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Cover art: “Prosecution Rests”

About the artist: “I believe art should reflect our society and the time in which it exists. I also believe that a society’s law system should have the same function. What was art 79 years ago, and what was law 79 years ago, do not reflect our society today. In the same way that the attorneys of NARF and NARF affiliates work to change the representation of Native Americans within the legal system, I am working to change the representation of Native Americans in the art world. A contemporary People deserve no less than contemporary representation.”
- Bunky Echo-Hawk

Bunky Echo-Hawk is an enrolled member of the Yakama Nation of Washington State and a member of the Pawnee Nation of Oklahoma. He is a graduate of the Institute of American Indian Art in Santa Fe, New Mexico. He currently lives and paints in Longmont, Colorado. Bunky is the son of NARF attorney Walter “Bunky” Echo-Hawk.

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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.
As the Native American Rights Fund (NARF) begins its thirty-fourth year of legal advocacy, it is fueled by the strength of its varied legal accomplishments as well as the active memory of reasons why it was founded in the first place. In 1970, a small but determined group of attorneys and tribal leaders created the Native American Rights Fund to address the need for legal representation in many major issues facing Indian people who could perhaps not afford it otherwise. One of the first institutions of its kind, NARF has been an unyielding advocate of Native peoples’ needs resulting from their unique government-to-government relationship with the federal government and the rights that this sovereign status should confer. NARF’s diligence and vision have resulted in a multitude of Native American legal victories in areas ranging from tribal sovereignty to natural resource ownership to human rights. Despite these crucial gains, however, NARF must contend with some of the same challenges that originally propelled its formation. The historic injustices perpetrated against Native peoples continue to this day and provide a constant, unending need for NARF to continue its fight. To guide it on this purpose, NARF’s first Board of Directors created five fundamental priorities:

- 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

As this battle continues, NARF strives to protect the legal and sovereign rights of tribes and Native people within the American legal system. This effort certainly could not exist without the contribution of the thousands of individuals who have offered their knowledge, courage, and vision to help guide NARF on its quest. Of equal importance, NARF’s financial contributors have graciously provided the resources to make these efforts possible. Contributors such as the Ford Foundation, the Rockefeller Foundation, the Carnegie Corporation of New York, the John D. & Catherine T. MacArthur Foundation, and the Skadden Foundation have made consistent contributions over the years. Federal funding from the Administration for Native Americans enables NARF to carry on its governance, economic, and social development efforts in Indian country. Finally, the effects of NARF’s work are reflective in the financial contributions by a growing number of tribal governments. United, these financial, moral, and intellectual gifts provide the framework for NARF to fulfill its mission: the securing of sovereignty and right to self-determination to which all Native American peoples are entitled.
Chairwoman’s Message

Aloha, Aloha ke Akua, nā 'aumakua a me nā Kūpuna: Huliau! (Time of Change!)

The Native American Rights Fund (NARF) continues to be a major influence for change. In my four years on the NARF Board of Directors, I have enjoyed a much cherished opportunity to learn from and work with ‘ohana (family) from Turtle Island and now, as its Chairwoman, will do my best to embrace the privilege, challenges and responsibilities that come with this position.

With your confidence and trust, I look forward to sharing my expertise, compassion, and strength as an organization committed to advocating for peace and justice.

NARF’s cases accentuate the burden of “Indian Country” and reveal the amazing spirit and resilience of its peoples to endure and survive severe acts of physical, economic and cultural genocide. I have experienced this same amazing spirit at NARF and have witnessed John Echohawk dynamically lead a brilliant and dedicated team of advocates forge ahead to defend, protect and work to make whole Native America.

Nānā i Ke Kumu! [Look to the Source!]

A renewed respect for our traditional values helps us to resolve the political, economic, and social problems that impact our community. It is now more than ever crucially important that we rediscover the power of traditional teachings and apply them to contemporary problems. By reinvigorating the principles embedded in our ancient teachings, we honor the memory and wisdom of our ancestors. With the mana (spiritual energy and life force) of our ancestors and our own wisdom, vitality and courage, we will prevail and maintain this interdependency and enforce the integrity of our cultures.

A primary challenge this New Year, Makahiki 2004, will be to strengthen NARF’s financial resources. Our Board is streamlining existing financial commitments and implementing more efficient investment and self-sustaining strategies. With your kōkua and kākoʻo, your help and continuing support, we will have the financial strength to continue to focus on issues of concern to the peoples of “Indian Country,” and resolve injustices that support the legal rights of Native nations, peoples and communities. We encourage those Nations that are doing well economically to show their support for NARF with financial contributions to help it to continue its important and necessary work to bring justice and peace to Native communities.

Our communities, health and well-being are of utmost importance to preserve our traditional values because it gives us the necessary strength for our nations’ survival and growth in this rapidly changing world. We must be extra vigilant not to unconsciously participate in our nations’ survival and growth: to be inflexible, intolerant, and prejudicial. Another way is to never to cease to act because you fear you may fail. The way to lose any earthly kingdom is to be inflexible, intolerant, and prejudicial. Another way is to be too flexible, tolerant of too many wrongs and without judgment at all. It is a razor’s edge.

It is the width of a blade of pili grass.”

NARF has diligently worked at carrying out its mission to support the integrity and strength of its peoples and cultures, providing help to rebuild nations and tribes, through difficult and often seemingly insurmountable challenges. As an organization, NARF will continue to develop and implement innovative strategies that will effectively deal with harm inflicted on native peoples. In its thirty-four years of service, NARF has provided invaluable legal and moral support to “Indian Country” as its peoples struggle against oppressive laws, practices and governmental systems and has remained responsive and accountable to its constituents. NARF must continue to take bold steps whenever necessary to ensure that it remains a strong and viable resource for the continuing benefit of those who draw upon its expertise, compassion, and wisdom of natives throughout the world. May all people on this earth enjoy peace, justice and aloha.

Kūʻe! Kūʻe! Kāʻe! (Resist! Resist! Resist!)
Holomua! (Move Forward!)
Ea! (Life!)

