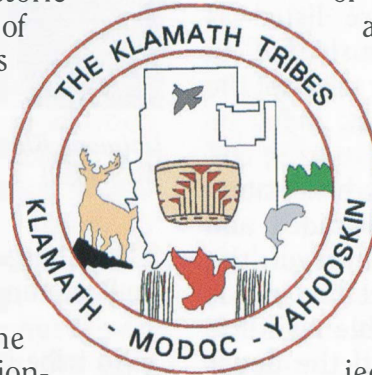


NARF Legal Review

Native American Rights Fund

THE LONG STRUGGLE HOME: THE KLAMATH TRIBES' FIGHT TO RESTORE THEIR LAND, PEOPLE AND ECONOMIC SELF-SUFFICIENCY

On March 19, 2002 the Secretary of the Interior invited the Klamath Tribes to meet with Interior officials to work on long term solutions to an entire range of water, land and wildlife issues facing the people of the Klamath Basin in Oregon and California. This historic invitation will include discussions of the potential return of public lands taken from the Tribes in the 1960's when the federal government took the Tribes ancestral reservation lands. The Tribes' lands were taken as part of the now repudiated "Termination Era" when the policy of the United States Congress was to end the government-to-government relationship with Indian tribes and force the assimilation of Indian people into the mainstream of the majority culture. Although the Tribes retained significant property rights on their former lands to hunt, fish and gather and water rights to sustain those activities, the water and wildlife resources have been continuously degraded to a state where they can no longer be harvested to provide subsistence for tribal members.



Indeed, the entire ecosystem of the Klamath Basin has been so degraded that it can no longer sustain either the quantity or quality of water demanded. In 2001 it was necessary for the first time in nearly 100 years for the federal Bureau of Reclamation to curtail delivery of agriculture irrigation water to a federally subsidized reclamation project in order to avoid jeopardizing treaty protected fisheries listed on the federal endangered species list. That fishery is a central component of tribal subsistence, and it has been cut off since 1986 when the Tribes determined that the fishery was in jeopardy. While Congress reacted quickly to provide 20 million dollars of economic relief to the farmers in 2001, along with a long list of other supports and benefits, not one dime of relief has been provided to the Tribes for the loss of their fishery. The farmers in the irrigation project reacted angrily to having their water deliveries curtailed for the first time in the project's history. The Tribes have warned for years that the federal and state governments had seriously over committed

- ▶ The Long Struggle Home: The Klamath Tribes' Fight to Restore Their Land, People and Economic Self-Sufficiency page 1
- ▶ CASE UPDATES
 - Alaska Court Strikes Down English-Only Law page 12-13
- ▶ New Board Member page 14
- ▶ Indian Law Library page 14

the waters of the Basin, promising far more water than nature could possibly deliver in even an average water year. That problem finally came to a head last year when the degraded condition of the Klamath basin watershed in a year of serious drought simply could not meet the needs of all concerned and the endangered species took precedence.

At the same time the State of Oregon has initiated a General Stream Adjudication to quantify the claims to the use of waters originating on the Oregon side of the Klamath Basin. Over 700 claimants are engaged in an administrative/judicial process that will require several more years and millions of dollars to complete. Wildlife refuges necessary to support migratory waterfowl and the largest population of bald eagles in the country are chronically de-watered. Coho salmon in the lower reaches of the Klamath River are listed as threatened species and continuously fail to meet the treaty reserved subsistence needs of the Indian Tribes who depend upon them.

It is clear that the Basin from its headwaters to the ocean is in a seriously degraded and depleted condition. The restoration of the entire Basin is necessary to meet the needs of sustainable agriculture, viable wildlife refuges, a vigorous fishery for both the upper and lower river tribes, and a restored habitat that accommodates habitat for healthy deer and related wildlife species and abundant food gathering.

The Klamath Tribes are beginning discussions about the return of the Tribes' land base as an essential element of their restoration as a people, and of the reconstruction of their once vital economy. These discussions, of necessity, must include the restoration of the seriously degraded eco-system that is integral to the vitality of the entire Klamath Basin. It is difficult to understand how the Tribes were placed in the position in which they find themselves without an appreciation of the historical events that placed them there.



Hatman - Klamath Warrior (Edward S. Curtis Collection 1868-1952) - Courtesy of the Klamath News Department

The subjugation and the destruction of lifeways and economic viability

No tribe in America has been more victimized by the vagaries of federal-Indian policies than the Klamaths of Oregon. These resourceful and productive people have been twice decimated by federal policies designed to deliberately destroy their economy and undermine their culture. The prosperous and powerful Klamath, Modoc and Yahooskin Band of Snake Paiute people ("the Klamaths") once controlled 22 million acres of territory in south central Oregon and northern California. Their lifestyles and economies provided abundantly for their needs and their cultural ways for over fourteen thousand years. Contact with invading Europeans, however, quickly decimated their numbers through disease and war and resulted in a treaty reserving to the Tribes a diminished land base of 2.2 million acres. Once traditional rivals, the three tribes were forced to live in close proximity to one another.

