



Native American
Rights Fund
Annual Report 2013

COVER AND ART:

Dallin Maybee is Northern Arapaho/Seneca Indian from the Cattaraugus Indian Reservation in Western New York and the Wind River Indian Reservation in central Wyoming. His Arapaho name in English loosely translates to "Thunder Sound Comes Down," or "A Thunder Being is Coming this Way." Dallin comes from a long-line of well-known beadworkers including Bob Spoonhunter and Agnes Logan-Spoonhunter; and his brother Ken Williams Jr., is a renowned contemporary beadworker. In 2007, at the prestigious Santa Fe Indian Market, Dallin was awarded Best of Show, Best of Division, Best of Classification and various other awards for his exquisite artwork. Dallin is establishing himself as an exciting contemporary ledger artist whose pieces are refreshing and culturally relevant as he explores identity, traditional and contemporary Indian life, as well as the dynamic interplay between the two which has allowed Indigenous culture to evolve, survive, and flourish. Dallin's ledger pieces are not limited to antique ledger pages; his mediums have included pages from the 1583 Geneva Bible, 16th century rice paper, rawhide, and buffalo robes. Dallin regularly shows at large art markets throughout the country, and his artwork can be seen in various private and public collections. Featured articles on his work have included; Southwest Art Magazine, Native Peoples Magazine, Western Art Collector Magazine, Cowboys and Indians Magazine, and SWAIA Magazine amongst others. Dallin received his Juris Doctorate from the Sandra Day O'Connor College of Law at Arizona State University, completed his Masters Degree coursework at UCLA in Los Angeles and also has a Bachelor of Arts degree in Philosophy. Dallin is the husband to an inspiring and amazing wife, Naomi Maybee; and the proud father of a son and two daughters. Dallin can be contacted at 505-506-5293 or dallinmaybee@hotmail.com.

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Tax Status: The Native American Rights Fund (NARF) is a nonprofit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue code. Contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code. NARF was founded in 1970 and incorporated in 1971 in Washington, D.C.

Workplace Campaigns – NARF is a member of America's Charities, a national workplace giving federation. Giving through your workplace is as easy as checking off NARF's box, #10350 on the Combined Federal Campaign (CFC) pledge form authorizing automatic payroll deduction.



INTRODUCTION

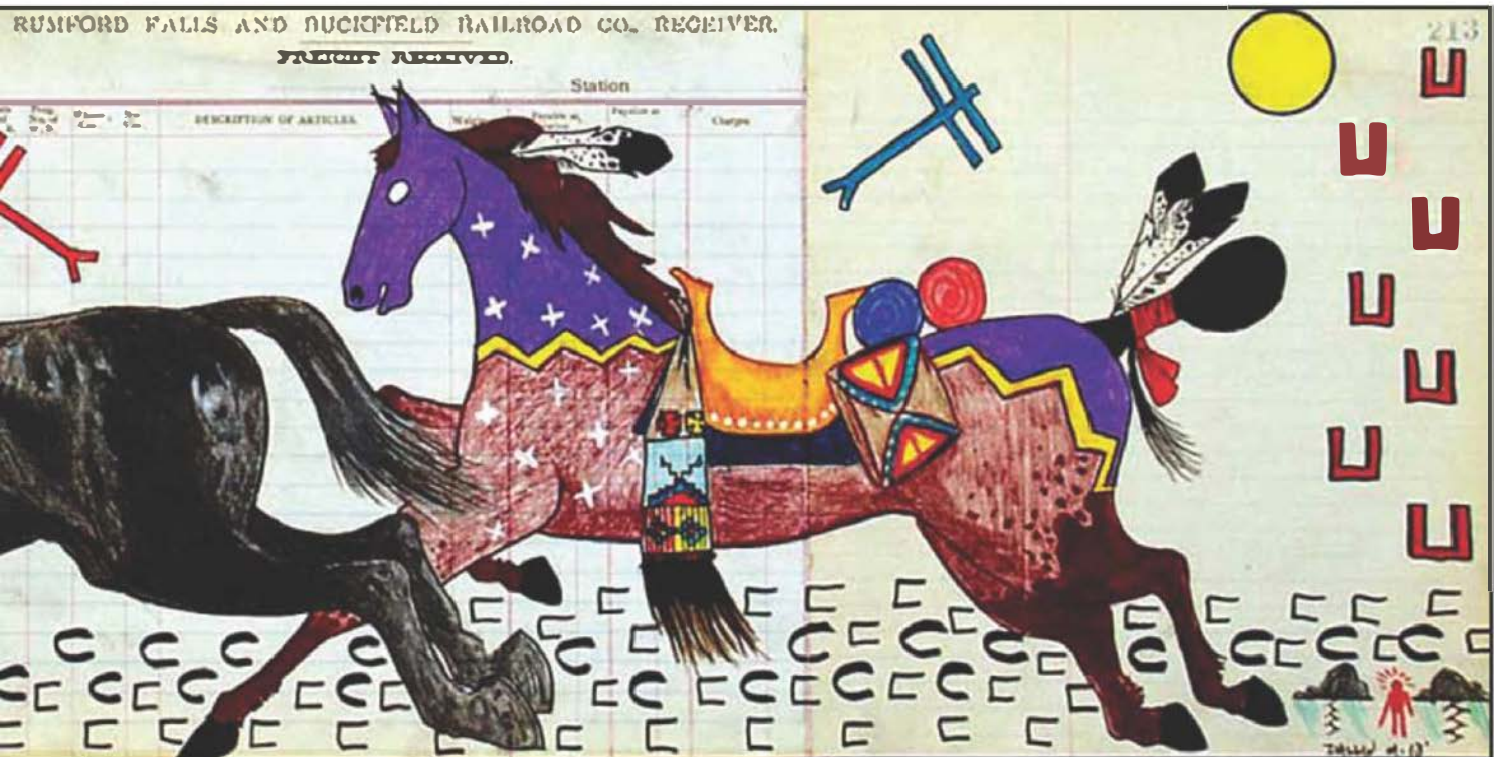
The Native American Rights Fund (NARF) is the national Indian legal defense fund whose primary work centers on the preservation and protection of Indian rights and resources. NARF began its work in 1970 with a planning grant from the Ford Foundation and through the years has grown into a reputable and well-respected advocate of Indian interests.

Since its beginnings, NARF has worked in conjunction with many people to seek judicial and negotiated solutions to long-standing Indian grievances, uncertainties and problems. NARF's partners have included tribal leaders, tribal attorneys, government attorneys and legal services attorneys.

It is time to heal our communities and our nations. Tribal nations and the United States both stand to benefit immensely by stepping towards recovery and righting the relationship that continues to suffer because of wide scale denial and ignorance of the history of the United States boarding school policy. Like a lot of the details of the

United States historical relations with the indigenous inhabitants of this land, the story of the Indian boarding school policy of the United States government has largely been written out of the history books. Through this policy, Native American children were forcibly abducted from their homes and put into Christian and government run boarding schools beginning in the mid 1800's, continuing into the 1950's, and in some cases until the 1970's. The boarding school policy represented a shift from genocide of Indian people to a more defensible, but no less insidious, policy of cultural genocide – the systematic destruction of indigenous communities through the removal and reprogramming of their children.

Children were held in isolation in regimented and sterile settings. Separated from their homes and communities, they were placed in dormitory settings fashioned after the military model where they were controlled, trained, neglected and abused. They were punished for speaking their native languages, banned from acting in any way representative of traditional or cultural practices, stripped of traditional



clothing, hair and all things and behaviors reflective of their cultures. They were intentionally and systematically inculcated with shame for being Indian through ridicule of their religions and their life-ways; shame that became internalized as self-loathing and emotional disenfranchisement for their own cultures.

Those victimized in the schools, their children, grandchildren and great-grandchildren, have become the legacy of the boarding schools and the federal policy that established and sustained them. Many of those that returned to their communities came as wounded human beings. Denied the security and safety necessary for healthy growth and development, they retained only fractured cultural skills to connect them with their families and communities. These survivors were left with varying degrees of scars and skills, but most profoundly, of psychological subordination. Many report feeling self-hatred for being Indian; bereft of spirit, knowledge, language and social tools to reenter their own societies. With only limited labor skills, exacerbated by the subordinated spirit trained into them, too many carried undefined

and unrelenting anxieties that drove them to alcoholism, drug abuse, violence against their own families and communities, and suicide.

To address this long-standing issue, NARF was instrumental in the formation of the National Native American Boarding School Healing Coalition (N-HABS-HC or Coalition) to formulate a specific strategy and framework to pursue healing. The main goal of the Coalition is healing. The full extent and depth of the impacts of the boarding schools to our nations, communities, and families and individual victims must first be better understood. The Coalition will ask the Congress to create a Commission on Boarding School Policy with the full and active participation of impacted Native Americans at all stages to carry out a range of essential tasks. The tasks of the commission can be summarized as providing information about what happened at the boarding schools, who was involved, what impacts are ongoing, what healing models are available and working, and what scientific developments can support healing models.

In order to raise awareness of the issues, and to garner support for establishment of a congressional commission, project staff have been conducting outreach among (mostly) regional tribal organizations. NARF and Coalition representatives offer a presentation on the goals of the Coalition and request a resolution in support of the plan. To date, resolutions of support have been passed by National Congress of American Indians, National Indian Health Board, Affiliated Tribes of Northwest Indians, Intertribal Council of Nevada, Montana/ Wyoming Tribal Leaders Association and the Great Lakes Inter-Tribal Council. We have provided draft resolutions and had discussions with staff or leaders from a number of other regional tribal organizations, and are continuing to contact others.

Congressional members and their staff also need to be educated about the boarding school policy and its continued impacts. NARF has initiated contact with interested Congressional staff, and plans to distribute educational materials. The project will initiate one or more Congressional briefing sessions to provide education to relevant staffers. Then we can request one or more oversight hearings to make the case for action necessary to address the continuing harms of the boarding school policy and to provide information directly to Congressional members.

The project also held discussions with the White House and sought the benefit of guidance about the prospects for Executive and Administrative attention during the remainder of this Presidential Term. Based on those discussions, high level administrative officials, particularly in the Departments of Interior, Education, and Justice will be recruited to support and provide guidance as the project progresses.

It will also be essential to generate the support of the churches that were involved in the initiation and implementation of the boarding school policy. Because of their institutional histories, the churches involved in the boarding school policy might be anticipated to provide resistance to bringing the harmful aspects of those histories to light. However, as moral leaders and institutions that serve as guideposts for right action, the churches also have an opportunity to serve in leadership roles in providing examples of how to right a past wrong.

NARF's Funding

NARF's existence would not be possible without the efforts of the thousands of individuals who have offered their knowledge, courage and vision to help guide NARF on its quest. Of equal importance, NARF's financial contributors have graciously provided the resources to give our efforts life. Contributors such as the Ford Foundation have been with NARF since its inception. The Open Society Institute and the Bay and Paul Foundations have made long term funding commitments. Also, the positive effects of NARF's work are reflected in the financial contributions by a growing number of tribal governments like the Yocha Dehe Wintun Nation, the Seminole Tribe of Florida, the Shakopee Mdewakanton Sioux Community, the San Manuel Band of Mission Indians, the Muckleshoot Tribe, the Sycuan Band of Kumeyaay, the Confederated Tribes of Siletz Indians, the Tulalip Tribes, the Chickasaw Nation, and the Poarch Band of Creek Indians. United, these financial, moral, and intellectual gifts provide the framework for NARF to fulfill its goal of securing the right to self-determination to which all Native American peoples are entitled. Finally, NARF's legal work was greatly enhanced by the ongoing generous pro bono contributions by the law firms of DLA Piper and Patton Boggs LLP. Their many hours of work made it possible for NARF to present the best positions possible and to move forward in insuring NARF's success.

NARF's Priorities

One of the initial responsibilities of NARF's first Board of Directors was to develop priorities that would guide the Native American Rights Fund in its mission to preserve and enforce the legal rights of Native Americans. That Board developed five priorities that continue to lead NARF today:

- Preservation of tribal existence
- Protection of tribal natural resources
- Promotion of Native American human rights
- Accountability of governments to Native Americans
- Development of Indian law and educating the public about Indian rights, laws, and issues

CHAIRMAN'S MESSAGE:

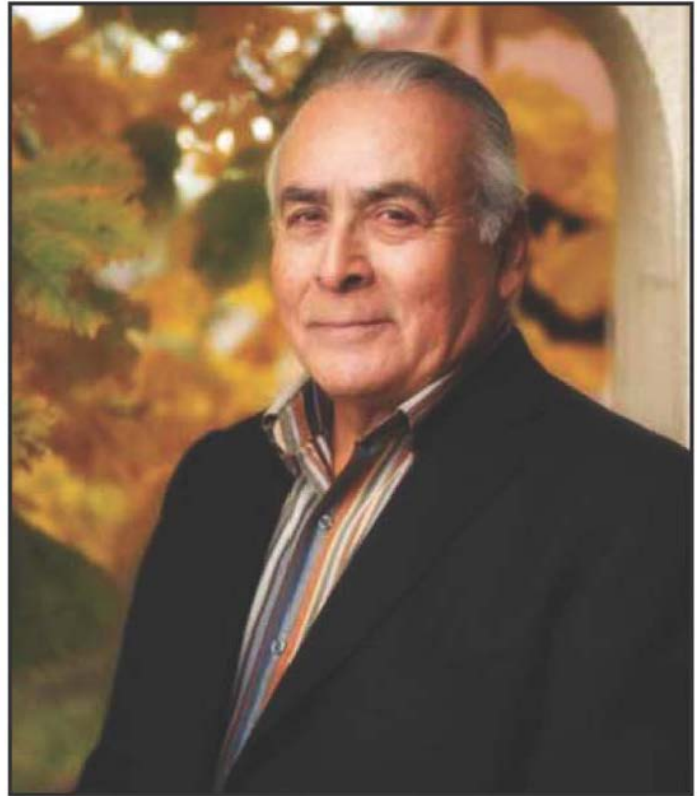
As my term on the Native American Rights Fund (NARF) Board of Directors comes to an end in 2014, I would like to call attention to a startling shift in funding at NARF. NARF was founded in 1970 through a grant from the Ford Foundation, and has relied heavily on institutional funding throughout its history. At the NARF Board meeting this past November the Development Director reported that gifts from tribes now comprised the single largest source of NARF funding.

The shift is clear. A recent study by Native Americans in Philanthropy (NAP) bears this out: over the last decade, funding for Indian Country from mainstream foundations has declined by 40%. This has affected NARF too, but more than 40 tribes have stepped up to fill NARF's gap in foundation funding. It is gratifying to receive support from the constituency we serve!

At that same Board meeting, it was also reported that during 2013, NARF had 92 active cases, special projects, and other activities (Indian Child Welfare, Sacred Sites, Climate Change, Education, Water Rights, Trust Responsibility, and Federal Recognition – to name a few) that consume time, energy, and money. While it is very good that we could dedicate staff to represent 92 specific needs, there were many additional requests for legal assistance that had to be turned down due to the lack of financial resources to acquire the legal staff necessary to take on the additional work load.

The need for NARF to serve those who are unable to afford legal counsel has never been greater. It is very clear that at every turn, there are constant attempts to erode Indian country's determination to self-govern and manage its affairs. It is also apparent that the United States Supreme Court continues to allow politics to cloud its judicial decision making. In concert with the National Congress of American Indians, NARF continues to monitor cases and decisions of this High Court. The reports are not good, and show no signs of positive change.

One strategy to diminish harmful judicial decisions is to settle those cases out of court. NARF has been very effective



in assisting with negotiated settlements in many instances and will continue this strategy, especially in light of this Court. To that end, we need your help!

On behalf of the Board, I respectfully request that all of Indian Country contribute financially, and at levels that you choose. That said, I am pleased and proud to say that each of the NARF Board of Director members have made their personal financial contribution in 2013.

I thank all who have contributed to NARF in the past and encourage you to continue giving in the future. For those who haven't thought about giving, please do.

