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*Native American Rights Fund*  
*Annual Report 2002*





# Native American Rights Fund



## Annual Report 2002

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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 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 heads into its thirty-third year of existence, it can be acknowledged that many of the gains achieved in Indian country over those 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

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 W.K. Kellogg Foundation and the Skadden Fellowship Foundation 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. With the Mashantucket Pequot Tribal Nation leading the way, each year the number of tribes contributing to NARF has increased and their contributions have become vital to our programs and services. 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 and educating the public about Indian rights, laws, and issues



Nez Perce.  
(Photo: Ken Blackbird)

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.

## Chairman's Message

I'll never forget that hot and humid day on September 15, 2002 in Washington, D.C. at the National Museum of the American Indian (NMAI) Inaugural Pow-Wow. There were thousands of spectators, it was raining and we had close to 500 dancers gathered around in the arena. The audience was listening to every word and as co-emcee, I took the liberty to introduce Mr. Billy Cypress of the Seminole Tribe of Florida Color Guard. Mr. Cypress is also Executive Director of the Seminole Tribe's Ah-Tah-Thi-Ki Museum and on that day he was carrying the POW/MIA flag. I had a chance to visit with Billy prior to the Grand Entry. He told me he was going to carry this particular flag because he feels that the 100,000 Native American remains in this nation's museums across the country are the "Indian Prisoners of War." I introduced him and acknowledged the fact that he wanted these 100,000 remains to be returned to Indian people for a proper memorialization, burial and eternal rest. The audience gave a roaring round of applause. The Indian dancers and singers acknowledged in their own way that this must be done.

For me it all started at Arizona State University on November 30, 2001. I was invited to serve as the facilitator for a conference on the issue of culturally unidentifiable Native American human remains. Tribal cultural leaders and representatives from all regions in the United States, including Alaska and Hawaii came together for a national dialogue on the Native American Graves Protection and Repatriation Act (NAGPRA). In particular, the dialogue focused on how to define "Culturally Unidentifiable Remains." I was overwhelmed when I asked the question: "How many of you have re-interred human remains?" Of the 125 Native people in attendance, approximately 75 individuals raised their hands.

On the final day of the conference the participants reached a consensus and outlined

a vision statement and five policy recommendations to guide the disposition of "Culturally Unidentifiable" Native American human remains. The participants at this conference expressed a great deal of concern about what the scientists and museums are doing regarding this particular issue. In their opinion, there is no such thing as "Culturally Unidentifiable" Native American remains. They are all "Culturally Affiliated" to contemporary Native



Wallace Coffey,  
Chairman, NARF Board  
of Directors  
(Photo: Ray Ramirez)

peoples and should be "speedily repatriated" to the Native people.

According to NAGPRA officials within the National Park Service, it is estimated that the number of "Culturally Unidentifiable" human remains is somewhere between 75,000 to 100,000 individuals in various institutions across the United States. These same officials have indicated that 800 museums and institutions



Nakota Designs Inc.  
(illustration: Walt Pourier)

across the country have submitted inventories as defined by the NAGPRA law, however, only 115 have been reviewed and entered into a database. Sad, isn't it, that at this very moment Indian people don't know where our ancestors are located because there is no published list. Did you know that not even one Indian is employed with the NAGPRA office and that this past summer four anthropologists were hired by the National Park Service? Although we have Indian representatives on the NAGPRA review committee, many people remain uncertain as to what their responsibilities and duties are to Native people.

In January 2002, the Native American Rights Fund Executive Committee by motion authorized me, as NARF's Chairman, to take an active role in the repatriation issue and to advocate for the return of our ancestors. In February 2002, I traveled to Washington, D.C. to seek support of the National Congress of American Indians regarding the vision statement and recommendations made by cultural representatives at the ASU conference. While in Washington, I went to the Museum of Natural History to the section which houses

the tribal displays. I sat down on a marble bench at the end of this short tour and prayed. I burned sage and talked to our ancestors whose spirits are there and confined within those walls. They do not want this as their final resting place. I said that we have not forgotten them and that we will be coming for them at some time for a proper burial and memorial. I asked that they communicate amongst themselves and aid us in our efforts and that just around the corner, with the good Lord willing, they will have their eternal rest. As I got up to leave, I felt a cold shiver go through me and I realized that with all the security in that facility, I could be arrested for burning sage. As I walked out of the Museum, I felt invisible and the only ones who could see me were the spirits themselves. I felt really special as if I was blessed by our ancestors.

I may not be able to change any laws that would repatriate our ancestors, but I can call attention to the human injustice imposed on our deceased relatives. When I was in Washington during the NMAI pow-wow and making comments about the POW/MIA flag and introducing Billy Cypress, I could see the spirits of our ancestors. I realized that we were walking in their footsteps and they were watching over us. When the National Museum of the American Indian opens its doors in the year 2004, you need to be there, for you will see our relatives smiling down at us and at the same time you will come to realize that when a person takes their last breath of life, they deserve everlasting and eternal rest. I think our ancestors deserve the same thing!

May God Bless You All

Wallace Coffey, Chairman  
Native American Rights Fund

# Executive Director's Report

Fiscal year 2002 was the 32nd year that the Native American Rights Fund provided legal advice and assistance to Native Americans across the country on legal issues of national significance. I want to summarize the most important victories and developments in our cases and activities during the year to illustrate the difference that the organization has made for Native Americans during the year.

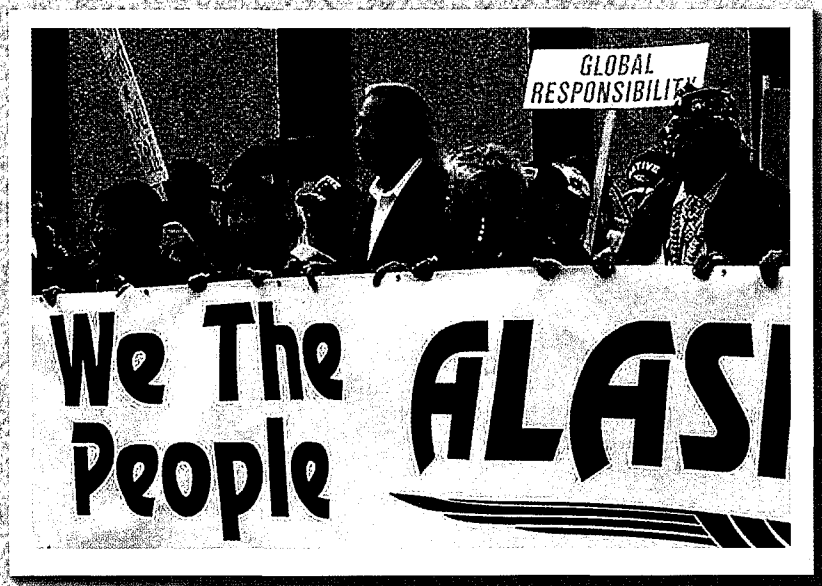
The Supreme Court Project that we operate with the National Congress of American Indians as part of the Tribal Sovereignty Protection Initiative got underway. The Project formally coordinates advocacy by tribes and their attorneys in all cases before the Supreme Court or potentially heading to the Supreme Court in an effort to improve the success rate of the tribes before the Supreme Court. Through the Project, NARF coordinated amicus briefs in two important Indian law cases currently before the Supreme Court, *United States v. White Mountain Apache Tribe* and *United States v. Navajo Nation*, involving the federal government's liability for money damages for breach of trust.

In *Alabama-Coushatta Tribe of Texas v. United States*, the Court of Federal Claims approved \$270 million as the amount of damages due the Tribe for loss of use of over 2.85 million acres of aboriginal land which was illegally occupied by non-Indians without federal approval after Texas became a state in 1845. The Court will soon be making that recommendation to Congress as it completes its work in this Congressional reference case that NARF has been involved in since 1981.

Continuing our environmental work with the Oglala Sioux Tribe of South Dakota, NARF assisted the Tribe in drafting a Water Quality Management Code which was approved by the Tribal Council. The Code will allow the Tribe to gain control over the environmental integrity of an important aspect to water within the Tribe's

jurisdiction and bring the Tribe into compliance with the requirements of federal environmental laws.

Implementation of the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 occurred when a Montana water court's decree approving the Tribe's water rights became final. The \$47 million settlement quantifies the Tribe's on-reservation water rights, provides \$25 million for on-reservation water development projects, \$3 million for a water administration system,



\$3 million for economic development, 10,000 acre-feet of storage water from a federal reservoir, \$15 million toward a drinking water importation project, and \$1 million to study future tribal water needs. NARF has represented the Tribe since 1987.

In another water rights case, this one on behalf of the Klamath Tribes of Oregon, NARF won a favorable decision in *United States v. Adair* where a federal court reaffirmed the Tribes' water rights and decided all disputed issues in favor of the Tribes. In order to ensure

NARF Executive Director John Echonawk (middle) leads the "We the People March" in Alaska, 2002.  
(Photo: Shona Embs)



John Echohawk, Wes Studi,  
and NARF Board member  
Mike Williams.  
(Photo: Ray Ramirez)

that the State of Oregon applies the correct federal standards in quantifying Tribal water rights in state proceedings, the Tribes had asked the federal court to clarify the nature and scope of the Tribes' reserved water rights. As confirmed by the federal courts nearly twenty years ago, the Tribes hold reserved water rights in the Klamath River basin to support their treaty hunting, fishing and gathering rights as well as to satisfy the agricultural purposes of the Klamath Reservation.

NARF assists the Gwich'in Steering Committee in their efforts to protect the Arctic National Wildlife Refuge (ANWR) in Alaska from oil development and successfully worked with a coalition of environmental groups to stop the U.S. Senate in 2002 from approving oil drilling in ANWR. 7,000 Gwich'in people live on or near the migratory route of the Porcupine caribou herd and rely on the caribou for food, clothing, tools and a source of respect and spiritual guidance. The calving grounds of the caribou lie inside ANWR and will be disturbed by any oil drilling.

Secretary of the Interior Gale Norton and Assistant Secretary for Indian Affairs Neal

McCaleb were held in contempt of court in *Cobell v. Norton*, the class action lawsuit on behalf of over 300,000 individual Indian trust account beneficiaries filed in 1996 by NARF and private co-counsel. Two federal courts have held that the federal government as trustee is in breach of trust for mismanagement of the trust accounts and have ordered trust reform and an accounting. Norton and McCaleb were found to have committed fraud on the court for misrepresentations about their efforts to reform the trust and perform the accounting.

In *Pele Defense Fund v. Campbell*, NARF and co-counsel Native Hawaiian Legal Corporation regained Native Hawaiians' access rights to rainforest lands traditionally exercised by Native Hawaiians before those lands were exchanged in 1983 by the State of Hawaii for other lands in order to accommodate a geothermal developer. Although the land exchange was upheld in 1992, traditional Native Hawaiian access rights to these lands under the Hawaii State Constitution were upheld in a ruling in 2002.

These victories and developments would not have been possible without the financial support provided by our many contributors and supporters across the country and around the world. Justice for Native Americans is possible if the Native American Rights Fund has the financial resources to pursue it. We thank all of you who have assisted us and urge you to continue working with us on behalf of Native Americans.

