

300,000 INDIANS SUE FEDERAL GOVERNMENT FOR MISMANAGING THEIR MONEY

*Class Action to Address Largest Financial Scandal Ever
Involving Federal Government
— Billions of Dollars Potentially at Stake —*

Introduction

The Native American Rights Fund, along with other attorneys, filed a class action lawsuit on June 10, 1996 against the federal government. The lawsuit was filed on behalf of 300,000 Indians, to seek redress for government mismanagement of trust funds through which billions of dollars in Indian money has flowed over the years. The suit charges Secretary of the Interior Bruce Babbitt, Assistant Interior Secretary for Indian Affairs Ada Deer, and Secretary of the Treasury Robert Rubin with illegal conduct in what is viewed as the largest and most shameful financial scandal ever involving the United States government.

The federal government is required by law to manage the Indians' money, held in what is known as trust

accounts. Although the money in question is processed by the Interior Department and deposited in the U.S. treasury, it is the Indians' own money, derived largely from income produced from leases of Indian lands. In a sense, the law requires the Indians to use the federal government as their bank. The Government Accounting Office (GAO) and a big six accounting firm have independently concluded that the government-managed trust fund is in total disarray and hopelessly broken.

"The Bureau of Indian Affairs (BIA) has spent more than 100 years mismanaging, diverting and losing money that belongs to Indians," said John Echohawk, Executive Director of the Native American Rights Fund. "They have no idea how much has been collected from the companies that use our land and are unable to

provide even a basic, regular statement to Indian account holders. Every day the system remains broken, hundreds of thousands of Indians are losing more and more money."

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CALL TO ACTION:

**STOP GOVERNMENT
MISMANAGEMENT
AND LOSS OF
INDIANS' MONEY**

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Call to Action

CALL TO ACTION: STOP GOVERNMENT MISMANAGEMENT AND LOSS OF INDIANS' MONEY

We must work together to stop the federal government's unconscionable gross mismanagement of billions of dollars belonging to over 300,000 individual Indians and 200 tribes and their members. The price of this government mismanagement and government wrongdoing is being paid by some of the poorest citizens of this great country—by the First Americans whose assets and interests the federal government is required by law to protect.

This deplorable, shameful government mistreatment of Native Americans must stop. The longer it is permitted to continue, the more expensive it will be to fix the system, and the greater the government's liability will be. And the price goes up every day.

We ask you to call, write or fax your U.S. Senators and Representatives to urge them to support an increase in appropriations of \$22 million for Fiscal Year 1997 so that the Special Trustee can fix the system and begin to resolve the mismanagement of the trust accounts of over 300,000 individual Indians. You can use the information in this sidebar, as well as in the feature article, to include in your letter if you wish.

In addition to calling, writing or faxing your Senators and Representatives, please also express your support for this increased appropriation of \$22 million to fix the IIM management system, to the following members of Congress who are in key leadership positions to help end this crisis:

Senator Mark Hatfield, Chairman
Appropriations Committee
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-3753 fax (202) 224-0276

Senator Slade Gorton, Chairman
Subcommittee on Interior
Appropriation
United States Senate
730 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-3441 fax (202) 224-9393

Senator John McCain, Chairman
Senate Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-2251 fax (202) 228-5429

Senator Daniel Inouye, Vice-Chairman
Senate Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-2251 fax (202) 228-2589

Rep. Bob Livingston, Chairman
Appropriations Committee
U.S. House of Representatives
2406 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-3015 fax (202) 225-0739

Rep. Ralph Regula, Chairman
Subcommittee on Interior
Appropriations
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-3876 fax (202) 225-3059

Rep. Sidney Yates
Subcommittee on Appropriations
U.S. House of Representatives
2109 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-2111 fax (202) 225-3493



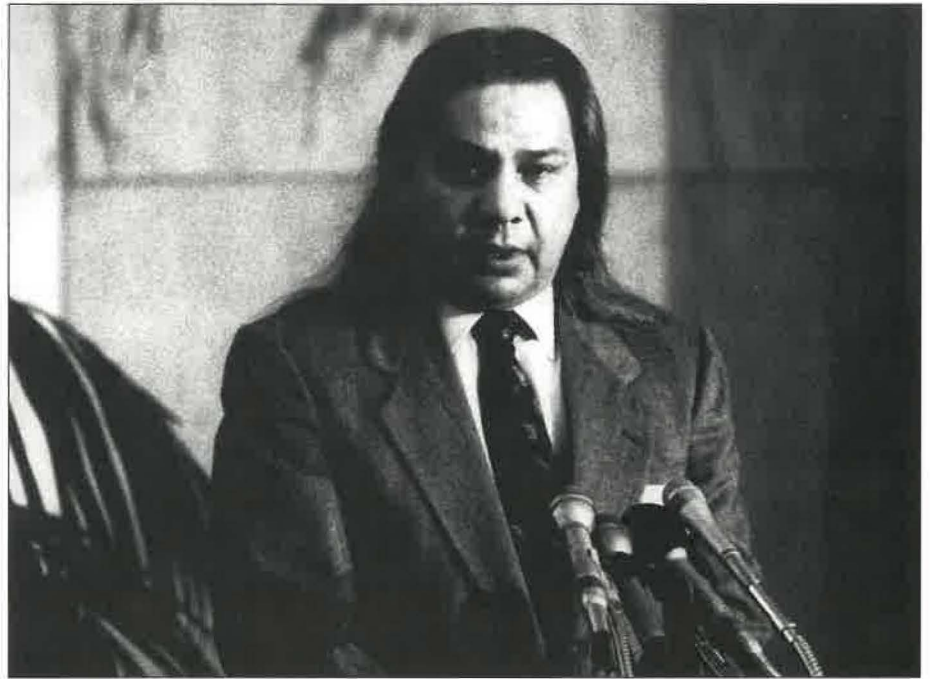
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Individual Indian account holders are particularly disturbed at what they view as cavalier acknowledgment by the executive branch and Congress that the federal government has failed to account for their trust monies, yet the federal government continually refuses to take the necessary steps to fix the system. Through the lawsuit, the 300,000 individual Indian class plaintiffs hope to force the federal government to determine what has happened to their money. They also seek a court order directing the government to fix the system and make restitution. "All we are asking is for the federal government to honor its word and follow the law," said Elouise Cobell, a member of the Blackfeet Tribe, board member of the Blackfeet National Bank and the lead named plaintiff in the class action litigation. Congress is in the process of holding a series of oversight hearings to investigate the mismanagement of unprecedented historical magnitude. One week after the lawsuit was filed, Echohawk testified before Congress that "the complete failure of the



