



# Legal Review

NATIVE AMERICAN RIGHTS FUND

## Pembina Chippewa Tribes and Individuals to Receive Long Overdue Settlement Payments

On June 23, 2021, the U.S. District Court for the District of Columbia gave final approval to a \$59 million negotiated settlement between Pembina Chippewa Indians and the United States of America in the case *Peltier, et al., v. Haaland, et al.* Four Pembina Tribes: the Turtle Mountain Band of Chippewa Indians of North Dakota; the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; the White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Little Shell Band of Chippewa Indians of Montana will share in the settlement along with 39,003 individual Pembinas.

Settlement distribution will close a twenty-nine-year-old lawsuit against the U.S. government alleging mismanagement of Pembina funds held in trust by the U.S. since 1964. "This victory is long overdue," said lead plaintiff representative Leslie Wilkie Peltier (Turtle Mountain Chippewa).

The funds held in trust derive from a treaty and an agreement by which the U.S. purchased lands from the Pembinas that became part of North Dakota and Minnesota. In the 1863 Treaty, as amended, the U.S. purchased about 2.5 million acres from the Pembinas for about 8 cents an acre. "The government told us how much they would pay us when we negotiated the 1863 Treaty. They told us how it would be paid out, when, and to whom and how long payments would last," said Peltier. "And, like it told most tribes, the government told us it would not ask us for more."

But the U.S. wanted more land, and gave the Pembinas few options as it demanded a second sale. "The federal government tried to force us to



Turtle Mountain Chippewa Tribe honored Pembina Chippewa Treaty Committee members at the 1994 Little Shell Pow Wow. From left to right: Elma Wilkie, Mary Cornelius, Francis Cree, and Ernest Patnaude. Not pictured: Leo Wilkie.

relocate from North Dakota by issuing our treaty-negotiated rations in Minnesota. We'd have to travel 300 miles one way to get food. Some of us tried but many never returned," said Peltier, who has taught the history, treaties, and culture of her people at the Turtle Mountain Community

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College for over 30 years. Under extreme duress, the Pembinas sold (through the 1892 McCumber Agreement) an additional 10 million acres in North Dakota to the U.S. for about 10 cents an acre.

When Congress admitted the dishonorable nature of hundreds of treaties that the U.S. had forged with tribes and established the Indian Claims Commission (ICC) in 1946, the Pembinas submitted claims. “The ICC was a remarkable official admission by the U.S. that it had cheated tribes in their treaties,” said Native American Rights Fund (NARF) Staff Attorney Melody McCoy, who has represented the Pembinas since 1996. “The ICC could not restore land to tribes, but it could award additional monetary compensation to them.”

In 1964, the ICC awarded the Pembinas an additional \$227,642 for their 1863 Treaty lands. In 1980, the ICC awarded the Pembinas an additional \$53 million for the McCumber Agreement lands. “That was a very large award,” said McCoy, “probably the second or third largest award ever made by the ICC.”

Instead of immediately paying ICC awards directly to individuals and tribal governments, following historic and paternalistic law and policy, the U.S. government held the awards in trust unless and until it distributed them. In 1971, Congress approved distribution of the 1964 ICC award to all Pembina individuals determined by the U.S. Department of the Interior to be eligible

to share in the award. It took the Interior 13 years to determine that 21,268 individuals each were eligible to receive about \$44. In 1984, the Interior began those distributions.

In 1982, Congress approved distribution of the 1980 ICC award. In 1988, Interior determined that 33,584 individuals were eligible to share in the award for about \$1,200 to \$2,400 per individual. The Interior made these distributions in 1988 and 1994. Peltier recalled the reaction on the Turtle Mountain Reservation. “My mom taught me that you can sometimes best educate people with humor. After the first 1980 award payments began, she went to the bank in this old truck she had, got rolls of dimes, and had t-shirts made. She decorated the truck for us to drive as a float in the St. Anne’s Turtle Mountain Days parade, with signs on each side that said: “‘Attention area farmers: we will buy your drought-stricken lands for 10 cents an acre. Payment in 100 years, without interest.’ We threw the dimes out to the crowd, yelling, ‘This is what your treaty got for you.’”

On a more serious note, Peltier remembers, “My family were members of the Pembina Treaty Committee of volunteers, who worked to understand the ICC awards and help convey what was going on to the Pembina people. My parents helped with research. Joe and Emma Great Walker, an elder couple who were fluent in Ojibwemowin, translated to our communities who did not speak English. I grew up listening to these elders, these leaders, talk about what the



government did to us. It was only natural that, as these elders passed away, I and others from the next generations took up this work.”