E. A. Hoʻōpī Kalaenaʻaua Pa, Chairwoman

We must continue to take our rightful place in the world and not depend upon others to secure the revitalization of our cultures. Our ancestor, Kapihe, shared this promising prophecy with us:

E hui ana nā molu:
The islands shall be united;
E kū ana ka pua:
The walls shall stand upright.

I would like to share these revealing words from Queen Liliʻuokalani of the Nation of Hawaiʻi: “Oh, honest Americans, as Christians hear me for my downtrodden people! Their form of government is as dear to them as yours is precious to you. Quite as warmly as you love your country, so yours is precious to you. Quite as warmly as you love yours is precious to you. Quite as warmly as you love your country, so you love theirs... to bear what is not said, to see what cannot be seen, and to know the unknowable, that is Aloha.”

And finally, in the words of our most respected 19th Century Freedom advocate, Joseph Nawahi: “The cause of Hawaiʻi and independence is larger and dearer than the life of any man connected with it. Love of country is depicted in the breast of every Hawaiian, whatever his station.”

We are at a turning point, Huliau, a moment of truth. Let us holomua kakou (move forward together) in 2004 with the great spirits of Turtle Island, the aloha spirit of Hawaiʻi, and with the mana of natives throughout the world. May all people on this earth enjoy peace, justice and aloha.

Chairwoman’s Message

As Liliʻuokalani, the last ruling monarch and queen of the Nation of Hawaiʻi, expressed (until illegally expressed as its Chairwoman, will do my best to embrace the privilege,
The Native American Rights Fund’s program of providing legal advice and assistance to Native Americans across the country on legal issues of national significance continued into its 33rd year in fiscal year 2003. Substantial developments and important victories were achieved in several issues and activities during the year that I want to highlight.

In United States v. White Mountain Apache Tribe, the United States Supreme Court held that the United States’ breach of fiduciary duty to maintain and preserve Indian trust property gave rise to a claim for money damages under federal law. Through the Tribal Supreme Court Project operated by NARF and the National Congress of American Indians, amicus briefs were coordinated and filed in support of the White Mountain Apache Tribe in this important federal trust responsibility case.

Once again, NARF assisted 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 2003 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.

Representing several Alaska tribes and tribal members, NARF successfully intervened in a case brought by a sporting club challenging federal regulations implementing the preference contained in federal law for customary and traditional uses of fish and wildlife by rural Alaskans over sports and commercial uses on federal public lands in Alaska. NARF will help defend over 180 communities to take fish and wildlife from the entitlement of rural areas or prevent others from taking the resource.

With the support and encouragement of the U.S. Department of Education, NARF helped to establish the Tribal Education Departments National Assembly (TEDNA), a new national organization for tribal education departments. The purpose of the TEDNA is to bring together tribal education directors, staff and policy makers so that they can share information, strategize and problem solve on common issues of education governance, policy and advocacy at the tribal, regional and national levels.

In a widely publicized case, NARF and private co-counsel won another important decision in Cobell v. Norton, the class action on behalf of 300,000 individual Indian trust account holders which was filed in 1996. Federal District Court Judge Royce Lamberth issued a structural injunction requiring the Department of the Interior to conduct a historical accounting of the trust accounts going back to their origin in 1887. In addition, the Cobell plaintiffs also agreed to seek a mediated solution to the case as proposed by Congress.

NARF also assisted in obtaining a $2 million appropriation to implement the Indian Tribal Justice and Legal Assistance Act, which we helped to pass in Congress in 2000. The Act authorizes the Justice Department to provide supplemental funding to Indian legal services programs for their representation of Indian people and tribes which fall below the federal poverty guidelines.

The Native American Rights Fund thanks all of our contributors and supporters who have helped to make these victories and developments for Native Americans possible. As we face projected funding deficits in the future, your continuing support is more important now than ever before. If we are going to maintain our efforts to seek justice for Native Americans through the legal system, your support will be critical.

John E. Echowhawk, Executive Director

The National Support Committee (NSC) assists NARF with its fund raising and public relations efforts nationwide. Some of the individuals on the Committee are prominent in the field of business, entertainment and the arts. Others are known advocates for the rights of the underserved. All of the 48 volunteers on the Committee are committed to upholding the rights of Native Americans.

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.

The Board of Director’s Report

NARF’s Board of Directors:

(Pictured from left clockwise) Verina Herdman (Inupiaq - Alaska); Nora McDowell (Fort Mojave - California); John Gonzales (San Ildefonso Pueblo - New Mexico); Paul Ninham (Onataa Nation of Wisconsin); Jaime Barrientos, Vice-Chairman (Grande Traverse Band of Ottawa & Chippewa Indians - Michigan); James Roan Gray (Oglala Nation - Oklahoma); E. Ho’opo ‘O, Chairwoman (Native Hawaiian - Hawaii); (Not Pictured) Mark Brown (The Mohawk Tribe - Connecticut); Elbridge Coochise (Hopi - Arizona); Billy Frank (Nisqually Tribe - Washington); Karlene Hunter (Oglala Lakota - South Dakota); Anthony Fico (Verpa Band of Enowayau Indians - California); Woody Widmark (Sisita Tribe - Alaska).

Owanah Anderson, Chief 
Edward Aner
Karina McCormick Barnes
David Bradbeck
U.S. Senator Ben Nighthorse Campbell, Northern Cheyenne
William Coffey, Comanche
Ada Deer, Menominee
Harvey A. Demenberg
Michael J. Dryer
Richard Dysart
Lucille A. Echowhawk, Paumier
Louise Erdrich, (Anishinaabe)
James Garner
Sy Gomberg
Carole Haymond, Fond Du Lac Chippewa
Richard Hayward, Mashantucket Pequot
John Heller
Emile Helle -Riho
Alvin M. Joseph Jr., Muscowequan
Charles R. Klewin
Nancy A. Klewin
Wilma Mankiller, Cherokee Nation of Oklahoma
Chris E. McNeil Jr., Tlingit-Nisga’a
Billy Mills, Oglala Sioux