John E. Echohawk,  
Executive Director

# The 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.

## NARF's Board of Directors:

**Wallace E. Coffey, Chairman** (*Comanche - Oklahoma*); **Jaime Barrientoz** (*Grande Traverse Band of Ottawa & Chippewa Indians - Michigan*); **Billy Cypress** (*Miccosukee - Florida*); **John Gonzales** (*San Ildefonso Pueblo - New Mexico*); **Nora Helton** (*Fort Mojave - California*); **Vernita Herdman** (*Inupiaq - Alaska*); **Karlene Hunter** (*Oglala Lakota - South Dakota*); **Kenneth P. Johns** (*Athabascan - Alaska*); **Paul Ninham** (*Oneida Nation of Wisconsin*); **E. Ho'oiipo Pa** (*Native Hawaiian - Hawaii*); **Clinton Pattea** (*Fort McDowell-Yavapai - Arizona*); **Sue Shaffer** (*Cow Creek Band of Umpqua - Oregon*); and **Mary T. Wynne** (*Rosebud Sioux - Washington*).

**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.

Owanah Anderson, *Choctaw*  
Edward Asner  
Katrina McCormick Barnes  
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  
Carol Hayward, *Fond Du Lac Chippewa*  
Richard Hayward, *Mashantucket Pequot*  
John Heller  
Emilie Heller-Rhys  
Alvin M. Joseph, Jr.  
Charles R. Klewin  
Nancy A. Klewin  
Wilma Mankiller,  
*Cherokee Nation of Oklahoma*  
Chris E. McNeil Jr., *Tlingit-Nisga'a*

Others are known advocates for the rights of the underserved. All of the 45 volunteers on the Committee are committed to upholding the rights of Native Americans.

Billy Mills, *Oglala Sioux*  
N. Scott Momaday, *Kiowa*  
Amado Peña Jr., *Yaqui/Chicano*  
David Risling Jr., *Hoopa*  
Pernell Roberts  
Walter S. Rosenberry, III  
Marc & Pam Rudick  
Leslie Marmon Silko, *Laguna Pueblo*  
Connie Stevens  
Ernie Stevens, Jr., *Wisconsin Oneida*  
Anthony L. Strong, *Tlingit-Klukwan*  
Maria Tallchief, *Osage*  
Andrew Teller, *Isleta Pueblo*  
Verna Teller, *Isleta Pueblo*  
Studs Terkel  
Tenaya Torres, *Chiricahua Apache*  
Rebecca Tsosie, *Pascua Yaqui*  
Thomas Tureen  
Richard Trudell, *Santee Sioux*  
Aine Ungar  
Rt. Rev. William C. Wantland, *Seminole*  
Dennis Weaver  
W. Richard West Jr., *Southern Cheyenne*



# The Preservation of Tribal Existence

NARF continues its work to empower tribes so that they can 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 sovereignty and jurisdiction issues, federal recognition and restoration of tribal status, 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.

## TRIBAL SOVEREIGNTY

The Constitution recognizes that Indian tribes are independent governmental entities. Like state governments and foreign governments, Indian tribes have the inherent power to govern their people and their lands. A fundamental contract was created in the

treaties with Indian nations. Indian tribes ceded millions of acres of land that make the United States what it is today. In turn, tribes received the guarantee that the federal government would protect the tribes' right to govern their own people and their reservations as homelands for tribal cultures, religions, languages, and ways of life.

Since the time of the Constitution, the U.S. Supreme Court has repeatedly affirmed the fundamental principle that Indian tribes retain their government powers unless specifically limited by treaty or by federal law. Chief Justice John Marshall, whose decisions laid the foundation for Indian law, wrote that tribes were "distinct, independent political communities, retaining their original natural rights." Until very recently, the U. S. Supreme Court remained faithful to Chief Justice Marshall's principles, upholding inherent tribal governmental authority over their lands.

In the past decade, the U.S. Supreme Court developed a trend in ruling against tribal interests, culminating in two major 2001 opinions. In *Nevada v. Hicks*, where NARF represented the Tribe, the Court overturned a Ninth Circuit Court decision holding that the Fallon-Paiute Shoshone tribal court lacks the authority to hear a civil rights lawsuit brought by a tribal member against Nevada state game officials for an illegal search on a tribal member's home located within the reservation. The Court not only found that the Tribe lacked sufficient "interest" in the case, it went far beyond the facts and included many propositions not supported by previous decisions, including the sweeping statement that "ordinarily, it is now clear, an Indian reservation is considered part of the territory of the State." *Atkinson Trading Company v. Shirley* struck down a Navajo Nation hotel occupancy tax on a non-Indian establishment. Again, the Court found that the Nation has no "interest" sufficient to warrant a tribal tax.

Klamath forest in Oregon.  
(Photo: Ray Ramirez)



These recent decisions have demonstrated that the Supreme Court is on an accelerated trend toward removing tribal jurisdiction. In addressing this attack, NARF along with NCAI and its member tribes, have implemented the Tribal Sovereignty Protection Initiative. This Initiative is a national tribal effort to address the erosion of tribal jurisdiction by putting forth a comprehensive effort to improve tribal collective advocacy before the federal courts, to engage in public education about tribal governance, and to develop legislation to reaffirm tribal jurisdiction. As part of the Initiative, NARF co-chaired a committee charged with drafting a legislative proposal for Congressional consideration that would overturn the recent bad Supreme Court decisions. The proposed legislation would affirm tribal regulatory, judicial and criminal jurisdiction on a territorial basis and would exclude all state jurisdiction in Indian country.

NARF is also co-chair of the Supreme Court Project which was established to monitor and oversee all tribal cases possibly heading for the Supreme Court in the future in order to increase the rate of success for tribes before the Court. Through the Project, NARF coordinated amicus briefs in two important Indian law cases currently before the Supreme Court, *United States v. White Mountain Apache Tribe* and *United States v. Navajo Nation*, involving the federal government's liability for money damages for breach of trust. Oral argument on both cases was held in December 2002.

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. Unfortunately, the Tax Commission ruled in favor of the State.

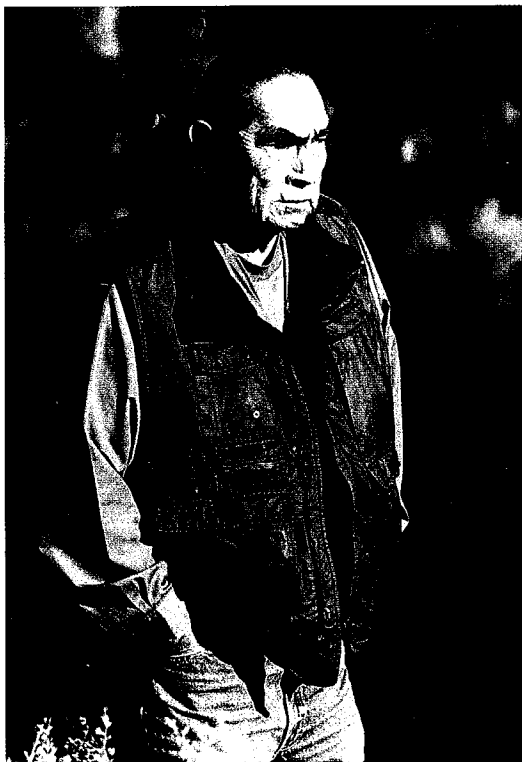
### FEDERAL RECOGNITION OF TRIBAL STATUS

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



Tribal Forester and forestry experts work together to develop the Klamath Tribes forestry management plan. (Photo: Ray Ramirez)

Phillip Jackson,  
Tribal Council member,  
Klamath Tribes  
of Oregon.  
(Photo: Ray Ramirez)



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.

Federal recognition is an arduous process that takes many years to complete. Petitioning tribes must prove that they have been identified by reliable external sources on a substantially continuous basis as an Indian entity; they must prove that they have maintained a continuous community from historical times to the present day; they must show that they have maintained political authority or influence on a substantially continuous basis from historical times until the present day; they must prove that current tribal members, as a whole, descend from a historic tribe or tribes which amalgamated; they must prove that their members are not mostly

members of an already recognized tribe; and, their members cannot be from groups which were terminated by legislation. This process requires the testimony of many experts and thorough documentation of each requirement.

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 waiting for a final decision on its petition. In the meantime, NARF assisted 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. The Tribe was placed on a one year active review status in 1997, however, the BIA continued granting itself six-month extensions. Although the due date for the findings of tribal status was in 1998, the extensions continued into 2000. Finally, after all the delays, the Assistant Secretary informed the Tribe in 2000 that the Bureau would publish in the Federal Register "a proposed finding that acknowledges that the Little Shell Tribe of Chippewa Indians of Montana exists as an Indian tribe within the meaning of federal law." In the meantime, the Tribe was granted an extension to gather and digest additional data. NARF will continue to supplement the Tribe's record until January 2003.

In *Miami Nation of Indians v. Norton*, NARF is challenging the BIA's decision not to recognize the Miami Nation as an Indian tribe. The U.S. District Court for Indiana initially rejected the Miami's claim that they were recognized in an 1854 treaty and were never terminated by Congress, but the Court considered

other Miami claims. In three separate opinions, the District Court granted the federal government summary judgment on all claims raised by the Tribe. The Tribe appealed the District Court's opinion seeking reversal of the opinion and having the case remanded to the agency with instructions to recognize the Miami Tribe, or at a minimum, to consider the Tribe under the regulations as reformulated in 1994. In 2001, the Miami Tribe lost their appeal before the 7th Circuit Court of Appeals. The Court thereafter rejected the Tribe's petition for reconsideration. In February, 2002, the United States Supreme Court declined to review the case effectively ending the Miami Tribe's ten-year legal battle to regain federal recognition. Without comment, the Supreme Court let stand a ruling by the 7th Circuit Court of Appeals that the Indiana Miami are no longer a tribe as defined by the United States government. The Tribe has exhausted its judicial remedies and only Congress can now right the wrong.

NARF has filed a petition for federal recognition for the Mashpee Wampanoag Tribe of Massachusetts that is now under active

consideration by the BIA. The Branch of Acknowledgment and Research (BAR) has placed the Tribe on active consideration pursuant to a federal court order rendered in December 2001. The BAR was instructed to issue its proposed findings by June 2002 and a final determination by December 2002. NARE has also completed and submitted a petition on behalf of the Shinnecock Indian Nation of New York and is responding to a BIA technical assistance letter explaining omissions or deficiencies in the petition. Work on a petition for the Pamunkey Tribe in Virginia continues.