Yaw^Ko,

Jerry Danforth
Chairman, Board of Directors

EXECUTIVE DIRECTOR'S REPORT:

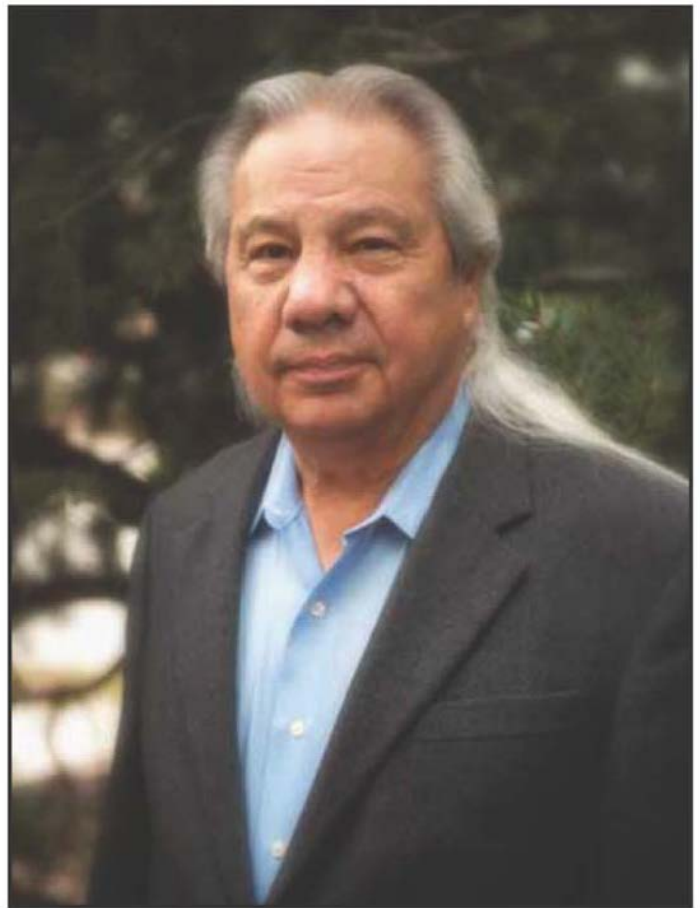
2013 marked the 43rd year that the Native American Rights Fund has been providing legal advice and assistance to Indian tribes, organizations and individuals in cases of major national significance. Our legal representation once again resulted in several important victories and accomplishments for Indian country during the year.

Diane J. Humetewa, an enrolled member of the Hopi Tribe, was nominated by President Barak Obama to serve as a federal judge in the U.S. District Court for the District of Arizona. The Native American Rights Fund worked with several Native organizations as part of the Judicial Selection Project to urge the nomination of Ms. Humetewa, a well-qualified Native American attorney, for the position. If confirmed by the Senate, Ms. Humetewa would be the only Native American serving as a judge in the federal judicial system.

On behalf of the Eastern Shoshone Tribe, the Native American Rights Fund was successful in securing approval from the Environmental Protection Agency (EPA) of the application of the Eastern Shoshone Tribe and the Northern Arapaho Tribe of the Wind River Reservation in Wyoming to be treated in the same manner as a state in the administration of certain Clean Air Act programs. The decision of the EPA to approve the application also determined that the boundaries of the Wind River Reservation were not altered by the Surplus Land Act of March 3, 1905. The decision is being appealed by the State of Wyoming.

In *Akiachak Native Community v. Department of Interior*, the Native American Rights Fund obtained a favorable federal court decision on behalf of several Alaska tribes invalidating the federal regulation that barred the Secretary of the Interior from acquiring land in trust in Alaska other than for the Metlakatla Indian Community or its members. The decision is being appealed by the State of Alaska.

Represented by the Native American Rights Fund, the Klamath Tribes had their time immemorial priority date water rights to support the Tribes' treaty hunting, fishing, trapping and gathering rights confirmed in the Final Order of Determination issued by the Oregon Water Resources



Department (OWRD) in the Klamath Basin Adjudication (KBA). For the first time ever, the Tribes are able to enforce their water rights. OWRD's determination of the Tribes' rights, as well as all other water rights asserted in the KBA, are now subject to judicial review in an Oregon state court. Settlement negotiations are also in process that may finally settle the Tribes' water rights claims.

In *Katie John v. Norton*, the Native American Rights Fund represents an Alaska Native asserting priority subsistence fishing and hunting rights provided by the Alaska National Interest Lands Conservation Act. We prevailed in a decision by the Ninth Circuit Court of Appeals rejecting the State of Alaska's challenge to the plan of the Secretary of the Interior and the Secretary of Agriculture to implement the Act. The Court held that it was reasonable for the Secretaries

to decide that the public lands subject to the Act's rural subsistence priority included the waters within and adjacent to federal reservations in Alaska. The State of Alaska is seeking review of the case by the U.S. Supreme Court.

In *Native Village of Tununak v. State of Alaska*, the Alaska Supreme Court issued an important ruling holding that the Indian Child Welfare Act (ICWA) implicitly mandates that good cause to deviate from ICWA's adoptive placement preferences which favor Natives be proved by clear and convincing evidence, not the weaker preponderance of the evidence standard. Alaska had been the only state where courts had applied the preponderance of the evidence burden of proof to findings of good cause to deviate from ICWA's adoption preferences. The Native American Rights Fund authored an amicus brief in the case on behalf of the Native Village of Kotzebue.

The Indian Tribal Justice and Legal Assistance Act authorizes the Department of Justice to provide supplemental funding to Indian legal services programs for the representa-

tion of Indian people and tribes which fall below federal poverty guidelines. On behalf of the 25 Indian legal services programs that the Indian Law Support Center at the Native American Rights Fund works with, we applied for and received civil and criminal grants of \$715,000 and \$515,000 respectively for civil and criminal assistance in tribal courts. The grants were distributed to the Indian legal services programs.

These 2013 victories and accomplishments for Indian country would not have been possible without the generosity of our many contributors across the United States. We thank you for your assistance and encourage you to continue your support of our Indian legal advocacy efforts in 2014.

John E. Echohawk
Executive Director



BOARD OF DIRECTORS

The Native American Rights Fund has a governing board composed of Native American leaders from across the country – wise and distinguished people who are respected by Native Americans nationwide. Individual Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as their tribal affiliation, to ensure a comprehensive geographical representation. The NARF Board of Directors, whose members serve a maximum of six years, provide NARF with leadership and credibility, and the vision of its members is essential to NARF's effectiveness in representing its Native American clients.

NARF's Board of Directors: First row (left to right) **Tex Hall, Board Treasurer** (Three Affiliated Tribes); **Gerald Danforth, Board Chairman** (Oneida Indian Nation of Wisconsin); **Natasha V. Singh, Board Vice-Chair** (Native Village of Stevens); **Buford L. Rolin** (Poarch Band of Creek Indians; Second Row (left to right) **Peter Pino, (Zia Pueblo)**; **Moses Haia, Board Executive Committee**, (Native Hawaiian); **Julie Roberts-Hyslop**, (Native Village of Tanana); and **Virginia Cross** (Muckleshoot Indian Tribe). (Not Pictured) **Mark Macarro** (Pechanga Band of Luiseño Indians); **Barbara Smith** (Chickasaw Nation); **Gary Hayes** (Ute Mountain Ute Tribe); **Stephen Lewis, Board Executive Committee**, (Gila River Indian Community); and **Larry Olinger**, (Agua Caliente Band of Cahuilla Indians)



NATIONAL SUPPORT COMMITTEE

The National Support Committee assists NARF with its fund raising and public relations efforts nationwide. Some of the individuals on the Committee are prominent in the field of business, entertainment and the arts. Others are known

advocates for the rights of the underserved. All of the 31 volunteers on the Committee are committed to upholding the rights of Native Americans.

Randy Bardwell, *Pechanga Band of Luiseño Mission Indians*

Jaime Barrientoz, *Grande Traverse Band of Ottawa and Chippewa Indians*

John Bevan

Wallace Coffey, *Comanche*

Ada Deer, *Menominee*

Harvey A. Dennenberg

Lucille A. Echohawk, *Pawnee*

Jane Fonda

James Garner

Eric Ginsburg

Jeff Ginsburg

Rodney Grant, *Omaha*

Chris E. McNeil, Jr., *Tlingit-Nisga'a*

Billy Mills, *Oglala Lakota*

Amado Peña, Jr., *Yaqui/Chicano*

Wayne Ross

Nancy Starling-Ross

Mark Rudick

Pam Rudick

Ernie Stevens, Jr., *Wisconsin Oneida*

Andrew Teller, *Isleta Pueblo*

Verna Teller, *Isleta Pueblo*

Richard Trudell, *Santee Sioux*

Rebecca Tsosie, *Pasqua Yaqui*

Tzo-Nah, *Shoshone Bannock*

Aine Ungar

Rt. Rev. William C. Wantland, *Seminole*

W. Richard West, *Southern Cheyenne*

Randy Willis, *Oglala Lakota*

Teresa Willis, *Umatilla*

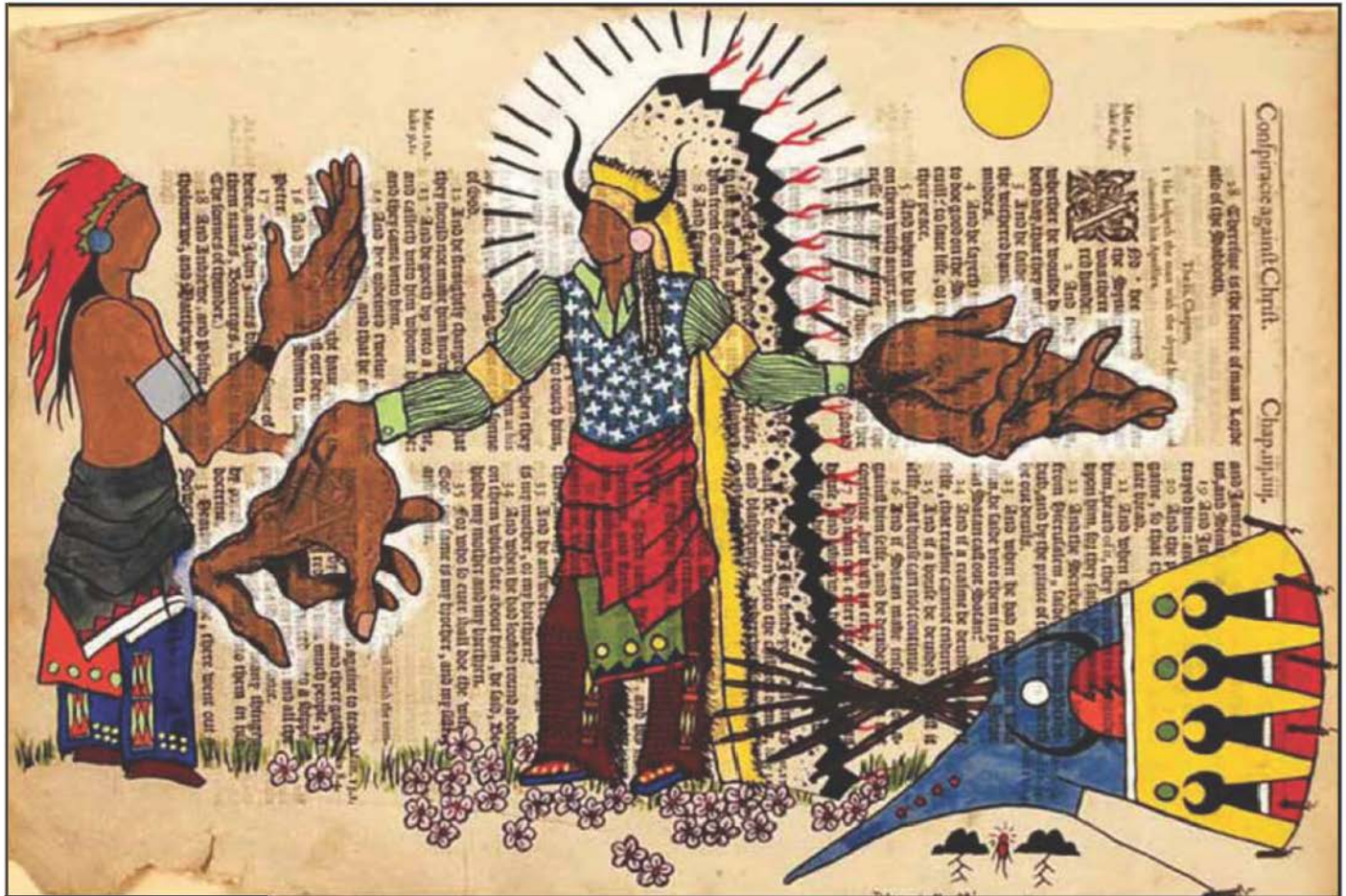
Mary Wynne, *Rosebud Sioux*

IN MEMORY

On May 31, 2013, Ahtna elder, matriarch and icon Katie John passed away at the age of 97. Katie John was a long-time client of the Native American Rights Fund who represented her in federal court litigation for nearly thirty years. The Katie John litigation, more than any other subsistence case exemplifies the contentious battle waged between federal, tribal and state interests over jurisdiction of Alaska Native subsistence fishing rights.



THE PRESERVATION OF TRIBAL EXISTENCE



“The first peace, which is the most important, is that which comes within the souls of people when they realize their relationship, their oneness, with the universe and all its powers, and when they realize that at the center of the universe dwells Wakan-Taka (the Great Spirit), and that this center is really everywhere, it is within each of us. This is the real peace, and the others are but reflections of this. The second peace is that which is made between two individuals; and the third is that which is made between two nations. But above all you should understand that there can never be peace between nations until there is known that true peace, which, as I have often said, is within the souls of men.”

— Black Elk, Oglala Sioux & Spiritual Leader

Under the priority of the *preservation of tribal existence*, NARF works to construct the foundations that are necessary to empower tribes so that they can continue to live according to their Native traditions, to enforce their treaty rights, to insure their independence on reservations and to protect their sovereignty.

Specifically, NARF's legal representation centers on sovereignty and jurisdiction issues and also on federal recognition and restoration of tribal status. Thus, the focus of NARF's work involves issues relating to the preservation and enforcement of the status of tribes as sovereign governments. Tribal governments possess the power to regulate the internal affairs of their members as well as other activities within their reservations. Jurisdictional conflicts often arise with states, the federal government and others over tribal sovereignty.

Tribal Sovereignty

The focus of NARF's work under this priority is the protection of the status of tribes as sovereign, self-governing entities. The United States Constitution recognizes that Indian tribes are independent governmental entities with inherent authority over their members and territory. In treaties with the United States, Indian tribes ceded millions of acres of land in exchange for the guarantee that the federal government would protect the tribes' right to self-government. From the early 1800s on, the Supreme Court has repeatedly affirmed the fundamental principle that tribes retain inherent sovereignty over their members and their territory.

Beginning with the decision in *Oliphant v. Suquamish Indian Tribe* in 1978 and with increasing frequency in recent years, the Supreme Court has steadily chipped away at this fundamental principle, both by restricting tribal jurisdiction and by extending state jurisdiction. These decisions by the Supreme Court have made this priority more relevant than ever and have led to a Tribal Sovereignty Protection Initiative in partnership with the National Congress of American Indians (NCAI) and tribes nationwide to restore the traditional principles of inherent tribal sovereignty where those have been undermined and to safeguard the core of sovereignty that remains.

This Initiative consists of three components. The first component is the Tribal Supreme Court Project, the focus of

which is to monitor cases potentially headed to the Supreme Court and those which actually are accepted for review. When cases are accepted, the Tribal Supreme Court Project helps to ensure that the attorneys representing the Indian interests have all the support they need and to coordinate the filing of a limited number of strategic amicus briefs. A second component of the Initiative is to weigh in on judicial nominations at the lower court and the Supreme Court levels. Finally, there is a legislative component to fight bills that are against tribal interests and to affirmatively push legislation to overturn adverse Supreme Court decisions.

The Tribal Supreme Court Project is a joint project staffed by the Native American Rights Fund and the National Congress of American Indians. The Tribal Supreme Court Project is based on the principle that a coordinated and structured approach to Supreme Court advocacy is necessary to protect tribal sovereignty — the ability of Indian tribes to function as sovereign governments — to make their own laws and be ruled by them. Early on, the Tribal Supreme Court Project recognized the U.S. Supreme Court as a highly specialized institution, with a unique set of procedures that include complete discretion on whether it will hear a case or not, with a much keener focus on policy considerations than other federal courts. The Tribal Supreme Court Project established a large network of attorneys who specialize in practice before the Supreme Court along with attorneys and law professors who specialize in federal Indian law. The Tribal Supreme Court Project operates under the theory that if Indian tribes take a strong, consistent, coordinated approach before the Supreme Court, they will be able to reverse, or at least reduce, the on-going erosion of tribal sovereignty by Justices who appear to lack an understanding of the foundational principles underlying federal Indian law and who are unfamiliar with the practical challenges facing tribal governments.

In 2013, the primary focus for the Tribal Supreme Court Project has been fixed on *Michigan v. Bay Mills*—a case granted review by the Court even though the United States had filed a brief recommending that cert be denied. Although this litigation should be about the merits of Bay Mills' claims under the Michigan Indian Land Claims Settlement Act to conduct gaming on lands acquired with settlement funds—it is not. In its current posture before the Court, the State of Michigan used this case to mount a full frontal attack on tribal sovereign immunity and the

authority of states to regulate “gaming activity” under the Indian Gaming Regulatory Act (IGRA). The State of Alabama, joined by fifteen other states, and the State of Oklahoma filed amicus briefs in support of Michigan.