N. Scott Momaday, Kioway
Clinton Parmelee, Ft. McDowell Yaqui
Amado Peña Jr., Tohono O’odham Nation
David Riesing Jr., Hupa
Perrell Roberts
Walter S. Rozenberry, Ill
Marc & Pam Braddock
Leode Mannon Silko, Laguna Pueblo
Connie Stevens
Enic Stevens Jr., Wisconsin Ojibwa
Anthony L. Strong, Tlingit-Khutzown
Maria Tchichick, Ogez
Andrew Teller, Maidu Pueblo
Verna Teller, Akwesasne
Studs Terkel
Teota Tsiya, Cheyenne Apeche
Richard Traudell, Santer Sioux
Rebecca Tsonie, Piscatacpe
Thomas Tisiem
Aine Ungar
Br. Rev. William C. Wantland, Serrimille
Dennis Weaver
W. Richard West Jr., Southern Cheyenne
Mary Wynne, Rahuud Sioux
NARF works to construct the foundations that are necessary 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 governments. Tribal governments possess the power to regulate the internal affairs of their members as well as other activities within their reservations.

Jurisdictional conflicts often arise with states, the federal government, and others over tribal sovereignty.

TRIBAL SOVEREIGNTY

Securing and developing tribal governmental authority derived from tribal sovereign status is a priority issue for NARF because of its importance in maintaining tribal existence and self-government. As part of this commitment to tribal sovereignty, NARF has joined forces with the National Congress of American Indians (NCAI) to create the Tribal Supreme Court Project.

The Tribal Supreme Court Project is a project to coordinate and strengthen the advocacy of tribal sovereignty and other Indian issues before the Supreme Court, and ultimately to improve the deplorable win-loss record tribes have suffered before that tribunal. In fact, over the past twenty years, Indian people have lost approximately 80% of their cases before the Supreme Court. As one Indian law scholar has noted, no other group of litigants has done worse. The opinions are departing from longstanding, established principles of Indian law and are constituting a wholesale re-writing of the very concepts of tribal sovereignty and jurisdiction by the Court. These cases have diminished the rights of every Indian tribe in the country.

The Project submits to the Court the fewest number and highest quality briefs in support of the Indian argument. This coordinated approach ensures that the briefs and the Indian voice get the Court’s maximum attention. The Project submitted amicus briefs in the three cases decided in 2003, United States v. White Mountain Apache Tribe, United States v. Navajo Nation, and Inyo County v. Paiute-Shoshone Indians of the Bishop Community, cases raising fundamental issues of tribal sovereignty. Perhaps because of the Project’s involvement, only one of these cases was lost. Victory was achieved in one case and the other was remanded to the lower court for further proceedings.

The Preservation of Tribal Existence

“Alpha Scout”
ruled in favor of the Tribe holding that the United States' breach of fiduciary duty to maintain and preserve Indian trust property gave rise to a claim for money damages under federal law. In United States v. Nanao Nation, the Court ruled against the Tribe holding that the Tribe's claim for compensation did not derive from any liability-imposing provision of Indian Mineral Leasing Act or its implementing regulations. In Inyo County v. Paiute-Shoshone Indians of the Bishop Community, the Court vacated the United States Court of Appeals for the Ninth Circuit favorable opinion on tribal immunity from suit and remanded the case back to the Ninth Circuit on jurisdictional grounds.

In the 1950s, Congressional experiments with terminating the federally recognized status of Native American tribes and forcing their assimilation under state law proved to be a disaster, compelling Congress decades later to restore the tribal status of terminated tribes. In turning the page back to the 1950s, the Alaska Legislature has for several years engaged in litigation against the Department of the Interior and Alaska Tribes to terminate the federally recognized tribal status of Alaska Tribes. The Alaska Legislature's efforts have been actively supported by Alaska Senator Ted Stevens, who has directly urged Interior Secretary Gale Norton to reverse the Department’s recognition of Alaska Tribes. Pending the outcome of this litigation, Senator Stevens has commenced a new campaign to defund Alaska Native Tribes in various spending bills.

In the case of Ryon v. AVCP, NARF prepared an amicus brief on behalf of the Alaska Inter-Tribal Council (AI-TO) that was filed with the Alaska Supreme Court in April 2003 in a case that raises the question of whether the Alaska Village Council of Presidents (AVCP), a tribal consortium organized as a non-profit under the laws of Alaska, can raise derivative sovereign immunity as a defense to suit. AI-TC's amici brief does not take a position with regard to whether AVCP possesses derivative sovereign immunity; rather, it rebuts the arguments raised by amici for the plaintiffs, the Alaska Legislative Council, who urged the Court to reconsider its historic holding in John v. Baker in 1999 that tribes in Alaska have been federally recognized. Oral argument was heard in September 2003 and a decision is pending.

FEDERAL RECOGNITION OF TRIBAL STATUS

Achieving legal status as an Indian tribe is very important to preserving tribal existence and self-governance. Some tribal groups do not have this status because they have never been formally recognized as tribes by the federal government. NARF provides representation to those tribal groups who have a right to become federally recognized tribes.

NARF currently represents five Indian communities who have survived intact as identifiable Indian tribes but who are not federally recognized. These Indian tribes, for differing reasons, do not have a government-to-government relationship between themselves and the federal government. Traditionally, federal recognition was accorded to a tribe through treaty, land set aside for a tribe, or by legislative means. The majority of these NARF clients are seeking an administrative determination by the Bureau of Indian Affairs (BIA) that they, in fact, have continued to exist as Indian tribes from the time of significant white contact to the present day and have continued to govern themselves and their members. NARF, therefore, prepares the necessary historical, legal, and anthropological documentation to support a petition for acknowledgment. For more than 100 years, these Indian communities have been denied the benefits of a formal relationship with the federal government. Through the process of 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.

In 1997, the Branch of Acknowledgment and Research (BAR) placed the Little Shell Tribe of Chippewa Indians of Montana's federal recognition petition on active review status. Therefore, in 2000, after many delays, the Assistant Secretary published a preliminary finding in favor of recognition. Work continues to be done to strengthen the Tribe's petition and the period for supplementing the record has been extended to January 2004, because of a large amount of new data being generated and analyzed. NARF and the Tribe are now exploring legislative options the Tribe may have for recognition.