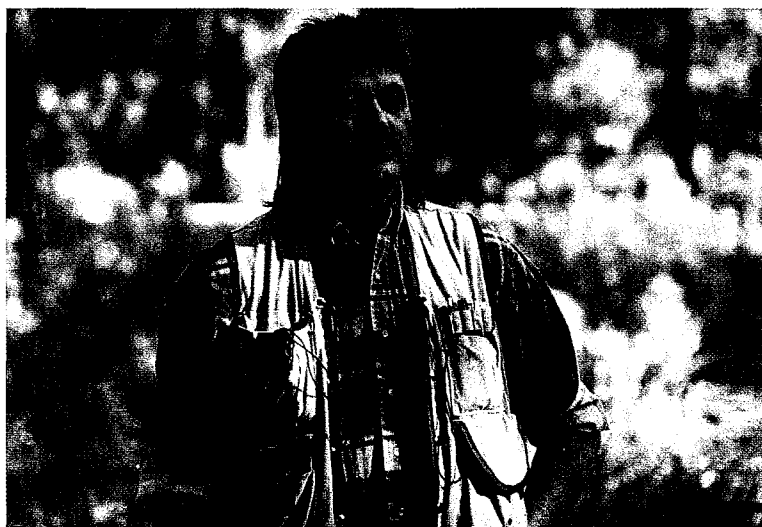


Former Klamath Tribal  
homelands which the Tribes  
are seeking the return of.  
Left: Crater Lake, Oregon  
(Photo: Ray Ramirez)



# 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.



Will Hatcher, Tribal Forester,  
Klamath Tribes.  
(Photo: Ray Ramirez)

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 use of

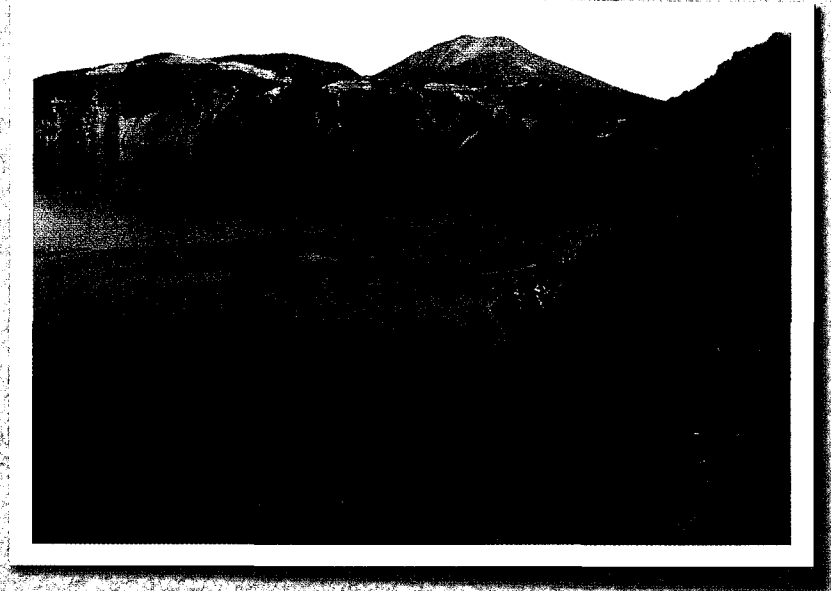
millions of acres of fertile forest that they once occupied in southeast Texas. The Tribe has been represented by NARF since 1981 in their quest to prove that their ancestral land was illegally taken from them by settlers. In 1996, the United States Court of Federal Claims ruled in *Alabama-Coushatta Tribe of Texas v. United States* that the United States should compensate the Alabama-Coushatta Tribe for the loss of use of ancestral land illegally taken without federal approval between 1845 and 1954. In 2000, the United States Court of Federal Claims ruled once again in favor of the Alabama-Coushatta Tribe of Eastern Texas in their breach-of-trust claim against the United States, holding the Government liable for the Tribe's loss of use of over 2.85 million acres of land between 1845 and 1954. The court also ruled that 5.5 million acres of aboriginal title has never been extinguished, so the Tribe also has a possessory land claim against the current occupants of 5.5 million acres. Negotiators for the U.S. and Tribe reached an agreement on the amount of damages, \$270 million, in February 2002 and submitted a stipulation to the Court. The Court approved the stipulation in September, 2002, and prepared to submit a favorable recommendation to Congress on the Tribe's breach of trust claim against the U.S.

NARF represents the Keewatinosagaing or Northern Lakes Pottawatomie Nation of Canada, a band of Pottawatomies descended from the historic Pottawatomie 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 Pottawatomie 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 years of fact-finding, discovery and briefing of this case, the Tribe and the United States agreed in principle to the settlement of this case. Settlement terms were approved by the Court in 2000 and settlement legislation was presented to Congress in 2001 for compensation of \$1.83 million.

NARF continued representing the San Juan Southern Paiute Tribe in the consolidated cases of *Masayesva 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. After negotiations, the San Juan Southern Paiute Tribal Council and the Navajo Tribal Council approved a settlement in 1999. In 2000, in an historic ceremony, the San Juan Southern Paiute and the Navajo Nation formally signed the settlement treaty. The settlement provides for a small reservation in Utah and one in Arizona (approximately 5,400 acres) to be carved out of the Navajo Reservation for the Paiute Tribe. NARF and the Tribe are continuing to work on Congressional approval of the settlement.

NARF is working with the Lower Brule Sioux Tribe against the State of South Dakota's challenge to the United States' decision to place approximately 91 acres of land into trust for the Lower Brule Sioux Tribe under Section 465 of the Indian Reorganization Act. The State is alleging, among other things, that the Secretary lacks authority to place land into trust because Section 465 is an unconstitutional delegation of legislative authority. In an earlier proceeding

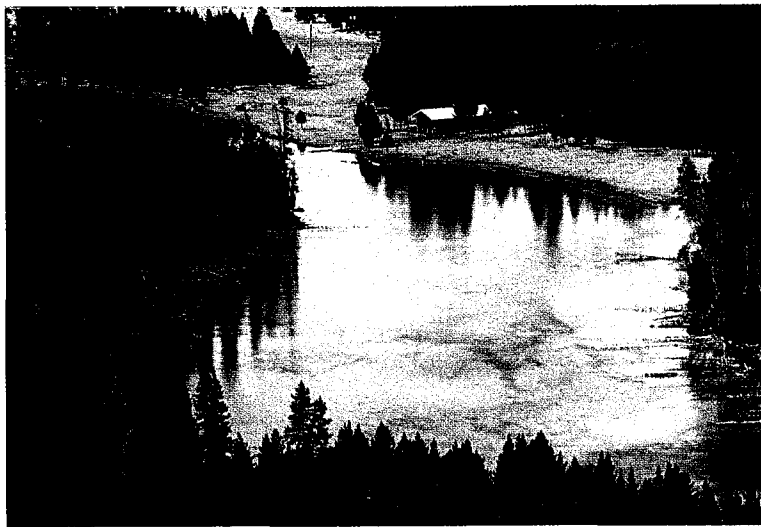


Crater Lake, Oregon  
(Photo: Ray Ramirez)

regarding this same 91 acres of land, the Eighth Circuit Court of Appeals did hold that Section 465 was unconstitutional but the Supreme Court vacated that opinion and remanded to the Secretary for further reconsideration. The State is now challenging the Secretary's reconsidered, and again favorable decision to place the land in trust. The Tribe filed a motion to intervene in this case, but the federal district court denied the Tribe's motion. The Tribe appealed to the Eighth Circuit on the issue of the Tribe's intervention.

The Summit Lake Paiute Tribe of Nevada requested a legal opinion on its ownership of and jurisdiction over legal rights to control fish and related habitat in Summit Lake. The Tribe's long-term goal is to use the legal opinion to help negotiate a memorandum of agreement among the Tribe, the federal government, and the State of Nevada whereby the Tribe would have primary authority to regulate the fish in all of the Lake. NARF completed the legal opinion and the Tribe is now considering its options.

With NARF's assistance, the Klamath Tribes of Oregon delivered a proposed Economic Self-Sufficiency Plan (ESSP) to the Office of the Secretary in 2000 as required by the Klamath



Former Klamath Tribal homelands which the Tribes are seeking the return of.  
(Photo: Ray Ramirez)

Restoration Act of 1986. The purpose of the ESSP is to define the foundation for the ability of the Tribes to regain the economic autonomy that they enjoyed prior to federal termination of the trust relationship and the taking of the Tribes' lands in the 1960s and 1970s. In March 2002 the Secretary of the Interior invited the Klamath Tribes to meet with Interior officials to work on long term solutions to an entire range of water, land and wildlife issues facing the people of the Klamath Basin in Oregon and California. This historic and broad invitation includes the possible return of lands taken from the Tribes in the 1960's under the now repudiated "Termination" policy. Discussions also include the restoration of degraded fish and wildlife habitat that currently prevent tribal resources from providing subsistence for tribal members.

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. The Department of the Interior is in the process of revising regulations

governing the process of taking land into federal trust for Native Americans. NARF worked with the NCAI Tribal Leaders' Task Force on Land Recovery, on behalf of Tuluksak, to develop comments to the proposed regulations and has been waiting for the Secretary of the Interior to issue final regulations. The Department of the Interior has already stated that the final regulations will continue to preclude Alaska tribes from being able to petition the Secretary to place tribal lands in trust. NARF is preparing a lawsuit on behalf of Tuluksak which will be filed against the Secretary once the regulations are finalized.

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 continued 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 (EPA) and other federal agencies. With a representative on the Green-Group, a coalition of national environmental leaders, NARF continues to coordinate with and educate the environmental community on the role of tribal governments in environmental law and policy.

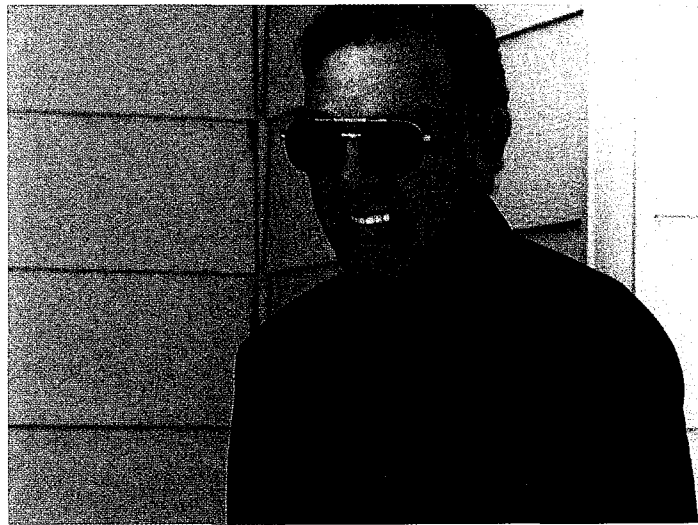
After assisting the Oglala Sioux Tribe of South Dakota with a Tribal Environmental Review Code, NARF assisted the Tribe in drafting a Water Quality Management Code, which was approved by the Tribal Council in February 2002. These Codes will allow the Tribe to gain control over the environmental integrity of an important aspect to water within the Tribe's jurisdiction and bring the Tribe into compliance with the requirements of federal environmental laws. Parallel to the efforts of completing these tribal codes is the effort to assure that their implementation will be compatible with the requirements of federal environmental laws.

and EPA's regulations. Of particular concern is the ability of Tribes, working with EPA, to secure implementation of federal environmental laws without the unnecessary intrusion from states. This will require a change in the laws that allow EPA to compact with tribes to accomplish implementation of certain federal environmental laws – including the Clean Water Act. NARF has been working with the Oglala Sioux Tribe and representatives of other tribes from EPA's Region 8 (including North and South Dakota, Montana, Wyoming, Colorado, and Nebraska), along with the attorneys representing these Tribes, to secure the necessary authority for EPA and the Tribes to enter into the necessary agreements.