John Echohawk — Executive Director of the Native American Rights Fund

United States government to properly discharge its trust responsibility implicates what we believe is the largest and longest-lasting financial scandal ever involving the federal government. And in our view it represents yet another serious and continuing breach in a long history of dishonorable treatment of Indian tribes and individual Indians by the United States government."

Echohawk emphasized that the lawsuit was filed as a last resort. Successive Administrations—both Republican and Democrat—have admitted that there are serious problems and abuses concerning what unequivocally amounts to gross mismanagement of Indian trust monies. Responsibility for the problem is unquestionably bi-partisan in nature, and neither the executive branch nor Congress can honestly or honorably avoid accountability.

Notwithstanding, each successive Administration—including the current one—has abjectly refused to seriously address or even attempt to resolve the problem. There has been

"All we are asking is for the federal government to honor its word and follow the law."

— Elouise Cobell, Blackfeet Tribal Member

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no attempt by any Administration to ask Congress for sufficient funds to fix the system—and Congress has consistently and drastically cut back the Administration's terribly inadequate funding requests.

"To make a long story short, we are in court because we have been unable to persuade the executive and legislative branches of government to honor the United States' solemn trust and legal obligation to 300,000 individual Indian account holders," Echohawk told the House Task Force on Trust Fund Management, chaired by Rep. J.D. Hayworth (R-Arizona), at a hearing on June 18, 1996.

The Task Force was created by Rep. Don Young (R-Alaska) to investigate the many allegations of federal government mismanagement of both individual and tribal trust funds. "It's bewildering that the Department of the Interior cannot even offer a full accounting for the manner in which it administers this important fund and refuses to address the numerous allegations of fraud, waste and abuse," said Young, Chairman of the House Committee on Resources, which has oversight authority over the Interior Department and Native American issues.

As well, the Senate is currently investigating the matter. On June 11, 1996 the Senate Committee on Indian Affairs, chaired by Sen.

John McCain (R-Arizona), held an oversight hearing to scrutinize the government's wrongdoing. Senator McCain opened the hearing stating that the failure of the BIA to keep trust fund records has resulted in a monetary loss that amounts to "theft from Indian people." "Most alarming, however," said McCain, "is the GAO's conclusion that the Interior Department lacks a serious commitment across its entire organization to devel-

sibility. Furthermore, it addresses some aspects of how the government has grossly breached its trust responsibility to over 300,000 individual Indians as a result of its malfeasance, mismanagement and self-dealing of unprecedented historical magnitude. The article concludes by identifying immediate steps that can be taken to resolve this unconscionable, illegal treatment of this nation's First Americans. Finally, a **CALL TO ACTION** is

"The Bureau of Indian Affairs (BIA) has spent more than 100 years mismanaging, diverting, and losing money that belongs to Indians."

— John Echohawk, Executive Director of the Native American Rights Fund

op proper Indian trust fund management policies and procedures." The Chairman of the Senate Indian Affairs Committee stated earlier that "Trustees receive and disburse funds all the time for other Americans, and if they blow it, they pay." McCain added, "In this case, it's the Native Americans who are rightfully owed the money and the Federal government who will be forced to compensate for their loss."

This article presents an overview of the origin and nature of the individual Indian trust accounts and the federal government's trust respon-

issued to help bring a closure to this sad chapter in Indian-government relations.

I. Origin and Nature of Individual, Tribal and Other Trust Fund Accounts

For more than 100 years, the federal government by law has held in trust for the benefit of both Indian tribes and individuals, those lands, minerals, timber and other natural resources and assets that were not taken by the United States. These resources gen-

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erate income including surface leases, timber and minerals. Another source of income is the settlement of land and water rights claims where the money was distributed by the tribe on a per capita basis to its members.

There are two major components to the trust funds: tribal trust funds and Individual Indian Money (IIM) accounts. There are 2,000 tribal accounts owned by some 200 tribes. Each such account is managed separately. There is a total of approximately \$2.3 billion in these tribal accounts. Tribes typically utilize their trust funds to finance essential tribal government services.

These tribal trust funds were the subject of a recent "reconciliation" by the federal government's auditor, Arthur Anderson, LLP, which found that at least \$2.4 billion in tribal trust funds is missing or otherwise unaccounted for from over a 20 year period. This amount alone is for tribal accounts for which the auditors could find no records whatsoever. There are billions of dollars more in tribal trust funds where the records are questionable at best. Moreover, the missing \$2.4 billion in tribal trust funds is only for the twenty-year period from 1973 through 1992. It does not include money missing before 1973, nor does it include money missing during the nearly five-year period since the reconciliation.

The Intertribal Monitoring Association (ITMA), chaired by Eric

Davenport, is spearheading the tribes' collective oversight efforts to reform the system as it particularly pertains to tribal trust funds. While the class action litigation does not involve the tribal trust funds, i.e., it is limited to the trust funds of individual Indians, the Native American Rights Fund has expressed its full support for the dedicated work of the ITMA. Echohawk stated that "while tribal trust fund issues are being addressed independently by the tribal governments and the ITMA, we look forward to working with them to bring a just and equitable end to this deplorable government misconduct which continues to unlawfully deprive our people of their money every day."