With NARF’s assistance, the Shinnecock Indian Nation located on Long Island, New York, filed a petition for Federal recognition in 1998. In response, the Bureau of Indian Affairs (BIA) sent a letter of technical assistance to the Nation that pointed out alleged omissions or deficiencies in the petition. Pursuant to the Federal acknowledgment regulations, the Nation filed a response to the letter in March 2003. The petition will now be placed on the BIA’s ready-for-active-consideration list which is a first-come, first-served list.
The Protection of Tribal Natural Resources

Through the process of European conquest and colonization, Indian tribes experienced a steady diminishment of their land base to a mere 2.3 percent of its original size. Currently, there are approximately 55 million acres of Indian-controlled land in the continental United States and about 44 million acres in Alaska which are owned by Natives after the 1971 Alaska Native Claims Settlement Act. Central to maintaining economic self-sufficiency as well as genuine self-determination, the possession of an adequate land base and resources are vital to the existence of tribes. Without such fundamental necessities, tribal life is virtually impossible to maintain. NARF’s work to ensure tribal control over their land, water, and subsistence rights holds importance beyond material wealth; indeed, it safeguards the very core of tribal existence.

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, and the Court submitted a favorable recommendation to Congress in 2002 on the Tribe’s breach of trust claim against the United States. NARF and the Tribe are now working to garner Congressional approval for the payment of this amount under the Congressional reference procedure.

NARF represents the Kewatinnooag or Northern Lakes Potawatomi Nation of Canada, a band of Potawatomies descended from the historic Potawatomi 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 Potawatomies 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, 2002, and 2003 for compensation of $1.83 million. Congress has yet to approve the settlement legislation.

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 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 Eighth Circuit upheld the district court’s denial of the Tribe’s motion for intervention in March 2003. The Tribe will not be allowed to participate in the litigation as a party, but will have its interests represented by the United States.

In 2002, the Secretary of the Interior invited the Klamath Tribes to meet with the Presidentially appointed Klamath River Basin Federal Working Group (Working Group) chaired by Secretary Norton, and including the Secretaries of Agriculture and Commerce, and the Chairman of the Council on Environmental Quality. These appointments offer an unprecedented opportunity to restore the land, water, hunting, fishing and gathering resources of the Klamath Tribes. Discussions are now taking place between tribal representatives, assisted by NARF and the Secretary’s designated team to seek 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 expressly included the possible return of lands taken from the Tribes in the 1960s under the...
tribes, the National Tribal
NARF continued to work with
as the primary regulators and
that recognizes tribal governments
environmental law and policy.
the current time.
of Tuluksak is weighing whether
and resources. The Native Village
consideration of a new regulation,
Interior to issue final regulations.
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 recommendation of the
Interior to issue final regulations.
The Department of the Interior has
decided to further postpone
consideration of a new regulation;
after an assessment of ongoing
policy work, available personnel
and resources. The Native Village of
Tuluksak is weighing whether
to move forward with litigation at
the current time.
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.
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 “Vadzah googi vi dehk’it
gwalti” (The Sacred Place Where
Life Begins). The Gwich’in will
donot journey into these sacred
grounds for hunting, even in
times of great need or food short-
age. Oil development in ANWR
would not only harm the caribou
and threaten the future of the
Gwich’in people, but 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.
NARF successfully worked with a
coalition of environmental groups
and organizations to stop the U.S.
Senate from approving oil drilling
Language was again introduced
in the 2003 Congress to allow for
oil drilling in ANWR, but was
once again defeated. As the
Administration has vowed to
continue to press for the passage
of this bill, NARF will continue
to assist the Gwich’in Steering
Committee in their efforts to stop
the approval of oil development in
ANWR.
NARF is working with the
Oglala Sioux Tribe’s
Environmental Health Technical
Team (EHTT) in developing
water-related environmental
codes. NARF is working with the
Tribe’s Department of Water
Maintenance and Conservation
and the EHTT on the revision of
the Tribe’s Ordinance for the
Protection of the Oglala Sioux
Rural Water Supply System and
Other Public Water Systems
Within the Pine Ridge Indian
Reservation (“Tap-in” Ordinance),
as well as a Solid Waste
Management Code. The “Tap-in”
 ordinance will provide for the
protection of the integrity of the
pipeline which delivers drinking
water to the public water systems
on the reservation. The Solid
Waste Management Code will
provide enforceable standards and
a fee structure for solid waste
collection and disposal of solid
and hazardous waste.

WATER RIGHTS
Establishing tribal rights to
the use of water in the arid west
continues to be a major NARF
involvement. The goals of
NARF’s Indian water rights work
are to secure allocations of western
water for present and future needs
for three Indian tribes represented
by NARF and other western tribes
generally. 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
titled under federal law to suffi-
cient 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
currently in use in the basin or
priority date, which in most cases will
give tribes valuable senior water
rights in the water-short west.
Unfortunately, many tribes have
not utilized their reserved water
rights and most of these rights are
unadjudicated or unquantified.
The major need, of course, in
each case is to define or quantify
the exact amount of water that
each tribe is entitled to through
litigation or out-of-court settle-
ment negotiations. Tribes are
generally able to claim water for
present and future use of their
practically irrigable acreage,
maintenance of treaty hunting
and fishing rights, and municipal
and industrial needs.