#### **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 August, 2002 the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 was implemented when the Montana water court's decree approving the Tribe's water rights became final. NARF has represented the Tribe in their claim since 1987. The \$47 million settlement quantifies the Tribe's on reservation water rights, provides \$25 million for on-reservation water development projects, \$3 million for a water administration system, \$3 million for economic development, 10,000 acre-feet of storage water from a federal reservoir, \$15 million toward a drinking water importation project, and \$1 million to study future tribal water needs.



As confirmed by the federal courts nearly twenty years ago, the Klamath Tribes of Oregon hold reserved water rights in the Klamath River Basin to support their treaty hunting, fishing and gathering rights, as well as to satisfy the agricultural purposes of the Klamath Reservation. These reserved rights are currently being quantified in the context of a state-wide water adjudication in Oregon. NARF is assisting the Klamath Tribes in asserting and

Tribal Chairman  
Allen Foreman,  
Klamath Tribes of Oregon  
(Photo: Ray Ramirez)

defending their treaty-based water rights in the adjudication. In order to ensure that the State of Oregon applies the correct federal standards in quantifying Tribal water rights, the Tribes asked the U.S. District Court for the District of Oregon to clarify the nature and scope of the Klamath Tribes' reserved water rights. In April, 2002 the court issued an Opinion and Order reaffirming the Tribes' water rights and deciding all disputed issues in favor of the Tribes.

NARF continues its representation of the Nez Perce Tribe of Idaho in its water rights claim to the Snake River Basin. The Tribe's major claim is for sufficient in-stream flows to

ter have claims to both surface irrigation and groundwater irrigation flows in these waters which present direct and actual conflicts of interest with the Tribe's claims. The Tribe filed motions to disqualify the judge and appealed the decision. The Idaho Supreme Court granted the Tribe's motion for appeal in 2000. In June 2002 the Idaho Supreme Court dismissed the appeal as moot. The Tribe's petition for rehearing was denied in August 2002 by the Idaho Supreme Court.

NARF continues to assist the Tule River Tribe of California in securing its water rights. NARF has been drafting a settlement agreement to present to both the United States and downstream users along the South Fork of the Tule River. The Tribe's goal is to prepare a proposal that will provide the Tribe with sufficient water to create a permanent homeland for its people with minimal impact on the other users. Thus far, the Tribe has identified the core elements of a settlement proposal and has developed a method for allocating water between the parties based on allocating the natural flow of the river – a concept to which all parties have thus far agreed. Such a method of agreement relies on accurate measurement of the river flows and thus, to measure such flows the Tribe has installed two gage stations. One at the midway point of the Reservation and a second gage station at the Reservation boundary. The Tribe has presented the downstream users with its overall plan for settlement and description of its proposal. A Federal Negotiation Team has been appointed to assist the Tribe in reaching settlement of its rights.

NARF also concentrated on addressing a major problem in water rights settlements - the lack of federal funding for settlements. The problem has been the budget caps imposed by Congress which has meant that new settlement funding had to come out of existing Interior Department programs. Working with state and



Former Klamath Tribal homelands which the Tribes are seeking the return of.  
(Photo: Ray Ramirez)

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 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. After issuance of the decision, the Tribe learned that the judge and his brother and sis-

private partners in the Ad Hoc Group on Indian Reserved Water Rights consisting of the Western Governors' Association and the Western Regional Council, nine Senators were convinced to introduce a bill in 2001 that would amend the Budget Act and allow the appropriations committees to fund settlements without having to count those appropriations against the budget caps. NARF was also involved in organizing the Western Water Alliance, a coalition of people and organizations who support sustainable and equitable water policy in the west.

### HUNTING AND FISHING

The subsistence way of life is essential for the physical and cultural survival of Alaska Natives. Most of the two hundred small Native villages in Alaska are located on or near the shores of a river or a lake, or located on the coast of the North Pacific or Arctic Ocean. The proximity to water is no accident and reflects the dependence of Natives on the harvest of fish stocks for sustenance and the basis of their traditional way of life. In many Native villages fresh meat, fish and produce are unavailable except through the subsistence harvest. Annually, subsistence harvest amounts to less than 10% of the total take of fish and game.

As important as Native hunting and fishing rights are to Alaska Natives' physical, economic, traditional, and cultural existence, the State of Alaska has been and continues to be reluctant to recognize the importance of the subsistence way of life. The State views subsistence as nothing more than a taking of a natural resource, and as something that all citizens of the state should be entitled to engage in on an equal opportunity basis with little distinction between commercial sport and trophy hunting, and subsistence needs.

NARF assists the Gwich'in Steering Committee in their efforts to protect the Arctic



National Wildlife Refuge (ANWR) from oil development. The Gwich'in, which means 'People of the Caribou', are the northernmost Indian nation living across northeast Alaska and northwest Canada. There are about 7,000 Gwich'in people who live on or near the migratory route of the Porcupine Caribou Herd. For thousands of years, the Gwich'in have relied on the caribou for food, clothing, tools, and a source of respect and spiritual guidance. The calving grounds of the Porcupine River caribou herd inside ANWR is considered sacred. The Gwich'in call it "Vadzaih googii vi dehk'it gwanlii" (The Sacred Place Where Life Begins). The Gwich'in will not journey into these sacred grounds for hunting even in times of great need or food shortage. Oil development in ANWR would not only harm the caribou and threaten the future of the Gwich'in people, it would also threaten more than 180 species of birds, and numerous mammals including polar bears, musk ox, wolves, wolverine, moose, Arctic and red foxes, black bears, brown bears, and the white Dall sheep. In 2002, NARF successfully worked with a coalition of environmental groups and organizations to stop the U.S. Senate from approving oil drilling in ANWR in April, 2002.

Jerry Franklin, Ph.D.,  
University of Washington,  
internationally recognized  
forestry expert retained by  
the Klamath Tribes.  
(Photo: Ray Ramirez)




Klamath Tribal members  
Buzz Kirk and Raison Tupper.  
(Photo: Ray Ramirez)

In what is known as the *Katie John* case, NARF brought suit on behalf of two Native Elders from the Native Villages of Menasta and Dot Lake in federal court in 1990 alleging that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) requires the federal government to manage subsistence fisheries for rural Alaskans in navigable waters of Alaska. Both the federal district court and the Ninth Circuit Court of Appeals in 1995 agreed and held that the definition of "public lands" in Title VIII of ANILCA includes navigable waters in which the United States has reserved water rights. In 2000, the State of Alaska was granted a rehearing by the full panel of Ninth Circuit judges following entry of final judgement in the Alaska federal district court. In 2001 the Ninth Circuit Court of Appeals issued an opinion in favor of protecting Alaska Native subsistence rights. The court held that "the [1995] judgement rendered by prior panel and adopted by the district court should not be disturbed or altered by the *en banc* court." The State had 90 days to appeal this decision to the U.S. Supreme Court. However, after a face-to-face meeting with subsistence plaintiff Katie John, Governor Tony Knowles announced in 2001

that he would not appeal the *Katie John* decision. He acknowledged that the State of Alaska has not been protecting the basic right of rural Alaskans to provide for themselves and for their families. Several challenges have been made by members of the State Legislature and private groups trying to force the Governor to reverse his decision and appeal the case, but have been denied by the courts. NARF continued to monitor challenges to this decision in 2002.

In *Native Village of Eyak v. Daley*, NARF asserts aboriginal hunting and fishing rights on behalf of Alaska Native tribes to the Outer Continental Shelf (OCS) in the Gulf of Alaska. The issue presented is whether the Tribes may possess non-exclusive aboriginal hunting and fishing rights to waters on the OCS. The lawsuit challenges the Department of Commerce's Individual Fishing Quota (IFQ) regulations for halibut and sable fish on the ground that they prohibit tribal members from fishing within their traditional fishing grounds without IFQ's. In 1998 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. The Supreme Court in 1999 denied the Villages' petition, thereby refusing to review the Ninth Circuit's decision rejecting the Villages' claims to exclusive hunting and fishing rights on the OCS. The question whether the Villages have nonexclusive aboriginal fishing rights was sent back before the federal district. The federal district court ruled against the Villages in September 2002. NARF is currently preparing an appeal to the Ninth Circuit Court of Appeals.

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, ANILCA, residents of rural areas are given a subsistence priority over sport and commercial hunters and fishermen. In 1991, the Federal Subsistence Board declared large portions of the Kenai Peninsula to be non-rural, including the entire Kenai area, which comprises the primary hunting and fishing grounds for members of the Kenaitze Indian Tribe. The Kenaitze Tribe with NARF's assistance drafted and submitted a proposal to the Regional Advisory Council and the Federal Subsistence Board seeking to have the Board reverse its 1991 "non-rural" determination. In 2000, the Federal Subsistence Board reversed itself, holding that the Kenai Peninsula was indeed rural. However, the State and others requested the Board to reconsider this determination and in 2001, the Board reversed itself again, holding that virtually all of the Kenai Peninsula was non-rural. The Tribe has decided to challenge this decision in court. NARF is preparing a complaint to be filed in federal court on behalf of the Kenaitze Tribe.

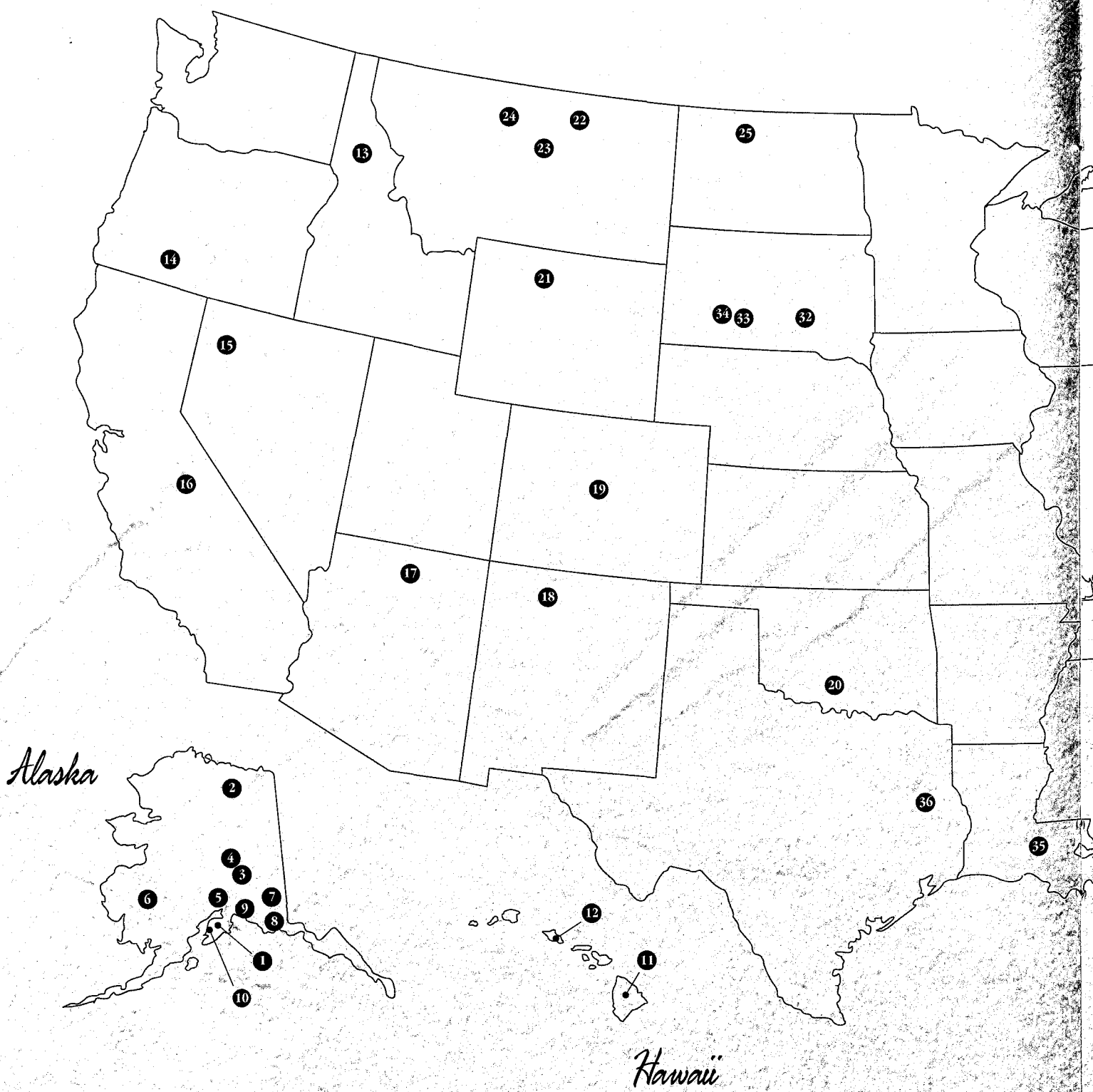
The Native Village of Kluti Kaah requested that NARF look into potential litigation against the federal government and the State of Alaska to federalize the fishery in and surrounding the Chitina area. The fishery has been regulated under state law as a personal use fishery until recently when the Alaska Board of Fisheries reclassified the fishery as a subsistence fishery open to all Alaskans. The designation will have a great impact on the local users as more and more urban residents come to the Copper River to fish as "subsistence users." NARF has been assisting the Tribe in petitioning the State Board of Fisheries to get it to reconsider the