On the merits, Michigan asked the Court to examine “IGRA as a whole” to find Congressional intent to waive tribal sovereign immunity or, in the alternative, to overrule *Santa Clara Pueblo* to allow the lower courts to apply a “less strict standard” when considering whether legislation such as IGRA abrogates tribal sovereign immunity. If the statutory arguments are not successful, the state is asking the Court to recognize that tribal sovereign immunity “is a federal common law doctrine” created by this Court and subject to adjustment by this Court. Thus, according to Michigan, the Court should narrowly read *Kiowa* as a “contract-based ruling” and (at the extreme) hold that a tribe’s immunity is limited to its on-reservation governmental functions. With the doctrine of tribal sovereign immunity and the authority of states under IGRA on the table, this case has become high-stakes litigation for Indian tribes across the country. Oral argument was held in December 2013.

Generally, the Court appeared to accept the fact that Michigan or the federal government could resolve the matter by initiating criminal proceedings against the individuals operating or working at the casino, but questioned their efficacy. Bay Mills conceded (as it did in regard to arbitration) that both the *Ex Parte Young* and criminal prosecution options were available remedies that could be pursued by the State. Bay Mills reminded the Court that the casino is currently closed and that the parties are currently in the process of renegotiating their state-tribal gaming compact where the State can bargain for additional remedies. However, several Justices appeared to view tribal sovereign immunity as a hurdle to any potential remedy.

Throughout the argument, various Justices noted several ways by which the Court could modify the doctrine of tribal sovereign immunity. Justice Kennedy, observing the unusual procedural posture of the case, proposed a ruling that would limit *Kiowa* so as to make the tribal sovereign immunity defense unavailable in the context of Indian gaming. Other Justices questioned whether Indian tribes should enjoy greater sovereign immunity than States or foreign nations. Justice Ginsburg proposed making a distinction between

governmental and commercial (off-reservation) activity, whereby the latter would not be covered by tribal sovereign immunity. Michigan argued that the Court could either modify *Kiowa* on this governmental-versus-commercial distinction, or simply distinguish *Kiowa* on the basis that States are different—States are constitutional sovereigns entitled to be treated differently than ordinary business plaintiffs.

Finally, the Court discussed whether it should modify the doctrine of tribal sovereign immunity, or whether, in line with *Kiowa*, once again defer any changes to Congress. A majority of the Justices, including Chief Justice Roberts, expressed a belief in the inherent power of the Court to modify tribal sovereign immunity despite its holding in *Kiowa*. A decision is expected in March/April 2014.

In July 2013, in coordination with the National Indian Child Welfare Association (NICWA) and NCAI, NARF filed a civil rights lawsuit on behalf of Veronica Brown (Baby Veronica) in the U.S. Federal District Court for the District of South Carolina. Two years ago, the South Carolina Family Court held best interest hearings and determined that it was in Veronica’s best interest to be with her father, Dusten Brown, a member of the Cherokee Nation. At that time, the state court determined that he was a fit and loving parent, and as a result, the South Carolina Supreme Court transferred custody to Mr. Brown. However, in June 2013, the U.S. Supreme Court issued a 5-4 decision in *Adoptive Couple v. Baby Girl*, reversing and remanding the case back to the South Carolina courts based on its determination that the provisions of ICWA do not to apply to this case. In July 2013, the South Carolina Supreme Court issued a controversial order to the state’s family court calling for an expedited transfer of custody to the South Carolina-based adoptive couple without a hearing of best interest for Veronica. It is standard procedure that adoption proceedings require a hearing to determine the best interest of the child in advance of any transfer of custody proceeding, an essential step the South Carolina Supreme Court failed to take, thus denying Veronica the right to have her current best interests considered.

The federal district court denied without prejudice NARF’s motion for a temporary restraining order against the South Carolina Family Court, and Judge Martin issued an order transferring custody of Veronica to the Adoptive





Couple. As pre-trial matters moved forward in our case, NARF closely monitored developments in the South Carolina courts (e.g. criminal charges and extradition requests against Dusten Brown), and the subsequent proceedings in the Oklahoma courts and the Cherokee Nation courts. In the end, the Oklahoma courts domesticated Judge Martin's order, and in September 2013, Veronica was transferred to the custody of Adoptive Couple. Although appeals through the Oklahoma courts remained, in October 2013, Dusten Brown announced his decision to end the custody battle. In conformity with the father's decision and with the best interests of Veronica in light of these developments, NARF filed a voluntary dismissal of the federal civil rights complaint. This matter is now closed.

The research objective of the Judicial Selection Project evaluates the records of federal court judicial nominees on their knowledge of Native American issues. The Project's analysis and conclusions are shared with tribal leaders and federal decision-makers in relation to their decision whether to support or oppose a particular judicial nomination. Given the number of federal court cases involving Native American issues, the Project works with the U.S. Senate Judiciary Committee to ensure that all nominees are asked about their experience with Indian tribes and their understanding of federal Indian law during confirmation proceedings.

As part of its outreach to Indian country, the Obama Administration continues to seek the names of qualified Native American attorneys, tribal court judges and state court judges who are interested in being considered for vacancies on the federal bench. In September 2013,

President Obama announced his nomination of Diane J. Humetewa, an enrolled member of the Hopi Tribe, to the U.S. District Court for the District of Arizona. Ms. Humetewa is a well-qualified Native American nominee who served as the U.S. Attorney for the District of Arizona from 2007-2009. Prior to her appointment as U.S. Attorney, she served as Counsel to the Deputy Attorney General and as Senior Litigation Counsel within the U.S. Attorney's Office. From 1993 to 1996, she was Deputy Counsel for the United States Senate Committee on Indian Affairs for the Chairman, Senator John McCain.

NARF was also invited to the White House for the President's announcement of three nominations to fill vacancies on the U.S. Court of Appeals for the D.C. Circuit—sometimes referred to as the second most powerful court in the United States. Through the work of the Tribal Supreme Court Project, NARF has worked closely with one of the nominees, Patricia Millett, in her capacity as a partner, head of the Supreme Court Practice, and co-leader of the National Appellate Practice at Akin Gump Strauss Hauer & Feld, LLP. NARF submitted a letter of support on her behalf to the Senate Judiciary Committee for her confirmation, and in December 2013, the U.S. Senate confirmed Ms. Millett as a judge on the D.C. Circuit.

Another part of NARF's work under this priority is the environmental law and policy initiative. NARF has played a key role in the implementation of federal environmental law and policy that recognizes tribal governments as the primary regulators and enforcers of the federal environmental laws on Indian lands. After several years of fruitful partnership, NARF has recently begun representing NCAI on climate change matters. Climate change is one of the most challenging issues facing the world today. Its effects on indigenous peoples throughout the world are acute and will only get worse. The effects are especially pronounced in Alaska where as many as 184 Alaska Native villages are threatened with removal. NARF, in addition to working with some of its present clients on this issue, previously worked with National Tribal Environmental Council (NTEC) on comprehensive federal climate change legislation. NTEC, NARF, NCAI and the National Wildlife Federation worked together and created a set of Tribal Principles and worked with national environmental organizations on detailed legislative proposals. Unfortunately, these efforts stalled in Congress.

Federal Recognition of Tribal Status

The second category of NARF's work under this priority is federal recognition of tribal status. NARF currently represents Indian communities who have survived intact as identifiable Indian tribes but who are not federally recognized. Tribal existence does not depend on federal recognition, but recognition is necessary for a government-to-government relationship and the receipt of many federal services.

In 1997, the Branch of Acknowledgment and Research (BAR) placed the Little Shell Tribe of Chippewa Indians of Montana federal recognition petition on active review status. In 2000 the Assistant Secretary for Indian Affairs (AS-IA) published a Preliminary Determination in favor of recognition. A technical assistance meeting was held with the Office of Federal Acknowledgment (OFA) to outline a program of action to strengthen the petition prior to the final determination. Substantial work was done to strengthen the Tribe's petition and the final submissions were made in 2005. Active consideration of the Tribe's new material began in August 2007, and OFA conducted a three week site visit in October 2007. OFA had previously indicated it would reach a final determination by the end of calendar 2007. This deadline was not met; the date was moved to the end of July 2008. Before that date arrived, the AS-IA granted OFA new deadlines of January 2009 and then July 2009. OFA granted itself an extension of time to September 2009, and then a further extension to October 2009. In October 2009, the Acting AS-IA issued a Final Determination against recognition of the Tribe, overruling the decision in the Preliminary Determination. The stated rationale for Final Determination was the unwillingness to go along with the "departures from precedent" which the previous AS-IA found to be justified by historical circumstances. In February 2010, the Tribe filed a Request for Reconsideration with the Interior Board of Indian Appeals (IBIA). The IBIA allowed interested parties, if any, to file opposition briefs by July 2010. No one filed an opposition brief.

In June 2013, the IBIA affirmed the negative Final Determination. However, it referred five legal questions to the Secretary of the Interior (SOI). In an important development after the IBIA decision, and before our July 2013 comments, in June 2013 the AS-IA made an announcement of "Consideration of Revision to Acknowledgment

Regulations" along with preliminary discussion draft regulations which propose major changes in the regulations. In light of this announcement, we urged the SOI to request the AS-IA to suspend consideration of the Final Determination pending completion of the revision process as the proposed amendments are very significant. We submitted extensive comments on the draft regulations in September 2013.

In September 2013, the SOI ruled on the legal issues which we had raised in the IBIA and which had been referred to the SOI. The SOI referred all five questions back to the AS-IA, stating, "The allegations in these grounds suggest that further review by your office would ensure that the Department's final decision in this matter benefits from a full analysis and comports with notions of a full and fair evaluation of the Little Shell petition." The SOI requested the AS-IA to consider this request as well. Pending is the Tribe's request to place their petition on suspension pending completion of the process to amend the acknowledgment regulations. The Tribe continues to pursue legislative recognition.

After years of preparing the necessary historical, legal, genealogical and anthropological evidence to fully document its petition for federal acknowledgment, the Pamunkey Indian Tribe, located on the Pamunkey Indian Reservation, Virginia, filed its petition with the Office of Federal Acknowledgment (OFA) in October 2010. The Tribe received OFA's letter of Technical Assistance (TA) in April 2011 and a response to the TA letter was filed in July 2012. In late July 2012, OFA informed the Tribe that its petition was moved to the top of the "Ready" list, and active consideration commenced August 2012.

The Pamunkey Indian Tribe is the only tribe located in Virginia to have filed a fully documented recognition petition. Established no later than 1646, the Tribe's Reservation is located next to the Pamunkey River, and adjacent to King William County. The Reservation comprises approximately 1,200 acres and is the oldest inhabited Indian reservation in America. NARF has represented the Tribe in this effort since 1988 and now is co-counsel on this matter.

THE PROTECTION OF TRIBAL NATURAL RESOURCES



“American Indians are this country’s first scientists, a fact that is often overlooked by contemporary America in general and the scientific community in particular. As Indigenous peoples walked through history on their respective cultural roads of life, they formulated sophisticated bodies of traditional knowledge, some points of which converge with mainstream science. They were intimately familiar with their environment and knew where they stood in the universe. In Indigenous thought, life is viewed holistically and for them science is but a strand that is interwoven into a vast, delicately balanced ecological system in which everyone and everything is connected and interdependent. For them, science did not stand separate from life.”

— Henrietta Mann, Cheyenne

Throughout the process of European conquest and colonization of North America, Indian tribes experienced a steady diminishment of their land base to a mere 2.3 percent of its original size. Currently, there are approximately 55 million acres of Indian-controlled land in the continental United States and about 44 million acres of Native-owned land in Alaska. An adequate land base and control over natural resources are central components of economic self-sufficiency and self-determination, and as such, are vital to the very existence of tribes. Thus, much of NARF's work involves the protection of tribal natural resources.

Protection of Indian Lands

Without a sufficient land base, tribal existence is difficult to maintain. Thus NARF helps tribes establish ownership and control over lands which are rightfully theirs.

NARF has been retained by the Eastern Shoshone Tribe (EST) of the Wind River Indian Reservation to analyze the Surplus Land Act of March 3, 1905, and other legislation and cases, to determine their implications for the boundaries of the Reservation.

The EST and Northern Arapaho Tribe cooperated in an application to the U.S. Environmental Protection Agency (US EPA) for delegation of "treatment in the same manner as a state" (TAS) in the administration of certain Clean Air Act programs. A decision supporting delegation will require that US EPA determine the location of the boundaries of the Reservation. The TAS Application has been published by US EPA and they have received comments. The Tribes filed their Response to the comments in March 2010. US EPA requested a written opinion from the Department of the Interior on the boundaries which has been completed and forwarded to the US EPA. US EPA issued its Approval of Application Submitted by Eastern Shoshone Tribe and Northern Arapaho Tribe for Treatment in a Similar Manner as a State Under the Clean Air Act in December 2013. That decision determined that the boundaries of the Wind River Reservation were not altered by the Surplus Land Act of March 3, 1905. Wyoming has indicated that it will appeal EPA's decision if not altered.

NARF represents the Hualapai Indian Tribe of Arizona in preparing and submitting four applications for the transfer of 7 parcels of land owned in fee by the Tribe into trust status.

The Tribe is located on the south rim of the Grand Canyon in Arizona, and claims a boundary that runs to the center of the Colorado River. The applications have been submitted to the BIA and await its response prior to being passed to the U.S. Interior Department's Solicitor for a Preliminary Title Opinion on the parcels. The Regional Solicitor in Phoenix recently issued a Preliminary Title Opinion (PTO) on one of the Applications. We are working with a Title Company to cure any concerns identified in the PTO.

In addition, NARF assisted the Tribe with the transfer of lands gifted to the Tribe at Cholla Canyon Ranch. Because there were title concerns, NARF prepared a trust which the Tribe adopted and into which the lands were transferred. In addition, we are working on having these lands taken into trust, but the United States will not take the lands into trust until title to the Ranch has been cleared of any claim arising from questions related to transfer of title to the Tribe from a private trust. NARF, working with a local firm, successfully accomplished a series of transfers of title to the lands to clear title to the Ranch. The Petition for transfer of these lands into trust has been filed with the BIA.

In *Akiachak Native Community, et al. v. Department of Interior, et al.*, the Akiachak Native Community, et al., represented by NARF, brought suit in the U.S. District Court for the District of Columbia seeking judicial review of 25 C.F.R. Part 151 as it pertains to federally-recognized Tribes in Alaska. This federal regulation governs the procedures used by Indian Tribes and individuals when requesting the Secretary of the Interior to acquire title to land in trust on their behalf. The regulation bars the acquisition of land in trust in Alaska other than for the Metlakatla Indian Community or its members. After full briefing, but nearly three years of no action by the federal court, the case was transferred to Judge Rudolph Contreras. Judge Contreras issued an Order in April 2012 requesting that the federal government respond to six additional questions in a supplemental brief. The government filed its supplemental brief in July 2012 and Plaintiff Akiachak Native Community filed its reply brief in August 2012.

In March 2013, an Order was issued by Judge Contreras, granting Plaintiffs complete relief on all of their claims – a major victory for Alaska Tribes. Briefing on remedies was concluded and a Memorandum Order was entered in

September 2013 denying the State of Alaska's motion for reconsideration, and severing and vacating Part 1 of 25 C.F.R. 151. The State is expected to appeal.

Water Rights

The culture and way of life of many indigenous peoples are inextricably tied to their aboriginal habitat. For those tribes that still maintain traditional ties to the natural world, suitable habitat is required in order to exercise their treaty-protected hunting, fishing, gathering and trapping rights and to sustain their relationships with the animals, plants and fish that comprise their aboriginal habitats.

Establishing tribal rights to the use of water in the arid western United States continues to be a major NARF priority. The goal of NARF's Indian water rights work is to secure allocations of water for present and future needs for specific Indian tribes represented by NARF and other western tribes generally. Under the precedent established by the Supreme Court in 1908 in *Winters v. United States* and confirmed in 1963 in *Arizona v. California*, Indian tribes are entitled under federal law to sufficient water for present and future needs, with a priority date at least as early as the establishment of their reservations. These tribal reserved water rights are superior to all state-recognized water rights created after the tribal priority date. Such a date will in most cases give tribes valuable senior water rights in the water-short west. Unfortunately, many tribes have not utilized their reserved water rights and most of these rights are adjudicated or unquantified. The major need in each case is to define or quantify the amount of water to which each tribe is entitled through litigation or out-of-court settlement negotiations. Tribes are generally able to claim water for any purpose which enables the Tribe's reservation to serve as a permanent homeland.

NARF, together with co-counsel, represents the Agua Caliente Band of Cahuilla Indians in a lawsuit filed in May 2013 in the U.S. District Court for the Central District of California, asking the Court to declare the existence of the Tribe's water rights as the senior rights in the Coachella Valley under federal law, to quantify these rights, and to prevent Coachella Valley Water District and Desert Water Agency from further injuring the Tribe, its members and residents in surrounding communities throughout the Valley by impairing the quantity and quality of water in the aquifer.