There are more than 300,000 individual Indian accounts with a total balance of approximately \$450 million. In addition, approximately \$250 million flows through the IIM accounts each year. The IIM accounts are invested as a single pool. The IIM account holders, most of whom are poor, need their money for basic subsistence. Furthermore, as discussed below, Arthur Anderson, LLP would not even attempt to reconcile the IIM accounts because the federal government had either destroyed, never created, or otherwise did not maintain the records necessary to conduct a reconciliation.

The bulk of the funds held by the United States in trust for IIM account holders is derived ultimately from income generated from individ-

ual land allotments. These allotments date from the era, lasting until 1934, when it was the policy of the United States to break up Indian tribes and tribal lands. In the implementation of this policy, the bulk of tribal land was divided into tracts normally of 80 or 160 acres (called "allotments") and the tracts were patented to individual Indians, with legal title held by the United States as trustee for the allottee. In many instances, such tracts produce income from, e.g., the lease of tracts for grazing or farming purposes, the sale of timber from tracts, and the grant of oil, gas, or mineral mining rights. The income so derived forms the core of the IIM accounts.

To a lesser extent, moneys from the following additional sources are included in IIM accounts: (a) funds originally held in trust for a tribe which were distributed per capita to tribal members; (b) per capita distributions of funds appropriated to meet judgments of the Indian Claims Commission and courts and in settlement of claims; (c) income from investment of funds; (d) money paid from tribal funds to equalize allotments; (e) proceeds of sales of allotments; (f) compensation for rights of way; (g) rent for allotments of aged or incompetent allottees; (h) proceeds of sales of allotments of incompetent Indians; (i) money due to incompetent or orphan Indians; (j) money accruing

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from the Department of Veterans Affairs or other government agencies to minors or incompetent adults; (k) apportionment or allotment of pro rata shares of tribal or trust funds; and (l) per capita annual payments to members of certain specified tribes.

In addition to tribal trust funds and IIM accounts, there are several smaller accounts. For example, the Alaska Native Escrow Account was established to escrow income from land that was to be transferred under the Alaska Native Claims Settlement Act (ANCSA) to Native corporations, but final transfer was put on hold pending the completion of surveys and other processing. While the annual amount in this fund never exceeds \$30 million, at least several hundred million dollars have flowed through the trust over the years.

II. The Federal Government's Trust Responsibility in the Management of IIM, Tribal and Other Trust Funds

The federal trust responsibility imposes traditional fiduciary standards on the conduct of executive agencies and officials. Since the trust obligations are binding on the United States, these standards of conduct govern all executive departments that deal with Indians, not just those such as the Department of the Interior or Bureau of Indian Affairs which have specific

statutory responsibilities for Indian affairs. This includes the Department of Treasury.

Federal law imposes important trust responsibilities upon executive branch agencies and officials in administering Indian assets. The Supreme Court has long held that, unless Congress has directed otherwise, the federal executive must properly discharge its fiduciary duties. In the management and administration of Indian property, executive agencies and officials are required to exercise due care, and are held to the "most exacting fiduciary standards" and "moral obligations of the highest responsibility and trust." Moreover, they are "bound by every moral and equitable consideration to discharge [the United States'] trust with good faith and fairness." Courts also require executive branch officials to adhere to the ordinary standards of a private fiduciary when managing and administering Indian assets. See generally, Felix Cohen, *Handbook on Federal*

Indian Law, 1982 edition, at 225-26 (citations omitted). Indian trust funds are no exception, either tribal or individual.

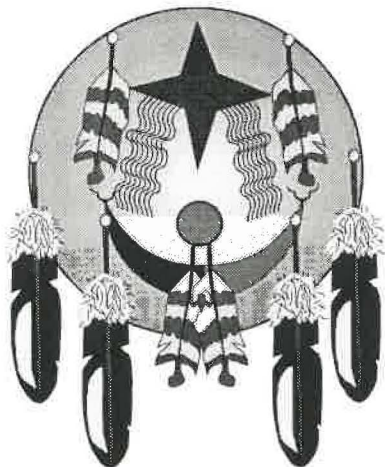
With particular regard to trust fund management, as trustee of the funds in the IIM (and tribal) accounts, executive branch agencies and officials owe certain duties and responsibilities to the account holders as trust beneficiaries. These include the duty: (a) to maintain adequate books and records; (b) to maintain adequate systems and controls to guard against error and dishonesty, including an accurate accounts receivable system and separating the billing and collection functions; (c) to deposit trust asset receipts and safely and soundly invest these funds; (d) to account regularly and accurately to the beneficiaries; (e) to distribute the earned income to the proper Indian beneficiaries; and (f) to refrain from self-dealing and benefiting from the management of these trust funds.

"In this case, it's the Native Americans who are rightfully owed the money and the Federal government who will be forced to compensate for their loss."

— Sen. John McCain, Chairman, Senate Committee on Indian Affairs

III. The Federal Government's Mismanagement and Breaches of Trust Responsibility Regarding IIM Accounts

For years, Congress, the General Accounting Office (GAO), the Inspector General of the Department of the Interior, and private accounting firms have issued numerous reports recognizing and concluding that the federal government has failed to carry out the above-referenced fiduciary duties and has breached its trust responsibility to over 300,000 individual Indian account holders. Moreover, the Office of Management and Budget has consistently placed the financial management of Indian trust funds as a "high risk liability" to the United States.



