parental consent. The Tribes have joined other tribes in working to resolve this issue.

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 the educational systems serving tribal children to provide a relevant and quality education for them. The Tribe has an Education Commission and Education Department that needs assistance with the long range planning and regulation of education. 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. NARF is working with the Fort Berthold Reservation's Department of Education and community representatives in reviewing the first draft of the code.

NARF represents the Jicarilla Apache Tribe of New Mexico in the development of an education code for Reservation education. The Tribe hopes the code will enable greater tribal input into the programs of the public school on the Reservation that serves a vast majority of Jicarilla Apache children. Statistics show that the Tribe's effort is badly needed. The Jicarilla Apache children consistently rank last or near last in all education



categories reported on annually by the State of New Mexico. As a first step, NARF worked closely with the Jicarilla Apache Department of Education to develop a work plan for the development of the Jicarilla Apache education code.

Since the President signed the Executive Order on Indian Education in 1998, NARF continues its representation of the National Congress of American Indians and the National Indian Education Association in the Order's implementation. The President has submitted to Congress a budget request for \$10 million in new federal dollars to train 1,000 new Indian teachers as part of implementing the Executive Order. As called for by the Executive Order, Regional Partnership Forums have been conducted and Pilot School Sites are being

reviewed. All of the activities governed by the Executive Order have occurred in consultation with tribal leaders and Indian educators.

Indian Child Welfare

In 1978, the United States Congress enacted the Indian Child Welfare Act (ICWA). The Act states as its purpose: "The Congress hereby declares that it is the policy of this Nation to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of

operation of child and family programs." The Act established substantive and procedural protections for tribes and families in cases of involuntary adoption, pre-adoptive placement, foster care placement, and dependency and neglect proceedings involving Indian children. Because these protections are challenged or may conflict with state law, policy or practice, there have been several hundred state and federal court decisions interpreting the Act. Recently, Congress has also attempted to amend the Act to resolve concerns related to the enforcement of the Act.

During 1999, NARF continued to monitor Congressional legislation that would strengthen ICWA and participated in national conferences and meetings related to Indian child welfare. NARF also drafted a chapter in a proposed book - entitled *Native American Children in our Legal System* - commissioned by the American Bar Association (ABA). The book outlines the legal rights of Native American children in our legal system in a variety of areas. NARF also drafted a chapter in the second edition of the ABA's Steering Committee on the Unmet Legal Needs of Children's publication - *America's Children at Risk*. The first edition failed to include issues related to the unmet legal needs of children in rural America, including Native Americans.

International Law

NARF has entered the international law arena with a focus on the United Nations (UN) Draft Declaration on the Rights of Indigenous Peoples and a similar declaration by the Organization of American States (OAS). NARF will represent the National Congress of American Indians on issues relating to the negotiation and adoption of the UN and OAS draft declaration on the rights of Indigenous people. An important drafting session on the OAS draft document on indigenous rights was held in Washington, D.C. in February 1999. The meeting provided for direct input by indigenous representatives for the first time in OAS history. The General Assembly in Guatemala authorized continued indigenous participation during the next year, with the goal of having the document approved in Canada in June 2000. The second drafting session was held during the second week in November 1999.



such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the

THE ACCOUNTABILITY OF GOVERNMENTS

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 represents approximately 500,000 present and past individual Indian trust beneficiaries in a class action suit against the United States for mismanagement of the individual Indian money (IIM) trust accounts. Filed in 1996, *Cobell v. Babbitt* is intended to force the United States as trustee to: (1) perform a complete, accurate and reliable accounting of all trust assets held to the benefit of individual Indian trust beneficiaries; (2) properly restate the trust fund accounts in conformity with that accounting; and (3) create an accounting and trust management system that is reliable and will safely and soundly manage the trust funds of individual Indians in the future. In 1998, the Federal District Court in Washington, D.C. denied the government's attempt to dismiss this case and issued a landmark ruling holding that the United States, as trustee to these individual Indian beneficiaries,

would be held to the same standards of care as a private fiduciary under the common law of trusts.

In February 1999 the defendants – the Secretary of Interior, the Secretary of Treasury and the Assistant Secretary for Indian Affairs – were held in civil contempt of court for failing to turn over relevant trust documents in violation of a court order. During summer 1999 a trial was held on the adequacy of the federal accounting and trust management system for the IIM accounts. In December 1999, the Court issued a 126 page Opinion that called the case a “stunning victory” for the plaintiffs and found that the United States had breached the trust duties owed to the IIM account holders. The Court ordered the federal government to fix the broken accounting and trust management system and retained judicial oversight of the process for a period of at least five years. The United States is appealing the decision.

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.