decision to make the personal use fishery in Chitina a subsistence fishery. The Board's action will have the effect of opening the fishery to urban residents creating greater competition for a limited number of available fish. NARF has also assisted the Tribe in preparing testimony before the Federal Board of Fisheries requesting that Board to do a customary and traditional use determination for the Chitina fishery that occurs in federal waters.

NARF is representing the Native Village of Venetie Tribal Government, the Ninilchik Tribal Government, and individuals as proposed interveners in a case that was initially brought by the Safari Club, a sporting club, to challenge regulations promulgated by the Secretaries of Interior and Agriculture to implement the subsistence preference established by ANILCA. ANILCA establishes a preference for customary and traditional uses of fish and wildlife by according a priority for the taking of fish and wildlife on federal public lands in Alaska for non-wasteful subsistence uses by rural Alaska residents. The Federal Subsistence Board has made determinations as to which areas or communities of Alaska are rural and which are not; it has further made over 180 customary and traditional use determinations. The customary and traditional determinations are critically important because eligibility to take a particular resource may then be limited to those residents of rural areas or communities so designated, and all other individuals may be prohibited, in some manner, from taking that resource based on the limitations. The Safari Club challenged the validity of all 180 customary and traditional determinations under ANILCA. NARF's clients seek to intervene as co-defendants to defend the subsistence use determinations for their respective communities and to protect their entitlement to the priority to take fish and wildlife on federal public lands in Alaska for subsistence uses in Alaska.

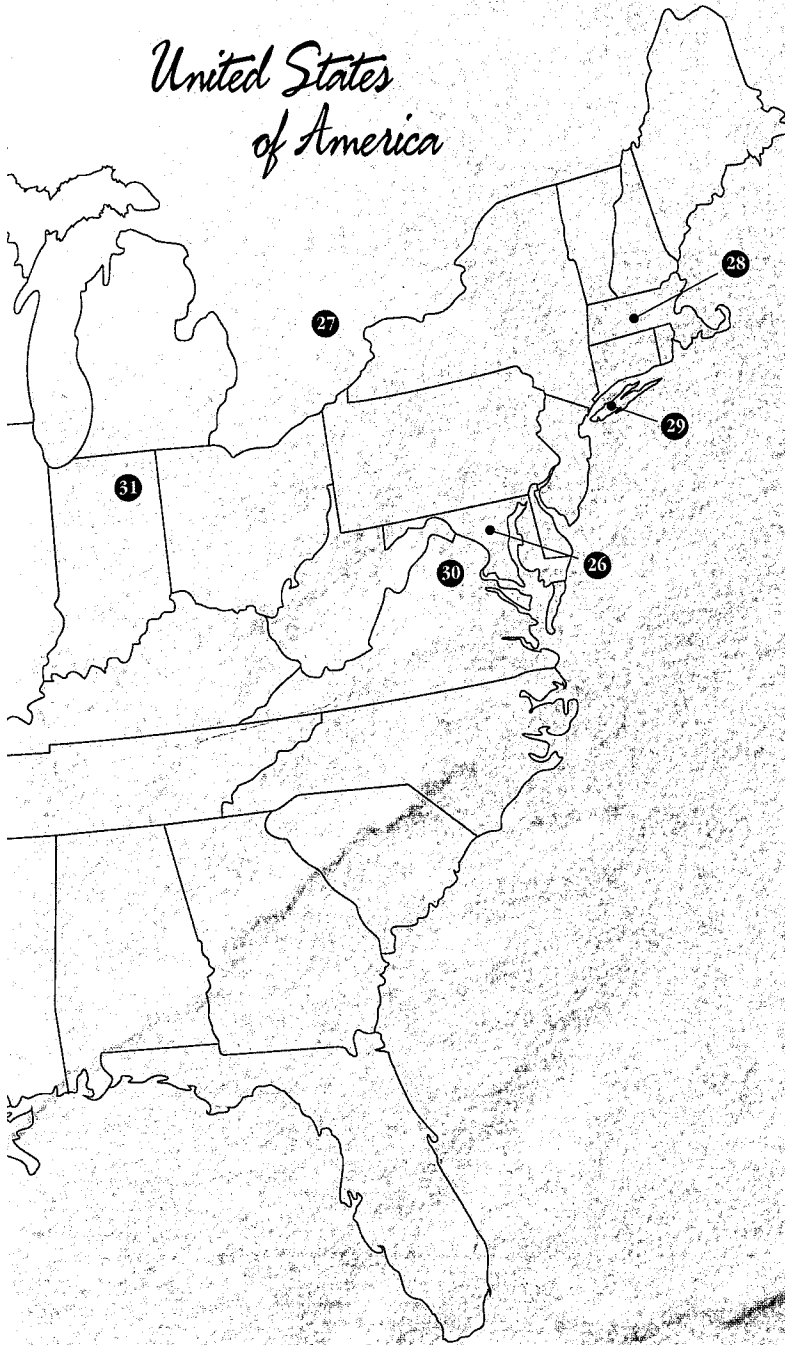


# Major Activities - 2002 Native American Rights Fund Case Map





# United States of America



- 1 Kenaitze Indian Tribe - Subsistence (Alaska)
- 2 Gwich'in Steering Committee - Environmental/Subsistence (Alaska)
- 3 Alaska Inter-Tribal Council/Native Village of Akiak - Equal Protection (Alaska)
- 4 Native Village of Alakayak - Language Initiative (Alaska)
- 5 NARF ANCHORAGE OFFICE
- 6 Native Village of Tuluksak - Trust Lands (Alaska)
- 7 Mentasta & Dot Lake (Katie John) - Subsistence (Alaska)
- 8 Native Village of Kluti Kaah - Subsistence (Alaska)
- 9 Native Village of Eyak - Subsistence & Aboriginal Title (Alaska)
- 10 Niniitchick Tribe - Subsistence (Alaska)
- 11 Pele Defense Fund - Aboriginal Rights (Hawaii)
- 12 Rice v. Cayetano - Voting Rights (Hawaii)
- 13 Nez Perce Tribe - Water Rights (Idaho)
- 14 Klamath Tribes - Water Rights & Self-Sufficiency (Oregon)
- 15 Summit Lake Paiute Tribe - Jurisdiction (Nevada)
- 16 Tule River Tribe - Water (California)
- 17 San Juan Southern Paiute Tribe - Land Claim (Arizona)
- 18 Jicarilla Apache Tribe - Education (New Mexico)
- 19 NARF HEADQUARTERS BOULDER-COLORADO
- 20 Oklahoma Tax Commission v. Goodeagle - Taxation (Oklahoma)
- 21 Medicine Wheel National Historic Landmark - Sacred Site (Wyoming)
- 22 Fort Peck Tribes - Education (Montana)
- 23 Chippewa-Cree Tribe - Water & Trust Claim (Montana)
- 24 Little Shell Tribe - Recognition & Trust Claim (Montana)
- 25 Turtle Mountain Reservation - Trust Claim (North Dakota)
- 26 NARF WASHINGTON, D.C. OFFICE
- 27 Northern Lakes Pottawotomi Nation - Land Claim (Canada)
- 28 Mashpee Wampanoag Tribe - Recognition (Massachusetts)
- 29 Shinnecock Tribe - Recognition (New York)
- 30 Pamunkey Tribe - Recognition (Virginia)
- 31 Miami Nation - Recognition (Indiana)
- 32 Lower Brule Sioux Tribe - Trust Land (South Dakota)
- 33 Rosebud Sioux Tribe - Education & Cultural Property Rights (South Dakota)
- 34 Oglala Sioux Tribe - Environmental (South Dakota)
- 35 United Houma Nation - Recognition (Louisiana)
- 36 Alabama-Coushatta Tribe - Land Claim (Texas)



# The Promotion of Human Rights

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

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 possession to these objects then they must be returned upon request of the tribe. NARF continues to provide guidance to tribes that are asserting NAGPRA claims.

The Native American Rights Fund represented the National Congress of American Indians (NCAI) as an amicus in the case of *Bonnicksen v. United States*, sometimes referred to as the "Kennewick Man case." The case arose from the discovery of 9000 year old human remains along the Columbia River. Several northwest Tribes collectively filed a claim for possession of the remains with the Department of Interior (DOI) under the Native American Graves Protection and Repatriation Act. The Tribes wish to reburial the remains in accordance with tribal religious traditions.

Several scientists, i.e., anthropologists, archeologists, museumologists, petitioned DOI for permission to conduct extensive studies of the remains before reburial by the Tribes. DOI denied the scientists' petition and granted the Tribes' petition. At that point, the scientists sought review and reversal of DOI's decision in the federal district court of Oregon. The court



Klamath Tribes Treaty Days  
Pow Wow 2002.  
(Photos: Ray Ramirez)

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 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

heard arguments and issued an opinion requiring DOI to reconsider its decision in light of analysis of a number of questions posed in the Court's opinion. DOI reconsidered and adhered to its original decision. The scientists again filed suit in Oregon court seeking review and reversal of DOI's decision.