The breaches of trust committed by the federal government, as set forth in the class action lawsuit, include but are not limited to:

(a) failure ever to reconcile or audit the accounts, so that federal officials are unable to provide accurate account balances or to determine how much money that should have been collected and credited to IIM accounts was not collected or was diverted to improper ends; (b) deliberate destruction of records from which the amounts that should have been credited to IIM accounts could be determined; (c) failure to establish an accounts receivable system, so that the federal government has no way of confirming that the income due from the trust assets, and other funds that should have been credited to IIM accounts, has in fact been collected; (d) failure to separate billing and collection functions or to install other systems necessary to guard against diversion of beneficiaries' funds; (e) failure to maintain accurate ownership records, so that federal officials have no way of determining to whom the income that has been collected belongs; (f) failure to provide regular, accurate reports to beneficiaries to tell them the correct amounts and sources of their income; (g) failure to exercise prudence and observe the requirements of law with respect to investment and deposit of IIM funds, and to maximize the return on investments within the constraints of law and prudence; and

(h) engaging in self-dealing and benefiting from the management of the trust funds.

The federal government has failed as a fiduciary to properly invest the pooled IIM funds. For example, in January 1984, the Bureau of Indian Affairs, acting in its capacity as trustee of individual Indian account holders, deposited more than \$5 million in a federally insured credit union, which ultimately failed. A substantial part of the principal was lost, and no interest has ever been paid to the individual beneficiaries.

Moreover, the federal government, acting through the Secretary of the Interior, has engaged in self-dealing in its management of Indian trust funds. For example, the government has enriched itself at the expense of IIM account holders by failing to identify the rightful payees of disbursement checks to individual Indian trust beneficiaries and converting to its own use at least \$1.1 million in account holders' money, plus interest, that was never distributed to IIM account holders. This money, and probably much more, was systematically paid over to the U.S. Treasury when the federal government canceled the checks. Further, the United States "borrowed" money from tribal trust accounts, paying interest at rates 2-3 times below the going market rates.

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It is quite possible that the federal government also engaged in such self-dealing with respect to IIM accounts.

IV. Defendants' Undermining of the Indian Trust Fund Management Reform Act of 1994

In 1992 the House Committee on Government Operations, under the astute and relentless leadership of the late Congressman Mike Synar, issued a report entitled "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund." Ultimately, in 1994 Congress enacted the Indian Trust Fund Management Reform Act to remedy the federal government's mismanagement of individual and tribal trust accounts.

The 1994 Act created the office of Special Trustee for American Indians as a sub-cabinet level officer (Executive Level II or higher pay scale) appointed by the President by and with the advice and consent of the Senate, reporting directly to the Secretary of the Interior. Congress's stated purposes in creating that office were, in part, "to provide for more effective management of, and accountability for the proper discharge of, the Secretary's trust responsibilities to... individual Indians," "to ensure that reform of such practices in the [Interior] Department is carried out in a unified manner," and "to ensure the implementation of all reforms neces-

sary for the proper discharge of the Secretary's trust responsibilities to... individual Indians." 25 U.S.C. § 4041.

The powers conferred on the Special Trustee by the 1994 Act to enable him to carry out his responsibilities include development of an annual consolidated trust management program budget proposal "that would enable the Secretary to efficiently and effectively discharge his trust responsibilities and to implement [a] comprehensive strategic plan." 25 U.S.C. § 4043(c)(5)(A). The Special Trustee has broad powers with respect to such budget, and funds appropriated for trust management which are included in the Trust Management Program Budget may not be reprogrammed without his consent. 25 U.S.C. § 4043(c)(5).

The 1994 Act also provides for a nine-member Advisory Board to the Special Trustee, including five trust fund account holders (including IIM account holders); two members with practical experience in trust fund and financial management; one member with practical experience in fiduciary investment management; and one member from academia with knowledge of general management of large organizations. The chairperson of the Advisory Board is Elouise Cobell, the Blackfeet banker who is the lead named plaintiff in the class action litigation.

The Department of the Interior vigorously opposed the adoption

of the 1994 Act. It particularly opposed Title III which created the office of Special Trustee and established his authority and responsibilities. Since its adoption and since the Special Trustee took office, Interior has obstructed and harassed efforts of the Special Trustee to carry out his mandate under the 1994 Act. This has included: returning \$24,000,000 of unspent funds in 1995 which could have been reprogrammed with the approval of congressional committees and applied to the work of the Special Trustee; refusing to request adequate funds for the work of the Special Trustee mandated by the 1994 Act; preventing the Special Trustee from preparing the strategic plan mandated by the 1994 Act; refusing to permit the Special Trustee to conduct the technology and use survey necessary to carry out his duties mandated by the 1994 Act; preventing the Advisory Board from meeting to conduct its functions mandated by the 1994 Act; and refusing to permit the Special Trustee to employ adequate staff





and expert consultants necessary to carry out his duties mandated by the 1994 Act.

The class action lawsuit asks the court to take the necessary steps to assure that the Special Trustee has all the tools and resources he needs to fix the system, and to get the job done right, just as Congress mandated when it enacted the Trust Fund Management Reform Act of 1994.

V. Partial Consequences of Mismanagement and Breaches of Trust Responsibility Concerning IIM Accounts

The consequences of the government's breaches of trust, other acts of mismanagement and obstruction of the Special Trustee include, but are not limited to, the following: (a) as of the close of fiscal 1995, there was a total of more than 387,000 IIM accounts,

among which there were at least 15,599 duplicate accounts with the same number; (b) there were many duplicate accounts with the same name; (c) twelve separate databases of accounts were maintained and there was no common database; (d) there were more than 54,000 accounts, containing over \$46,000,000, for individuals with no address or no correct address; (e) out of more than 48,000 accounts containing more than \$159,000,000 supposedly held in trust for minors until they reach the age of 18, over 15,000 accounts, containing more than \$24,000,000, were held for persons who in fact were over 18; (f) more than \$122,000,000 was held in nearly 22,000 accounts which were supposedly temporary repositories pending determination of ownership of the funds; more than 4,000 of these accounts, containing over \$3,000,000, had no activity for 18 months; (g) there were more than 21,000 accounts with more than \$36,000,000 for persons who had died; at least 2400 of these were for closed estates, yet more than \$600,000 due to heirs under such estates had still not been distributed; and (h) there were more than 280 overdraft accounts totaling over \$325,000.