Though pleased to begin receiving the ICC awards in 1984 and 1988, elected Pembina tribal leaders also had questions. The government had held their awards in trust for decades, and by law, the U.S. is charged as the trustee with investing the awards until distribution. How much had they earned? How much *should* they have earned? When efforts to get this information from the government failed, the Turtle Mountain Chippewa Band hired a private accounting firm to investigate. The accounting firm advised the Band to seek legal counsel.

The Pembina tribal governments secured assistance from NARF in 1991, and in 1992 NARF filed a U.S. Court of Federal Claims lawsuit against the government on behalf of all Pembina beneficiaries, alleging failure to account for and mismanagement of the Pembina awards, and seeking money damages for breaches of trust. The Pembinas refused to accept a partial accounting transaction report produced by a government contractor in 1996 as the full and accurate fiduciary accounting to which Pembina trust beneficiaries are entitled by law. Bit by bit—and sometimes only in response to court order—over several years the government produced thousands of accounting records to the Pembinas. NARF used these records in 2005 to outline the Pembinas’ first settlement proposal, which the U.S. rejected. Instead, the U.S. filed a motion to have the lawsuit dismissed or drastically reduced.

The court denied the government’s motion in 2006. The court held that the Pembinas’ claims could proceed to determine whether the U.S. was liable for breaches of trust, and, if so, what damages were owed. At that point, the government and the Pembinas embarked on what would become a decade-long process of negotiating a settlement of the Pembinas’ claims.

At the court’s insistence, all Pembinas had to be fully represented in this case, meaning all four Pembina tribes and fifteen subgroups of the Pembina individuals, including the heirs of



Leslie Wilkie Peltier (Turtle Mountain Chippewa) at the TMCC Pow Wow in 2008.

deceased original Pembina individual beneficiaries. Ultimately, 85 individuals have served as named or class representatives for the Pembina individuals, since, under the act of Congress providing for the distribution of the 1980 ICC award, the individuals are entitled to over 80% of any recovery in the case.

“I was with my Mom when we first met Melody as court-approved named representatives for our people. This was a critical moment. Many tribal members had given up and told us we were wasting our time, fair compensation would never happen,” said Peltier. “We had no idea what to expect. Melody spoke eloquently about how NARF believes in winning cases like this. She knew our history and the details of our treaties. After years without assistance or hope, it was a relief and an honor to hear someone from the outside take up our case, complexities and all, and outline the many, many steps we would have to take to proceed and succeed.”

Settlement negotiations and meetings for the Pembinas bounced back and forth from North Dakota and Montana to Washington, D.C. In March 2010, Peltier and other named representatives attended a negotiations session in Washington, D.C. “We joined in a circle in front



of the National Courts building across from the White House, and we smudged down before we went in. That really helped us to bond together, all the Pembina delegates from Turtle Mountain, Chippewa Cree, Little Shell, White Earth, and many other places, to be of one mind and hope: that the settlement judge would listen. During the proceedings, there were so many lawyers sitting at the other table. At our table, there was just Melody and her assistant, yet Melody stumped them. The judge did listen.”

In July 2015, the parties reached agreement on a monetary amount for a potential settlement. In March 2018, the parties reached agreement on the non-monetary components of a potential settlement. In December 2020, the U.S. government gave final federal approval to the settlement. Part of the settlement involved filing the claims of the Pembina individuals in the U.S. District Court, as opposed to the Court of Federal Claims, where the benefits of federal court class action rules could lead to the needed finality for the settlement to work.

When the District Court granted final approval of the settlement in June 2021, both parties anxiously waited for the appeal time to end in September 2021. No appeals were filed, and the parties have moved on to payment of and distribution of the



settlement proceeds. Payment has begun, and distributions should begin in early 2022 and likely will run through much of 2023.

The Chippewa Cree Tribe will receive \$1,027,939; the Turtle Mountain Band will receive \$6,853,350; the Little Shell Chippewa Tribe will receive \$563,986; and the White Earth Band will receive \$341,646. The 39,003 Pembina individuals collectively will receive \$42,650,600, with individual amounts ranging from \$50 to \$1,550. The settlement proceeds allocations are based solely on the acts of Congress that distributed the 1964 and 1980 ICC awards to the Pembinas. “It’s simply more money for everyone who already got money,” said McCoy. “Unfortunately, about one-third of the original Pembina individual beneficiaries have passed on. The Court ruled that their shares in this case pass to their heirs, which will add to the time it takes to complete the distributions.