The water districts import and then fail to adequately treat substantially lower quality water from the Colorado River and inject that water into the aquifer. The recharge water, which contains higher total dissolved solids, nitrates, pesticides, and other contaminants, is re-injected into the Coachella Valley aquifer at a facility close to the Tribe's lands. Thus, the groundwater in the Western Coachella Valley, including the water below the Agua Caliente Reservation, which includes the cities of Palm Springs, Cathedral City, Rancho Mirage, and Thousand Palms, is being polluted at a faster rate than the aquifer down-valley.

The judge in the federal district court in Riverside, CA, has set the initial scheduling conference between the parties for January 2014. The structure for the litigation will be discussed with the judge at that time, and a scheduling order entered by the court.

The Klamath Tribes' time immemorial priority date water rights to support the Tribes' treaty hunting, fishing, trapping, and gathering rights were confirmed in the Final Order of Determination (FOD) issued by the Oregon Water Resources Department (OWRD) in the Klamath Basin Adjudication (KBA) in March 2013. For the first time ever, the Tribes were able to enforce their water rights during the 2013 irrigation season. OWRD's determination of the Tribes' rights, as well as all other water rights asserted in the KBA, is now subject to judicial review in the Klamath County Circuit Court in Klamath Falls, Oregon.

In Summer and Fall 2013, the Tribes successfully defended against the Upper Klamath Basin irrigators' attempts to halt enforcement of the Tribes' water rights. In the next step of the judicial review phase, parties who dispute OWRD's determinations in the FOD have the opportunity to file exceptions to the FOD with the Klamath County Circuit Court. Under the current schedule exceptions must be filed with the Court by March 3, 2014, but the State of Oregon has filed a motion with the Court requesting an extension of that deadline to May 2014.

Following the widespread curtailment of water use by Upper Basin irrigators and other junior water users during the 2013 irrigation season, Oregon Senator Ron Wyden initiated a series of meetings among the Klamath Tribes, Upper Basin Irrigators, and federal and state representatives to

explore settlement opportunities, which resulted in an Agreement in Principle (AIP) in December 2013. In the AIP the parties agree to continue good-faith negotiations with the goal of reaching a Final Agreement consistent with the AIP principles in early 2014. The four stated goals of the AIP are: to support the economic interests of the Klamath Tribes; to provide a stable, sustainable basis for the continuation of agriculture in the Upper Klamath Basin; to manage and restore riparian corridors along streams that flow into Upper Klamath Lake; and, to resolve water rights claims and contests in the Klamath Basin Adjudication. Negotiations directed toward developing a Final Agreement are ongoing.



John Echohawk (center) with former NARF attorneys and former staff.

After almost 30 years of advocacy, the Tule River Indian Tribe, represented by NARF, successfully settled its water rights in November 2007 by signing a Settlement Agreement with water users on the South Fork Tule River of California. The Settlement Agreement secures a domestic, municipal, industrial, and commercial water supply for the Tribe. The Tribe now seeks federal legislation to ratify the Settlement Agreement and authorize appropriations to develop the water rights through the creation of water infrastructure and reservoirs on the Tule Reservation. Bills introduced in the U.S. House and Senate in 2007, 2008, and 2009 did not pass. With the present Congress, we are once again engaged in strategy meetings with the California Congressional delegation regarding the possible introduction of a water settlement bill in calendar year 2014. Additionally, we are continuing work with the federal Bureau of Reclamation on necessary studies for the feasibility and design of the Tribe's water storage project.

In June 2006, the Kickapoo Tribe in Kansas, represented by NARF, filed a federal court lawsuit in an effort to enforce express promises made to the Tribe to build a Reservoir

Project. The Nemaha Brown Watershed Joint Board # 7, the Natural Resources Conservation Service of the U.S. Department of Agriculture, and the State of Kansas made these promises to the Tribe over a decade ago. In the intervening years these parties have been actively developing the water resources of the watershed, resulting in the near depletion of the Tribe's senior federal water rights in the drainage.

According to the Environmental Protection Agency, the water supply for the Reservation is in violation of the Safe Drinking Water Act of 1974. The Kickapoo people are unable to safely drink, bathe or cook with tap water. There is not enough water on the reservation to provide basic municipal services to the community and the Tribe is not even able to provide local schools with reliable, safe running water. The fire department cannot provide adequate fire protection due to the water shortage. The proposed Reservoir Project is the most cost effective and reliable means by which the Tribe can improve the water supply.

The U.S., the State and the local watershed district all concede the existence of the Tribe's senior Indian reserved water rights; the real issue is the amount of water needed to satisfy the Tribe's rights, and the source or sources of that water. The Tribe and the US are also discussing funding to quantify the Tribe's water rights.

In March 2011, the watershed district rejected a Condemnation Agreement that the State and Tribe had approved. That agreement created the mechanism for condemning the property for the water storage project. NARF then succeeded in restructuring the litigation to place an immediate focus on discovery against the watershed district and on getting the condemnation dispute resolved by the federal court. We also continue to investigate the possibility of a comprehensive settlement of the water rights issues in the case.

Most recently, the federal court entered summary judgment in favor of the watershed district on the question of whether a 1994 agreement obligated the district to make its condemnation power available to aid the Tribe in acquiring the land for the water storage project area. The Tribe is now evaluating its options, including discussions with the Interior Department and the State of Kansas to find an alternative means of securing the land rights for the project.

NARF prepared an analysis of the options the Bad River Band of Lake Superior Tribe of Indians has for protecting the quantity and quality of the waters of its Reservation. The Tribe's Reservation is located in the State of Wisconsin which uses a riparian system for allocation of the uses of the surface waters within the State. Of particular concern to the Tribe are recent amendments by the State to remove or significantly relax water related environmental protections contained in state laws. These amendments were intended to facilitate the development and operation of a proposed taconite (low grade iron) mine on the headwaters of the rivers that feed the Bad River Reservation. NARF is working with the Tribe to request that the United States support the Tribe in the protection of the Tribe's treaty reserved water rights.

NARF has represented the Nez Perce Tribe in Idaho in its water rights claims in the Snake River Basin Adjudication (SRBA) both litigation and settlement phases for over 16

years. In 2004 Congress enacted and the President signed the Snake River Settlement Act. We continue to work with the Tribe, on a very limited basis, to secure final approval of the settlement by the state water court, and on the federal appropriations process. Additionally, we are representing the Tribe in the drafting and negotiations with the United States, the State and private water interests in the Final Unified Decree that will be the capstone document closing the SRBA. With the Court, and one of the special masters, we have worked through many drafts of the Final Unified Decree with an eye toward resolving all objections to the text. It is now anticipated that the Final Unified Decree will be signed by the judge in 2014.

Protection of Hunting and Fishing Rights in Alaska

The subsistence way of life is essential for the physical and cultural survival of Alaska Natives. As important as Native hunting and fishing rights are to Alaska Natives' physical, economic, traditional and cultural existence, the State of Alaska has been and continues to be reluctant to recognize the importance of the subsistence way of life.

In *State v. Norton*, the State of Alaska filed a lawsuit in the U.S. District Court for the District of Columbia in 2005, challenging a federal agency final rule implementing the mandate in a prior Alaska Native subsistence case, *John v. United States*. The prior case, in which NARF represented Katie John, an Alaska Native, established that the United States must protect subsistence uses of fisheries in navigable waters where the United States possesses a reserved water right. In this new lawsuit, the State challenges the Federal agencies' implementation of the mandate by arguing that the reserved waters doctrine requires a quantification of waters necessary to fulfill specific purposes. Katie John moved for limited intervention for purposes of filing a motion to dismiss for failure to join an indispensable party. The United States' request to transfer the case to the U.S. District Court for the District of Alaska was granted. The case was then consolidated with *John v. Norton*. The issues in the two cases were bifurcated for briefing with the State's claims addressed first. In 2007 the court upheld the agency's rule making process identifying navigable waters in Alaska that fall within federal jurisdiction for purposes of federal subsistence priority.

In *Katie John v. Norton*, Katie John, represented by NARF,

filed a lawsuit in 2005 in the U.S. District Court for the District of Alaska challenging Federal Agencies' final rule implementing the prior *Katie John* mandate as being too restrictive in its scope. Katie John alleged that the Federal agencies should have included Alaska Native allotments as public lands and that the federal government's interest in water extends upstream and downstream from Conservation Units established under the Alaska National Interest Lands Conservation Act. The State of Alaska intervened and challenged the regulations as illegally extending federal jurisdiction to state waters. In 2009 the court upheld the agencies' final rule as reasonable. While rejecting Katie John's claim that the agency had a duty to identify all of its federally-reserved water rights in upstream and downstream waters, the court stated that the agency could do so at some future time if necessary to fulfill the purposes of the reserve. The case was appealed to the U.S. Court of Appeals for the Ninth Circuit where oral argument was held in July 2011.

In July 2013, a panel of the Ninth Circuit Court of Appeals affirmed the district court's decisions upholding the 1999 Final Rules promulgated by the Secretary of the Interior and the Secretary of Agriculture to implement part of the Alaska National Interest Lands Conservation Act concerning subsistence fishing and hunting rights.

As threshold issues, the panel held that the Secretaries appropriately used notice-and-comment rulemaking, rather than adjudication, to identify whose waters are "public lands" for the purpose of determining the scope of the Act's rural subsistence policy; and that in construing the term "public lands," the Secretaries were entitled to "some deference." The panel concluded that, in the 1999 Rules, the Secretaries applied *Katie John* I and the federal reserved water rights doctrine in a principled manner. The panel held that it was reasonable for the Secretaries to decide that the "public lands" subject to the Act's rural subsistence priority included the waters within and adjacent to federal reservations; and reserved water rights for Alaska Native



NARF hosted students from Dartmouth.

Settlement allotments were best determined on a case-by-case basis.

The State filed a petition for U.S. Supreme Court review in November 2013. Appellees requested and were granted a 45 day extension in which to file their response until January 2014. The United States again requested a 30 day extension to and including February 2014.

In *Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham v. Evans*, NARF represents five Chugach villages that sued the Secretary of Commerce to establish aboriginal rights to their traditional use areas on the Outer Continental Shelf (OCS) of Alaska, in Cook Inlet and the Gulf of Alaska. In 2002 the federal district court ruled against the Chugach. NARF appealed to the U.S. Court of Appeals for the Ninth Circuit which in 2004 en banc vacated the district court's decision and remanded for determination of whether the Tribes can establish aboriginal rights to the areas. After denials of summary judgment motions on the issue, trial on whether these Tribes hold aboriginal rights to hunt and fish in federal waters was held in August 2008. In August 2009 the court held that although the five Chugach Tribes had established that they had a "territory" and had proven they had used the waters in question, the

Tribes could not hold aboriginal rights as a matter of law. The Chugach appealed to the Ninth Circuit en banc panel which retained jurisdiction over the case. Oral argument was heard by the en banc panel in September 2011. In July 2012, a 6-5 majority of the Ninth Circuit en banc panel affirmed the district court's ruling that the Tribes failed to establish entitlement to non-exclusive aboriginal rights on the OCS.

The majority concluded that the Villages had satisfied the "continuous use and occupancy" requirement of the test for aboriginal rights, which is measured in accordance with the particular ways of life, customs, and habits of the tribe seeking to establish aboriginal rights. The majority determined that the district court's findings that the Villages' ancestors had hunted and fished on the OCS seasonally and while traveling to outer islands was consistent with their way of life as marine hunters and fisherman, and thus satisfied this requirement.

However, the majority concluded that the Villages did not satisfy the "exclusivity" requirement of the test. Exclusivity is established when a tribe shows it used and occupied a territory to the exclusion of other Indian groups. The majority rejected the argument that the lack of evidence that other groups hunted and fished in the claimed OCS territory established exclusivity. The majority interpreted the district court's finding that neighboring tribes had likely fished and hunted on the periphery of the claimed OCS territory to constitute a finding that these other groups had likely fished and hunted within the claimed OCS territory. The majority also relied on a statement by the district court that the population of the ancestral villages was too low to have been able to exercise dominion and control over the claimed OCS area.

Five judges signed on to a vigorous dissent which agreed with the majority that the Tribes had satisfied the continuous use and occupancy requirement but strongly disagreed with the majority's conclusion that the exclusivity requirement was not satisfied. The dissent argued that exclusivity does not require the Tribes to show that as a theoretical matter, they could have repelled intruders from the claimed OCS area, as suggested by the district court's population finding. Rather, in the absence of evidence of use by others, case law requires only that the Villages show that they were

the only group that used and occupied the area. The dissent engaged in a thorough and well-reasoned analysis of the district court's findings and the supporting evidence to conclude that this requirement had been satisfied with respect to at least some parts of the claimed OCS area. Thus, the dissent would have reversed and remanded with instructions to the district court to find, under the proper legal test, precisely where within the claimed area the Tribes have aboriginal rights.

NARF filed a petition for a writ of certiorari in the U.S. Supreme Court and cert was finally denied in October 2013, ending the case.

The Bering Sea Elders Group is an alliance of thirty-nine Yup'ik and Inupiaq villages that seeks to protect the sensitive ecosystem of the Bering Sea, the subsistence lifestyle, and the sustainable communities that depend on it. NARF has designed a comprehensive plan to help this group of Alaska Native villages in their efforts to protect the area and become more engaged in its management. Subsistence is the inherently sustainable Native philosophy of taking only what you need. There are often no roads and no stores in rural Alaska, and so no other group of people in the United States continues to be as intimately connected to the land and water and as dependent upon its vast natural resources as Alaska's indigenous peoples.

NARF has been working with the Elders Group in their negotiations with the bottom trawl industry. These negotiations have resulted in the creation of a Working Group which will study various issues including seafloor habitat and subsistence uses of the area and make recommendations about changes that need to be made. The first Working Group meeting is currently being planned.

Alaska's Bristol Bay region is home the largest wild salmon runs in the world. It is also home to the Yup'ik, Dena'ina, and Alutiiq people who depend on the sustainable salmon runs for their subsistence. In April 2013, NARF assisted in the creation of the United Tribes of Bristol Bay (UTBB). UTBB is a consortium of federally recognized tribes in the region. It was formed in order for tribes to directly address regional large-scale mining proposals threatening salmon rearing streams—such as the proposed Pebble Mine, which would sit on the headwaters of the largest salmon-producing

river in Bristol Bay. UTBB possesses a unique power, separate from any other grassroots organization in Bristol Bay: it is a political subdivision of the tribes, exercising delegated tribal governmental powers. As such, UTBB exists under tribal law and is organized as a Section 7871 group—an IRS tax code provision granting tribes and their subdivisions treatment as states. Exercising its delegated governmental authority with NARF as legal counsel, UTBB has actively engaged the federal government in direct government-to-government consultation on the proposed Pebble Mine development in Bristol Bay region, including a recent consultation directly with Administrator Gina McCarthy of the U.S. Environmental Protection Agency (EPA).

Climate Change Project

After several years of fruitful partnership, NARF has recently begun representing NCAI on climate change matters. Climate change is one of the most challenging issues facing the world today. Its effects on indigenous peoples throughout the world are acute and will only get worse. The

effects are especially pronounced in Alaska where as many as 184 Alaska Native villages are threatened with removal. NARF, in addition to working with some of its present clients on this issue, previously worked with National Tribal Environmental Council (NTEC) on comprehensive federal climate change legislation. NTEC, NARF, NCAI and the National Wildlife Federation worked together and created a set of Tribal Principles and worked with national environmental organizations on detailed legislative proposals. Unfortunately, these efforts stalled in the Congress.

NARF and NTEC attended the United Nations Framework Convention on Climate Change (UNFCCC) Summit -COP 15- in Copenhagen, Denmark in December 2009. The purpose of the UNFCCC process is to come up with an international treaty governing emissions of greenhouse gases.