Because it does not have an adequate accounts receivable system, and because so many lease documents are missing, the federal government cannot even report to IIM account holders whether lease income has

been collected from the lessees, if it has been collected in the correct amount, nor if it has been paid on time. In addition, the government cannot determine with certainty whether payments from the IIM accounts are made to the correct individual Indian account holder. Moreover, in 1987 the Department of the Treasury destroyed all of its records pertaining to IIM accounts, and continues to destroy additional records each year. As a result of these breaches, just like the problems recently disclosed about funds collected by the IRS, the federal government in actuality has no idea how much IIM money it has; how much IIM money it should have; how much IIM money it has lost; or how much IIM money that could easily be and may be stolen every single day.

The government's trust fund system is in such disarray that the Arthur Andersen accounting firm would not even attempt to reconcile the IIM accounts because federal officials had either willfully destroyed, or never created the crucial documents necessary for a reconciliation. In fact, Arthur Andersen, LLP estimated that it would take at least \$108 to \$281 million just to attempt to reconcile the IIM accounts, and that even then, it would likely be of no value in providing the IIM account holders with assurance about the correctness of

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their account balances. Indeed, at the hearing before the Senate Committee on Indian Affairs on June 11, 1996, Special Trustee Homan testified that the IIM account system was "as bad or worse" than the tribal trust accounts. Notwithstanding, the Department of the Interior has no plans or money to do any historical accounting regarding the IIM accounts, to determine how much money the IIM account holders may have lost and continue to lose each day as a result of the government's ongoing mismanagement and gross breaches of trust.

It should be noted that the Department of the Interior was quoted in the media after the lawsuit was filed that it had fixed the trust fund management system. Echohawk replied, "Nothing could be further from the truth. The fact of the matter is that Interior has done absolutely nothing to improve the system for the management of Individual Indian Money accounts, and it should be clear by now that it does not have any plans to do so. In short, the federal government continues to turn its back on 300,000 individual Indian account holders every day."

Conclusion

Over 300,000 individual Indians and 200 tribes and their members are the direct victims of this continuing scandalous government wrongdoing. The price for this government negli-

gence and malfeasance is being paid by some of the poorest citizens of this great country. And each day that this mismanagement continues, these individuals and their families lose more and more of their money to the open, outstretched hands of the federal government—which by law is required as a fiduciary to protect their assets and interests.

This egregious government misconduct is inexcusable and must stop once and for all. The longer it is permitted to continue, the more expensive it will be to fix the system, and the greater the government's liability will be to the 300,000 individual Indian account holders and 200 tribes and their members who are being forced daily to pay the price for the government's breach of trust. And the price goes up every day.

The resolution of this crisis is the joint responsibility of both Congress and the Administration; it is likewise the joint responsibility of both the Republican and Democratic parties. As indicated, one of the major problems preventing system reform is the routine lack of adequate appropriations. In short, the Special Trustee's hands are tied due to lack of funds and resources.

For example, the Special Trustee indicated that it would take almost \$50 million in FY 1997 just to begin to resolve this problem. However, the Administration asked for only \$16 million in its appropria-

tion request. Just recently the House of Representatives marked this down to a paltry \$1 million—about 2 percent of the amount the Special Trustee sought just to begin to reform the system, as mandated by Congress in 1994.

In fact, the \$1 million appropriated by the House is not even sufficient to enable the Special Trustee to complete the statutorily-mandated strategic plan. Moreover, it will not cover the staff that the Special Trustee requires to actually write the plan. As a result, the plan, which Congress required to be completed no later than September 1996, will be impossible to complete by September 1997.

It will take at least an additional \$22 million for FY 1997 to begin to satisfactorily reform the trust fund system as it relates to the Individual Indian Money (IIM) accounts. Without this minimal amount, the government could be paying substantially more to correct the staggering losses that are hitting these 300,000 individual Indians every single day.



NARF UPDATES

PAI 'OHANA ASSOCIATION LAND CLAIM



NARF represents Mahealani Pai, a Native Hawaiian, and the Pai 'Ohana Association in an effort to resolve their claim to use and occupy their ancestral homelands within the boundaries of a national historic park on the Island of Hawaii. The Pai family ('Ohana means family), currently represented by the Native Hawaiian Legal Corporation, brought an action against the federal government under the federal quiet title statute to establish individual aboriginal title to and traditional uses of their abo-

iginal homelands. The United States District Court held against the family and granted summary judgment for the United States.

In February, 1996, the United States Court of Appeals for the Ninth Circuit affirmed the District Court's opinion that Native Hawaiian tenant rights do not include the right to "exclusively use and occupy land." The National Park Service and the State of Hawaii quickly issued a notice of eviction to the Pai 'Ohana with the effective date of April 1, 1996. On behalf of the Pai 'Ohana, NARF began negotiations with senior Interior Department officials on a settlement agreement between the National Park Service and the Pai 'Ohana Association to permit continued occupancy and traditional use of the lands within the historical park. The eviction proceedings were then postponed until April 25, 1996, to review a proposal for a negotiated settlement agreement between the National Park Service and the Pai 'Ohana Association.

On May 17, 1996, Interior Secretary Bruce Babbitt agreed to delay the enforcement of action to evict the Pai 'Ohana from Kaloko Honokohau National Historic Park indefinitely. This decision was prompted by United States Senator Daniel K. Inouye of Hawaii so that all sides can continue to negotiate a fair settlement agreement.