Beyond financial compensation, in resolving this lawsuit, the Pembinas remained true to the teachings of their elders and ancestors to be persistent and patient in holding the U.S. government accountable to Indians. “One of the milestones of my career will be the decades I spent working with the Pembina Tribes and individuals in this case,” said McCoy. “It rectifies a series of injustices for which payment was long, long overdue.” 🙏

For more information on *Peltier v. Haaland* settlement Pembina Chippewa class-action awardees can visit [www.pembinasettlement.com](http://www.pembinasettlement.com) or call 1-833-999-9915.

← → ↻ 🔒 pembinasettlement.com/pembina/

**PEMBINA CLASS ACTION SETTLEMENT WEBSITE**

This website contains information regarding the class action *Leslie Ann Wilkie Peltier, et al. v. Debra Haaland, et al.*,<sup>[1]</sup> No. 20-3775, also known as “Pembina,” and is maintained by the Court-approved Settlement Administrator for this case, Class Experts Group, LLC.

# Case Updates



## Tribes Respond to Keystone XL Termination

On June 9, 2021, TransCanada (TC Energy) announced that it is terminating its Keystone XL (KXL) pipeline project. Rosebud Sioux Tribe President Rodney M. Bordeaux responded to the announcement, “This is great news for the Tribes who have been fighting to protect our people and our lands. The treaties and laws guarantee us protections, and we are committed to see that those laws are upheld.”

Fort Belknap Indian Community President Andy Werk also commented, “The TransCanada announcement is a relief to those of us who stood in the pipeline’s path. We were not willing to sacrifice our water or safety for the financial benefit of a trans-national corporation. We are thrilled that the project has been canceled.”

The Rosebud Sioux Tribe (Sicangu Lakota Oyate) and the Fort Belknap Indian Community (Assiniboine (Nakoda) and Gros Ventre (Aaniiih) Tribes) in coordination with their counsel, the Native American Rights Fund, sued the Trump Administration for numerous violations of the law in the Keystone XL pipeline permitting process. On January 20, 2021, President Biden signed an Executive Order revoking the Keystone XL pipeline permit issued by the Trump administration.

## Montana Parents and Tribes Demand State Supports *Indian Education For All* Mandate

In July 2021, multiple Montana parents along with the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Fort Belknap Indian Community, Little Shell Tribe of Chippewa Indians of Montana, and Northern Cheyenne Tribe filed *Yellow Kidney, et al., v. Montana Office of Public Instruction, et al.*, in Montana District Court a class action lawsuit to ensure that all Montana public school students learn in school about Indigenous peoples as required by Montana’s constitution and statutes.

“Montana citizens approved their Constitution in 1972 and in 1999 the Montana Legislature passed the Indian Education for All Act (IEFA) to ensure that every state public school student—Indian and non-Indian—has the opportunity to gain a basic understanding of the history and current status of the American Indian tribes in this region,” said Confederated Salish and Kootenai Tribes Chairwoman Shelly R. Fyant. “We need state education administrators at the top level to create a system of accountability down to every classroom to ensure that every educator teaches this information in every subject area in a way that preserves American Indians’ cultural integrity and ensures that the money

## INDIAN EDUCATION FOR ALL

Montana parents and tribes insist that the state responsibly implement and administer public education resources as mandated by law, which **will benefit every public school student.**



Montanans voted to invest in IEFA benefits every student. Now, more than ever, quality education is needed in our state.”

The State agencies’ failure to effectively implement and monitor IEFA means that the vast majority of Montana public school students are not getting any meaningful education about American Indians. “We want the children in our public schools to grow together with as much effort put towards understanding one another as possible,” said plaintiff and parent Amber Lamb (Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation). “It is important to building a strong community for the future to be educated about historical elements that built the culture we are living in today.”