The Tribes' economy and trade were wiped out and the people were forced to survive on a subsistence basis dependent almost entirely on the fish, wildlife and gathering provisions of the treaty, a subsistence that was further diminished by the destruction of the abundant salmon runs by the construction of hydroelectric dams in the early 1900's. The Tribes were, in addition, forced to engage in a continuous struggle with the United States over its relentless efforts to diminish and ultimately wipe out the Klamath homelands, a struggle further exacerbated by federal encouragement of strife among the tribes.



Klamath Chief at Crater Lake (Edward S. Curtis Collection 1868-1952) - Courtesy of the Klamath News Department

In spite of these obstacles the Klamaths thrived on the remaining fish and wildlife resources, and recreated their vigorous economy based on careful timber production and livestock grazing. They soon became one of the nation's wealthiest and strongest tribes. In 1953 the Klamath people were nearly at economic parity with mainstream society. Tribal individual income was 93% of the majority culture. The Tribe was, moreover, no burden on taxpayers. The Klamath Tribes were the only tribe in the country paying their BIA administrative costs. In 1957 there were only four Indians on welfare in the Klamath Basin – three on old age benefits and one on disability. The Klamath Tribes were by every measure not only no burden, but a significant contributor to the local economy.

Their strength and wealth were, however, no match for determined efforts of the federal government to eradicate their culture and acquire their most valuable natural resources – a million acres of land and ponderosa pine. The stage was set for the dispossession of the Klamaths in the early 1950's when the Tribes were subjected to the worst of many disastrous experiments in federal-Indian policy – "Termination". "Termination" was a federal policy adopted by the United States Congress

in 1953 on its own motion, without the request of any tribe and over the objections of almost all tribes and Indian organizations of the day. The purpose of the policy, in its simplest terms, was to force the assimilation of Indian people into the mainstream American culture by the abolition of tribal governments, the eradication of reservations and all tribal holdings of lands and assets, and a whole array of other purposes. In short, having gotten the benefit of the bargain from the treaties with Indian nations, the federal government no longer wished to uphold, even in the smallest degree, its side of the bargain.

Termination was, therefore, accomplished over the objections of the majority of the tribal members and to the great detriment of the Tribes. The thrust of the policy was to abrogate and remove the bulk of the federal responsibilities guaranteed to the Tribes by treaty. These treaty guarantees had been bought and paid for with Tribal cessions which surrendered over 20 million acres of prime timber and farm lands to the United States. The federal obligations promised in exchange included a whole array of services and benefits to which the Klamath people were entitled. Among those federal guarantees were ►

delivery of a range of social services including health, education, and housing, as well as the protection of their sovereignty and natural resources.

Once terminated the Tribes were cut off from these valuable services. There was not at the time, nor has there ever been, any compensation for the loss of these entitlements. The value of these lost services from the implementation of termination in 1961 until restoration in 1986 has been estimated to be about one hundred forty-eight million dollars (\$148,000,000).

There were, in addition, federal guarantees which insulated the Tribes and its members from taxation and other economic burdens imposed by the state and local non-Indian governments. These guarantees had tremendous value – the most conservative estimate being at least \$100 million over the period from 1961 to 1986 – yet were given no consideration at Termination when they were discontinued.

But Termination took even more important assets from the Klamath people, both tangible and intangible. The intangible was the Klamaths' identity as an Indian nation among the great circle of recognized Indian tribes of America. The loss of this identity did incalculable psychological damage to the Klamath people. They were inappropriately viewed as having "sold out" their Indian heritage. The tangible asset that was taken was the then diminished but still extensive reservation of over 880,000 acres of ponderosa pine – the reservation lands and resources that embodied the sacred homeland and source of sustenance for these proud and resourceful people. The timber resource by itself would, over the next 40 years, produce in excess of \$450 million in revenues for the United States.



Woman gathering wocus at the marsh (Edward S. Curtis Collection 1868-1952) - Courtesy of the Klamath News Department

It is difficult to overstate the disastrous impact or the enormous stupidity of these actions. Congress first reached the patently sham conclusion that the Klamath people were "ready" for termination because they had achieved sufficient sophistication in the arts of "civilization" that they were prepared to assimilate into the majority culture. This conclusion was contrary to both the report of the Bureau of Indian Affairs that the Klamaths did not meet Congress' criteria for termination, and the Stanford Research Institute report that implementation of termination would be disastrous. The federal agencies responsible for implementing termination then reached the incredible conclusion that fully one-half of the adult Klamaths were incapable of managing their own affairs without a legal guardian. Undaunted by this extraordinary inconsistency, termination proceeded to the realization of its actual purposes – the dispossession of the Klamath people from their rich and prosperous homeland and the removal of the Tribes and its members from federal recognition.