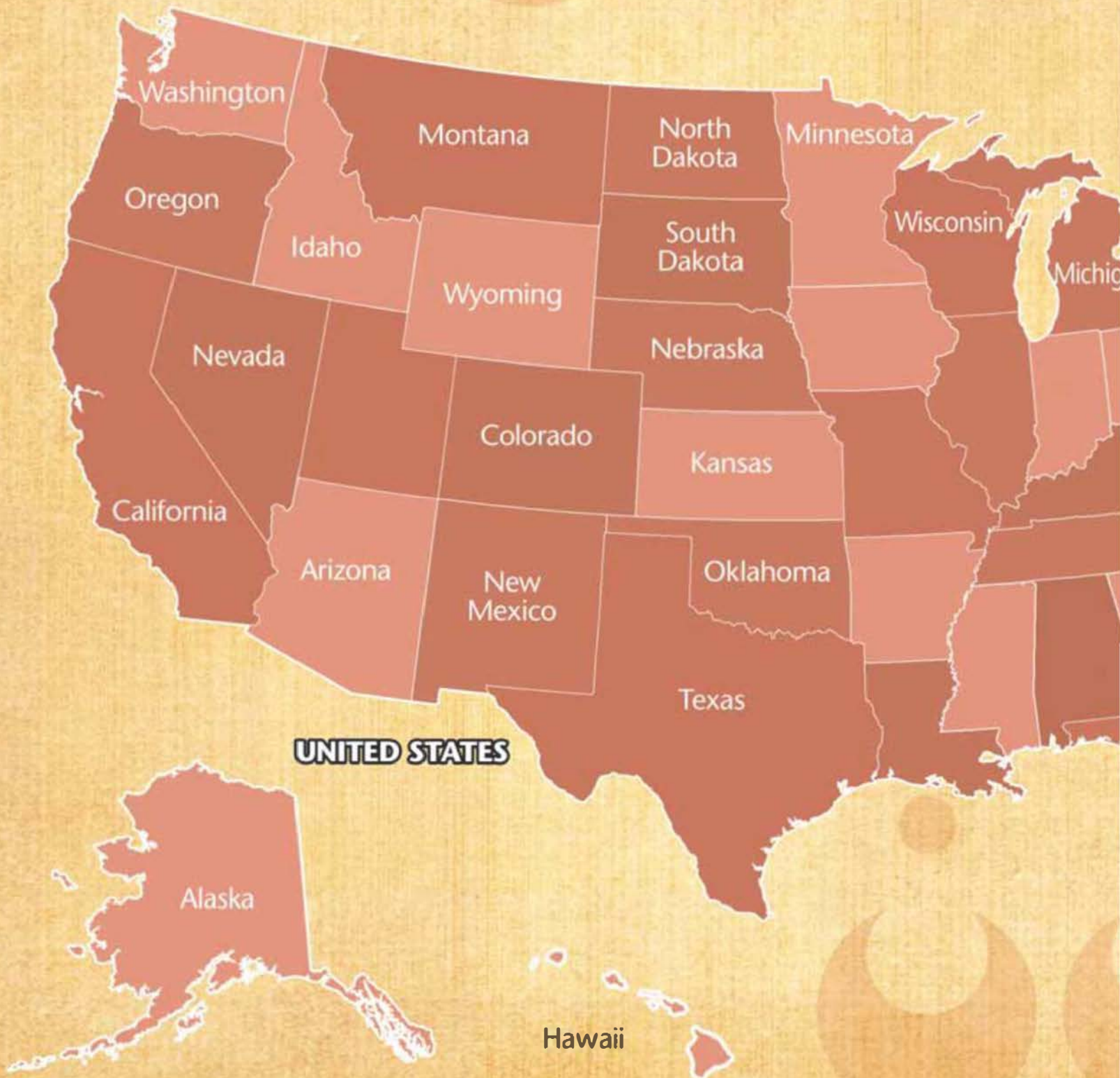
NARF and NTEC also attended COP 16 in Cancun in December 2010. A Cancun Agreement was reached, likely



NARF staff receiving their longevity awards (L to R) John Echohawk, Chrissy Johnson Dieck, Richard Guest, Katrina Mora, Natalie Landreth, Mireille Martinez, Debbie Thomas, David Selden, Steve Moore, Chris Pereira, Don Wharton.

Native American Rights Fund

MAJOR ACTIVITIES 2013 - CASE MAP





CANADA



ALASKA NARF ANCHORAGE OFFICE

Akiachak Native Community
– Land into Trust

Native Village of Atka
– Tribal Trust Funds

Aleut Community of St. Paul
Island – Tribal Trust Funds

Bering Sea Elders Group
– Subsistence

Chilkoot Indian Association
– Land into Trust

Chalkyitsik – Land into Trust

Chistochina Tribe
– Subsistence

Churyung v. Alaska
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Native Villages of Eyak,
Tatitlek, Chenega,
Nanwalek, and Port Graham –
Subsistence & Aboriginal Title

Ivanof Bay Village
– Sovereign Immunity

Kaltag Tribe
– Indian Child Welfare

Native Village of Kasigluk
– Voting Rights Act Suit

Katie John v. Norton
– Subsistence

Kenaitze Indian Tribe
– Tribal Trust Funds

Native Village of Kivalina -
Global Warming Project

Native Village of Kwigillingok
– Voting Rights Act Case

Gwich'in Steering Committee
– Environmental/Subsistence

Native Village of Nulato –
Indian Child Welfare

Ninilchick Tribe – Subsistence

Tanana – Tribal Sovereignty

Tlingit and Haida Indian Tribes
– Tribal Trust Funds

Native Village of Tuluksak
– Trust Lands & Voting Rights
Act Case

Native Village of Tuntutuliak
– Voting Rights Case

Native Village of Tyonek
– Subsistence & Cultural
Preservation

Native Village of Venetie
– Subsistence

United Tribes of Bristol Bay
– Environmental/Subsistence

ARIZONA

Hualapai Tribe – Boundary
Issue

Kaibab Paiute Tribe
– NAGPRA

CALIFORNIA

Agua Caliente Band of
Cahuilla Indians – Tribal
Water Rights

San Luis Rey Indian Water
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Tule River Tribe
– Tribal Water Rights

Yurok Tribe
– Tribal Trust Funds

COLORADO

NARF HEADQUARTERS

BOULDER, COLORADO

Southern Ute Tribe
– Tribal Trust Funds

Valmont Butte
– Sacred Site Issue

FLORIDA

Seminole Tribe of Florida
– Tribal Trust Funds

IDAHO

Nez Perce Tribe - Water Rights

KANSAS

Kickapoo Tribe – Water Rights

MAINE

Penobscot Indian Nation
– Tribal Trust Funds

MICHIGAN

Grand Traverse Band of
Ottawa and Chippewa Indians
– Tribal Trust Funds

MINNESOTA

Prairie Island Indian
Community
– Tribal Trust Funds

White Earth Band of Chippewa
Indians - Tribal Trust Funds

MONTANA

Chippewa-Cree Tribe of the
Rocky Boys Reservation
– Tribal Trust Funds

Little Shell Tribe of Chippewa
Indians – Recognition &
Tribal Trust Funds

NEW MEXICO

Pueblo of Acoma
– Tribal Trust Funds

NORTH DAKOTA

Turtle Mountain Chippewa
Tribe – Tribal Trust Funds

OKLAHOMA

Cheyenne-Arapaho Tribes
– Tribal Trust Funds

Comanche Nation
– Tribal Trust Funds

Kickapoo Tribe
– Tribal Trust Funds

Muscogee Creek Nation
– Tribal Trust Funds

Pawnee Nation – NAGPRA

Sac & Fox Nation
– Tribal Trust Funds

Tonkawa Tribe
– Tribal Trust Funds

OREGON

Klamath Tribes – Water Rights
& Tribal Trust Funds

Confederated Tribes of the
Umatilla Reservation
– Tribal Trust Funds

SOUTH DAKOTA

Oglala Sioux Tribe
– Environmental

Sisseton Wahpeton Oyate
– Tribal Trust Funds

TEXAS

Native American Church of
North America – Religious
Freedom

VIRGINIA

Pamunkey Tribe
– Tribal Recognition

WASHINGTON

Nooksack Tribe
– Tribal Trust Funds

Quinalt Indian Nation
– Tribal Trust Funds

Samish Indian Nation
– Tribal Trust Funds

Shoalwater Bay Tribe
– Tribal Trust Funds

Skokomish Tribe
– Tribal Trust Funds

WASHINGTON, D.C.

**NARF WASHINGTON, D.C.
OFFICE**

Tribal Supreme Court Project

WISCONSIN

Bad River Band of Lake
Superior Chippewa Indians
– Tribal Water Rights

WYOMING

Eastern Shoshone Tribe
– Land Issue

INTERNATIONAL

Declaration on the Rights of
Indigenous Peoples/Climate
Change Issues – Organization
of American States and United
Nations

saving the UNFCCC process. The agreement contains increased, though inadequate, mentions of indigenous peoples and of the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP). There are safeguards calling for "the full and effective participation" of indigenous peoples in Reduction of Emissions from Deforestation and Forest Degradation (REDD+) activities and there are also some references to taking into account traditional indigenous knowledge.

At COP 17 in Durban, South Africa, November – December 2011, the countries established a new Ad Hoc Working Group for Enhanced Action (ADP). The countries committed to adopt a universal legal agreement on climate change as soon as possible, but not later than 2015, to go into effect by 2020. Based on this commitment, a core of countries, led by the European Union agreed to a second commitment period to the Kyoto Protocol (to which the U.S. is not a party). In addition, the Green Climate Fund, which is to be the major source of funding for international mitigation and adaptation activities was agreed to and can start receiving funding. But no progress was made regarding an assessment of whether safeguards for indigenous rights are being implemented.

At a two week session in Bonn in May 2012, the new ADP could not even agree on the agenda until the last day. Informal sessions were held in Bangkok, Thailand in August and September, 2012 to prepare for COP 18 which was held in Doha, Qatar in November and December, 2012. The outcome at Doha was generally anemic. A second period for the Kyoto Protocol was approved with weak emissions reduction commitments by countries accounting for a modest percentage of world-wide emissions. COP 18 resulted in nothing solid in the way of commitments from non-KP countries, and nothing as to financial commitments to developing countries. These are matters for the ADP in upcoming meetings. The can was kicked down the road once again. Further, Indigenous Peoples, along with other constituencies found their already limited rights to make interventions curtailed even more, as usually only 2-3 entities were allowed to speak. On a brighter note, the head of COP 18 attended an Indigenous caucus meeting and expressed support. The caucus asked in a letter that Qatar support a meeting between indigenous peoples and friendly states before COP 19 is held in Warsaw, Poland in

November 2013. No reply was ever received.

The first meetings on the specifics of the new "protocol to be adopted by December 2015 were held in Bonn in April/May and June, 2013. NARF attended all of the April /May meeting and part of the June meeting on behalf of NCAI. NARF was the only one to make a brief statement on behalf of the indigenous view-point at the April/May meeting. So far, the process is very slow and developed countries are spending a lot of time on general concepts, but no specific language has been proposed yet. In November 2013, NARF attended COP 19 in Warsaw, Poland and the results were disappointing. Disturbingly, Poland only authorized a small percent of NGOs to attend. One indigenous organization requested 30 slots and only seven were approved. The main accomplishment of COP 19 was the approval of a loss and damage mechanism (though with no finding) which would address loss due to climate change.

On a more positive note, the Indigenous Caucus met with the organizers of COP 20 to be held in Lima, Peru and were assured that ample attendance by Indigenous participants would be approved and that a pre-meeting would be held between Indigenous representatives and friendly states just as had been done before COP 16 in Mexico and COP 17 in Durban, South Africa. Finally, the caucus also met with organizers for COP 21 in France who gave assurance of ample participation as well, though they did not commit to a pre-meeting.

Global warming is wreaking havoc in Alaska. In recent years scientists have documented melting ocean ice, rising oceans, rising river temperatures, thawing permafrost, increased insect infestations, animals at risk and dying forests. Alaska Natives are the peoples who rely most on Alaska's ice, seas, marine mammals, fish and game for nutrition and customary and traditional subsistence uses; they are thus experiencing the adverse impacts of global warming most acutely. In 2006, during the Alaska Forum on the Environment, Alaska Native participants described increased forest fires, more dangerous hunting, fishing and traveling conditions, visible changes in animals and plants, infrastructure damage from melting permafrost and coastal erosion, fiercer winter storms, and pervasive unpredictability. Virtually every aspect of traditional Alaska Native life is impacted. As noted in the Arctic Climate Impact



New NARF attorneys Sue Noe and Heather Whiteman Runs Him.

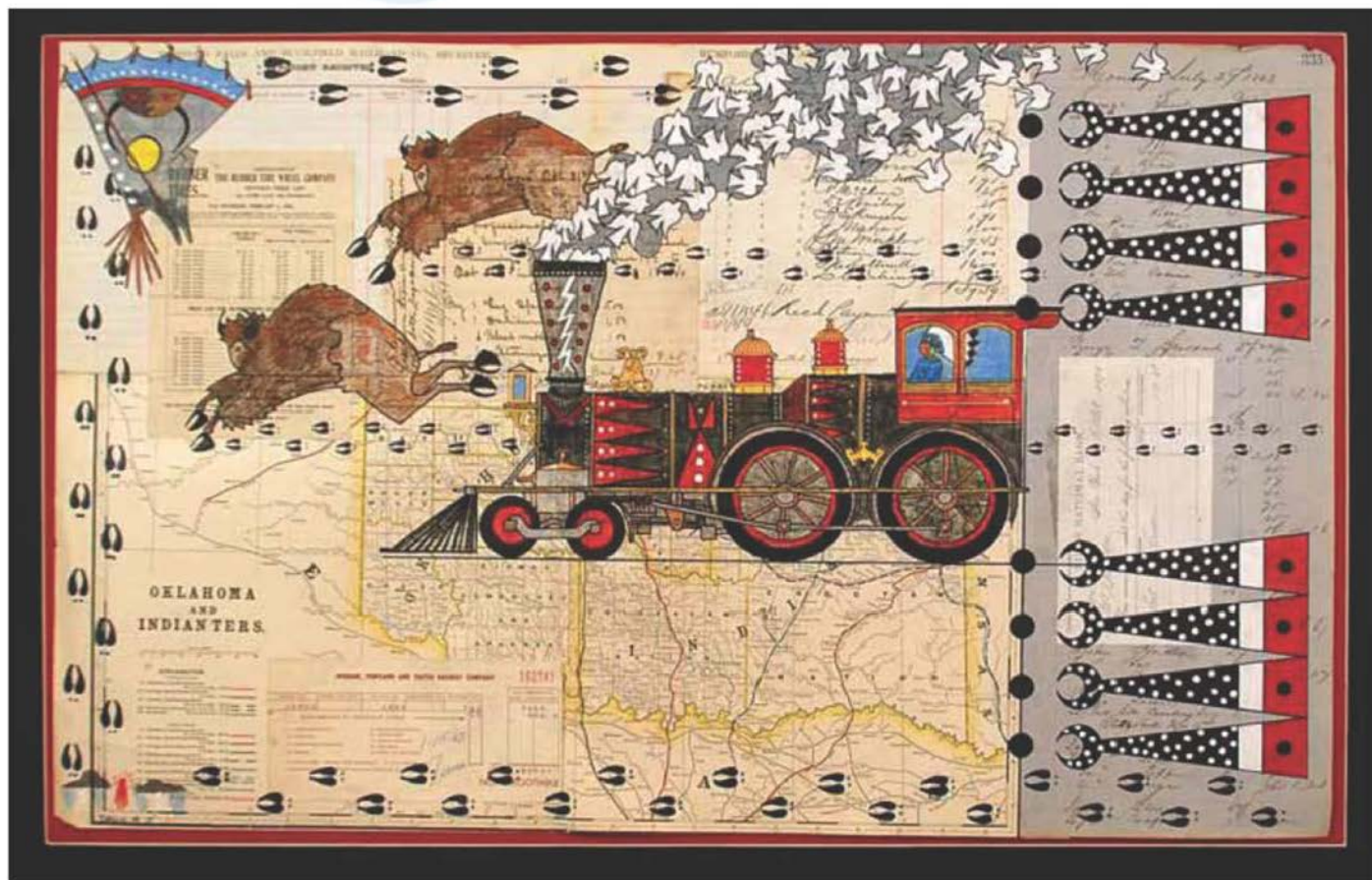
Assessment of 2004, indigenous peoples are reporting that sea ice is declining, and its quality and timing are changing, with important negative repercussions for marine hunters. Others are reporting that salmon are diseased and cannot be dried for winter food. There is widespread concern about caribou habitat diminishing as larger vegetation moves northward. Because of these and other dramatic changes, traditional knowledge is jeopardized, as are cultural structures and the nutritional needs of Alaska's Indigenous peoples. Efforts are continuing to convene Congressional hearings on climate change impacts on indigenous peoples.

In *Native Village of Kivalina v. Exxon Mobil*, NARF represents the Native Village of Kivalina, which is a federally recognized Indian Tribe, and the City of Kivalina, which is an Alaskan municipality, in a suit filed on their own behalf and on behalf of all tribal members against defendants ExxonMobil Corp., Peabody Energy Corp., Southern Company, American Electric Power Co., Duke Energy Co,

Chevron Corp. and Shell Oil Co., among others. In total there are nine oil company defendants, fourteen electric power company defendants and one coal company defendant. The suit claims damages due to the defendant companies' contributions to global warming and invokes the federal common law of public nuisance. The suit also alleges a conspiracy by some defendants to mislead the public regarding the causes and consequences of global warming. In October 2009, the District Court granted the Defendant's motion to dismiss on the basis that Kivalina's federal claim for nuisance is barred by the political question doctrine and for lack of standing under Article III of the Constitution.