The Native American Rights Fund (NARF), American Civil Liberties Union of Montana, and the American Civil Liberties Union represent the five Montana tribes and eighteen Indian and non-Indian Montana public school students and their guardians against the Montana Office of Public Instruction (MPOI) and the Montana

Board of Public Education (MBPE) for failing to implement IEFA. Every year since 2007, taxpayers have provided over \$3 million for school districts to provide IEFA instruction, yet there is little evidence that MOPI and MBPE are holding districts accountable statewide for whether and how IEFA funding is spent. Nor are MOPI and MBPE requiring schools and staff to work with tribes in achieving the constitutional and statutory IEFA guarantees and requirements.

“Montana is the first and to date only state to constitutionally require the teaching of Indian education to all students in its public schools,” said NARF Staff Attorney Melody McCoy, who has worked in Indian education for over 30 years. “That is a stunning testament to the people of Montana who are not getting what they voted for and what their public money is being allocated for. If we succeed in this lawsuit, going forward, that will change and the state agencies and officials charged with implementing the law finally will have to implement the law correctly and fully.” 🙏



# Tribal Supreme Court Project

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians and the Native American Rights Fund. The Project was formed in 2001 in response to a series of US Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a *writ of certiorari*, prior to the Supreme Court accepting a case for review. You can find copies of briefs and opinions on the major cases we track on the NARF website (<https://sct.narf.org>).

October 4, 2021, was the first day of the October Term 2021. With many high-profile issues on the Court's docket, court watchers anticipate that this will be a significant Supreme Court term. For Indian law, two petitions have been granted so far: *Ysleta del Sur Pueblo v. Texas* (20-493) (Indian gaming) and *Denezpi v. United States* (20-7622) (double jeopardy). Also, we are closely watching *Brackeen v. Haaland* (21-380), and related petitions, which raise issues about the Indian Child Welfare Act. In addition, the State of Oklahoma has filed a series of petitions encouraging the Court to reverse its holding in *McGirt v. Oklahoma*.



National  
Congress of  
American  
Indians

## PETITIONS FOR A WRIT OF CERTIORARI GRANTED

The Court has granted review in the following cases:

### ***DENEZPI V. UNITED STATES (20-7622):***

Petitioner Merle Denezpi is a Navajo Nation citizen and was convicted of a tribal law assault-and-battery charge by the Court of Indian Offenses of the Ute Mountain Ute Agency and served 140 days of imprisonment. Six months later, a federal grand jury indicted him on one count of aggravated sexual abuse in Indian Country. He moved to dismiss the indictment, claiming that it violated the double jeopardy clause because he was convicted of the same offense in the Court of Indian Offenses. The district court denied the motion to dismiss and he was convicted after a trial. The Tenth Circuit affirmed, holding that the double jeopardy clause was not violated because the "ultimate source" of Mr. Denezpi's prosecution in the Court of Indian Offenses was the tribe's inherent sovereignty. The court reasoned that Congress's creation of the court provided a forum through which the tribe could exercise its power of self-governance.

### ***YSLETA DEL SUR PUEBLO V. TEXAS (20-493):***

The State of Texas sued the Ysleta del Sur Pueblo ("Pueblo"), seeking to enjoin it from engaging in certain gaming as a violation of Texas law. In 1987, Congress passed an act restoring federal recognition of the Pueblo, which provided that the Pueblo may not conduct gaming that is prohibited under Texas law. Congress subsequently passed the Indian Gaming Regulatory Act ("IGRA"), which is more permissive of tribal gaming operations than the Pueblo's restoration act. Texas and the

Pueblo have disagreed ever since about whether the restoration act or IGRA control the Pueblo's gaming operations. In 1993, the Fifth Circuit sided with Texas and held that the restoration act controlled. In the instant lawsuit, Texas argued that the Pueblo's games violated Texas law. Relying on its 1993 case, the Fifth Circuit agreed and held that "the Restoration Act 'govern[s] the determination of whether gaming activities proposed by the [ ] Pueblo are allowed under Texas law, which functions as surrogate federal law.'" 🏛️

## CONTRIBUTIONS TO THE TRIBAL SUPREME COURT PROJECT

**NCAI and NARF welcome contributions to the Tribal Supreme Court Project. Please send any contributions to:**

NCAI, attn: Accounting  
1516 P Street, NW  
Washington, DC 20005

**Please contact us if you have any questions or if we can be of assistance:**

**Joel West Williams**  
NARF Senior Staff Attorney  
202-785-4166  
williams@narf.org

**Esther Labrado**  
NCAI Legal Manager  
202-466-7767 x. 201  
elabrado@ncai.org





# National Indian Law Library (NILL)

Using the NILL Catalog to Find Indian Law Information You Need

Researchers around the world have access to the resources of the National Indian Law Library through online access to our library catalog (<https://nill.softlinkliberty.net/liberty>). The catalog contains information on over 18,000 titles held in the NILL collection. Copies of most resources can be delivered to researchers in a timely way and many catalog records provide links to free resources that are available on the internet.