NARF continues its extensive
involvement in the water rights
litigation and settlement negotia-
tions on behalf of the Klamath
Tribes to adjudicate the Tribes’
reserved water rights to support
its 1864 treaty hunting and fishing
rights. 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
defending their treaty-based water
rights in the adjudication, and is
currently engaged on a number of
fronts. First, 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 2002, the Court
issued an opinion and order reaf-
firming the Tribes’ water rights
and deciding all disputed issues in
favor of the Tribes. This important
decision was appealed to the
Ninth Circuit Court of Appeals
by private water users and the
State of Oregon. In July 2003,
the Court of Appeals vacated the
2002 decision. NARF has filed
a petition for a rehearing en banc
from the Ninth Circuit Court of
Appeals. Meanwhile, the state
water rights adjudication is moving
forward. The Tribes contested
numerous unsubstantiated claims
in the basin, scores of which are
underway and tribal claims are
being scheduled for hearing. At
the same time, the Tribes continue
to explore water settlement
efforts.
NARF continues its represen-
tation of the Nez Perce Tribe of
Idaho in its water rights claim
in the Snake River Basin
Adjudication (SRBA). The Tribe’s
current major claim is for
sufficient in-
stream flows to maintain its
treaty rights to fish for salmon and steel-
head that migrate down the Snake
River to the Columbia River and out
to the ocean before returning to
spawn. After issuance of a
1999 decision, the Tribe learned
that the judge and his brother
and sister have claims to both
surface irrigation and groundwater
irrigation flows in the SRBA,
which will likely result in actual
conflicts of interest with the
Tribe’s claims. The Tribe filed
motions, in 2000, to disqualify
the judge and to set aside all
judgments, orders and decisions
involving the Tribe’s claims. The
Tribe and the United States
appealed the decision to the
Idaho Supreme Court. In 2002,
the Idaho Supreme Court
dismissed the appeal as moot.
The Tribe’s petition for rehearing
was denied by the Idaho Supreme
Court. In October 2003, all
parties to the negotiations signed
on to a comprehensive term sheet
agreement, which also calls for
the suspension of all litigation
regarding Nez Perce claims in the
SRBA. The Idaho Supreme Court and the SRBA Court both agreed to suspend all litigation to permit settlement negotiations to proceed. NARF continues to assist the Tule River Tribe of California in securing its water rights. NARF’s main focus has been on 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. Initially, the Tribe presented the downstream users with a broad conceptual plan for settlement, which included a proposed short-term and long-term water storage facility, and proposed reservoir operation rules which would honor the terms of an important 1922 ditch company and certain riparian users tentatively approved the conceptual plan so long as it does not adversely impact their current water uses under the 1922 agreement. However, some downstream users who rely on storage water in a large downstream federal reservoir are wary of the potential impact of new Tribal storage rights on water supply in the federal reservoir. After refining the conceptual settlement plan in light of updated technical, legislative, and legal information, the Tribe, in consultation with the Federal Negotiation Team, presented the refined plan to the downstream users. Negotiations are scheduled to continue based on the Tribe’s revised settlement plan. NARF also concentrated on addressing a major problem in water rights settlements - the lack of federal funding for settlements. NARF has continued to facilitate Indian water rights settlement policy in the Congress by working with its state and private partners in the Ad Hoc Group on Indian Reserved Water Rights, the Western Governors’ Association, and the Western Business Roundtable. NARF has also continued to participate in the Joint Federal-Tribal Water Funding Task Force in order to encourage the Administration to support funding for Indian water rights settlements. NARF has also been involved in the creation of the Western Water Alliance, which hopes to bring together organizations and funders involved in western water issues to advance 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 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 represents the Alaska Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham seeking to establish nonexclusive aboriginal hunting and fishing rights to their traditional-use areas on 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 IFQs. 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. NARF argued that the paramountcy doctrine did not extinguish aboriginal title to the seabed and waters off Alaska because aboriginal title does not interfere with the federal government’s ability to protect the nation or to regulate international trade. The Court, however, expressly reserved the question whether Native tribes might hold non-exclusive hunting and fishing rights. The question whether the Villages have nonexclusive aboriginal fishing rights was sent back before the federal district court. The federal district court ruled against the Villages in 2002. An appeal was filed by NARF to the Ninth Circuit Court of Appeals, and oral argument was held in August 2003. A decision is now pending. The Kenaitze Indian Tribe of Alaska, Alaska Native Coastal Tribal Government, and individuals as proposed interveners in a case that was initially brought by the Safari Club, a sporting club, to challenge the Federal Subsistence Board to reconsider its determinations for fishable species on federal public lands in Alaska have succeeded in having the Board reverse its 1991 “non-rural” determinations. In 2000, the Federal Subsistence Board reversed itself, holding that virtually all of the Kenai Peninsula was non-rural. The Tribe decided to challenge this decision in court and NARF filed a complaint in federal court on behalf of the Kenaitze Tribe.

NARF is representing the Native Village of Venetie Tribal Corporation, Alaska Native Coastal 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 implementing the subsistence preference established by ANILCA. ANILCA establishes a preference for customary and traditional uses of fish and wildlife by 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, and 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 take fish and wildlife on federal public lands in Alaska for subsistence use in Alaska. The court granted the Tribe’s motion to intervene in January 2003, and entered an order establishing a new briefing schedule. NARF submitted its brief in April 2003.
The Promotion of Human Rights

Although basic human rights are considered a universal entitlement, Native Americans must struggle against the constant threat of having their rights undermined by the United States government and others who seek to limit these rights. Although the First Amendment of the United States Constitution pledges to uphold guarantees of religious freedom, Native peoples have to continue their fight to ensure that their right to religious expression remains intact. NARF’s specialized knowledge works to uphold this essential human right, along other key issues such as education, prison reform, and the welfare of Indian children. NARF, on behalf of its clients, seeks to enforce and strengthen laws which are designed to protect the human rights of Native Americans in these areas.