In August 2002 Magistrate Judge John Jelderks, U.S. District Court for the District of Oregon, issued a ruling that requires the DOI to transfer the remains to the plaintiffs (scientists) to study the remains of "Kennewick Man." The Tribes charge that this far reaching decision removes any barriers that would prevent scientists from demanding access to all Native American human remains for their research and study, regardless of whether the remains were 20 or 20,000 years old. An appeal of this decision is expected.

NARF has undertaken limited representation of a Native American Working Group for the Return of Culturally Unidentified Human Remains. This Group is concerned about the proper disposition of Native American human remains under the provisions of the Native American Graves Protection and Repatriation Act. NARF has filed a Freedom of Information Act request seeking information concerning DNA testing of such remains. In addition, NARF wrote to Interior Secretary Norton in July 2002, complaining of destruction of NAGPRA documents and the implementation of NAGPRA regulations without proper indigenous input. The letter attached a paper developed by the working group consisting of recommendations for disposition of culturally unidentifiable Native American human remains under NAGPRA. In response, DOI advised the group that it is not aware of any DNA testing, that it will halt destruction of NAGPRA documents, and that it withdrew proposed NAGPRA regulations pending consultation.



In late 1994, Public Law 103-344, which exempts the religious use of peyote by Indians in bona fide traditional ceremonies from controlled substance laws of the federal and state governments, was passed. NARF represented the Native American Church of North America (NACNA) and played a key role in the passage of the legislation. It also prohibits discrimination against Indians for such religious use of peyote, including the denial of otherwise applicable benefits under public assistance programs. The bill closes the door to governmental prohibition of sacramental use of peyote by Indians and effectively reverses a 1990 United States Supreme Court decision in *Smith v. Oregon* that denied First Amendment protection to the Native American Church.

NARF represented the Native American Church in the case *O Centro Espírita Beneficente União Do Vegetal (UDV-USA) v. Ashcroft*. The UDV is a Christian religious organization duly formed under the laws of Brazil, with its headquarters in Brasília, Brazil. The UDV-USA is the United States branch of the UDV whose principal offices are in New Mexico. The UDV claims that the federal government is violating its constitutional right

Klamath Tribes Treaty Days  
Pow Wow 2002.  
(Photos: Ray Ramirez)



Klamath Tribes Treaty  
Days Pow Wow 2002.  
(Photos: Ray Ramirez)

of equal protection by permitting Native American Church members to possess and use peyote for religious purposes while denying them the religious possession and use of ayahuasca by UDV members. Ayahuasca is a hallucinogenic tea decoction made from the stems or bark of the vine *banisteriopsis* (also known as "mariri") together with the leaves of *psychotria viridis* (also known as "chacruna"). Ayahuasca has been used for centuries in healing rituals in Columbia, Ecuador, Brazil, and Peru.

The government bases its protection of the religious use of peyote on the trust relationship between the United States and Indians and the political relationship between the United States and tribes. Numerous courts over the past 20 years have recognized and upheld this special relationship as a basis for the unique treatment of the Native American Church. NARF and the Church assisted the United States Department of Justice in defending current federal law which protects the religious use of peyote by Indian Church members. In February 2002 the Federal District Court in New Mexico rejected the UDV's equal protection argument. The NAC took no position on the UDV's Religious

Freedom Restoration Act claim against the United States.

NARF represents the NACNA in negotiations with the Department of Defense (DOD), which has initiated a process 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, the Department of Defense issued amendments to the interim rules and NARF submitted comments on behalf of the Native American Church of North America for the promulgation of a final rule which 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 final rule has not yet been released.

The Medicine Wheel National Historic Landmark, located within the Bighorn National Forest in north-central Wyoming, is a valuable cultural and religious resource for several Native American tribes who have inhabited the area for at least 7,500 years. Many tribes consider the site sacred, as has been documented in various ethnohistoric studies. In 1988 it became apparent that the site was in need of a better management plan to ensure visitor safety and the integrity of the Medicine Wheel.

Therefore, in 1996 the United States Forest Service and several consulting parties signed a Historic Preservation Plan (HPP) which established a management plan for this site. The purpose of the HPP was "to establish a process for integrating the preservation and traditional use of historic properties with the multiple use mission of the Forest Service, in a manner that gives priority to the protection of the historic properties involved by continuing traditional cultural use consistent with the National Historic Preservation Act." The HPP additionally provided for on-site interpreters, visitor management, limited motorized access, and the protection of traditional cultural use of the site.

In *Wyoming Sawmills v. United States and Medicine Wheel Coalition*, a private timber company in Wyoming has challenged the legality of the United States Forest Service's Management Plan for the Sacred Medicine Wheel. NARF filed an amicus curiae brief on behalf of the National Congress of American Indians urging the United States District Court for the District of Wyoming to uphold the Plan on statutory and constitutional grounds, which it did in a decision in 2002. The District Court did not address the constitutionality of the HPP because it found that Wyoming Sawmills lacked standing to raise an Establishment Clause claim. Wyoming Sawmills has appealed this decision.

### CULTURAL RIGHTS

In 1998, an "English Only" initiative was passed in the State of Alaska. The initiative was written in very broad terms and will have a major impact upon Alaska Natives. Unlike other official English measures that are primarily symbolic, this measure prohibits the use of any language except English in all governmental functions and actions. The measure applies to "the legislative and executive branches of the



Klamath Tribes Treaty  
Days Pow Wow 2002.  
(Photos: Ray Ramirez)

State of Alaska and all political subdivisions, including all departments, agencies, divisions and instrumentalities of the State, the University of Alaska, all public authorities and corporations, all local governments and departments, agencies, divisions, and instrumentalities of local governments, and all government officers and employees." In response to the initiative, NARF filed suit on behalf of twenty-seven Native individuals and organizations that have asked NARF to represent them. In 1999, the Alaska Superior Court granted a preliminary injunction that enjoined the State of Alaska from the operation and enforcement of Alaska's Official English Initiative. Alaskans for a Common Language moved to intervene and were granted intervention in 2000. In March, 2002 the Alaska Superior Court struck down the English-only law as a violation of the free speech clause of the Alaska Constitution. The State of Alaska chose not to appeal, but Alaskans for a



Klamath Tribes Treaty Days  
Pow Wow 2002.  
(Photos: Ray Ramirez)

#### Common language has appealed.

NARF is conducting an extensive analysis of federal and international intellectual property laws and policies and their current impact on Native American intellectual property and cultural property issues. The analysis will form the basis of an action plan that will be presented to the National Congress of American Indians. This review constitutes phase I of a proposed two phase project to initiate concrete efforts to improve the legal protection of indigenous intellectual and cultural property rights.

NARF is also helping the Rosebud Sioux Tribe of South Dakota develop a Cultural Resources Management Code by which the Tribe can regulate its cultural and intellectual property on its reservation. The Tribe is particularly interested in regulating the harvest and use of sage, its Sun Dances, and various arts and crafts.

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 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 operation of child and family programs." The Act established substantive, procedural and jurisdictional protections for tribes and Indian families in cases of adoption, pre-adoptive placement, foster care placement, and termination of parental rights 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. Congress has also attempted to amend the Act to resolve concerns related to the enforcement of the Act. NARF continued to monitor Congressional legislation and participated in several national conferences and meetings related to Indian child welfare to address tribal concerns.

#### 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 32 years, the Native American Rights Fund has focused its educational efforts on increasing Indian self-determination and transferring control back to the tribes. With funding from the Kellogg Foundation, NARF has continued its 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; and reforming federal and state education laws and policies.

NARF continued to represent the Rosebud Sioux Tribe on implementing and refining its Education Code that was adopted in 1991. NARF continues to help the Tribe work with the U.S. Department of Education's Office of Indian Education regarding the Department's policies and programs on the availability of public school district records on students who are tribal members. With these records, the Tribe can improve its Tribal Student Tracking System, and its State of the Reservation Education Report. The Tribe has also determined that it wants to add a pre-school/early childhood component to its Education Code. In response to this directive, in September 2002, NARF began to research pre-school and early childhood education program regulations by other tribes, states, and the federal government. Also in September 2002, NARF began its work with the Tribe to plan the fall National Tribal Education Departments Forum in November 2002 in Albuquerque, New Mexico in conjunction with the National Indian Education Association's Annual Convention. The Forum



Klamath Tribes Treaty  
Days Pow Wow 2002.  
(Photos: Ray Ramirez)

is an annual event that the Tribe helped start in 1994. It presently brings together about forty to fifty tribal education departments from around the country to share success stories and brainstorm about needs and problems. The Forum is co-sponsored by several tribes and many national Indian organizations.

The Fort Peck Tribes have continued to work toward full implementation of the Tribal Education Code through cooperative agreements with the five public school districts within reservation boundaries, and through the establishment of a tribal student tracking system. Due to the need to collect signed parental permission forms prior to inputting attendance and academic data, a reservation wide tribal student tracking system is not yet operational. NARF continues to assist the Tribes in dealing with concerns raised by certain public school officials regarding the release of student records to the Tribal

Education Department. In accordance with the Code, the Tribal Education Department has attempted to conclude agreements with the school districts to require teacher training in Indian studies. A number of productive meetings with school superintendents have been held to discuss Tribal Education Department sponsored teacher training, and several districts are either already requiring Indian studies training or are very receptive to the idea. This effort to take responsibility for the provision of training has gone a long way in convincing reluctant school districts to voluntarily adopt an Indian studies teacher training requirement, and has further

Apache children consistently rank last or near last in all education categories reported on annually by the State of New Mexico. NARF assisted the Jicarilla Apache Department of Education ("JADE") in negotiating a memorandum of understanding between the Tribe and the Dulce public school district setting out a process for JADE's data gathering from the district. NARF assisted JADE in the preparation of a memorandum to the New Mexico Legislature urging the Legislature to adopt a legislative policy encouraging cooperative arrangements between Tribes and public school districts which encourage significant tribal input into the public school program.



Klamath Tribes Treaty Days  
Pow Wow 2002.  
(Photos: Ray Ramirez)

cemented an already strong working relationship between the Tribes and the public schools on the Fort Peck Reservation.

NARF represents the Jicarilla Apache Tribe in the development of an education code for Reservation education. The Tribe hopes the code will enable greater tribal input into the program of the public school on the Reservation that serves the vast majority of Jicarilla Apache children. Statistics show that the Tribe's effort is badly needed. The Jicarilla

#### INTERNATIONAL LAW

Through a relentless campaign by a coalition of tribes and Indian rights organizations including the National Congress of American Indians (NCAI), NARF and the Indian Law Resource Center, the United States announced that it was adopting a more forward-looking policy on rights for "Indigenous Peoples" in 2001. While the United States has promoted a measure of self-determination for Indian tribes domestically since the 1970s, the government had steadfastly refused to recognize any right of self-determination for tribes or other indigenous peoples within the international arena. For decades, tribes have urged the United States to abandon its anachronistic and discredited international policy against self-determination.

The new policy, while far from perfect, is a step in the right direction and will set the necessary foundation to begin a more constructive dialogue with the United States and other states on the Rights of Indigenous Peoples during negotiations surrounding the Declarations on the Rights of Indigenous Peoples in the United Nations (U.N.) and the

Organization of American States (OAS). The new policy does three things that indicates considerable movement by the United States: (1) it acknowledges a right to "self-determination" (albeit only an 'internal' right); (2) it accepts that certain rights of "indigenous peoples" are "group rights"; and (3) it accepts the use of the term "Peoples." The use of the term Peoples has important legal significance, since two widely accepted international covenants both expressly provide that "All Peoples have the right to self-determination. ..."