## Locate Items in the NILL collection

At the top of the catalog homepage, use the dropdown list to choose the “Advanced Search” option. This will allow you to search by title, author, subject, etc. You can also choose the type of material you would like to see, such as Article, Book, or Tribal Code. Or, if you prefer, you can use the “Basic Search” and enter a keyword in the large box at the top of the screen. NILL’s collection includes catalog records for approximately 7,000 articles, 4,500 books, and 1400 tribal law resources. Many of these items are freely available online and are easily accessed via a link in the catalog record.

## Request Resources

NILL does not loan books from our collection, but we can usually provide a copy of an article, book chapter, tribal code, or other item via email. When you’ve located the catalog record for an item of interest, simply click on the “Request” icon on the right hand side of the

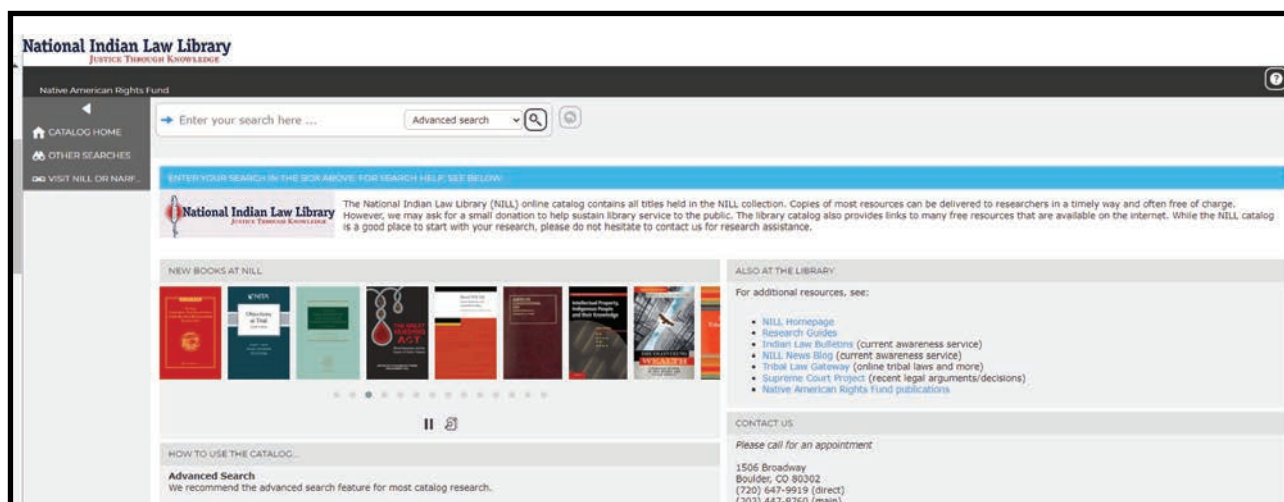
screen to request a copy. The request form will automatically include information about the item in the catalog, but the requestor can add additional information such as chapter number or topic of interest to help the NILL librarians locate the relevant information.

## AskNILL for Research Assistance

While the NILL catalog is a good place to start with your research, please do not hesitate to contact us for research assistance. NILL is the only library serving the public with extensive expertise and resources relating to Indian law, providing services that other libraries are unable to provide. If you need assistance with Indian law or tribal law research, please contact us via our website ([www.narf.org/nill/asknill.html](http://www.narf.org/nill/asknill.html)).

## Support the National Indian Law Library

Your contributions help ensure that the library can continue to supply unique and free access to Indian law resources and that it has the financial means necessary to pursue innovative and groundbreaking projects to serve you better. We are not tax-supported and rely on individual contributions to fund our services. Please visit [www.narf.org/nill/donate](http://www.narf.org/nill/donate) for more information on how you can support this mission. 🙏





## CALL TO ACTION

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It has been made abundantly clear that non-Indian philanthropy cannot sustain NARF's work. Federal funds for specific projects also have been reduced. To provide legal advocacy in a wide variety of areas such as religious freedom, the Tribal Supreme Court Project, tribal recognition, human rights, trust responsibility, voting rights, tribal water rights, Indian Child Welfare Act, and tribal sovereignty issues, NARF looks to the tribes to provide the needed funding. It is an honor to list those tribes and Native organizations who have chosen to share their good fortunes with the Native American Rights Fund and the thousands of Indian clients that we serve.