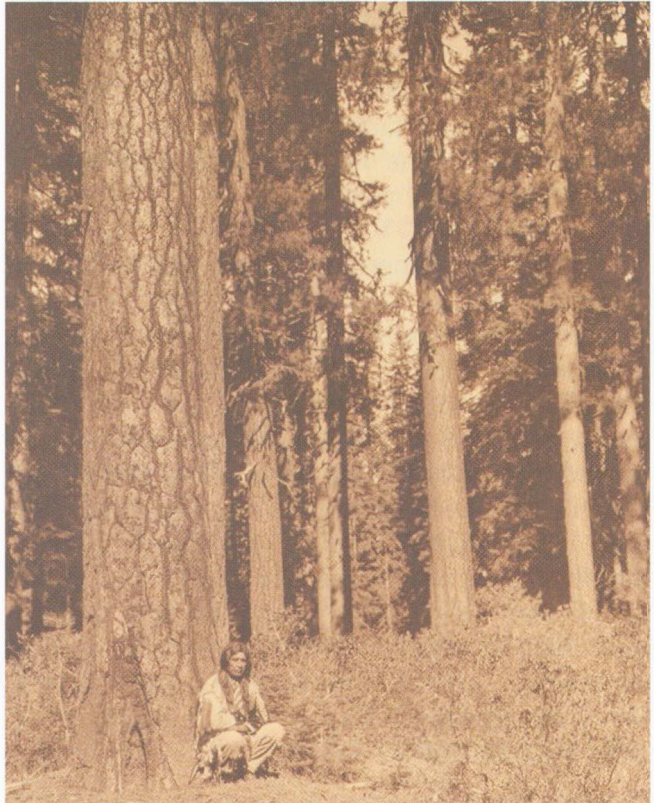
The corollary but unrecognized and related inconsistency of the Klamath termination legislation was the taking of the land. Any validity to the conclusion that the Klamath

people may have been prepared for release from federal supervision was dependent solely upon the assessment that they were one of the, if not the most, economically self-sufficient tribes in the country. But that self-sufficiency was directly related to the revenues generated primarily by the tribal timber and ranching and related industries.

These industries – ranching and timber – are of necessity tied to the lands that support them. It was, however, ownership of those very resources that termination legislation was designed to remove from the Tribes and its members. It was, moreover, done in a fashion that guaranteed that neither the Tribes nor its members would have any realistic chance of acquiring any of the lands of the soon to be former reservation.

At the time of termination tribal members were separated into two groups; those who would receive their share of the tribal estate in cash from liquidation of tribal assets – the “withdrawing members”; and those who would hold an undivided interest in a share of the tribal estate to be managed by a private trustee – the “remaining members.” The election to be in one group or the other was the only choice ever given to the Klamath people. But only those who had reached majority – 21 years of age – could vote. The tribal estate would be divided into two parcels: one to be sold to produce the revenues to be paid to the “withdrawing members”; and, another to be managed by a private trustee for the benefit of the “remaining members.”

There was great confusion at the time of the election. Very little useful or reliable information about the real meaning of either choice was available. There was, in addition, much misinformation. It was generally felt that taking the cash being offered at the time may be the only chance to ever get anything from the tribal estate. Many thought that they could take the money and acquire a parcel of land. Others simply did not understand that the payment meant the loss of the lands. Given this confusion, 77% of those who voted chose to take the money, not



Klamath Indian in former forest (Edward S. Curtis Collection) - Courtesy of the Klamath News Department

fully appreciating that it meant they would lose their ancestral reservation. As for the remaining lands concept, there was no information about what the plan for the remaining members would be, how those lands would be managed, who would manage them or what role the remaining members would play in the management.

After the election Congress determined that such a large portion of the ponderosa pine forest reservation would be sold that they needed to do something to protect the local timber industry. Without any concern for the impact on the tribal members, Congress amended the termination legislation and made it a provision that no portion smaller than 5,000 acres could be acquired and that these forest lands had to be managed on a sustained yield basis. This new provision had two important effects: 1) it virtually assured that no tribal member would receive enough money to purchase the minimum sized parcel; and, 2)

since “sustained yield” was a poorly understood management concept at the time, it depressed the value of the lands on the market. This was evidenced by the fact that there was only one private bid on the lands – Crown-Zellerbach took a 90,000 acre parcel.

Even if a tribal member had wanted to borrow money to add to their share of the liquidated estate so they could purchase lands, they had little or no sophistication in financial affairs. The only economic purpose for which they could have acquired the land was timbering or ranching. It would have been nearly impossible to demonstrate any real possibility of competing with the United States Forest Service as a supplier of timber in the late 1950’s. Except for the Crown-Zellerbach parcel, the rest of land was taken through condemnation by the United States to become the majority part of the Winema National Forest and a portion of the Fremont National Forest.

Congress determined after the vote that there would be a private trustee to manage the so-called “remaining lands.” A local bank was selected as the trustee and the remaining members were given very little say about how the lands were to be managed. Once again the irony and inherent inconsistency for the management of the “remaining lands” was evident. Here were people declared by congressional finding to be prepared to handle their own affairs nevertheless having their assets placed under the supervision of a federally appointed trustee. The “remaining members” were to have no real say or control over their own assets nor over the actions of the trustee. Nor would the remaining members ever have any real opportunity to ultimately undertake management of the trust assets for themselves. Indeed their only opportunity for input on the adequacy of the performance of the trustee was a vote every five (5) years on whether to retain the federally selected trustee – something they discovered only after they elected to be “remaining members”.