The new policy also impacts the United States' official position on the collective nature of the rights of indigenous peoples. Prior to this change in policy, one of the major stumbling blocks in the discussions at both the U.N. and the OAS regarding the respective Declarations has been that the United States had taken the position that it would only recognize rights belonging to individuals. But, of course, Indian tribes by definition have always had rights that are exercised by the group. The new United States policy acknowledges this reality.

NARF continued its participation on drafting sessions with the U.N. Working Group On Indigenous Populations and at the OAS on behalf of our client, NCAI. It is hoped that the change in the U.S. position at the OAS will be continued at the U.N. and that the logjam at the U.N. will open up. NARF has also been granted special consultative status in the U.N. and can now appear on its own credentials at all U.N. activities dealing with Indigenous peoples. The next drafting session will address core paragraphs of the Draft dealing with self-determination, treaty rights and land rights.



Klamath Tribes Treaty  
Days Pow Wow 2002.  
(Photos: Ray Ramirez)



# 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 all present and past individual Indian trust beneficiaries (approximately 300,000) in a class action suit against the United States in 1996 for mismanagement of the individual Indian money (IIM) trust accounts. Commonly referred to as the "IIM Case," this litigation is intended to force the

States in breach of trust and requiring the government to provide an accounting to the IIM beneficiaries. These two decisions constitute two of the most important opinions ever issued on the trust responsibilities of the government to Native Americans. The government decided against appealing the Court of Appeals unanimous decision to the Supreme Court.

Following the Court of Appeals decision, District Court Judge Royce C. Lamberth appointed a court monitor, Joseph S. Kieffer III, to independently assess the United States' failing effort to reform the Indian trust management system. His first Report found that despite Judge Lamberth's 1999 order to account, the federal government failed to perform a full and fair accounting of trust funds. He also found that Interior Secretary Gale Norton and her predecessor, Bruce Babbitt, were orchestrating an elaborate charade to trick the Court into believing that they were taking action, when they were not. Mr. Kieffer's second and third Reports found that the government lied at trial regarding the progress of trust reform and the likelihood that their trust reform plan would result in success. In addition, the Reports demonstrated that although federal officials were under an obligation to report truthfully on trust reform after the 1999 decision in Quarterly Reports to the Court, they failed to do so. Instead, time and time again they falsely told the Court that the reform effort was generally going as planned. They never revealed that both the Bureau of Indian Affairs (BIA) Trust Asset and Accounting Management System (TAAMS) data cleanup effort and the installation of the TAAMS system, the purported centerpiece of trust reform, was running into serious problems. Finally, in early October 2001, Mr. Kieffer issued a fourth report, this one finding essentially that Secretary Norton had knowingly



Klamath Tribes Treaty Days  
Rodeo 2002.  
(Photos: Ray Ramirez)

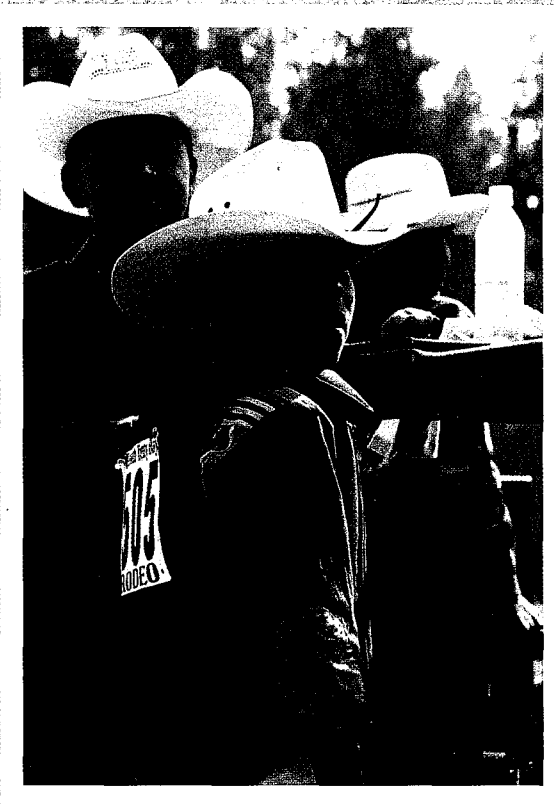
United States as trustee to: (1) perform a complete, accurate and reliable accounting of all trust assets held to the benefit of individual Indian trust beneficiaries; (2) properly restate the trust fund accounts in conformity with that accounting; and (3) create an accounting and trust management system that is reliable and will safely and soundly manage the trust funds of individual Indians in the future.

In 2001, the Court of Appeals for the District of Columbia upheld the 1999 Federal District Court decision holding the United

verified an "inaccurate and incomplete" Quarterly Report to the Court. In October 2001, based on the four Kieffer reports and other material, plaintiffs amended their motion to reopen Trial One and have the Court grant additional relief, specifically, the appointment of receiver to take over trust management reform. In response, Secretary Norton proposed a plan to reorganize management of individual Indian and tribal trust assets within the Department of Interior by creation of a new agency within Interior, a plan which was overwhelmingly rejected by tribes throughout Indian Country since they were never consulted about it as required by law.

In December 2001 contempt proceedings against Secretary of the Interior Gale Norton and Assistant Secretary for Indian Affairs Neal McCaleb began and did not conclude until February 2002. Norton and McCaleb were ordered by the Court to show why they were not in contempt of court for: 1) failing to comply with the Court's order to do an historical accounting; 2) committing fraud on the Court by concealing the true actions of the Department regarding the historical accounting; 3) committing fraud on the Court for failing to disclose the true status of the TAAMS project; and, 4) committing fraud on the Court by filing false and misleading status reports regarding BIA data clean-up.

A fifth charge of contempt was added regarding computer security. This charge came to light following a report issued by the Special Master describing the lack of computer security for individual Indian trust data, calling the lack of security "deplorable and inexcusable." In addition, as a result of this report, Judge Lamberth issued a temporary restraining order in December 2001 instructing that the federal defendants immediately disconnect from the Internet all information technology systems that house or provide access to



Klamath Tribes Treaty  
Days Rodeo 2002.  
(Photos: Ray Ramirez)



Klamath Tribes Treaty  
Days Rodeo 2002.  
(Photos: Ray Ramirez)



individual Indian trust data, and immediately disconnect from the Internet all computers within the custody and control of the Department of the Interior, its employees and

contractors that have access to individual Indian trust data. Judge Lamberth issued a further order allowing the Interior to issue checks to IIM beneficiaries. Despite this order, however, defendants were very slow to issue the checks.

In September 2002, Judge Lamberth held Secretary of Interior Gale Norton and Assistant Secretary Neal McCaleb in contempt of Court on the following four counts: 1) Committing fraud on the court by concealing the true actions of the department regarding the historical accounting; 2) Committing a fraud on the Court for misrepresentations regarding IT security failures at the Department of Interior; 3) Committing fraud on the Court for failing to disclose the true status of the TAAMS project and; 4) Committing fraud on the Court by filing false and misleading status reports regarding BIA Data Clean-up. In addition, defendants were held to have engaged in litigation misconduct for failing to comply with the Court's December 21, 1999 Order to initiate a Historical Accounting Project.

As remedy for the contempt, the Court has awarded attorneys fees to plaintiffs and has set the groundwork for efficient resolution of this litigation. By January 6, 2003, Interior must and plaintiffs may submit two separate plans – (1) setting forth a means to conduct the accounting required by law and (2) setting forth a means to bring Interior into compliance with its trust duties (i.e. a trust reform plan). A trial the Court dubbed a “trial 1.5” will commence in May 2003 and the Court will enter a “structural injunction” to force Interior to reform and meet certain requirements by specific timetables. Also, he will decide at that time how to conduct the Phase II trial – the historical accounting trial.

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 Tribes allege misaccounting, misinvestment, and mismanagement by the federal government of their \$50 million tribal trust 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. In July 2002 the court lifted the ten year stay in this case and put the case on a regular pre-trial schedule. In the meantime, the Tribes continue to explore a negotiated settlement of their claims against the government.

In a related matter, NARF filed suit in the Court of Federal Claims against the government seeking damages for breach of trust on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. NARF is seeking an accounting of certain of the Tribes accounts and has asked the Court to assign the case to the judge in the IIM case.

The Native American Rights Fund, on behalf of the Alaska Inter-Tribal Council, ten Native villages and seven Native individuals, filed a civil lawsuit in 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 off-road Native villages and for discriminating against them in the provision 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.

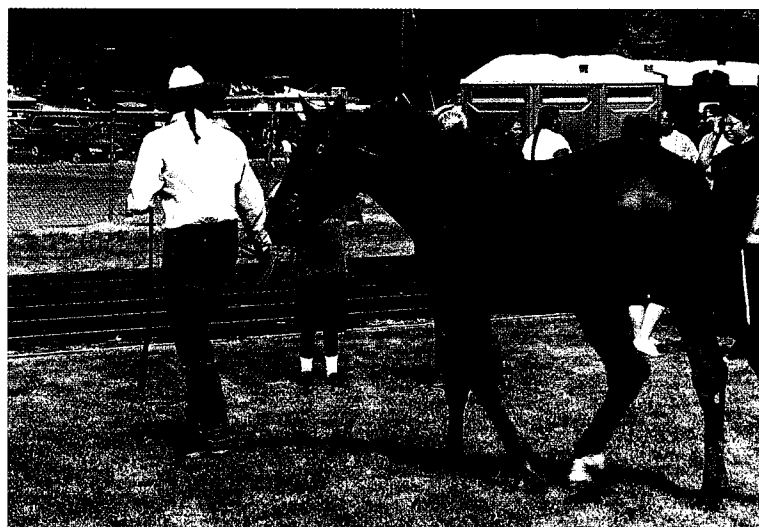
The complaint also alleges that the State's discriminatory treatment of Native villages in the provision of police protection is based on race and therefore violates the Villages' rights to Equal Protection of the law under the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. The complaint sets forth in sad



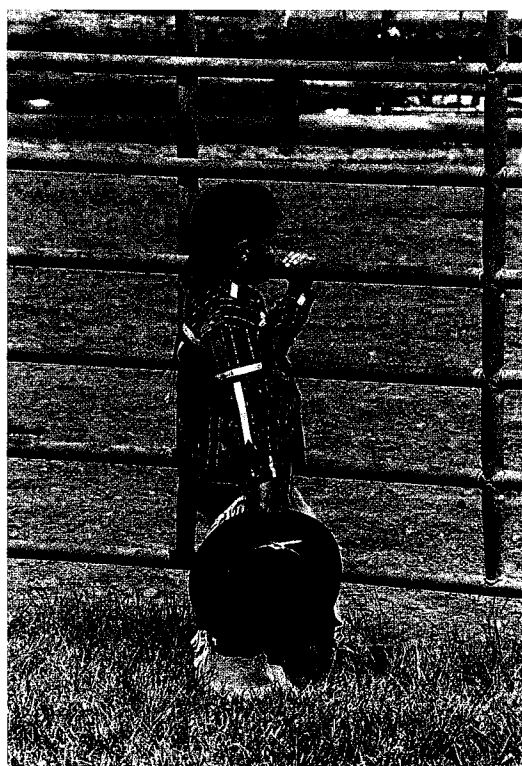
detail the history of discrimination against Native Villages in the provision of law enforcement by both the Territorial and State governments. The trial on the merits was completed in May 2002. A decision was rendered by the Superior Court in September 2002 in favor of the State of Alaska. NARF is now preparing an appeal to the Alaska Supreme Court.