In September 2012, the US Court of Appeals for the Ninth Circuit rejected the Tribe's appeal. The Court held, in a very short and cursory opinion, that the federal Clean Air Act defines the full scope of all federal remedies for air pollution and, since there is no monetary damages remedy under the Clean Air Act, there is no monetary damages remedy under federal common law. Writing a separate opinion, Judge Pro noted that the most recent case law from the Supreme Court – the Exxon Shipping case (i.e. Exxon Valdez oil spill case), holds the opposite; in his concurring opinion Judge Pro struggles to make sense of the law since older case law would deny Kivalina's claims while Exxon Shipping says that a federal environmental statute does not bar a federal common law claim for monetary damages. Based on the separate opinion by Judge Pro, a petition for rehearing en banc was filed on October 5, 2012 but rejected. Plaintiffs filed a timely petition for a writ of certiorari before the Supreme Court but that petition was denied in May 2013.

THE PROMOTION OF HUMAN RIGHTS



“Our determination to survive as a distinct Indigenous peoples comes from the will of our ancestors. They suffered unspeakable crimes to their spirits and bodies, and we still struggle to beat back this legacy of genocide. To outsiders, it might appear as if the Indian wars are over. We know that is not true. Our battle today is with historical oppression and generational trauma. Seeds of doubt and shame planted hundreds of years ago continue to take root in the darkness of each new generation, winding its way through our communities.”

— Beverly Cook, Wolf Clan, Akwesasne

Although basic human rights are considered a universal and inalienable entitlement, Native Americans face an 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 the *promotion of human rights*, NARF strives to enforce and strengthen laws which are designed to protect the rights of Native Americans to practice their traditional religion, to use their own language and to enjoy their culture. NARF also works with Tribes to ensure the welfare of their children. In the international arena, NARF is active in efforts to negotiate declarations on the rights of indigenous peoples.

Religious Freedom

Because religion is the foundation that holds Native communities and cultures together, religious freedom is a NARF priority issue.

In NARF's Sacred Places Project, NARF has partnered with the National Congress of American Indians and the Morningstar Institute to help ensure that various federal agencies with jurisdiction over federal lands are held accountable to their obligation to protect sacred places and provide meaningful access to tribal people wishing to use those places for traditional purposes. These efforts will include providing best practices analysis, as well as raising awareness of issues and different approaches that can be used to protect sacred places held by the federal government. To the extent possible, analysis and practices learned from federal lands will also be compared for use on private and state-held lands.

NARF also has written amicus briefs in select cases involving sacred places and laws pertaining to the continued ability of native people to exercise their religions and traditional cultural practices. For example, NARF wrote an amicus brief in *Yount v. Salazar*, arguing that the government was able to withdraw a million acres of land around the Grand Canyon from mining without violating the Establishment Clause of the Constitution. The Northern Arizona Withdrawal will protect many sacred sites, trails, plants, and other cultural items from future mining claims if it is upheld.

Legal work continues on a number of Native American Graves Protection and Repatriation (NAGPRA) implemen-

tation issues. NARF continued a decade-long effort as a member of the Colorado Commission of Indian Affairs to work out agreements and protocols with the Colorado State Historical Society for the repatriation and reburial of hundreds of Native American human remains, both culturally affiliated and unaffiliated. Part of the work also involved the development of a protocol for the future identification and disposition of Native American remains disturbed on state or private lands, which specifies a process for consultation with interested tribes and for the reburial on site of those remains whenever possible.

The massive Chuitna Coal project in Alaska threatens to destroy a vital salmon habitat stream that the Tyonek Native Village utilizes for subsistence fisheries. After agreeing to assist the Tribe in protecting its subsistence fisheries resources, legal research established that much more was at stake as recent field surveys and excavations found numerous house pits, cultural features, and religious remains in the project area. Under such circumstances the National Historic Preservation Act requires that the federal agency tasked with jurisdiction immediately contact the impacted Tribe to seek consultation regarding the protection of the historic resources. Under existing law Tyonek should be granted the opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. NARF has engaged an expert and has been working with the Tribe's Council, the State Historic Preservation Office, the National Park Service and others to effectively engage the Army Corp of Engineers on National Historic Preservation Act issues. NARF also met in Washington, D.C. with top agency personnel in October 2012 and received significant commitments from EPA, NOAA, Department of the Interior, NPS, NHPC, and the White House Counsel on Native American Affairs to monitor the process and ensure that tribal consultation is adhered to.

NARF has been assisting the Denver area Native American community and interested tribes for almost a decade to give voice to the need to clean up and preserve a prominent geologic feature just to the northeast of Boulder, Colorado. Valmont Butte is an ancient volcanic uplift that

sits prominently on the outskirts of town, just overlooking the north fork of Boulder Creek. In pre-contact times it was the location of Ute and then Arapaho village sites. Use and occupation of the area is known to go back at least 10,000 years in antiquity. The property, owned by the City of Boulder since 2000, is known to contain substantial prehistoric materials, including burial areas. The Butte has also until recent years been the site of an active sweat lodge. There is an abandoned mill on the property, and millings from the fifty-plus years of milling activities are now contained on the eastern end of the property about forty acres in size. The City purchased the property to locate a composting facility or fire training center. The tribes and the local Native community successfully opposed these facilities. In recent years, the effort has been to monitor the development of the City's proposed cleanup plan and also to secure a County landmark designation for the Butte and surrounding acreage.

NARF represents the Kaibab Paiute Tribe in their dispute with the King County Water District and the Army Corps of Engineers who are preparing to build a dam over a burial ground that is known to contain the remains of almost 100 people. The Water District and the Corps have not finished their study to determine exactly how many people are still buried there, and the Kaibab do not want the dam built or the reservoir filled until the full extent of the burials are known and steps can be taken to protect the site and the people under the Native American Graves Protection and Repatriation Act (NAGPRA).

The Native American Rights Fund is part of a working group of Indian organizations and tribal leaders to address government intervention in the lives of Native people who work with or use eagle feathers in traditional ways. Since time-immemorial, the eagle and other raptor birds have been an integral part and intrinsic to the traditions, culture and religion of many tribes, pre-dating U.S. colonization. The U.S. Fish and Wildlife Service (FWS) and other federal law enforcement agencies had been conducting raids, confiscations and interrogations on many Indian reservations and pow-wow events, in at least 14 states of the western United States under what purportedly is referred to as an "Eagle Feather Sting Operation."

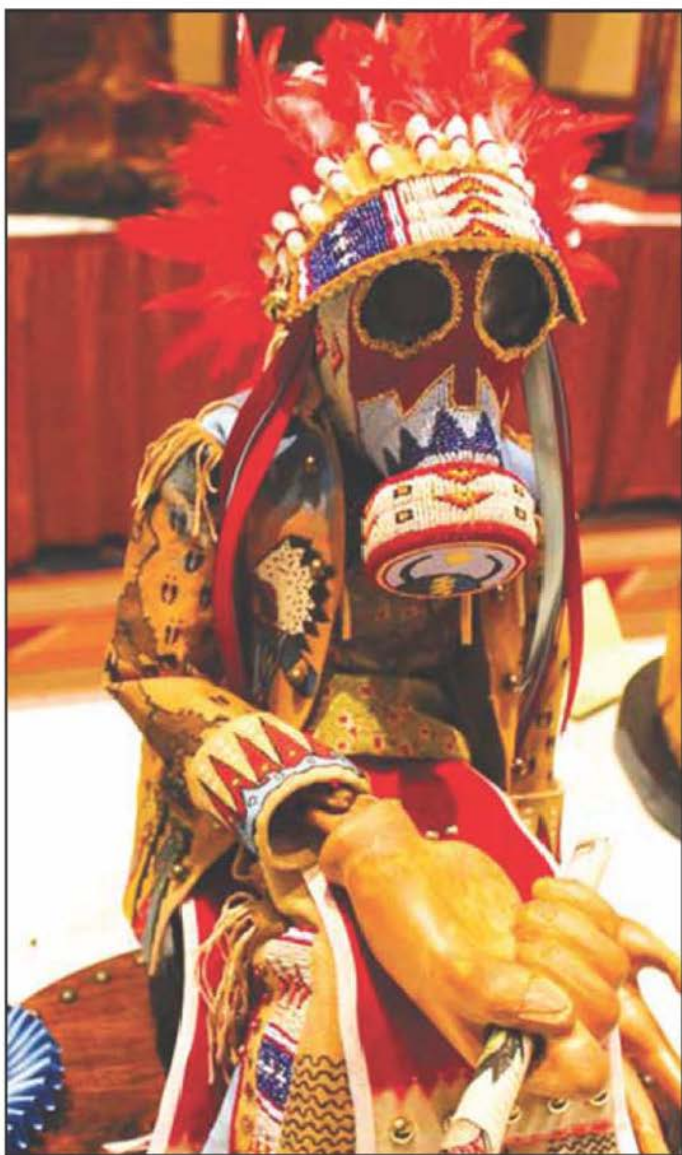
The immediate purpose of these investigations by the FWS was to address the illicit sale of eagles and eagle parts and the poaching of eagles. However, the impact of these investigations has awakened fear that the U.S. government is once again encroaching upon tribal culture and religious practices, to the point where the tribal culture and religion may be forced underground once again.

The working group met with the FWS and the Department of Justice (DOJ) in 2009 to express tribal concerns about raids that were conducted by the FWS, FBI and other law enforcement officials who seized feathers and demanded documentation. Under federal law, only Native people can possess eagle feathers through gifts or inheritance, or from a government-run repository near Denver which issues permits specifically for individual birds or parts, generally after lengthy waits.

As a result of this meeting, FWS and DOJ pledged to take action regarding their lack of effective outreach and education to tribes on policies regarding the possession, use, gifting and crafting of eagle feathers and other endangered birds. FWS proposed the development of a Tribal Advisory Group to work out long-term solutions to the issues that tribes raised.

The National Congress of American Indians (NCAI) adopted a resolution supporting the establishment of Tribal Advisory Group to the U.S. Fish and Wildlife Service in order to provide consultation on the policies, regulations and procedures for the acquisition, possession, gifting, crafting and use of eagles and other migratory birds by tribal members. It was also resolved that NARF shall serve as a central clearinghouse for the cases appertaining to the "Eagle Feather Sting Operation" being conducted by the FWS and other federal law enforcement agencies. NARF and NCAI continued meetings with the FWS and other federal law enforcement agencies to discuss and seek solutions as to the effects and impacts of eagle feather confiscations and to discuss the drafting of an all-inclusive bill to "fix" the gap between current law and administrative policies, regulations and procedures.

As a result of these efforts, the Department of Justice announced in October 2012 a department-wide, internal policy regarding the enforcement of laws that affect the



ability of members of federally recognized Indian tribes to possess or use eagle feathers. The policy provides that, consistent with the Department of Justice's traditional exercise of its discretion, a member of a federally recognized tribe engaged only in the following types of conduct will not be subject to prosecution: possessing, using, wearing or carrying federally protected birds, bird feathers or other bird parts (federally protected bird parts); traveling domestically with federally protected bird parts or, if tribal members obtain and comply with necessary permits, traveling internationally with such items; picking up naturally molted or fallen feathers found in the wild, without molesting or

disturbing federally protected birds or their nests; giving or loaning federally protected bird parts to other members of federally recognized tribes, without compensation of any kind; exchanging federally protected bird parts for federally protected bird parts with other members of federally recognized tribes, without compensation of any kind; and providing feathers or other parts of federally protected birds to craftspeople who are members of federally recognized tribes to be fashioned into objects for the eventual use in tribal religious or cultural activities.

NARF has also continued its representation of the Native American Church of North America in addressing issues concerning the sacramental use of peyote in their religious ceremonies. NARF has begun a project to research the impact of the peyote harvest decline in Texas on Native American Church members and to develop and support access to and the use of the holy sacrament, peyote, for our client, the Native American Church of North America.

Indian Education

During the 19th and into the 20th century, pursuant to federal policy, Native American children were forcibly abducted from their homes and put into Christian and government run boarding schools. The purpose was to "civilize" Indians and to stamp out native culture. It was a deliberate policy of ethnocide and cultural genocide. Cut off from their families and culture, the children were punished for speaking their native language, banned from conducting traditional or cultural practices, shorn of traditional clothing and identity of their native culture, taught that their culture and traditions were evil and sinful, and that they should be ashamed of being Native American. Placed often far from home, they were frequently neglected or abused physically, sexually and psychologically. Generations of these children became the legacy of the federal Boarding School Policy. They were returned to their communities, not as the Christianized farmers that the Boarding School Policy envisioned, but as deeply scarred humans lacking the skills, community, parenting, extended family, language, and cultural practices of those who are raised in their cultural context.

There has been scant recognition by the U.S. federal government that initiated and carried out this policy, and no acceptance of responsibility for the indisputable fact that its purpose was cultural genocide. There are no apparent

realistic legal avenues to seek redress or healing from the deep and enduring wounds inflicted both on the individuals and communities of tribal nations. Lawsuits by individuals have been turned aside, and unlike other countries that implemented similar policies – e.g. Canada and Australia – there has been no official U.S. proposal for healing or reconciliation.

The Boarding School Healing Project, directed by the National Native American Boarding School Healing Coalition, mission is to secure healing and reconciliation among Native American individuals, families, communities, tribes, Pueblos, and Alaskan villages victimized by over a century of documented boarding school human rights violations. Currently, the Project is primarily in a phase of conducting education and outreach, which has three general areas of focus at this time: (1) Indian Country, (2) Congress, and (3) Churches. Outreach in Indian country has been moving forward by giving presentations at regional tribal organization meetings, as well as working with Indian Country media whenever available. We have also made contact with the Assistant Secretary of Indian Affairs' staff and are keeping that office informed of our work. Project staff have been meeting and teleconferencing with staff from both the House Native American Caucus and the Senate Committee on Indian Affairs. We will provide briefings to staff of members of each group, as requested, in order to create spheres of awareness among Congressional staff.

We continue to work with representatives from the Council of Native American Ministries in order to raise awareness among churches working in Indian Country. We also presented to a multi-denominational audience at a briefing on the boarding schools sponsored by the Friends Committee on National Legislation (Quakers) in December 2013 in Washington DC. We are also collaborating with the local Boulder Quaker chapter and Haverford College faculty on attempting to raise awareness and academic interest in church investigation and admission of roles in the boarding school policy as a field of research.

NARF is seeking and compiling research on transfer of trauma related symptoms across generations of a family (Historical Trauma), as well as on healing models for trauma. We share this information as much as possible with anyone interested.

Recent developments mark a historical shift in Indian education law and policy by taking the first step in accomplishing "educational tribal sovereignty." NARF, other Indian organizations and tribes have been advocating for systemic changes to American Indian/Alaska Native (AI/AN) education. Changes that would increase involvement of tribal governments, educators, parents, and elders in what AI/AN students are taught, how they are taught, who teaches them, and where they learn. Tribal control of these core issues can amount to educational tribal sovereignty.

NARF represents the Tribal Education Departments National Assembly (TEDNA), a national advocacy organization for tribal education departments and agencies (TEDs/TEAs) that works to strengthen the legal rights of tribes to control the formal education of tribal members. NARF started TEDNA in 2003 with a group of tribal education department directors from Indian tribes across the country. Since its inception, NARF has hosted National meetings with TEDNA to 1) identify obstacles impeding educational tribal sovereignty, 2) develop policy initiatives to address such obstacles, and 3) advocate and provide technical assistance on such policy initiatives.

After over 20 years of work, NARF and TEDNA secured the first source of direct federal funding – \$ 2 million – for tribal education departments ("TEDs") in the Labor, Health, and Human Services Fiscal Year 2012 Appropriations Bill to be distributed by the U.S. Department of Education via a competitive grant process under a new State Tribal Education Partnerships ("STEP") Program. The STEP program authorizes eligible TEDs to participate in a pilot project that allows TEDs to operate federal education programs in schools located on Indian reservations. STEP grants were awarded to the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, the Navajo Nation, and the Chickasaw Nation. All of these tribes have been long time members of TEDNA.

NARF and TEDNA have been working with NCAI and NIEA on the Elementary and Secondary Education Act ("ESEA") amendments to provide for greater tribal self-determination in the area of education. Several bills were recently introduced – The Strengthening America's Schools Act, S. 1094, and the Student Success Act, H.R. 5, are the primary bills. The Senate bill, S. 1094, included some of



Indian Country's recommendations for ESEA reauthorization, but unfortunately failed to include many important recommendations. H.R. 5 completely re-tools the ESEA and eliminates several Indian education programs. It is not likely that the House and Senate will come together to reauthorize the ESEA, but TEDNA, NCAI, NIEA, and NARF are continuing to work with Congress to incorporate Indian Country's recommendations into the ESEA reauthorization. If we are unable to get our provisions in the reauthorization, or should the ESEA not pass, TEDNA, NCAI, and NIEA have been working on a stand-alone bill, the Native CLASS Act, to achieve greater tribal self-determination in education. We will work with the Senate Committee on Indian Affairs to pass the Native CLASS Act as a whole or in piecemeal fashion depending on the political climate.