The Native American Rights Fund, on behalf of ten Native villages and seven Native individuals, filed a civil lawsuit in October 1999 in the Superior Court for the State of Alaska, seeking declaratory and injunctive relief against the State of Alaska for failure to provide minimally adequate police protection to 165 off-road Native villages and for discriminating against them in the provi-

sion of State law enforcement services. In *Alaska Inter-Tribal Council v. Alaska* the complaint alleges that the actions of the State in unlawfully prohibiting Native villages from keeping the peace in their traditional ways, which rendered them defenseless to lawbreakers, while failing to provide them even minimally-adequate police protection under the State law enforcement system, violated the Villages' rights to Due Process of law and basic law enforcement protection guaranteed by the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. The complaint also alleges that the State's discriminatory treatment of Native vil-

Equal Protection of the law under the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. The complaint also alleges that the State's use of State and federal funds and services in State law enforcement programs which discriminate against Alaska Natives in the provision of police protection violates their rights under Alaska statutes and Title VI of the Federal Civil Rights Act of 1964.

In *Alaska v. Native Village of Venetie*, the State argued that Native Villages were not "Indian country" and therefore lacked taxing authority to raise revenue for tribal governmental services, like police protection. The

essential governmental services. The indisputable facts in *Alaska Inter-Tribal Council v. Alaska* demonstrate the falsity of the State's extravagant misrepresentations in the *Venetie* case. Nonetheless, based in part on these misrepresentations, Alaska succeeded in convincing the United States Supreme Court in 1998 to deny Native Villages' the critical means of providing local police protection through tribal jurisdiction.

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 but there are historical similarities. 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 reasserting Native Hawaiian rights.

Rice v. Cayetano involves a challenge by a non-Native to the voting restriction allowing only Native Hawaiians to vote



lages in the provision of police protection is based on race and therefore violates the Villages' rights to

State claimed that tribal taxing authority was not necessary because the State was providing all

for trustees of the Office of Hawaiian Affairs (OHA). The OHA administers income received from certain trust lands for the benefit of Native Hawaiians. Rice argues that the restriction violates the Fourteenth and Fifteenth Amendments to the Constitution. The Ninth Circuit Court of Appeals upheld the voting restriction, but the United States Supreme Court is reviewing that decision. One of Rice's arguments is that since there are no tribes in Hawai'i, the voting restriction is purely race-based and subject to strict scrutiny. The Supreme Court case of *Morton v. Mancari* held that legislation as to Indian tribes is based on the political relationship between tribes and the United States and need only be rationally related to Congress' unique obligation toward Indian tribes. The question is whether the same standard applies to legislation passed for the benefit of Native Hawaiians. NARF filed an *amicus curiae* brief in support of Native Hawaiians on behalf of the National Congress of American Indians in the Supreme Court. The case was argued in October 1999.

In *Pele Defense Fund v. Campbell*, NARF and co-counsel Native Hawaiian Legal Corporation await a favorable ruling promised by a Hawai'i 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 Hawai'i for other lands in order to accommodate a geothermal developer. The decision is expected to be appealed to the Hawai'i Supreme Court. The case was previously before the Hawai'i 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 Hawai'i v. Hawai'i County Planning Commission* which alerted government agencies of their responsibility under the Hawai'i 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 which has now been pending for four years.

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

tant 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. NILL handles close to one thousand information requests per year and serves a wide variety of public patrons including attorneys, tribal governments, tribal organiza-

The National Indian Law Library recently launched its library catalog on its improved Internet website. This searchable catalog provides free access to current descriptions of over 12,000 holdings in the library collection. For the past twenty seven years, NILL has been collecting a wealth of materials relating to federal Indian law and tribal law which include such tribal self-governance materials as constitutions, codes and ordinances; legal pleadings from major Native American law cases; law review articles; handbooks; conference materials, and other information. Now the general public can access bibliographic descriptions of these materials from the electronic catalog on the NILL website. Once relevant documents are located, patrons can review materials at the Boulder, Colorado library, request copies for a nominal fee, or borrow materials through inter-library loan. To reach the catalog and other Native American law resources on the NILL website, point your Internet browser to the Native American Rights Fund (NARF) website at www.narf.org and click on the National Indian Law Library link.

Indian Law Support Center

Since 1972 the Indian Law Support Center (ILSC) of the Native American Rights Fund