STATE OF ALASKA LOSES SUBSISTENCE CASE

The United States Supreme Court denied the State of Alaska's petition for *certiorari* review of *State v. Babbitt*, the case otherwise known as the *Katie John* case. The Supreme Court's denial of *certiorari* review leaves intact the Ninth Circuit's decision that the federal government has the obligation to provide rural Alaska residents a subsistence fishing priority on all navigable waters in Alaska in which the United States has a federally reserved water right. The

Departments of Interior and Agriculture were instructed to identify those waters for the purpose of implementing federal, rather than state regulation of subsistence activities. Federal jurisdiction over waters has been hotly contested since the State of Alaska lost management authority over subsistence activities on public lands in the wake of an Alaska Supreme Court decision that held that the State constitution precludes the State from differentiating between subsistence

users as required by the 1980 federal subsistence law. The State nonetheless argued that it should continue to be able to regulate fishing throughout the State.

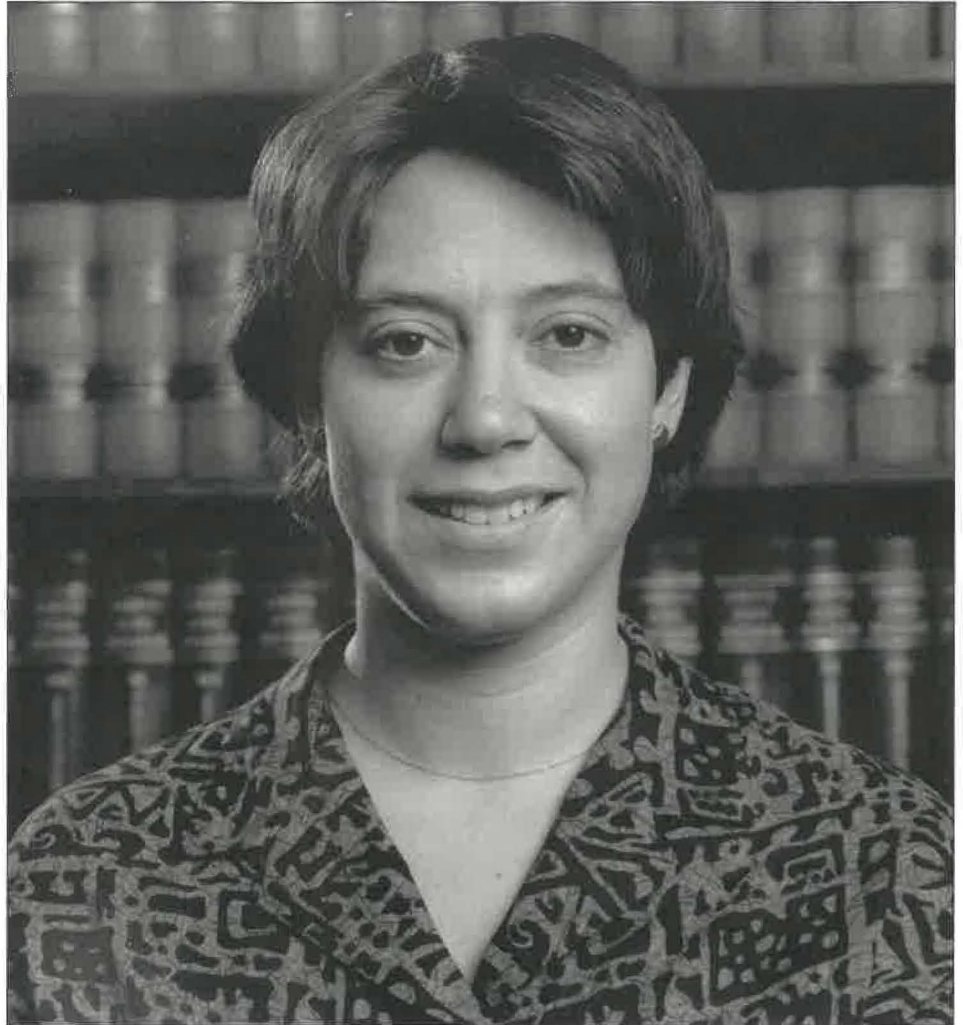
The Supreme Court's denial of *certiorari* review guarantees that Native subsistence users in rural areas throughout the State will be entitled to federal protection of subsistence fisheries over commercial and sport fishing.



NARF ATTORNEY

Melody L. McCoy

Melody L. McCoy, an enrolled member of the Cherokee Nation, joined NARF as a staff attorney in October, 1986. She has worked primarily in the areas of jurisdiction in Indian country, tribal courts, and tribal education rights. She has argued Indian law cases before the United States Courts of Appeals for the Eighth, Ninth, and Tenth Circuits, and has practiced in and represented several tribal courts. Melody was instrumental in the development and implementation of NARF's Indian Education Legal Support Project with its central theme of "tribalizing education." From 1992 until 1995, Melody served as a member of NARF's Litigation Management Committee. Melody received her B.A. from Harvard University, and her J.D. from the University of Michigan. She is admitted to practice law in Colorado and Massachusetts.



NARF RESOURCES AND PUBLICATIONS

NATIONAL INDIAN LAW LIBRARY

For the modern-day Indian, information is priceless in helping their fight to keep tribal homelands intact and traditional tribal ways alive. The National Indian Law Library has been providing Indian tribes and Indian law attorneys with a wealth of Indian law materials for the past 24 years. The materials are documents ranging from legal pleadings written in vital Indian law cases (from Tribal court to United States Supreme Court) to a collection of Tribal codes (there are about 510 federally recognized tribes in the United States.)

The National Indian Law Library began as a special library project of the Native American Rights Fund. It was initially designed to serve as a clearinghouse for materials on American Indian Law for tribes, private and tribal attorneys, legal service programs, law firms, federal and state governments and agencies, and for students. Essentially, it was intended to carry out one of the Native American Rights Fund's priorities, the systematic development of Indian law.

Over time, The National Indian Law Library has become the sole repository of Indian law materials in the nation. The library fulfills its function by collecting all available materials related to Indian law. These materials are catalogued on a customized library application software database and indexed for inclusion in the National Indian Law Library Catalogue.