We encourage other tribes and organizations to become contributors and partners with NARF in fighting for justice for our people and in keeping the vision of our ancestors alive. We thank the following tribes and Native organizations for their generous support of NARF in the 2021 fiscal year (October 1, 2020 to September 30, 2021):

### **AMERIND Risk**

**Chickasaw Nation**

**Confederated Tribes of Siletz Indians**

**Cow Creek Band of Umpqua Tribe of Indians**

**Jamestown S'klallam Tribe**

**Mohegan Sun Casino**

**Muckleshoot Indian Tribe**

**National Indian Gaming Association**

**Poarch Band of Creek Indians**

**San Manuel Band of Mission Indians**

**Santa Ynez Band of Chumash Mission Indians**

**Seminole Tribe of Florida**

**Shoalwater Bay Indian Tribe**

**Tulalip Tribes of Washington**

**United Tribes of Bristol Bay**

**Yavapai-Prescott Tribe**

**Yocha Dehe Wintun Nation**

To join these tribes and organizations and support the fight for Native rights and tribal sovereignty, contact Don Ragona at [ragona@narf.org](mailto:ragona@narf.org)

# The Native American Rights Fund

The Native American Rights Fund (NARF) is the oldest and largest nonprofit legal organization defending and promoting the legal rights of Indian people on issues essential to their tribal sovereignty, natural resources, and human rights.

Since 1970, we have provided specialized legal advice and representation to Native American tribes and organizations on issues of major importance. Our early work was instrumental in establishing the field of Indian law.

NARF—when very few would—steadfastly took stands for Indian religious freedom and sacred places, subsistence hunting and fishing rights, as well as basic human and civil rights. We continue to take on complex, time-consuming cases that others avoid, such as government accountability, voting rights, climate change, and the education of our children. We have assisted more than 300 tribal nations with critical issues that go to the heart of who we are as sovereign nations.

NARF's first Board of Directors developed priorities to guide the organization in its mission to preserve and enforce the legal rights of Native Americans. Those five priorities continue to lead NARF today:

- Preserve tribal existence
- Protect tribal natural resources
- Promote Native American human rights
- Hold governments accountable to Native Americans
- Develop Indian law and educate the public about Indian rights, laws, and issues

Under preserving tribal existence, NARF works to construct the foundations that empower tribes to live according to their traditions, enforce their treaty rights,

insure their independence on reservations, and protect their sovereignty. An adequate land base and control over natural resources are central components of economic self-sufficiency and self-determination, and are vital to the very existence of tribes. Thus, much of NARF's work involves protecting tribal natural resources. Although basic human rights are considered a universal and inalienable entitlement, Native Americans face the ongoing threat of having their rights undermined by the United States government, states, and others who seek to limit these rights. Under the priority of promoting human rights, NARF strives to enforce and strengthen laws that protect the rights of Native Americans to practice their traditional religion, use their languages, and enjoy their culture.

Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the laws and regulations applicable to Indian peoples. Because such laws impact virtually every aspect of tribal life, NARF is committed to holding governments accountable to Native Americans. Developing Indian law and educating the public about Indian rights, laws, and issues is essential for the continued protection of Indian rights. This primarily involves establishing favorable court precedents, distributing information and law materials, encouraging and fostering Indian legal education, and forming alliances with Indian law practitioners and other Indian organizations.

Requests for legal assistance should be addressed to NARF's main office at 1506 Broadway, Boulder, CO 80302. NARF's clients are expected to pay what they can toward the costs of legal representation.

**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.

**NARF Legal Review** is published biannually by the Native American Rights Fund. 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.

[www.narf.org](http://www.narf.org)

## **Boulder, CO (Main)**

1506 Broadway  
Boulder, CO 80302-6217  
(303) 447-8760; FAX (303) 443-7776

## **Washington, DC**

1514 P Street, NW (Rear) Suite D  
Washington, DC 20005-1910  
(202) 785-4166; FAX (202) 822-0068

## **Anchorage, AK**

745 W. 4th Avenue, Suite 502  
Anchorage, AK 99501-1736  
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