RELIGIOUS FREEDOM

Because religion is the foundation that holds Native communities and cultures together, religious freedom is a NARF priority issue. As a result, NARF has utilized its resources to protect First Amendment rights of Native American religious leaders, prisoners, and members of the Native American Church, and to assert tribal rights to repatriate human remains. It continues to provide guidance to tribes that are asserting NAGPRA claims. NARF was a leading proponent of the Native American Graves Protection and Repatriation Act (NAGPRA) which was signed into law in 1990. The Act requires federal agencies and private museums that receive federal funding to inventory their collections of Native American human remains and funerary objects, notify the tribe of origin, and return the ancestral remains and funerary objects upon request to the tribe. It makes clear that Indian tribes have ownership of human remains and cultural items which are excavated or discovered on federal or tribal land and that they alone have the right to determine disposition of Indian human remains and cultural remains discovered in these areas. The Act prohibits the trafficking of Native American human remains and cultural items where the items are obtained in violation of the Act and requires federal agencies and private museums that receive federal funds to create a summary database that holds Native community and cultural remains. It also requires federal agencies and private museums to return the ancestral remains and funerary objects upon request to the tribe. 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 represents the National Congress of American Indians (NCAI) as an amicus in the case of Bonnichsen 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 north-west tribes collectively filed a brief claiming possession of the remains with the Department of Interior (DOI) under the Native American Graves Protection and Repatriation Act. The Tribes wish to repatriate the remains in accordance with tribal religious traditions. Several scientists, i.e., anthropologists, archeologists, and museum professionals 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 heard arguments and issued an opinion. 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 2002, the 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. The District Court granted a request by four Pacific Northwest tribes to intervene in the law suit. The Ninth Circuit Court of Appeals issued an order staying the District Court’s order allowing non-Indian scientists access to the remains for study pending the resolution of the appeal. NARF and the Association on American Indian Affairs filed an amicus brief on behalf of the Association on American Indian Affairs and the Morning Star Institute in March 2003. The brief supports the tribal position that the District Court’s interpretation of NAGPRA is legally erroneous. Oral argument was held in September 2003 and a decision is now pending in the Ninth Circuit. 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 continued on page 22
### Native American Rights Fund - Annual Report 2003 - Case Map

#### NARF Major Activities 2003 - Case Map

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<th>Case Number</th>
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</tr>
<tr>
<td>20</td>
<td>Alabama-Coushatta Tribe - Land Claim</td>
<td>Texas</td>
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</table>
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 closed the door to governmental prohibition of sacramental use of peyote by Indians and effectively reversed a 1990 United States Supreme Court decision in Smith v. Oregon that denied First Amendment protection of otherwise applicable benefits under public assistance programs.

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 2002, the Federal District Court in New Mexico rejected the UDV's equal protection argument, but accepted its argument that it was protected under the Religious Freedom and Restoration Act (RFRA). The NAC took no position on the UDV’s RFRA claims against the United States. The government appealed to the Tenth Circuit Court of Appeals and the Tenth Circuit affirmed in 2003 in favor of UDV’s RFRA claim, but also rejected the UDV’s equal protection claims that threatened the NAC’s special status under federal law. The government has now filed a petition for reconsideration. 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 Historic Preservation Plan (HPP) for managing the Sacred Medicine Wheel on constitutional (establishment of religion) and other grounds. 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 to the federal appeals court. Oral argument was held in the spring of 2003, and a decision is forthcoming.

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 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 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 Common language has appealed. Oral argument was heard in June 2003. NARF is now waiting for a decision.

NARF conducted 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. The review and analysis will be a comprehensive and systematic examination of the current state of Native American intellectual property law and policy and provide a framework for the development of legislative and other policy initiatives.

The Act established substantive, federal and international protections for tribes and Indian families in cases of adoption, pre-adoptive placement, foster care placement, and terminal adoption proceedings involving Indian children. Because these protections are challenged or may conflict with state law, policy or practice, there have been several 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 continues to monitor Congress legislative and action to continue its participation in national conferences and meetings related to Indian children’s welfare to address tribal concerns.

EDUCATION

In 2002, NARF received a generous grant of $1.6 million from the Kellogg Foundation. The grant became effective September 2002 and extends over a three-year period. The ultimate goal of the grant is for NARF to help tribes in improving the learning outcomes for Native American children in schools by utilizing a collaborative approach in which tribes work closely with school officials to identify obstacles to improvement in education, to identify and implement potential solutions, and to establish and implement a tribal system of gathering and updating basic data measuring achievement of tribal students.

Under the Kellogg grant, NARF is currently working closely with the Assiniboine and Sioux Tribe of the Fort Peck Reservation in Montana, the Jicarilla Apache Nation in New Mexico, the Native Villages of Kiana and Nulato in Alaska, the Rosebud Sioux Tribe in South Dakota, and the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota. NARF is providing legal and technical assistance to help these tribes establish or reorganize tribal departments of education. These efforts to improve tribal involvement in the education of their children would enable the tribes to collaborate with the schools providing education programs to tribal children. An important part of this work includes preparing materials and training tribal leaders about the responsibilities of school districts, the legal authority of tribes to operate schools, the rights of tribes to determine the educational programs provided to their children, and the rights of tribes to participate in the decision-making process of the school district. NARF is also providing technical assistance to the Rosebud Sioux Tribe of South Dakota to 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, federal and international protections for tribes and Indian families in cases of adoption, pre-adoptive placement, foster care placement, and terminal adoption proceedings involving Indian children. Because these protections are challenged or may conflict with state law, policy or practice, there have been several 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 continues to monitor Congress legislative and action to continue its participation in national conferences and meetings related to Indian children’s welfare to address tribal concerns.
of this effort involves the development and implementation of legal devices such as tribal education codes and intergovernmental agreements that will operate to formalize tribal/school collaborative activities that increase the role of tribal governments in the schools that serve their people. Another important part of the project is to assist tribes in developing a system and process by which basic data concerning the education status of tribal children will be collected, tracked on a regular basis, and used to measure the progress of the tribe/schools’ collaborative activities. In addition, under the project, NARF will assist tribes in acting as catalysts to bring together tribal, state, and federal agencies and resources to work in concert to improve the learning experience of Indian students.

In September 2003, following the first full year of the three-year project, NARF education attorneys worked with an evaluation consultant to prepare the first annual evaluation of the Project’s progress. The Project evaluation concluded that all six tribes had made progress over the first year sufficient to put them in a position of moving forward with the project more expeditiously in the second year.

The U.S. Department of Education Office of Indian Education awarded a one-time grant of $20,000 to NARF for the purpose of establishing a new national organization for Tribal Education Departments and to develop the new organization’s web site. With the help of Education Directors of the Suquamish Tribe, the Cheyenne-Arapaho Tribes, and the Confederated Salish and Kootenai Tribes, the Tribal Education Departments National Assembly (TEDNA) was formed and incorporated in 2003. The purpose of the TEDNA is to bring together tribal education directors, staff and policy makers so that they can share information, strategize and problem solve on common issues of education governance, policy and advocacy at the tribal, regional and national levels.