Available from NILL

(Prices are subject to change, shipping and handling charges are additional)

The Bibliography on Indian Economic Development, 2nd Edition. Designed as a tool for the protection and regulation of commercial activities on Indian reservations. Included in the bibliography are articles, monographs, memoranda, Tribal codes, and miscellaneous materials on Indian economic development. Cost for this title is \$30.00.

The National Indian Law Library Catalogue, Volume I. One of the National Indian Law Library's major contributions to the development of Indian law is the creation of this catalogue. It is arranged by subject-matter index, author-title index, plaintiff-defendant index, and NILL number listing. Cost for *The National Indian Law Library Catalogue, Volume I* is \$85.00; the *1985 Supplement* is \$10.00; the *1989 Supplement* is \$30.00.

Top Fifty: A Compilation of Significant Indian Cases, compiled by the National Indian Law Library, costs \$85.00.

American Indian Law: Cases and Materials, 3rd edition, 1991, by Robert N. Clinton, Neil Jessup, Monroe E. Price. Price is \$45.00.

American Indian Law: Cases and Materials, 3rd edition, 1992 Supplement, by Robert N. Clinton, Neil Jessup, Monroe E. Price. Price is \$10.00.

American Indian Law in a Nutshell, 2nd edition, 1988, by William C. Canby. Price is \$16.00.

American Indians, Time and the Law, 1986, by Charles F. Wilkinson, price is \$13.00.

Battlefields and Burial Grounds, 1994, by Walter Echo-Hawk and Roger Echo-Hawk. Price is \$15.00.

Code of Federal Regulations, Title 25, 1995, published by U.S. Government Printing Office. Price is \$15.00.

Federal Indian Law, Cases and Materials, 3rd edition, 1993, by David Getches, Charles Wilkinson, and Robert A. Williams, Jr. Price is \$54.00.

Felix S. Cohen's Handbook of Federal Indian Law, 1992 edition, edited by Rennard Strickland. Price is \$85.00.

Handbook of American Indian Religious Freedom, 1991 edition, edited by Christopher Vescey. Price is \$15.00.

The Indian Child Welfare Handbook: A Legal Guide to the Custody and Adoption of Native Americans, 1995, published by the American Bar Association. Price is \$69.95.

Indian Claims Commission Decisions 1946-1978. This forty-three volume set reports the work of the Indian Claims Commission. Each volume is sold separately at a cost of \$25.00. The *ICCD Index* is sold at \$25.00.

Indian Land Area Map, 1992, published by the U.S. Department of the Interior. Price is \$5.00.

Mending the Circle: A Native American Repatriation Guide, 1996, published by the American Indian Ritual Object Repatriation Foundation. Price is \$40.00.

The Rights of Indians and Tribes, 2nd edition, 1992, by Stephen L. Pevar. Price is \$8.00.

1988 Update to The Manual for Protecting Indian Natural Resources.

The Indian Law Support Center is pleased to announce the availability of the 1988 Update to its Manual for Protecting Indian Natural Resources. The Manual covers the developments in natural resource law over the past six years since the publication of the original manual in 1982.

A Manual For Protecting Indian Natural Resources.

Designed for lawyers who represent Indian tribes or tribal members in natural resource protection matters, the focus of this manual is on the protection of fish, game, water, timber, minerals, grazing lands, and archaeological and religious sites. Part I discusses the application of federal and common law to protect Indian natural resources. Part II consists of practice pointers: questions to ask when analyzing resource protection issues; strategy considerations; and the effective use of law advocates in resource protection. (Must be purchased with Update.) The update is available for the price of \$30.00. The original manual and the update are available for \$50.00.

A Self-Help Manual For Indian

Economic Development. This manual is designed to help Indian tribes and organizations on approaches to economic development which can ensure participation, control, ownership, and benefits to Indians. Emphasizing the difference between tribal economic development and private business development, the manual discusses the task of devel-

oping reservation economics from the Indian perspective. It focuses on some of the major issues that need to be resolved in economic development and identifies options available to tribes. The manual begins with a general economic development perspective for Indian reservations: how to identify opportunities, and how to organize the internal tribal structure to best plan and pursue economic development of the reservation. Other chapters deal with more specific issues that relate to the development of businesses undertaken by tribal government, tribal members, and by these groups with non-tribal entities. \$35.00

Handbook Of Federal Indian Education Laws. This handbook discusses provisions of major federal Indian education programs in terms of the legislative history, historic problems in implementation, and current issues in this radically changing field. (Must be purchased with update.)

1986 Update To Federal Indian Education Laws Manual. The Update is available for \$30.00. The price for original manual and update is \$45.00.

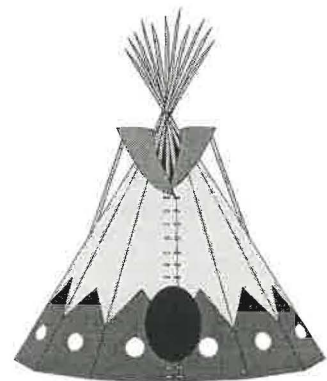
A Manual On The Indian Child Welfare Act And Laws Affecting Indian Juveniles.

This manual focuses on a section-by-section legal analysis of the Act, its applicability, policies, findings, interpretations and definitions. With additional sections on post-trial matters and the legislative history. (Must be purchased with Update.)

1992 Update to the Indian Child Welfare Act and Laws Affecting Indian Juveniles Manual. The 1992 Update provides a section-by-section legal analysis of the Act as well as the developments in Indian Child Welfare Act case law over the past eight years since the publication of the original manual in 1984. The 1992 Update and the original Manual comprise the most comprehensive examination of the Indian Child Welfare Act to date. The original manual and the 1992 Update are available for \$50.00. If you have the original manual and require only the Update, it is priced at \$35.00.

ANNUAL REPORT. This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request.

THE NARF LEGAL REVIEW is published biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor. There is no charge for subscriptions, but contributions are requested.