The remaining members exercised their right to vote on retention of the trustee on two



Wife of Moduc Henry (Edward S. Curtis Collection 1868-1952) - Courtesy of the Klamath News Department

occasions. The trustee turned out to be the United States National Bank of Oregon. On the second vote in 1971 the majority opted to remove the trustee. The trustee bank then determined that the vote was to terminate the trust, not merely the Bank’s role as trustee. There was no opportunity for the remaining members to clarify their vote and retain a new trustee. The Bank began proceedings to liquidate the trust. Despite significant protests and one lawsuit (later voluntarily dismissed under community pressure), the liquidation of the remaining lands of the former Klamath Reservation was arranged by the Bank through condemnation by the United States. Once again no member was given a chance to acquire any of their ancestral lands.

As outrageous as the imposition of termination was, as ridiculous as the liquidation of the tribal estate was, few things rival the irresponsibility of the incredible scheme for distribution of the tribal estate to the withdrawing, and later the remaining, members.

There is a temptation to point to the political strife among the Klamath people and conclude that they were politically vulnerable because they were in disarray. Such a conclusion would be unwarranted and erroneous. Their government was far more stable than comparable local non-Indian governments all over the nation at the time. This is all the more remarkable considering that these people were; 1) constituted of traditional enemies forced together on a land base representing one tenth (1/10) of their original territory, 2) that they had overcome a war involving the escape from and return to the reservation of the Modoc people, 3) that they had rebuilt from the ground up a viable economy, and 4) that they enjoyed a reasonably stable tribal government and relationship with the BIA for over several generations. It is impossible to imagine a healthy local government that does not have among its numbers at least one dissenting voice on any issue, and usually one or more vocal minority factions. The Klamaths were no different in that regard, and certainly no worse.

These were a well integrated people, economically prosperous, politically active, culturally and spiritually vital while on their reserved homelands. They were also, for all of their success at rebuilding their reservation economy, reservation Indians. That had some very specific meanings in the 1950's. It meant, for example, that they were unaccustomed to a number of the attributes of the majority society. They lived in a setting where they paid no property taxes. They had little or no consumer debt. A significant portion of their subsistence was taken from reservation fish and game sources, to which they had exclusive access. They enjoyed an enclave secure from the destructive management practices of the Fish and Game Department of the State and the habitat destroying practices of the U.S. Forest Service. Few of them had checking accounts or engaged in any significant amount of consumer purchases for large and expensive items with the exception of cars or appliances. They lived primarily on the reservation in small communities insulated from most of the influ-

ences of the majority culture. They certainly had no experience with large distributions of money. They were, in addition, not subject to state income or other taxes while on the reservation. Although, like Indian people everywhere, they paid every conceivable tax when they went to town and purchased the necessary goods and services for daily life.

They also had a connection to their ancestral lands, the significance of which is impossible to convey here. They were spiritually responsible for the land that was being sold out from under them. The land was a source from which they drew spiritual and cultural as well as bodily sustenance. They took their stewardship responsibilities seriously. They conveyed much of their cultural ways to the young through experiences on the land that reflected their relationship with the Creator.

Their lives were being transformed by forces beyond their control and in ways beyond their comprehension. All of this without one single study by Congress prior to adopting this policy about the economic, social or cultural impacts involved. The single possible exception to this was the Stanford Research Institute study which was finished after Congress had adopted the Termination Act, and which Congress ignored in all subsequent considerations in the implementation of the Act.

It is against this backdrop that the federal government in 1961 determined to distribute checks for \$43,000 each to 1,659 Klamath individuals. A distribution that was to take place without counseling for either the Klamaths or the local community; without the provision for a reasonable transition by the Klamath people; without any safeguards against sharp dealings or unscrupulous consumer practices. And, because so many Klamath's "ready" for termination were declared to not be competent to handle their own financial affairs, a significant portion of the payments went into individual trust accounts managed primarily by local attorneys or bank trust officers, most of them having no experience in handling such matters,



and none of them having any training in cultural sensitivity.

The bulk of the money distributed to the Klamaths which actually was delivered into their hands was expended on the usual array of consumer goods purchased by most citizens of the day; homes, furniture, appliances, cars etcetera. These purchases were intended to accomplish at least some of the symbolic transition of the Klamath people toward the goal they had been told they must pursue – assimilation into the majority culture. What they were not told, of course, is that no amount of money could purchase a non-racist community willing to deal honorably with them in commercial and social affairs.

The result, as predicted by the Stanford Research Institute Study, was a disaster. Much of the wealth derived from the sale of the Klamath's heritage was lost to sharp dealings by merchants; unscrupulous attorneys that mishandled, embezzled or engaged in self-dealing from trust accounts of those determined to be incompetent; to poorly considered investments – sometimes by attorneys lending themselves money from the accounts; or to exorbitant fees charged by local attorneys or banks for the handling of the beneficiaries affairs – which hardly ever got more sophisticated than handing out checks to the beneficiaries – a process usually handled in the most paternalistic of ways. They were also lost to non-Indian spouses who married Klamaths, had them declared incompetent, and gained control of their assets. There were also those who simply wasted their Klamath spouses' wealth and then left. There were, in addition, mysterious deaths of Klamath people. And in some cases following the death of a Klamath member, the disinheritance of the children born before the marriage in favor of the surviving non-Indian spouse.