INTERNATIONAL LAW

NARF and the National Congress of American Indians (NCAI) entered into a attorney-client relationship for the purpose of working in the international arena to protect indigenous rights. Conversely, if the OAS document is adopted in weakened form, it may be used to dilute the United Nations draft declaration, which has widespread indigenous approval.

Through a relentless campaign by a coalition of tribes and Indian rights organizations including 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 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 U.N. and the 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…” as opposed to “people” which does not convey the same legal rights.

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. NARF has 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. A U.N. drafting session was held in September 2003 and the OAS held drafting sessions in February and November of 2003, and has scheduled additional sessions for January and February of 2004. The drafting sessions addressed core paragraphs of the Draft dealing with self-determination, treaty rights and land rights.
Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the many laws and regulations applicable to Indian peoples. Because such laws impact virtually every aspect of tribal life, NARF maintains its involvement in the legal matters pertaining to government accountability to Native Americans. In a time when federal government accountability is increasingly dubious, it is crucial that NARF continues its fight to assure that Native Americans do not succumb to government negligence.

NARF, along with other attorneys, filed a class action lawsuit in 1996 against the federal government. The lawsuit was filed on behalf of 300,000 Individual Indian Money (IIM) account holders to seek redress for government mismanagement of trust accounts through which billions of dollars of Indian money has flowed over the years. The suit charges the federal government with illegal conduct in what is viewed as the largest and most shameful financial scandal ever involving the United States government. NARF represents all present and past individual Indian trust beneficiaries. Commonly referred to as the “IIM Case,” this litigation is intended to force the United States as trustee to: (1) perform a complete, accurate and reliable accounting of all trust assets held to the benefit of individual Indian trust beneficiaries; (2) properly restate the trust fund accounts in conformity with that accounting; and (3) create an accounting and trust management system that is reliable and will safely and soundly manage the trust funds of individual Indians in the future.

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

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 the Interior Secretary and her predecessor 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, Mr. Kieffer issued a fourth report, this one finding essentially that the Secretary had knowingly verified an “inaccurate and incomplete” Quarterly Report to the Court.

Beginning late in 2001, contempt proceedings against the Secretary of the Interior and the Assistant Secretary for Indian Affairs were held. In 2002, Judge Lamberth held the Secretary of Interior and the Assistant Secretary for Indian Affairs 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 1999 Order to initiate a Historical Accounting Project. The government appealed Judge Lamberth’s decision.

The Court ordered that Interior must, and plaintiffs may, each submit two separate plans by January 2003 that would set forth a means to conduct the accounting required by law and set forth a means to bring Interior into compliance with its trust duties (i.e. a trust reform plan). In conformity with the Order, NARF filed an accounting plan which demonstrated that more than $13 billion in proceeds from individual land has been produced by Indian allotted land (not counting interest accrued). NARF argued in their plan that, pursuant to trust law where all presumptions are against the trustee, this amount is owed. If Defendants show with competent evidence that they made disbursements to the correct beneficiary, the $13 billion will be reduced accordingly. To the extent defendants cannot make such a showing, then the trust account balances must be corrected (plus interest accrued since production).

In January 2003, the Department of the Interior filed three motions for summary judgment. After both parties briefed the issues in April 2003, the Court denied all three motions in toto.

One of the motions is particularly noteworthy since defendants sought to limit the accounting to 1984 forward by application of the statute of limitations. The Court held, consistent with NARF’s position, that no limitations are applicable because defendants have not “repudiated” the trust and until repudiation, limitations cannot begin to run.

In April 2003, Senate Indian Affairs Committee Chairman Ben Nighthorse Campbell and Vice Chairman Daniel Inouye wrote letters to the parties urging a mediated settlement of the case. On behalf of the plaintiffs, NARF responded favorably to the suggestion in a letter in May 2003 calling on Senator Campbell, Senator Inouye and other key Congressional leaders to become directly involved in settlement discussions themselves. NARF repeated its support for a mediated settlement process at a Senate Indian Affairs Committee hearing in July 2003.

In July 2003, a decision was rendered on the government’s appeal of Judge Lamberth’s 2002 ruling on contempt. A three-judge panel of the U.S. Court of Appeals for the District of Columbia ruled that the District Court ruling holding the Secretary’s in civil contempt had to be reversed because the sanction was a criminal proceeding, not a civil sanction, and the burden of proof was not met. In September 2003, NARF attorneys asked the nine active judges who sit on the U.S. Court of Appeals for the District of Columbia to reinstate the civil contempt citations arguing that the three-judge panel misconstrued the true nature and purpose of the civil contempt proceeding in declaring it to be something it was not – a criminal contempt proceeding. NARF’s petition for rehearing was denied in October 2003.

In May 2003, as scheduled, Trial 1.5 on the accounting and trust reform plans commenced. The trial lasted 44-trial-days with closing arguments in July 2003. In September 2003, in ruling on Trial 1.5, the Court issued a two-part opinion and an order imposing a structural injunction which requires the Interior defendants to
conduct a historical accounting of the IIM Trust and to provide plaintiffs with an accurate accounting. Judge Lamberth’s opinion consists of two parts: Historical Accounting and Fixing the System. In Historical Accounting, the government must account for all funds since the passage of the General Allotment Act of 1887 by 2007. In Fixing the System, the Court held that “Congress intended to impose upon the Indian Tribes the ongoing fiduciary duties of a trustee, and that the scope and nature of those duties are coextensive with the duties imposed upon trustees at common law.” An appeal by the government is expected.

In a Court of Federal Claims related action, NARF represents the Turtle Mountain Band of Chippewa in North Dakota, the Chippewa-Cree of the Rocky Boy’s Reservation in Montana, and the Little Shell Tribe of Chippewa in North Dakota, the Chippewa Tribe in Minnesota, and the Ojibwe Tribe of Lake Winnibigoshish. The tribes allege misaccounting, misinvestment, and mismanagement of the tribe’s trust funds based on oil and gas, timber, and grazing resources. NARF is seeking an accounting of tribal accounts and has asked the Court to assign the case to the judge in the IIM case. At this time, the litigation is on hold to allow the parties to explore a negotiated settlement of the Tribe’s claims.