TEDNA also worked on a Gates Foundation project with NCAI. TEDNA and NARF's portion of the project was to develop a Decision Making Guide that was intended to provide tribes and TEAs with an outline of select K-12 federal programs in which TEAs can potentially participate and thereby provide options for TEAs to enhance their role in Native education. The Guide can be seen on TEDNA's website, or a copy can be obtained by contacting NARF.

Civil and Cultural Rights

From the embryonic days of our Nation, Indian tribes have long struggled against the assimilationist policies instituted by the United States which sought to destroy tribal cultures by removing Native American children from their tribes and families. As an example, the federal government failed to protect Indian children from misguided and insensitive child welfare practices by state human service agencies, which resulted in the unwarranted removal of Indian children from their families and tribes and placement of those children in non-Indian homes. Statistical and anecdotal information show that Indian children who grow up in non-Indian settings become spiritual and cultural orphans. They do not entirely fit into the culture in which they are raised and yearn throughout their life for the family and tribal culture denied them as children. Many Native children raised in non-Native homes experience identity problems, drug addiction, alcoholism, incarceration and, most disturbing, suicide.

In order to address these problems facing tribes as a result of the loss of their children, the Indian Child Welfare Act (ICWA) was enacted by Congress in 1978. It established minimum federal jurisdictional, procedural and substantive

standards aimed to achieve the dual purposes of protecting the right of an Indian child to live with an Indian family and to stabilize and foster continued tribal existence. Since that time, there have been misinterpretations and, in some cases, outright refusal to follow the intent of the law by state agencies and courts.

State services frequently do not reach village Alaska. Tribal courts must therefore handle most cases involving the welfare of village children. State recognition of those tribal court proceedings is therefore critical to assure that proceedings which occur in tribal court are then respected by other state agencies. Otherwise, adoptive parents may not be able to participate in state-funded assistance programs, to secure substitute birth certificates necessary to travel out of state, to enroll children in school, or to secure medical care.

In March 2011, the Alaska Supreme Court published its decision in *State of Alaska v. Native Village of Tanana* and reaffirmed that (1) Alaska Tribes had not been divested of their jurisdiction to adjudicate children's custody cases, and (2) Alaska's tribes have concurrent jurisdiction with the State. The court further held that tribes that had not reassumed exclusive jurisdiction under the Indian Child Welfare Act nonetheless had concurrent jurisdiction to initiate ICWA-defined child custody proceedings, regardless of the presence of Indian country and that as such, the decisions of tribal courts in these cases were due full faith and credit under ICWA.

Following the Alaska Supreme Court's decision upholding tribal authority to initiate children's proceedings, NARF has been working with the Alaska State Attorney General's office to formalize policies and protocol to implement the Tanana decision.

The ICWA establishes adoptive placement preferences for placing an Indian child with a member of the child's extended family, other members of the child's tribe, or with other Indian families. A court may deviate from these preferences only upon a showing of good cause. NARF has worked with tribes on the issue of ensuring that state courts abide by a tribe's adoptive placement preference. In Alaska, courts had been applying the incorrect standard – the preponderance of the evidence standard – instead of the clear and convincing standard of proof. At issue in *Native Village*

of Tununak v. State of Alaska was this proper burden of proof that the Alaska Office of Children's Services must meet in order to move a child from one placement to another. NARF authored an amicus brief in the case on behalf of the Native Village of Kotzebue.

In June 2013 the Alaska Supreme Court issued an important ruling in the case which held that ICWA implicitly mandates that good cause to deviate from ICWA's adoptive placement preferences be proved by clear and convincing evidence, not the weaker preponderance of the evidence standard. This is an important decision because Alaska had been the only state where courts applied the preponderance of the evidence burden of proof to findings of good cause to deviate from ICWA's adoption preferences. In addition, the court's opinion also includes important language on the need for trial courts to evaluate the suitability of placements not under "white, middle class standards" but under "the prevailing social and cultural standards of the Indian community." Unfortunately, the ruling did not end the status of the appeal as the adoptive parents have now asked the Court to revise its ruling in light of the U.S. Supreme Court's decision in *Adoptive Couple v. Baby Girl*. The Alaska Court has asked the parties to brief the effect, if any of Baby Veronica on the pending adoption case. NARF submitted an amicus brief in November 2013 in support of the tribal placement preference. Oral argument was heard and a decision is expected later this year.

In *Parks v. Simmonds*, after numerous hearings, the Minto Tribal Court terminated the parental rights of Mr. Parks and Ms. Stearman and granted permanent custody of a child to the Simmonds. Mr. Parks sued in state court, claiming, among other things, that the tribal court has no jurisdiction over him and that his right to due process was violated when the Minto Court – in accordance with its traditional practices and procedures – did not permit Mr. Parks' attorney to present oral argument. Based on these arguments, Mr. Parks claims that the tribal court termination order is not entitled to full faith and credit under ICWA. The Simmonds argued that the termination order is entitled to full faith and credit and they moved to dismiss the state court action, but this motion was denied by the state court in November 2010. The state court reasoned that failure to allow an attorney to present oral argument did violate Mr. Parks' due process rights.



The Simmonds petitioned the Alaska Supreme Court for review. The petition was granted in March 2011 and the case was remanded to the trial court for it to make specific factual findings and legal conclusions. Briefing on remand was concluded in May 2011 and oral argument was held in December 2011. The trial court issued findings and concluded in part that tribal courts may not have jurisdiction over nonmembers outside of Indian Country, and also suggested that tribal courts must permit oral argument. The Simmonds filed another petition for review with the Alaska Supreme Court asking that numerous aspects of this decision be overturned. In July 2012, the Alaska Supreme Court granted the petition for review and the Simmonds' principal brief was filed in December 2012. It took over eight months for the Respondents' briefs to be filed. The Simmonds' reply brief was filed in October 2013 and oral argument has been scheduled for early March 2014.

In *Toyukuk v. Treadwell*, NARF and national law firm Wilson Elser, acting on behalf of two tribal councils and two Alaska Native voters, filed suit in federal court in July 2013 charging state elections officials with ongoing violations of the federal Voting Rights Act and the United States Constitution. The suit claims state officials have failed to

provide oral language assistance to citizens whose first language is Yup'ik, the primary language of many Alaska Natives in the Dillingham and Wade Hampton regions.

In the complaint, Mr. Toyukuk of Manakotak, Mr. Augustine of Alakanuk, the Native Village of Hooper Bay, and the Traditional Village of Togiak asked the court to order state election officials to comply with the language assistance provisions of the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution.

The relief they requested includes implementing procedures in the Dillingham and Wade Hampton areas similar to those secured by Alaska Natives in the Bethel area in the *Nick, et al. v. Bethel, et al.* litigation, requiring state election officials to obtain approval from the federal court or the Attorney General of the United States for any changes in those procedures, and to appoint federal observers to oversee future elections in the two regions. "Language assistance" requires translating ballots and other election materials and information into Yup'ik and providing trained bilingual staff to register voters and to help voters at the polls through complete, accurate, and uniform translations.

Seven regions of Alaska, including the Dillingham and Wade Hampton regions, are required to provide language assistance for Alaska Natives under Section 203, the language assistance provision of the Voting Rights Act. Section 203 applies to states and localities that meet certain threshold requirements for the numbers of citizens with limited English proficiency. Two additional regions of Alaska have to provide language assistance in non-Native languages.

The voting guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution prohibit state officials from denying the right to vote on account of race or color, which federal courts have found includes Native voters.

Last year, the Supreme Court in the *Shelby County* case invalidated Section 4 of the Voting Rights Act which required preclearance by the Justice Department of changes in state voting laws in certain states with histories of discrimination. On behalf of Bristol Bay Native Corporation, NARF is currently working on a Congressional amendment to the Voting Rights Act that would replace Section 4 and protect Alaska Natives.

International Recognition of Indigenous Peoples

The development of international laws and standards to protect the rights of indigenous peoples greatly benefits Native American peoples. NARF and NCAI entered into an attorney-client relationship over a decade ago for the purpose of working in the international arena to protect indigenous rights.

In September 2007, the United Nations General Assembly overwhelmingly adopted the Declaration on the Rights of Indigenous Peoples (U.N. DRIP). The vote was 143 in favor, 4 opposed, and 11 abstaining. The votes in opposition were Canada, Australia, New Zealand, and the United States. This historic vote came after 30 years of worldwide indigenous efforts. NARF has represented the National Congress of American Indians (NCAI) in this matter since 1999. The U.N. DRIP recognizes that indigenous peoples have important collective human rights in a multitude of areas, including self determination, spirituality, and lands, territories and natural resources. The U.N. DRIP sets out minimum standards for the treatment of indigenous peoples and can serve as the basis for the development of customary international law.

In 2009 Australia and New Zealand reversed their positions and now support the U.N. DRIP. Canada endorsed the U.N. DRIP in November 2010 and in December 2010, President Obama made the historic announcement that the U.S. was reversing its negative vote and now endorses the U.N. DRIP.

In February and March, 2013, NARF, on behalf of NCAI, participated in a meeting of the North American Indigenous People caucus to prepare for the High Level Plenary / World Conference on Indigenous People (WCIP) to be held in New York City in September 2014 and for the Indigenous preparatory meeting in Alta, Norway in June 2013.

In May 2013, NARF, along with its client NCAI and 72 tribes and other Non-governmental Organizations signed onto a statement read at the Permanent Forum on Indigenous Issues which highlighted those issues deemed most important to be dealt with at the WCIP: establishment of a body at the UN to monitor implementation of The Declaration within the UN and by States; creation of a permanent, dignified and appropriate status for Indigenous Peoples at the UN; and, address violence against women.

In June 2013 NARF participated in the Indigenous preparatory meeting in Alta, Norway. This meeting produced an outcome document which will be used by indigenous peoples to lobby states in advance of the WCIP. NARF has also presented 2 webinars and made a presentation on the WCIP at NCAI's Annual meeting in Tulsa, OK in October 2013 to help educate tribal leaders about the WCIP and their need to participate.

The adoption of the U.N. DRIP has impacted the Organization of American States (OAS) process. NARF also represents NCAI in this process. In November 2007 it was agreed that the U.N. DRIP would be used as the foundation for an OAS document, in that all the terms of the OAS document would be consistent with, or more favorable to, Indigenous rights than the U.N. DRIP. It was further agreed that the terms of the OAS declaration would be agreed upon through a consensus based decision making process which includes Indigenous representatives. The United States and Canada, who at the time opposed the U.N. DRIP, nevertheless agreed they would not oppose the process moving forward in the OAS.



The most recent OAS negotiation session was held in April 2012 in Washington, D.C. Disappointingly the U.S. and Canada did not actively participate even though they both now support the U.N. DRIP. The session lasted only three days and progress was hampered by the lack of funding to enable the Indigenous caucus to meet ahead of time and work on its proposals. There was one highlight, however, with the approval of a treaty provision supporting the

understanding of the indigenous peoples involved in any given treaty. No additional negotiation sessions were held in 2013 and none have been set for 2014 as of this time. It is not clear that the political will exists among the states of the OAS to make the Declaration a priority.

NARF represents the Pottawatomi Nation of Canada, a band of descendants from the Historic Pottawatomi Nation, which from 1795 to 1873 signed a series of treaties with the United States. These treaties provided for the payment of certain annuities. The ancestors of the present-day Canadian Pottawatomi fled to Canada following the signing of the final treaty and were never paid their annuities as promised. The American Pottawatomi bands recovered the payment of these annuities in the Indian Claims Commission (ICC), but the Pottawatomi members who now reside in Canada could not bring a claim in the ICC. In 1993, NARF brought suit on behalf of the Pottawatomi Nation in Canada in the Court of Federal Claims, by way of a congressional reference bill, to seek redress. The Nation and the U.S. Department of Justice reached a settlement in principle and the Court of Federal Claims accepted the settlement in September 2000, and recommended the settlement to Congress in January 2001.

Attempts to pass congressional legislation approving the settlement agreement have stalled on several occasions in the 107th Congress through the 111th Congress. In January 2011, Senator Inouye introduced Senate Bill 60 for consideration during the 112th Congress. Senate Bill 60 was referred to the Senate Committee on the Judiciary where NARF worked closely with Chairman Leahy's staff in coordination with Senator Inouye's staff. NARF was successful in getting S.60 "hot-lined" out of the Senate Judiciary Committee during the lame-duck session, but we were unable to secure unanimous consent or a vote on the bill before the end of the session. With Senator Inouye's untimely death during the lame-duck session of the 112th Congress, NARF and the leadership for the Pottawatomi Nation in Canada must now determine whether and how to move forward.

THE ACCOUNTABILITY OF GOVERNMENTS



“My Relatives, time has come to speak to the hearts of our Nations and their Leaders. We, from the heart of Turtle Island, have a great message for the World. We are guided to speak from all the White Animals showing their sacred color, which have been signs for us to pray for the sacred life of all things....many Animal Nations are being threatened, those that swim, those that crawl, those that fly, and the Plant Nations....we may also seek to live in harmony, as we make the choice to change the destructive path we are on.”

— Chief Arvol Looking Horse,
19th generation Keeper of the Sacred White Buffalo Pipe

Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the many laws and regulations applicable to Indian peoples and the trust duties to which those give rise. Because such laws impact virtually every aspect of tribal life, NARF maintains its involvement in the legal matters pertaining to *accountability of governments* to Native Americans.

NARF represents forty-one tribes in an action in federal district court for the District of Columbia seeking full and complete accountings of their trust funds. Such accountings never have been provided by the federal government which is the trustee for the funds. In December 2011, active claims settlement negotiations on a tribe by tribe basis began for many tribes. To date 31 of NARF's client tribes in this case have reached settlement agreements with the United States totaling over \$400 million. These settlement agree-

ments have been approved by the federal district court. NARF continues to represent its remaining client tribes in this case in their on-going settlement negotiations.

In April 2013, NARF filed suit on behalf of ten more tribes seeking full and complete accountings of their trust funds. In discussions with the Justice Department regarding the *Sisseton Wahpeton Oyate v. Jewell* tribal trust funds case, the government indicated that it was willing to enter into settlement negotiations with NARF's ten tribal clients involved in the case.

The Tonkawa Tribe in Oklahoma has retained NARF to represent it in its pending action in the federal district court for the Western District of Oklahoma for historical accountings of its trust funds and assets. NARF and experts retained by NARF have reviewed the Tribe's trust account data provided by the government in the context of political negotiated settlements. The government and the Tribe have reached an agreement of settlement in this case and are proceeding to execute the agreement.

NARF has been retained by the Muscogee Creek Nation in Oklahoma to represent the Nation in its on-going case against the federal government for accountings of its tribal trust accounts, funds, and assets. The case was filed in U.S. District Court for the District of Columbia in 2006, and the parties have been engaged in settlement negotiations at the political level since 2012. NARF is in the process of reviewing with the Nation the data that the Nation has received from the government in the context of settlement negotiations and assessing the Nation's claims in the case.

NARF represents the Turtle Mountain Chippewa, Chippewa Cree, White Earth Band of Minnesota Chippewa, and Little Shell Chippewa Tribes in this case against the federal government for misaccounting and mismanagement of their tribal trust fund, the Pembina Judgment Fund (PJF), since the inception of the fund in 1964. In 2006, the Tribes defeated the United States' motion to have the case dismissed. Since August 2007, the parties have been trying to resolve the Tribes' claims primarily through alternative dispute resolution proceedings before a Settlement Judge of the Court of Federal Claims. In August 2009, the parties reached agreement at least for settlement negotiations purposes on the population of

"baseline" (non-investment) transactions in the PJF. Since that time the parties have been negotiating the Pembinas' claims of the government's investment mismanagement of the PJF and discussing numerous procedural matters in the event that agreement is reached on a settlement amount.

In *Cobell v. Salazar*, NARF and private co-counsel filed this class action case in federal district court in Washington, D.C. in 1996 to force the federal government to provide an accounting to approximately 300,000 individual Indian money account holders who have their funds held in trust by the federal government. Through years of litigation, decisions of the federal district court and the federal court of appeals held that the government was in breach of trust and must provide an accounting. NARF was active in the case until 2006 when the case was fully staffed and NARF's resources were shifted over to help 41 unrepresented Tribes who faced a deadline to file suit against the federal government for accountings of their tribal funds held in trust by the federal government under the same system. That tribal trust fund litigation is proceeding.