But much of the wealth went to another far less visible but culturally significant end. Those born after August 13, 1954 were cut off from eligibility to share in the distribution of the tribal estate. They would receive nothing while

siblings a year or more older received either \$43,000 or a share in the Remaining Members estate. As a result many of the Klamath parents and siblings shared their distributions with those cut off by the accident of later birth.

Some of the money, however, went to far more sensational purchases. These became the fodder of the stories told in the press about days long parties, multiple purchases of cars, and Indian individuals walking around with thousands of dollars in paper bags. Many of the stories were true. The fact that they were the exception did nothing to keep them from marking all of the Klamath people as wild squanderers of their money.

These behaviors are not significantly different from what any thoughtful person might have expected given a moment to reflect on what could actually happen. Any group of 2,100 people randomly selected would have engaged in much the same conduct given a check for a large amount of money with no experience in financial affairs and no counseling of any sort available to them. Recent studies of the fate of lottery winners reflects some of the same experiences.

Add to that the burdens facing the Klamaths. They were being asked to deal with this at a time when their whole culture was undergoing significant upheaval. Their way of life was being completely transformed. Their economic system was being stripped away. And in all of this they were being blamed for abandoning their Indian identity in a situation where they had no real choices and little hope of having others understand the complex set of circumstances that led them to the situation in which they were placed. One result was tremendous guilt along with frustration – all the more confusing because there was no basis at the time for understanding these feelings. These contributed to the desire, both overt and subliminal, to get rid of the money that symbolized their betrayal. It also led to rampant alcoholism and the attendant problems of suicide, domestic violence, loss of self-esteem, symptoms of post-traumatic stress

syndrome, and more. This is but a part of the legacy of termination.

The economy of the Klamath's was destroyed. Their land lost to the federal government for a fraction of what would prove to be its real value. The culture and social fabric of the people was seriously hurt. Their government was critically undermined and all but dysfunctional. Their consistent requests for assistance in preserving a small portion of their heritage went unheeded. They were dispossessed from the very land-based enterprises at which they had been so successful. They were sent to participate in a society for which they had few of the skills or inclinations necessary with which to succeed; a society ill-prepared and largely unwilling to accommodate them. The single exception being those willing to marry tribal members to obtain access to their relative wealth. Few of those marriages survived the dissipation of the payments.

The local community viewed them with envy and growing contempt based on the bizarre notion that the payments for their land were in some sense a windfall which was unearned and undeserved. This conclusion was based in part on the perception that the Klamath's inability to hold on to and increase that wealth was an indication that they truly had not deserved it in the first place. The irony of the latter conclusion all the more poignant since the loss of so much of that wealth is directly traceable to dealings with much of that same community.

Faced with growing demoralization, the social profile of the Klamath people reflected increasing evidence of all of the indices that have come to characterize one face of Indian America – poverty, alcoholism, high suicide rates, low educational achievement, disintegration of the family, poor housing, high drop-out rates from school, disproportionate numbers in penal institutions,



Treaty signers and descendants (Treaty of 1864)

increased infant mortality, decreased life expectancy and more.

The once self-sufficient Klamath people had not realized the dream of assimilation that the federal officials and bureaucrats had crafted and forced upon them. They had, instead, had their land and resources stripped from them; been subjected to the distribution of large sums of money with which they were ill-prepared to deal; suffered the worst of consumer and other practices in having that wealth wrested from them; been offered no realistic alternatives in the process; and finally blamed and ridiculed for the very process that had victimized them.

The enduring spirit of survival; the fight to protect part of the legacy

Despite the announced goals of the Termination Act the Klamath Tribes didn't disappear, and they didn't give up their battle to regain what they had lost. Although the lands had been taken by condemnation the Tribes reserved to themselves the right to hunt, fish and gather on their former reservation in the Treaty of 1864. Congress further determined in the Termination Act of 1954 that these hunting, fishing and gathering rights would not be terminated in the legislation ending the

government-to-government status of the Tribes with the United States and expressly said so in the Act. Despite these clear indications the State of Oregon refused to allow tribal members to exercise their rights, and subjected them to harassment and arrest.

In 1972 five members of the Tribes, represented by the Native American Rights Fund, brought suit in federal district court to have their rights vindicated. After appeals to the federal circuit court the Tribes rights to hunt, fish and gather on their former reservation lands were upheld in *Kimball v Callahan*. The Tribes, since the mid 1970's, have been working diligently to protect the viability of these rights.

Despite tireless work on behalf of the Tribes to stem the decline of those fish, wildlife and plant resources on which they relied for subsistence, the habitat destructive practices of the United States Forest Service and wildlife decimating policies of the State of Oregon have nearly wiped out the fish, deer and wocus – a water lily the seeds of which were a staple for the Tribes. In the 1960's when the State assumed management of the wildlife the mule deer were estimated to be at 60 deer per square mile. Today they are below 4 per square mile. The fisheries upon which the Tribes primarily relied – the c'wam and qupto (two succulent mullet that exist in only one other place in the world) – have been reduced to listing on the federal endangered species list. The wocus beds have been reduced to a fraction (less than 10%) of their former range as the wetlands throughout the Klamath basin are drained and water diverted for agriculture.