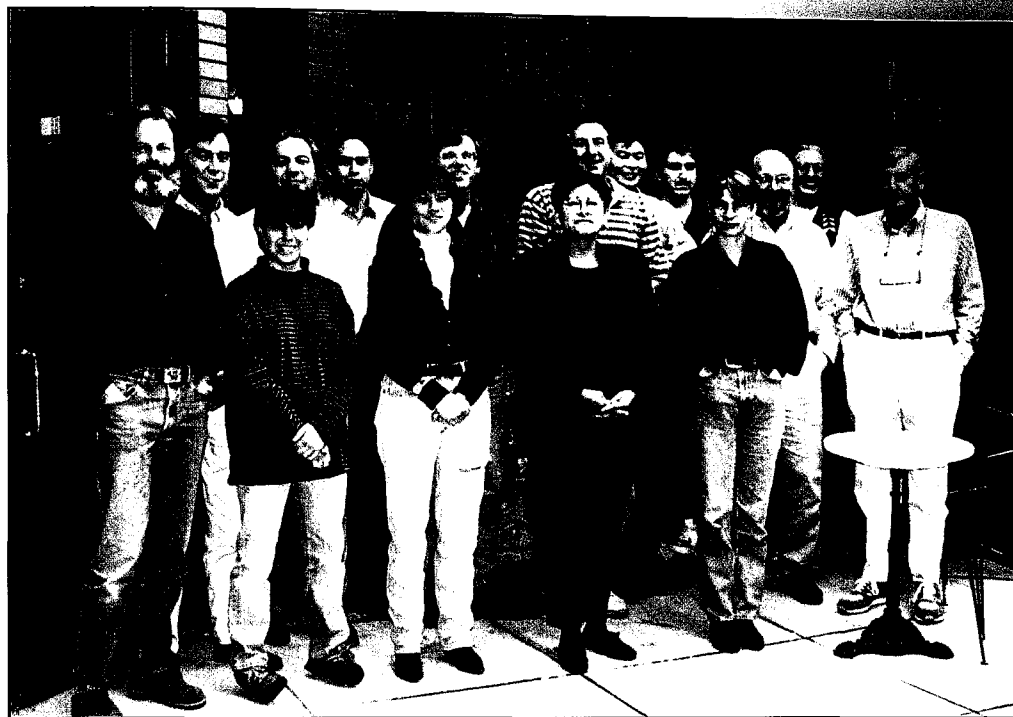


essential for practitioners of Indian law. An important component of NILL is its collection of pleadings filed in impor-

tions, researchers, students, prisoners, the media, and the general public.

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 were 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.



During 1999 ILSC has been involved in coordinating efforts to enact the Indian Tribal Courts Technical and Legal Assistance Act of 1999. ILSC has also been coordinating efforts of the National Association of Indian Legal Services to develop a more formal and comprehensive set of policies of the Legal Services Corporation regarding Indian legal services programs.

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.

1999 TREASURER'S REPORT

Based on our *audited* financial statements for the fiscal year ending September 30, 1999, the Native American Rights Fund reports total unrestricted revenues of \$6,719,284 against total expenditures of \$6,547,900. Due to presentation requirements of the 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, rev-

enue actually exceeded operating expenses and other cash outlays by \$680,674, allowing for a modest increase to NARF's reserve fund. This increase can be largely attributed to the continued generosity of NARF's donors and other supporters, combined with a fortuitous gain in investments.

Expenditures decreased by \$271,126 due, in the most part, to a decline in consultant costs for FY99's case-related activity. Total management and fund raising costs constituted 30.7% of total revenues in Fiscal Year 1999.

Support and Revenue comparisons between FY99 and FY98 are shown below. The significant difference in foundation grant revenue is reflective of the timing of receipt of NARF's largest foundation grant which was recognized in FY98 for financial statement purposes. The sharp decline in legal fees is due to receipt in FY98 of the last of four large payments of a previous fee award.

SUPPORT AND REVENUE COMPARISON

	1999		1998	
	\$	%	\$	%
Federal Grants	\$ 1,506,839	22.4%	\$1,487,468	21.4%
Foundation Grants	610,914	9.1%	2,120,804	30.5%
Contributions	3,126,321	46.5%	2,608,407	37.5%
Legal Fees	299,664	4.5%	805,838	11.6%
Investment Income	1,130,329	16.8%	(162,110)	-2.4%
Other	45,217	0.7%	94,925	1.4%
TOTALS	\$ 6,719,284	100%	\$6,955,332	100%

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.

NARF

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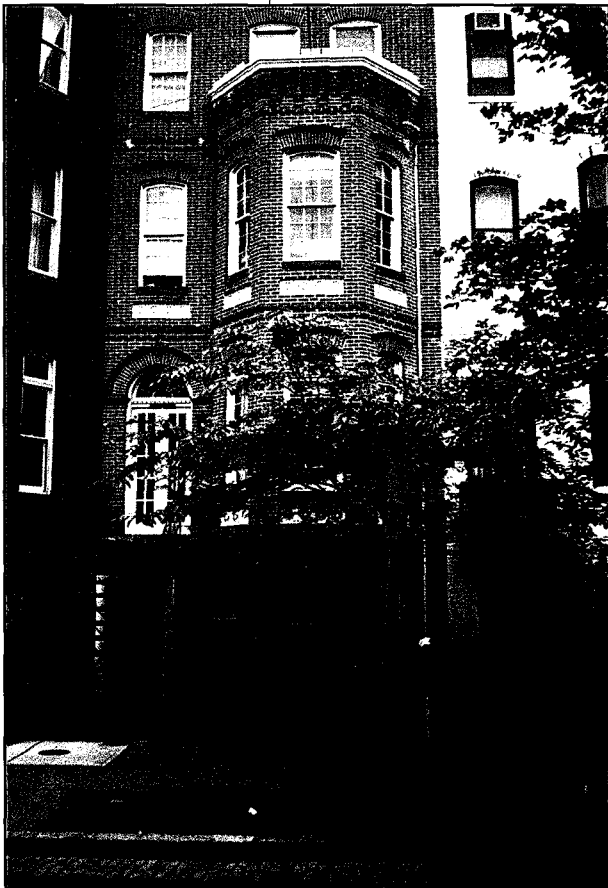
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