The Native American Rights Fund, on behalf of the Alaska Inter-Tribal Council, filed a lawsuit in 1999 in the Superior Court for the State of Alaska seeking declaratory and injunctive relief against the Department of the Interior for failing 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 Villagers’ rights to Due Process of law and basic law enforcement protection

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 Villagers’ rights to Equal Protection of the law under the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. The Tribe alleges misaccounting and misinvestment of the Tribe’s trust funds based on oil and gas, timber, and grazing resources. NARF is seeking an accounting of tribal accounts and has asked the Court to assign the case to the judge in the IIM case. At this time, the litigation is on hold to allow the parties to explore a negotiated settlement of the Tribe’s claims.

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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 1,800 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. (See: http://nillcat.narf.org/)

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 the Indian Law Bulletin current awareness service. Access these resources by directing your Internet browser to the Native American Rights Fund (NARF) website at www.narf.org and click on the National Indian Law Library link.

INDIAN LAW SUPPORT CENTER

Since 1972, the Indian Law Support Center (ILSC) of the Native American Rights Fund had received funding from the Legal Services Corporation to serve as a national support center on Indian law and policy for the national Indian legal services community and the 32 basic field programs serving Native American clients. Literally hundreds of requests for assistance in all areas of Indian law were answered annually. Because of the unique and complex nature of Indian law and the geographic remoteness of Indian legal services programs, complicated by the difficulty of attracting and maintaining experienced staff, ILSC performed a vital and cost-effective support role.
Based on our audited financial statements for the fiscal year ending September 30, 2003, the Native American Rights Fund reports total unrestricted revenues of $7,895,814 against total expenditures of $7,942,204. Net assets at the end of the year came to $7,522,282. 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, revenue actually exceeded operating expenses and other cash outlays by $163,239, allowing for an increase to NARF’s reserve fund. This increase is largely attributed to settlements in attorney fees and gains on investments.

### SUPPORT AND REVENUE COMPARISON

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>percents</th>
<th>2002</th>
<th>percents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributions</td>
<td>$3,780,856</td>
<td>47.9%</td>
<td>$3,450,174</td>
<td>73.3%</td>
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<tr>
<td>Federal Grants</td>
<td>$1,147,310</td>
<td>14.5%</td>
<td>$1,478,099</td>
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<tr>
<td>Foundation Grants</td>
<td>$1,342,339</td>
<td>17.0%</td>
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<td>Legal Fees</td>
<td>$752,989</td>
<td>9.5%</td>
<td>$64,031</td>
<td>1.1%</td>
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<tr>
<td>Other</td>
<td>$15,293</td>
<td>0.2%</td>
<td>$27,436</td>
<td>0.5%</td>
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<tr>
<td>Return on Investments</td>
<td>$857,027</td>
<td>10.9%</td>
<td>&lt;742,026&gt;</td>
<td>&lt;12.5%&gt;</td>
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<tr>
<td><strong>TOTALS</strong></td>
<td>$7,895,814</td>
<td>100%</td>
<td>$5,937,132</td>
<td>100%</td>
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### EXPENSE COMPARISON

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<th>2003</th>
<th>percents</th>
<th>2002</th>
<th>percents</th>
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</thead>
<tbody>
<tr>
<td>Litigation and Client Services</td>
<td>$4,734,537</td>
<td>59.6%</td>
<td>$4,537,074</td>
<td>63.4%</td>
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<tr>
<td>National Indian Law Library</td>
<td>$477,087</td>
<td>6.0%</td>
<td>$560,223</td>
<td>5.0%</td>
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<tr>
<td>Total Program Services</td>
<td>$5,211,624</td>
<td>65.6%</td>
<td>$4,093,297</td>
<td>68.4%</td>
</tr>
<tr>
<td>Management and General</td>
<td>$993,953</td>
<td>12.5%</td>
<td>$899,625</td>
<td>13.8%</td>
</tr>
<tr>
<td>Fund Raising</td>
<td>$1,736,627</td>
<td>21.9%</td>
<td>$1,275,653</td>
<td>17.8%</td>
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<tr>
<td>Total Support Services</td>
<td>$2,750,580</td>
<td>34.4%</td>
<td>$2,265,278</td>
<td>31.6%</td>
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<tr>
<td><strong>TOTALS</strong></td>
<td>$7,942,204</td>
<td>100%</td>
<td>$7,158,575</td>
<td>100%</td>
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</tbody>
</table>

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.
Acknowledgment of Contributions: Fiscal Year 2003

We thank each and every one of our supporters for their commitment to the goals of NARF. NARF’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 2003.

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Elk Valley Rancheria
Fort Mojave
Gila River Indian Community
Hoa-Chink Nation
Jamestown S’Klallam Tribal Council
Lac du Flambeau Band of Lake Superior
Chippewa Indians of Wisconsin
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Mille Lacs Band of Ojibwe Indians
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Native Village of Kipnuk
Native Village of Kenai Peninsula
Nez Perce Tribe
Onida Tribe of Wisconsin
Ortizarrum Native Council
Port Graham Village Council
Pueblo of San Ildefonso
Puquap Tribe
Redding Rancheria
San Manuel Band of Mission Indians
Seven Cedars Casino
Shakopee Mdewakanton Sioux
 Ugashik Traditional Village
Winnebago Tribe of Nebraska
Yavapai Prescott Tribe
Winnebago Tribe of Nebraska

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Chickasaw Nation
Chitimacha Indian Tribe
Colusa Community Development Program
Cour d’Alene Tribe
Jicarilla Apache Nation
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Mazatzal Casino
Microsoule Tribe of Indians
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Thank you to the thousands of federal, state, municipal and private sector employees throughout the country who through their payroll deduction plans contributed $132,628 in fiscal year 2003.

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