One of the parcels acquired by the United States from the former reservation was converted into the Klamath Marsh Wildlife Refuge. Soon after it was acquired it became apparent to the federal refuge managers in the United States Fish and Wildlife Service that the water diversions for agriculture were depriving the marsh of water, even leaving it dry in some years. In order to secure a legal determination of the rights to water for the marsh the United States filed a lawsuit against all of the water users. The Tribes



Man fishing. (Edward S. Curtis Collection 1868-1952) - Courtesy of the Klamath News Department

were not included in the lawsuit even though the termination legislation had expressly preserved the Tribes rights to water. Once again, the Native American Rights Fund, this time on behalf of the Klamath Tribes, intervened in the lawsuit and fought to protect the rights of the Tribes to the water needed to sustain the tribes hunting, fishing and gathering rights. Once again, after appeals that went to the federal circuit court of appeals, the rights of the Tribes were sustained in *United States v Adair*.

As soon as it saw the result in the *Adair* case, the State of Oregon started a General Stream Adjudication (GSA) of the Klamath Basin to prioritize and quantify all water uses that had been initiated prior to 1909 – the year in which the state began requiring permits to substantiate a right for the use of water. The Tribes resisted the State's GSA in federal court but were rejected and are now full participants in the GSA.

Throughout all of this the Tribes persisted in their quest for the reversal of termination, continuously seeking the restoration of the government-to-government status unilaterally taken from them in the 1950's. They worked with their own people, congressional leaders, state and local community representatives, and anyone else who would listen. They were told frequently that despite the fact that other tribes subjected to termination had been and would be restored, there would be no restoration for the

Klamaths. Ironically, the reason was because they had been “paid” for their reservation, the outrageous injustice of their treatment being completely obscured by the seemingly large amounts of money distributed and the huge losses of their resources and culture completely eclipsed by the processes that stripped them of their heritage. But through the leadership and vision of the Klamath people and the assistance of a few congressional leaders, the Klamath Restoration Act was adopted into law in 1986.

Restoration of the Tribes to the great circle of recognized tribes in America began the process of providing the Tribes and their citizens with the resources necessary to put their nation and their people back together. But the damage wrought over 120 years and particularly over the last 40 years cannot be cured in a single act, nor over a course of even a few years. Just as it took decades to create the problem it will take significant time for the Klamath people to heal it.

Rebuilding their lives, their government, their community and their economy

NARF attorneys are working with the Tribes to define both the meaning and the methods for achieving economic self-sufficiency. This includes a plan for the return of former reservation lands held by the federal government within the boundaries of the pre-termination reservation. The federal government presently holds as U.S. forest lands 690,000 acres of the former reservation.

Since the federal government has assumed management of the Klamaths’ former lands, they have been so poorly managed that the Tribes’ were forced to sue the United States Forest Service to get a declaration that the Forest Service needed to take into account the Tribes adjudicated rights when making forest management decisions that could effect those rights. After winning that case in federal court the Tribes and the Forest Service entered into a Memorandum of Agreement concerning future management.

In like manner the Tribes have consistently struggled with the State of Oregon over its practice of historically ignoring Klamath rights when setting bag limits for wildlife take. The result has been the decimation of the deer herds and reduction of fisheries to endangered status.

The Tribes now see a land and its related resources nearly decimated. The Klamaths seek return of these lands primarily for the purpose of healing the land and its resources and restoring them to some semblance of the abundance they once reflected. They also seek to restore the spiritual integrity of the land. The culmination of “restoration” in its full sense is the healing of the land, its related resources, and the people, both Indian and non-Indian.

The goals of the Klamath people are simple and reflective of those to which most communities aspire. The Klamath people wish to be self-sufficient. Their concept of self-sufficiency takes them back to earlier times when they experienced no dependence on any federal, state or local non-tribal government or any other outside institutions. It recalls the time both before the invading Europeans arrived and again before the disastrous policy of termination was visited upon them. It incorporates the concept of tribal independence to provide for the social, economic, cultural, and spiritual well-being of all of its citizens. It is the fundamental notion of tribal self-determination. The Klamaths have never and do not now wish to participate in federal welfare dependency. They want the ability and resources to provide for their own people, consistent with their cultural norms and lifeways.

The Tribes and their citizens seek the wherewithal to achieve these goals from the very same resources that formed the foundation of their earlier ability to provide for their well-being and development. And in that quest they seek some measure of justice for the imposition of past wrongs and inequities. In the simplest terms, the Klamath people want the chance to restore their former lands and related resources. They want their way of life back. 🌻

CASE UPDATES

Alaska Court Strikes Down English-Only Law

Alaska's Official English Initiative violates Article I, Section 5 of the Alaska Constitution and is therefore unconstitutional, and null and void in its entirety.