In December 2010, President Obama signed into law a Cobell settlement of \$1.5 billion to be paid to the 300,000 individual Indian money account holders with another \$1.9 billion made available to pay individual Indians who want to sell their small fractionated interests in their trust lands to the federal government to be turned over to their Tribes. The federal district court approved the settlement in June 2011, and the decision was appealed. The federal district court also awarded \$99 million in attorneys' fees and expenses in June 2011. NARF, through its pro bono attorneys, submitted an application for attorneys' fees and expenses for its work on the case. The Court of Appeals heard oral arguments in the first appeal of the decision to approve the settlement in February 2012. The Court of Appeals affirmed the federal district court's approval of the settlement in May 2012. The U.S. Supreme Court denied review of the case and NARF is now waiting for the federal district court to make a decision on our application for attorneys' fees and expenses. The federal district court held a hearing on the matter in March 2013 and referred it to a magistrate judge for mediation in hopes of resolving the matter before issuing a ruling. Mediation was held in April 2013 and was unsuccessful. The matter is back to the federal district court for decision.

THE DEVELOPMENT OF INDIAN LAW



“...eagles disappear into the sun surrounded by the light from the face of Creation...then scream their way home with burning messages of mystery and power...messages for holy places in the heart of Mother Earth...”

— Suzan Shown Harjo

The coordinated *development of 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. NARF has three ongoing projects which are aimed at achieving this goal: the Indigenous Peacemaking Initiative; the National Indian Law Library; and the Indian Law Support Center.

Indigenous Peacemaking Initiative

The mission of NARF's Indigenous Peacemaking Initiative (IPI) project is to promote and support Native peoples in restoring sustainable peacemaking practices. This project provides NARF with an opportunity to support traditional peacemaking and community building practices as an extension of Indian law and sovereign rights. The project is guided by an Advisory Committee consisting of traditional peacemaking experts and practitioners, including a NARF Board member.

Peacemaking is a community-directed process to develop consensus on a conflict resolution plan that addresses the concerns of all interested parties. The peacemaking process uses traditional rituals such as the group circle, and Clan structures, to involve the parties to a conflict, their supporters, elders and interested community members. Within the circle, people can speak from the heart in a shared search for understanding of the conflict, and together identify the steps necessary to assist in healing all affected parties and to prevent future occurrences and conflicts.

NARF and the Advisory Committee will accomplish the IPI mission by: promoting traditional peacemaking practices; raising awareness about peacemaking practices; spotlighting existing programs that have had success with model programs; coordinating a Traditional Peacemaking Practices Clearinghouse; creating a peacemaking clearinghouse by cataloging codes, manuals, curricula and best practices; digitizing all records for easy dissemination; creating an anthology of successful programs and individuals within peacemaking; convening traditional peacemaking meetings; coordinating meetings for a variety of audiences interested in peacemaking (tribal leaders, tribal peacemakers, tribal judges, policymakers, non-native peacemakers); creating

training and teaching opportunities; documenting and disseminating best practices; development of curriculum, case studies, and tools; providing training on various components and techniques of peacemaking; mentoring and nurturing; and, supporting relationships and mentoring between and among individual peacemakers, programs, and communities.

NARF and IPI Advisory Committee members continue to participate in planning for a national peacemaking gathering, to be held in March or April, 2014 at the Chickasaw Nation, and co-sponsored by the Chickasaw Nation and the Tribal Judicial Institute at the University of North Dakota.

The national peacemaking gathering will offer the project a chance to report back to Tribal representatives the results of a survey administered in 2011 to tribal justice system employees. The gathering will also be an opportunity to roll out a higher visibility for the project, and preparations are underway to have available information on resources compiled for the project.

The National Indian Law Library (NILL) staff have developed a draft web page and continue integrating that page with the electronic versions of resources on Peacemaking in the NILL catalog. The webpage will serve as a basis for outreach and provide easy access to resources gathered for the project. The project also continues to grow and strengthen its networks, as part of raising awareness and also recruiting additional expert resources. The project has also been working closely with Columbia Law School to complement each other's work, and the Colorado University Indian Law Clinic has recently placed an intern to help in development and analysis of the catalog of resources for the project.

The National Indian Law Library

The National Indian Law Library (NILL) is the only law library in the United States devoted to Indian law. The library serves both NARF and members of the public. Since it was started as a NARF project in 1972, NILL has collected nearly 9,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions; legal pleadings from major Indian cases; and often hard to find reports and historical legal information. In addition to making its catalog and extensive collection available to the

public, NILL provides reference and research assistance relating to Indian law and tribal law and its professional staff answers over 2,000 questions each year. In addition, the Library has created and maintains a huge web site that provides access to thousands of full-text sources to help the researcher. See www.narf.org/nill/index.htm.

With more than 400 participating tribes, NARF's National Indian Law Library Comprehensive Tribal Law Index collection of tribal laws continues to grow. Web use statistics show that the online tribal law collection is seeing more visitors, with about 8,000 page visits per month. To accommodate this growth and increase usability, NILL has developed an improved architecture for the online tribal law collection. The new tribal law gateway was released in August 2012 and as of December 2013, more than 300 individual tribe's pages have been launched. We plan to roll out all of the remaining tribal pages over the next several months. Each tribe will have a web page outlining exactly what tribal law materials – from codes and constitutions to tribal court opinions – are available and where they can be found.

NILL is also organizing several free webinars on Indian law research. The purpose of these webinars is to provide practical guidance on how to research tribal law – a difficult and misunderstood area of law. NILL plans on providing at least three free sessions available to members of the Oregon bar, American Association of Law Libraries, and tribal members and tribal governments. The purpose of these sessions is to help the public understand how to utilize the free NILL research tools and services as well as understand which fee-based services also provide quality content. Tribal law is a growing area of law as tribal governments exercise their inherent jurisdiction and develop their law in a way that meets and honors their traditional and customary ways of life.

NILL also recently developed email sign-up and donation apps for our Facebook pages, which will allow our Facebook fans to more easily become involved in NARF e-actions and provide NARF with financial support. A soft introduction of the Peacemaking website to selected colleagues within the field has been implemented and is now working with peacemakers nation-wide to develop materials for this new online resource. NARF's final web statistics for 2013 showed 25%

growth year-over-year with 767,732 page views and 314,625 unique visitors to our website.

Indian Law Support Center

NARF continues to perform Indian Law Support Center duties by sending regular electronic mailouts nationwide to the 25 Indian Legal Services (ILS) programs, hosting a national listserv, handling requests for assistance, and working with ILS programs to secure a more stable funding base from Congress. The Indian Tribal Justice and Legal Assistance Act of 2000 authorizes the U.S. Department of Justice (DOJ) to provide supplemental funding to Indian legal services programs for their representation of Indian people and Tribes which fall below federal poverty guidelines. After funding in 2003, 2004, and 2005, funding in 2006 - 2009 was unsuccessful. In 2010, NARF secured a line item appropriation of \$2.35 million from Congress. In FY 2011, Congress appropriated \$2.49 million for civil and criminal assistance in tribal courts. In FY 2012, both civil and criminal grants were awarded to NARF in the amounts of \$850,659 and \$875,000 respectively, and most recently, NARF was awarded civil and criminal grants in the amounts of \$715,000 and \$515,000, respectively from the FY 2013 federal budget. Funding amounts were reduced due to the effects of budget cuts and sequestration. NARF distributes these funds to the ILS programs.

Other Activities

In addition to its major projects, NARF continued its participation in numerous conferences and meetings of Indian and non-Indian organizations in order to share its knowledge and expertise in Indian law. During the past fiscal year, NARF attorneys and staff served in formal or informal speaking and leadership capacities at numerous Indian and Indian-related conferences and meetings such as the National Congress of American Indians Executive Council, Midyear and Annual Conventions and the Federal Bar Association's Indian Law Conference. NARF remains firmly committed to continuing its effort to share the legal expertise which it possesses with these groups and individuals working in support of Indian rights and to foster the recognition of Indian rights in mainstream society.

FY 2013 FINANCIAL REPORT

Based on our audited financial statements for the fiscal year ending September 30, 2013, the Native American Rights Fund reports unrestricted revenues of \$11,692,615 against total expenditures of \$9,372,448. Total revenue and net assets at the end of the year came to \$12,478,718 and \$19,087,742, respectively. Due to presentation requirements of the audited financial statements in terms of recognizing the timing of certain revenues and expenses, they do not reflect the fact that, based on NARF's internal reporting, revenue exceeded expenses and other cash outlays resulting in an increase of \$2,268,828 to NARF's reserve fund. When compared to fiscal year 2012: The increase in Public Contributions is mostly due to receiving approximately \$800,000 more in bequests (this area can vary widely from one year to the next). The decrease in Tribal Contributions is due to the difference in contributions from our Nez Perce v. Salazar clients (who received settlement awards

from the federal government in fiscal year 2012). Federal Awards relate to our Bureau of Justice Assistance (BJA) contracts (the majority of which is also included in expenses since it is paid-out to sub-recipients), we continue to be awarded new contracts. We received new foundation grants that were restricted to our work in Alaska. Legal fees held steady. The Gain on Disposal of Property in fiscal year 2012 relates to the sale of our Washington, D.C. building. We had no sales of property and equipment in fiscal year 2013. Along with the overall investment markets, NARF's investments continue to have very favorable performances.

Unrestricted Revenue and Expense comparisons between fiscal year 2013 and fiscal year 2012 are shown below (not including contributed services).

UNRESTRICTED SUPPORT AND REVENUE COMPARISON

	2013		2012	
	dollars	percent	dollars	percent
Public Contributions	\$ 1,901,958	16.3%	\$ 1,092,316	6.6%
Tribal Contributions	4,512,844	38.6%	10,122,098	61.4%
Federal Awards	1,744,556	14.9%	1,366,143	8.3%
Foundation Grants	1,227,729	10.5%	752,707	4.6%
Legal Fees	1,277,395	10.9%	1,245,587	7.6%
Gain on Disposal of Property	-0-	-0-	1,186,853	7.2%
Return on Investments	1,006,879	8.6%	674,152	4.1%
Other	21,254	0.2%	35,987	0.2%
TOTALS	\$ 11,692,615	100%	\$ 16,475,843	100%

EXPENSE COMPARISON

	2013		2012	
	dollars	percent	dollars	percent
Litigation and Client Services	\$6,904,183	73.6%	\$ 5,267,067	69.9%
National Indian Law Library	306,352	3.3%	250,257	3.3%
Total Program Services	7,210,535	76.9%	5,517,324	73.2%
Management and General	871,821	9.3%	731,647	9.7%
Fund Raising	1,290,092	13.8%	1,284,359	17.1%
Total Support Services	2,161,913	23.1%	2,016,006	26.8%
TOTALS	\$ 9,372,448	100%	\$ 7,533,330	100%

Note: This summary of financial information has been extracted from NARF's audited financial statements which received an unmodified opinion by the accounting firm of BKD, LLP. Complete audited financials are available, upon request, through our Boulder office or at www.narf.org.

NARF ACKNOWLEDGMENT OF CONTRIBUTIONS: FISCAL YEAR 2013

We thank each and every one of our supporters for their commitment to the goals of NARF. NARF's success could not have been achieved without the generosity of our many donors throughout the nation. NARF receives contributions from foundations, corporations, tribes and Native organiza-

tions, bequests and trusts, benefactors, private donations, and in-kind contributions. We gratefully acknowledge these gifts received for fiscal year 2013 (October 1, 2012 through September 30, 2013).

Tribes and Native Organizations

Ak-Chin Indian Community
Bois Forte Band of Chippewa Tribal Council
Colorado River Indian Tribes
Confederated Salish & Kootenai Tribes
Cow Creek Band of Umpqua Indians
Delaware Nation
Forest County Potawatomi Foundation
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thousands of hours to
protecting the rights of
tribes. They also commit
their own funds to help
through payroll giving.*

Anonymous
Jonathan Briggs
Rose Cuny
John E. Echohawk
Kim Gottschalk
David Gover
Richard Guest
Ron His Horse Is
Thunder
Melody McCoy
Heather Kendall-Miller
Steven Moore
Mauda Moran
Morgan O'Brien
Chris Pereira
Ray Ramirez
Buford Rolin
Debbie Thomas
Don Wharton

In-Kind Donations

*There are many ways to
support the Native
American Rights Fund,
in addition to cash gifts.
People who volunteer
their time and talents,
or donate valuable goods
and services, provide
crucial support for the
NARF mission. We
would like to expressly
thank the following indi-
viduals and organiza-
tions for their generosity:*

Patton Boggs
Virginia Cross
Ann Estin
Gerald Danforth
Mariah Ford
Julia Guarino
Ron His Horse Is
Thunder
Mark Johnson, Attorney
at Law, Boulder, CO
Moses Haia
Mitchel Holdrich
Julie Roberts-Hyslop
Mark Macarro
Tierra Marks
Marshall McKay
Matt Molinaro
Zoe Osterman
DLA Piper
Kenneth Richards
Buford Rolin
Barbara Smith
Christina Warner
Other Anonymous
Individuals

Native Ways Federation – The Native Ways Federation (Native Ways) is the only workplace giving program in the United States to exclusively fund Native nonprofits that serve people and communities in Indian Country. To learn more about Native Ways and the participating nonprofits, or to see how your company can support Indian Country through workplace giving, please visit www.nativewaysfederation.org. Your business can make a difference!

Boulder-Denver Advisory Committee – Lucille A. Echohawk, Thomas W. Fredericks, Ava Hamilton, Jeanne Whiteing, Charles Wilkinson.

Federated Workplace Campaigns – Thank you to the hundreds of federal, state, municipal and private sector employees throughout the country who through their payroll deduction plans contributed to NARF in fiscal year 2013.

Show Your Support in NARF's programs – NARF receives contributions from many sources and for many purposes. Below are descriptions of NARF's donor programs and additional ways you can get involved.

Peta Uha Membership – Peta Uha in the Lakota (Sioux) language means firekeeper. One that honors tribal members who made a solemn commitment to ensure that the sacred flame, source of light, heat and energy for his people, would always be kept burning. Like the firekeepers of old, members of the Peta Uha Council can demonstrate constancy and vigilance by helping to ensure that the critical work of the Native American Rights Fund continues to move ever forward. For benefits associated with each level of Peta Uha membership, please contact our Development Department, 303.447.8760.

Tsanáhwit Circle – Tsanáhwit is a Nez Perce word meaning equal justice. Tsanáhwit Circle members provide a regular source of income to NARF by pledging and making monthly contributions. Smaller monthly contributions add up over the year to make a real difference.

Otu'han Gift Membership – Otu'han is the Lakota Sioux word translated as giveaway. Otu'han is a memorial and honoring gift program modeled after the tradition of the Indian giveaway in which items of value are gathered over a

long period of time to be given away in honor of birthdays, marriages, anniversaries, and in memory of a departed loved one.

Circle of Life – NARF's Circle of Life are donors who provide a lasting legacy to the Native American Rights Fund by including NARF in estate planning or deferred gifts. The circle is an important symbol to Native Americans, representing unity, strength and the eternal continuity of life. These lasting gifts help ensure the future of NARF and our Indian clients nationwide.

Endowments – NARF has two established endowments. The 21st Century Endowment is a permanent fund in which the principal is invested and interest income is used for NARF's programs. This endowment is designed to provide a permanent, steady income that can support the ever-increasing costs of providing legal representation to our tribal clients. The Living Waters Endowment directly funds the 21st Century Endowment. It allows donors to honor friends and loved ones by making an endowment gift of \$10,000 or more. By designating a gift to either endowment, you can be sure that your contribution will continue to generate annual funds in perpetuity.

Workplace Campaigns – NARF is a member of America's Charities, a national workplace giving federation. Giving through your workplace is as easy as checking off NARF's box, #10350 on the Combined Federal Campaign (CFC) pledge form authorizing automatic payroll deduction.

Matching Gifts – Currently, 16 foundations and corporations nationwide make matching gifts to NARF on a regular basis. Employers match their employees' contributions sometimes doubling or even tripling their donation. Please check with your human resources office and request a matching gift form.

E-Action – Sign up for our e-action network by providing NARF with your email address. This is a great way to get periodic case updates, calls-to-action, special events information, invitations and other activities. Your e-mail address is confidential and we will not share it with any outside sources. For further information about any of the programs or services, please contact NARF's Development Department at 303-447-8760. Thank you.

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The “Native American Rights Fund Statement on Environmental Sustainability.”

“It is clear that our natural world is undergoing severe, unsustainable and catastrophic climate change that adversely impacts the lives of people and ecosystems worldwide. Native Americans are especially vulnerable and are experiencing disproportionate negative impacts on their cultures, health and food systems. In response, the Native American Rights Fund (NARF) is committed to environmental sustainability through its mission, work and organizational values. Native Americans and other indigenous peoples have a long tradition of living sustainably with the natural world by understanding the importance of preserving natural resources and respecting the interdependence of all living things. NARF embraces this tradition through its work and by instituting sustainable office practices that reduce our negative impact on our climate and environment. NARF is engaged in environmental work and has established a Green Office Committee whose responsibility is to lead and coordinate staff participation in establishing and implementing policies and procedures to minimize waste, reduce energy consumption and pollution and create a healthful work environment.”



Native American Rights Fund

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