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that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

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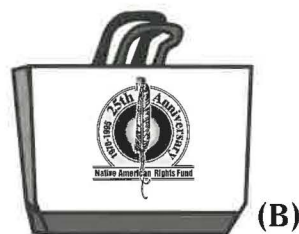
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NARF LIMITED EDITION SHIRTS AVAILABLE

NARF is offering two "**Limited Edition**" long sleeve shirts designed by artist Stan Natchez. The shirts are entitled "Save the Women and Children of the World" and "Indian Wars." The shirts are available in "natural" in sizes L, XL, XXL. (\$20 plus \$2 shipping & handling) (CO add 4.05% sales tax)

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The Native American Rights Fund is a nonprofit organization specializing in the protection of Indian rights. The priorities of NARF are: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; 3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law.

Our work on behalf of thousands of America's Indians throughout the country is supported in large part by your generous contributions. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance. Requests for legal assistance, contributions, or other inquiries regarding NARF's services may be addressed to NARF's main office: 1506 Broadway, Boulder, Colorado 80302. Telephone (303) 447-8760.

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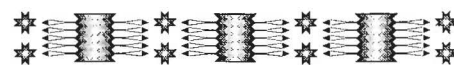
The Native American Rights Fund recently hired Mary Lu Prosser (*Cheyenne River Sioux*) to the position of Director of Development. She succeeds Marilyn Pourier (*Oglala Lakota/Cheyenne River Sioux*) who returned home to South Dakota earlier this spring to work with the Oglala Lakota College.

As Director of Development, Mary Lu plans and manages NARF's fundraising and public relations initiatives, and oversees a department staff of five.

She says she is "honored to be spearheading NARF's development efforts as we move beyond our first twenty-five years and into the next century."

Mary Lu has been with the Native American Rights Fund

since 1976 and a member of the development team since 1978. Prior to her promotion, she was the Development Assistant & Planned Giving Coordinator.



Sonya Paul (*Navajo*) was hired in April as NARF's Development Assistant. In her new capacity, she focuses on acquiring foundation funding, administering workplace giving campaigns, and conducting NARF's public and media relations activities.

Prior to joining NARF, Sonya worked as an independent writing and public relations consultant in Boulder, Colorado. From 1990-1994 she lived in Anchorage, Alaska where she worked for the Alaska Public Radio Network's Indigenous Broadcast Center. Sonya has a Bachelor's degree in English Literature from the University of Colorado-Boulder and is currently an ambassador in the 1996 Americans for Indian Opportunity "American Indian Am-

bassadors Program." She has written articles for *the Progressive*, *Indigenous Woman* and *Mirabella* magazine, and has produced radio news stories and features for the nationally distributed public radio program "National Native News."





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JANUARY 1996 – JUNE 1996

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("firekeeper," *Lakota*)

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SURF NARF



Thanks to the design and programming expertise of development staff member Scott Gettman, NARF proudly launched its internet website (www.narf.org) on April 1st. To date, nearly 1,500 people worldwide have visited our homepage. We are very pleased with the results and look forward to increased use.

Some of the more notable features of our website are the 1995 Annual Report; past editions of the NARF *Legal Review*; case updates and press releases; a map of the United States that highlights NARF cases in Indian Country; staff and board of director profiles; collections

of Indian laws and treaties; a Japanese translation for all of our friends and supporters in the land of the rising sun; and contribution opportunities.

At present, we are working on adding an extended history of NARF, online availability of NARF and NILL (National Indian Law Library) products, and a comprehensive database of Native American related resources on the Internet.

So, grab that surfboard and pay us a visit at www.narf.org!



EYAPAHA



Lakota word meaning camp crier.

Don Ragona, Director of Major Gifts

Summer has finally arrived here in the west! It doesn't seem that long ago that snow covered the ground and we all donned our winter coats.

Among the recent and exciting changes in the development department is the union of our major gifts and planned giving programs. NARF's donor program has also expanded to include opportunities for *lifetime income* gifts that enable supporters to make a substantial commitment to NARF (\$25,000 or more) while still ensuring their steady income. Contact me for more details on lifetime income gift options.

Lila wopila tunka (thank you very much) and a hearty handshake to Kay Nuissl of The Body Shop — an international skin and hair care retailer that dedicates its

business to social and environmental change. Kay organized and enlisted the support of Boulder area businesses for a local Earth Day celebration on April 22nd to benefit the Native American Rights Fund. Gene Poor Bear (*Oglala Lakota*) offered a blessing for the earth and for all of the day's participants, and nearly 150 elementary students from five Boulder-area schools paraded through downtown Boulder.

NARF Senior Staff Attorney Walter Echo-Hawk (*Pawnee*) and I will be in Rhode Island, home of Brown University and the Haffenreffer Museum of Anthropology, on November 19th. Thanks to NARF supporters and honored friends Howard and Gay Ben Tre, the museum invited us to meet with students and staff to discuss

NARF's repatriation efforts, as well as other issues affecting Native America.

I am also looking forward to traveling this summer on the "pow-wow trail" to celebrations in Montana and South Dakota. If you're planning any trips in the region and would like some information as to what, when and where things are happening, call me here at NARF.

Until then, have a safe and fun summer.



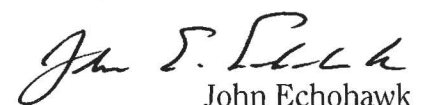
NARF Visions is published by the Native American Rights Fund, 1506 Broadway, Boulder, CO 80302. Sonya Paul, Editor.



THANK YOU!

Since 1970, NARF has helped over 190 tribes nationwide in such areas as tribal treaty rights, self-determination, religious freedom, education, economic development, and the protection of natural resources — issues that will impact generations to come.

We are thankful and honored to have the ongoing support of individual donors like you to help us continue to respond to the needs our people.


John Echohawk
Executive Director