After three years of litigation, Judge Fred Torrissi of the Superior Court for the State of Alaska ruled in *Alakayak v. State* that Alaska's Official English Initiative violates Article I, Section 5 of the Alaska Constitution and is therefore unconstitutional, and null and void in its entirety. Judge Torrissi concluded "...that the initiative was not narrowly tailored to achieve a legitimate state interest and unduly constricts the opportunities for free expression."

Torrissi said that he realized that the people of Alaska did pass this initiative and that it presumed its constitutionality, but ... "In the end, however, it appears that the main purpose of the initiative was to try to change people's behavior; to make non-English speakers learn the language more quickly. But both the American experience and a world view teach otherwise – in a free society, laws about language don't accomplish much."

In addressing the free speech rights of public employees and as to what limitations can be placed on government in this regard, Torrissi quoted Justice Rabinowitz of the Alaska Supreme Court who stated "...The United States of America, and Alaska in particular, reflect a pluralistic society, grounded upon such basic values as the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles."

The specter of governmental control of the physical appearances of private citizens, young and old, is antithetical to a free society, contrary to our notion of a government of limited powers, and repugnant to the concept of personal liberty." In addressing this question, Torrissi concluded that public officials and employees do have free speech rights and the Official English Initiative interferes with those rights.

NARF attorney Heather Kendall-Miller and former NARF attorney Eric Johnson, joined by attorneys from the Alaska Civil Liberties Union and the North Slope Borough Law Department, claimed that Alaska's English-only law is unconstitutional because it violates constitutional rights to free speech, equal protection, and due process, and argued those pending motions for summary judgment on October 12, 2001.

NARF had filed the *Alakayak* case in February 1999, in the state superior court in Anchorage, on behalf of twenty-seven individual plaintiffs who sought an order declaring that English-only Ballot Measure Six is unconstitutional. On March 3, 1999, Alaska State Superior Court Judge Fred Torrissi granted a preliminary injunction that enjoined the State of Alaska from the operation and enforcement of Alaska's Official English Initiative, which was passed by state voters in November 1998.

Heather Kendall-Miller explained that NARF brought this lawsuit “to protect the rights of Alaska Native villages to freely choose, shape and control the forms of community self-governance that exist in their local communities.” Because Alaska Native villages exercise their powers of community self-governance through numerous structures, both tribal and state, many of the most basic powers of community self-governance in Native villages are exercised through institutions established under state law, such as city governments, school districts, and the various citizen advisory boards that provide local input on state agency decisions. As Kendall-Miller explained, “Alaska Native villages have a fundamental community right to govern themselves through whatever structures they may choose, which necessarily includes the right to do so in the Native languages of their communities, the only languages many of their citizens can understand.”

The temporary restraining order and preliminary injunction had become necessary because a number of the *Alakayak* plaintiffs had meetings of their city governments or school functions scheduled for after the date the law would have gone into effect. She added that the potential for state enforcement of the English-only law against these plaintiffs after that date “threatened the most basic sovereign rights of these communities to meaningful self-government.”

The “English Only” initiative was written in very broad terms, and would have had a major impact upon Alaska Natives, had it gone into effect. Unlike most other official English measures that are primarily symbolic, this measure would have prohibited the use of any language except English in virtually all governmental functions and actions. The measure applied 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.”

The measure also contained a private cause of action that allowed any person to bring suit against a government entity to enforce the provisions of the act. Thus, a non-Native resident of Anchorage would have been able to bring an enforcement action to require a Yupik-speaking community in Southwest Alaska, to force it to conduct its city business in English, and English only.

The impact of this statute would have been direct and immediate, had it gone into effect in March 1999. For example, of the 226 Native villages in Alaska, over 100 have formed municipal governments. It is very common for city officials to conduct business in Yupik, Inupiat, or Athabaskan languages. If this initiative had become law, they would no longer have been able to do so. And, if they had, they would have been law breakers and potentially subject to suit. Moreover, those city officials who do not speak English as a first language (and there are many in rural Alaska), would have effectively been excluded from participating in local government. The breadth of this measure made it all the more unconstitutional, since it violated both free speech and the constitutional right to participate in and have access to government.

Because the measure extended to all state employees, it would have prohibited an Inupiat school teacher and a monolingual Inupiat-speaking parent from speaking in Inupiat about a child's education. It would have also precluded a discussion in a language other than English between public employees and citizens seeking unemployment or worker's compensation benefits, or access to fair housing or public assistance, or information with respect to child support, child welfare, foster care placement, Indian Child Welfare Act matters, or to redress violations of those rights. In short, the measure would have had a chilling effect on all Native languages, which is why NARF filed this lawsuit, and secured this decision to keep the law from taking effect.

It is not yet known if the state will appeal. ❁

NEW BOARD MEMBER

Dr. Clinton M. Pattea, Dr. Clinton M. Pattea, President of the Fort McDowell Yavapai Nation of Arizona since 1986, was elected to the Native American Rights Fund Board of Directors, replacing Rebecca Tsosie who completed three terms on the Board. The Fort McDowell Reservation is the home to the Yavapai, Mohave-Apache and Apache Indians. Dr. Pattea graduated with a degree in Business Administration in 1959 from Northern Arizona University. In 1999, he was recognized with an Honorary Doctorate Degree from Northern Arizona University for his "...continued commitment to education for his Tribe, for all Indians, and for non-Indians as well..."