NARF is involved in Native Hawaiian legal issues primarily in support of the Native

Klamath Tribes Treaty  
Days Rodeo 2002  
(Photos: Ray Ramirez)



Klamath Tribes Treaty Days  
Rodeo 2002.  
(Photos: Ray Ramirez)





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 re-asserting Native Hawaiian rights.

In *Pele Defense Fund v. Campbell*, NARF and co-counsel Native Hawaiian Legal Corporation are attempting to regain Native Hawaiians' access rights to rainforest lands traditionally exercised by Native Hawaiians before those lands were exchanged in 1983 by the State of Hawaii for other lands in order to accommodate a geothermal developer. The Hawaii Supreme Court in 1992 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. In August 2002 the trial court entered findings of fact and conclusions of law and signed a stipulated judgment upholding traditional Native Hawaiian access rights to these lands. Discussions regarding the sale of the 25,000 plus acres of rainforest to a non-profit land trust, thereby assuring perpetual access rights for Native Hawaiians, have followed.

*Rice v. Cayetano* involved a challenge by a non-Native to the voting restriction in the state constitution allowing only Native Hawaiians to vote 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 argued that the restriction violates the Fourteenth and Fifteenth Amendments to the U.S. Constitution. The Ninth Circuit Court of Appeals upheld the voting restriction, but the United States Supreme Court reviewed 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 was 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. However, in February 2000 the Supreme Court ruled against the Native Hawaiians declaring that the state restriction on voting for OHA trustees to Hawaiians was based on race and, therefore, violated the 15th Amendment which prohibits denying anyone the right to vote based on race. Since this decision, NARF continues to monitor numerous challenges by non-Native Hawaiians to programs and legislation that have been enacted to benefit to Native Hawaiians.



# 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 a national public law library devoted to American Indian law which serves both the Native American Rights Fund (NARF) and the public. The mission of NILL is to develop and make accessible a unique and valuable collection of Indian law resources and to assist people with their research needs. Special emphasis is placed on helping individuals and organizations working on behalf of Native Americans who have the greatest potential to positively influence

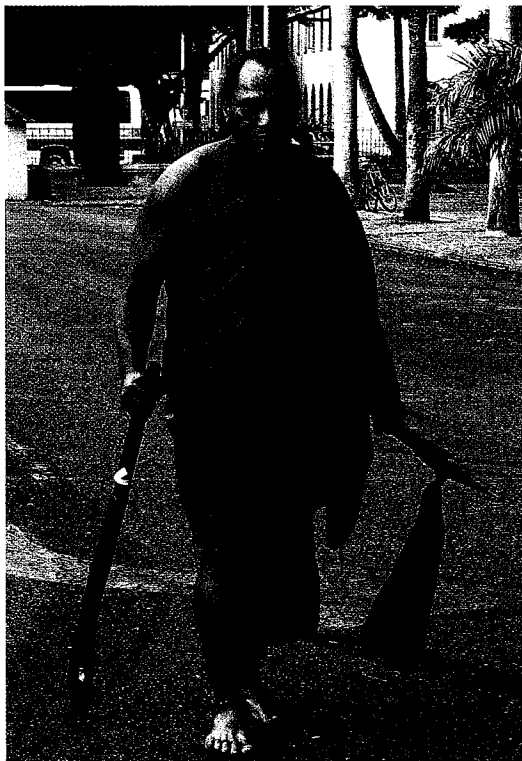
their lives. NILL fills the needs of the often-forgotten areas of the nation known as Indian country. NILL handles close to 1,500 information requests per year and serves a wide variety of public patrons including attorneys, tribal governments, tribal organizations, researchers, students, prisoners, the media, and the general public.

For the past thirty years, NILL has been collecting a wealth of materials relating to federal Indian law and tribal law that 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 library catalog on the NILL website. This searchable catalog provides free access to current descriptions of more than 10,000 holdings in the library collection. Once relevant documents are located, patrons can review materials at the Boulder, Colorado library; request copies to be mailed, faxed or E-mailed for a nominal fee; or borrow materials through interlibrary loan. In addition, the library web pages provide research links, full-text copies of tribal codes and constitutions, and current awareness services such as the U.S. Supreme Court update. Access these resources by directing your Internet browser to the Native American Rights Fund (NARF) website at [www.narf.org](http://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 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

110th Year Observance  
and Protest of the illegal  
overthrow of the  
Kingdom of Hawaii.  
(Photos: Ray Ramirez)



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.

Due to the loss of Legal Services Corporation funding in 1995, 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. However, ILSC has been able to continue some assistance to Indian Legal Services programs throughout the year. ILSC continued to send out regular mailouts to Indian Legal Services programs, handling requests for assistance, and working with Indian Law Support Directors to secure a more stable funding base from the Congress. ILSC was involved in the passage of the Indian Tribal Justice and Legal Assistance Act of 2000 which President Clinton signed into law. The Act authorizes the Department of Justice to provide supplemental funding to Indian Legal Services programs for their representation of Indian people and tribes which fall below federal poverty guidelines. ILSC continues to work with the Indian Legal Services programs to secure appropriations for the Act. ILSC continues to sponsor an annual training conference on Tribal Courts.

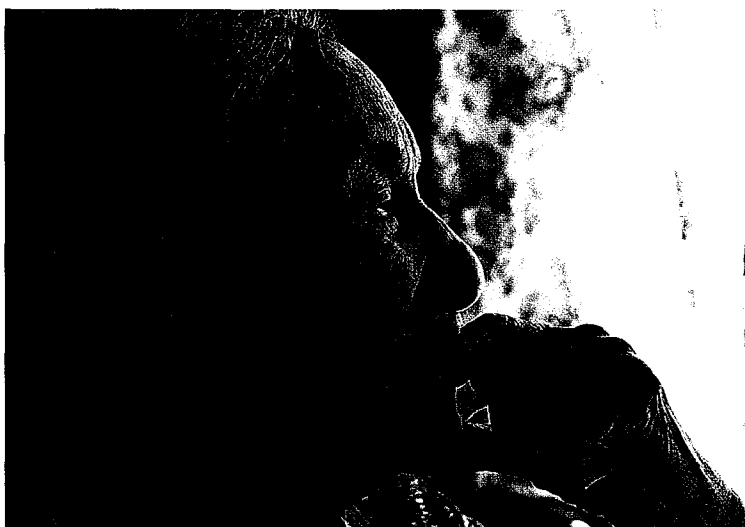
#### OTHER ACTIVITIES

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.

110th Year Observance  
and Protest of the illegal  
overthrow of the Kingdom  
of Hawaii  
(Photos: Ray Ramirez)

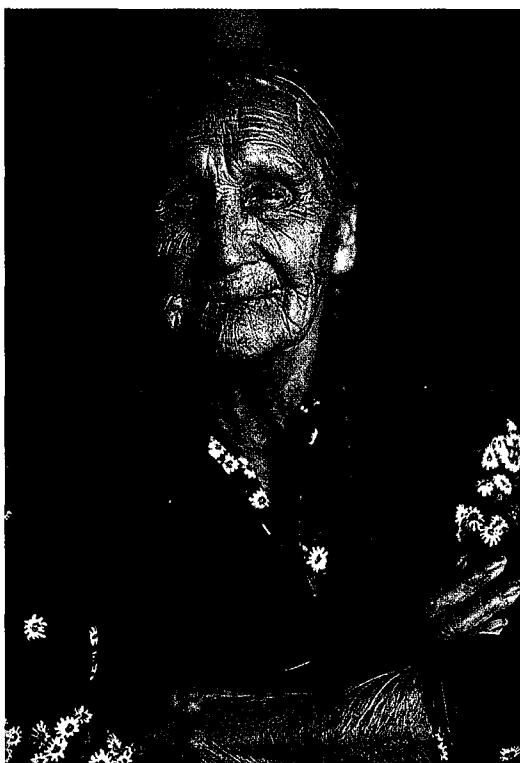


Rocky Boy, MT  
Paul Small Jr. and Conrad.

Ft Belknap, MT  
Juanita Tucker.

Rosie Weasel - Assiniboine

Photos by Ken Blackbird.



# Treasurer's Report



Based on our *audited* financial statements for the fiscal year ending September 30, 2002, the Native American Rights Fund reports total unrestricted revenues of \$5,937,132 against total expenditures of \$7,158,575. 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, operating expenses and other cash outlays actually exceeded revenue by \$525,467,

allowing for a decrease to NARF's reserve fund. This decrease is largely attributed to losses on investments.

Expenditures decreased by \$251,240 due, in the most part, to a decrease in consultant costs for fiscal year 2002's case-related activity. Total management and fund raising costs constituted 37.16% of total revenues in fiscal year 2002. Support and Revenue comparisons between fiscal year 2002 and fiscal year 2001 are shown below.

## Support and Revenue Comparison

	2002		2001	
	dollars	percents	dollars	percents
Contributions	\$ 4,350,174	73.3%	\$ 5,361,622	67.9%
Federal Grants	1,478,699	24.9%	1,906,824	24.1%
Foundation Grants	759,118	12.7%	1,837,437	23.2%
Legal Fees	64,031	1.1%	92,207	1.2%
Other	27,136	0.5%	46,737	0.6%
Return on Investments	<742,026>	<12.5%>	<1,343,311>	<17.0%>
<b>TOTALS</b>	<b>\$ 5,937,132</b>	<b>100%</b>	<b>\$ 7,901,516</b>	<b>100%</b>

*Note: This summary of financial information has been extracted from NARF's audited financial statements on which the accounting firm of JDS Professional Group expressed an*

*unqualified opinion. Complete audited financials are available, upon request, through our Boulder office or at [www.narf.org](http://www.narf.org).*

# Acknowledgment of Contributions: fiscal Year 2002

We thank each and every one of our supporters for their commitment to the goals of NARE. NARE's success could not have been achieved without the generosity of our many donors throughout the nation. We gratefully acknowledge these gifts received for fiscal year 2002.

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Chitimacha Indian Tribe

Confederated Tribes of Siletz Indians

Cow Creek Band of Umpqua

Ely Shoshone Tribe

Fort McDowell Yavapai Nation

Grand Traverse Band of Ottawa and

Chippewa Indians

Ho-Chunk Nation

Jicarilla Apache Tribe

Kenaitze Indian Tribe (Ira)

Mashantucket Pequot Tribe

Miccosukee Tribe of Indians

Mille Lacs Band of Chippewa Indians

Mississippi Band of Choctaw Indians

Native Village of Port Lions

Ninilchik Traditional Council

Oneida Tribe of Wisconsin

Pinoleville Band of Pomo Indians

Santa Ynez Band of Mission Indians

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