Dr. Pattea began his public service in 1960 as an elected Tribal Council member, which has continued to the present time. He witnessed first-hand many of the obstacles faced by his people: low educational attainment, unemployment and lack of sufficient social and health services. But he knew that his homeland, rich in culture and history, held much potential. His tenure in tribal leadership encompassed two historic events which solidified the Tribe's sovereignty. First, the Tribe successfully defeated

a proposal for the construction of Orme Dam to be built at the confluence of the Verde and Salt Rivers – a project which would have forced the community off of what little remained of their ancestral homeland. The most crucial episode of Dr. Pattea's Presidency occurred on May 12, 1992 when FBI agents invaded the Fort McDowell Casino, seizing the community's 348 gaming machines. Community members quickly formed a blockade of cars, trucks and machinery, preventing the movement of the Agents and machines. The Fort McDowell Casino had been waiting for several years to sign gaming compacts with the state government, which was opposed to Indian gaming at the time. With a standoff in effect, Dr. Pattea successfully negotiated and signed a compact with the Governor of Arizona, ensuring the future of Indian gaming and tribal sovereignty for Indian tribes in Arizona. Since this time, Dr. Pattea has overseen the extensive creation of social, health, environmental and educational services for his people.

The NARF Board of Directors and staff look forward to working with Dr. Clinton Pattea. 🌟

National Indian Law Library

The National Indian Law Library (NILL) located at the Native American Rights Fund in Boulder, Colorado is a national public library serving people across the United States. Over the past thirty years NILL has collected nearly 10,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States, legal pleadings from major American Indian cases; law review articles on Indian law topics; handbooks; conference materials; and government documents. Library users can access the searchable catalog which includes bibliographic descriptions of the library holdings by going directly to: <http://wanderer.aescon.com/webpubs/webcat.htm> or by accessing it through the National Indian Law Library link on the Native American Rights Fund website at www.narf.org. Once relevant materials are identified,

library patrons can then choose to review their selected materials, request mailed copies for a nominal fee, or borrow materials through interlibrary loan. In addition to making its catalog and extensive collection available to the public, the National Indian Law Library provides reference and research assistance relating to Indian law and tribal law. NILL serves a wide variety of public patrons including attorneys, tribal and non-tribal governments, Indian organizations, law clinics, students, educators, prisoners and the media. The National Indian Law Library is a project of the Native American Rights Fund and is supported by private contributions. For further information about NILL, visit: <http://www.narf.org/nill/nillindex.html> or contact Law Librarian David Selden at 303-447-8760 or dselden@narf.org. Local patrons can visit the library at 1522 Broadway, Boulder, Colorado. 🌟

THE NATIVE AMERICAN RIGHTS FUND

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

NARF strives to protect the most important rights of Indian people within the limit of available resources. To achieve this goal, NARF's Board of Directors defined five priority areas for NARF's work: (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. Requests for legal assistance should be addressed to NARF's main office at 1506 Broadway, Boulder, Colorado 80302. NARF's clients are expected to pay whatever they can toward the costs of legal representation.

NARF's success could not have been achieved without the financial support that we have received from throughout the nation. 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. ❁

**NARF's website awarded Standard of Excellence
by the Web Marketing Association. Visit NARF's
award winning website at www.narf.org**



NARF 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. Editor, Ray Ramirez (ramirez@narf.org).

The NARF Legal Review is published biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor (ramirez@narf.org). There is no charge for subscriptions, however, contributions are appreciated.

Tax Status. The Native American Rights Fund 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, and 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.

Main Office: Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760) (FAX 303-443-7776). <http://www.narf.org>

Washington, D.C. Office: Native American Rights Fund, 1712 N Street, NW, Washington, D.C. 20036 (202-785-4166) (FAX 202-822-0068).

Alaska Office: Native American Rights Fund, 420 L Street, Suite 505, Anchorage, Alaska 99501 (907-276-0680) (FAX 907-276-2466).



NATIVE AMERICAN RIGHTS FUND BOARD OF DIRECTORS

Wallace E. Coffey, ChairmanComanche
Mary T. Wynne, Vice ChairwomanRosebud Sioux
Jaime Barrientoz Ottawa/Chippewa
Billy CypressMiccosukee
John Gonzales.....San Ildefonso Pueblo
Nora HeltonFort Mojave
Karlene HunterOglala Lakota
Kenneth P. JohnsAthabaskan
E. Ho`oipo Pa Native Hawaiian
Clinton PatteaFort McDowell Yavapai
Sue M. Shaffer.....Cow Creek Band of Umpqua
Ernie L. Stevens, Jr.Wisconsin Oneida
Michael P. Williams.....Yup'ik
Executive Director: John E. EchohawkPawnee

NARF LEGAL REVIEW • VOLUME 27, NO. 1 • WINTER/SPRING 2002

NARF Legal Review

1506 Broadway
Boulder, CO 80302

Non-Profit Org.

U.S. Postage

PAID

Boulder, Colorado

Permit No. 589



PRINTED ON RECYCLED PAPER