

NATIVE AMERICAN RIGHTS FUND
ANNUAL REPORT 2016



W A T E R I S
L I F E

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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.

Cover:

NARF's feather logo – The tradition of clients as friends was firmly established in 1971 when John Echohawk spent two weeks on the Hopi Reservation in Arizona. The traditional Hopi leaders wanted to be sure he understood what they felt about the white man's legal system because of what their prophecies said. When the work was finished there was feasting and sharing. The Hopis made a gift of two special prayer eagle feathers to John. They were the first token of appreciation NARF ever received from a client. It was those Hopi feathers which were the inspiration for NARF's feather logo.

INTRODUCTION

Promises.... spelled out in treaties agreed to by the United States and Indian leaders during the eighteenth and nineteenth centuries.

Promises... through treaties which guaranteed that Indian tribes would maintain their sovereignty within their reservation homelands.

Promises.... by the United States government which agreed to maintain a unique trust relationship with Indians protecting land, rights and resources.

The Ultimate Promise.... that Indians could create homelands where their people and their cultures would prosper.

The Native American Rights Fund has spent the last forty-six years ensuring that the promises are kept.

When the Native American Rights Fund was started forty-six years ago, our objective was to bring competent and ethical legal representation to Native Americans who were unable to afford such representation. We believed that Indians – if given this opportunity – could receive justice from the American legal system.

Our mission had always been to secure for Indians the sovereignty, natural resources and human dignity that the laws of the majority society promised. At the heart of these laws lies the goal of all Native people – to maintain their status and traditional ways of life.

Treaties forged between the United States and Indian leaders during the last two centuries create the foundation of Indian law. These treaties, which Congress made the law of the land, are unprecedented in the American experience. They recognize the existence of sovereign governments within the boundaries of the United States.

The treaties were promises made to the Indian people – ensuring their special rights of sovereignty and self-determination. As part of these agreements, the United States entered into a unique trust relationship with Indian tribes. The United States government agreed to protect the safety and well-being of Native Americans.

In case after case, the modern courts insisted that the federal government honor its historic commitments to Native Americans. Until recently, the promises have survived the passage of time.

Over the years, NARF has achieved hundreds of victories in courtrooms across the country. We have been involved in most of the major litigation brought on behalf of Native Americans during the more than four decades that have passed. We have experienced many successes. Some of those victories have been major – others less sweeping. In some instances – despite a valiant fight – we have fallen short. These defeats, however, have not deterred us. We are committed to seeking justice for Native Americans. We will continue the fight and we expect to prevail.

From the vantage point of these 46 years, we can see how the dynamic of NARFs work has played out. It can be truly said that starting in 1970 and today, NARF's role has been a significant contributor to the modern tribal movement. Through NARF's priorities, established by its first Steering Committee and still in force today – *Preservation of tribal existence; Protection of tribal natural resources; Promotion of Native American human rights; Accountability of governments to Native Americans; and, the Development of Indian law and educating the public about Indian rights,*

laws, and issues – NARF's victories and work have made a major difference in Indian country.

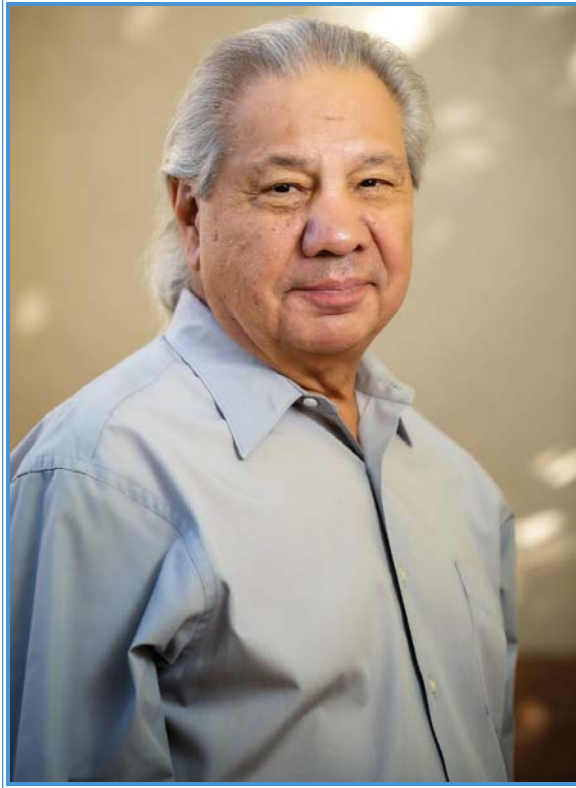
NARF's Funding

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 as has the Chorus Foundation. 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 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 on-going generous pro bono contributions by the many attorneys who have devoted their time and expertise to our causes and to the Tribal Supreme Court Project. Their many hours of work made it possible for NARF to present the best positions possible and to move forward in insuring NARF's and Indian country's success.



EXECUTIVE DIRECTOR'S REPORT



Tribe's senior Indian reserved water right in the Delaware River watershed. Federal legislation is now being developed for Congress to consider which would approve the water right negotiated by the Tribe with the State.

President Barack Obama signed an historic Executive Order before he left office creating the Northern Bering Sea Climate Resilience Area establishing an important set of policies aimed at promoting resilient tribal communities and protecting the Alaska Native subsistence way of life in the face of increasing effects of climate change. The Bering Sea Elders Group, an alliance of thirty-nine Yup'ik and Inupiaq villages, advocated for the Executive Order to protect the sensitive ecosystem of the Bering Sea that they depend on for their sustainability.

Assistance was provided to the Standing Rock Sioux Tribe and the Tribe's attorneys to develop and coordinate an amicus brief strategy in support of the Tribe in their lawsuit against the U.S. Army Corps of Engineers in relation to the Dakota Access Pipeline. At issue is whether an easement should be granted for a major crude oil pipeline to pass under the Missouri River at Lake Oahe just half a mile upstream of the Tribe's reservation boundary, where a spill would be culturally and economically catastrophic. The easement was first denied pending further environmental review, but it has now been granted without a full environmental review. That decision is now being challenged by the Tribe.

2016 marked the 46th year that the Native American Rights Fund has been serving as the national Indian legal defense fund providing legal advice and assistance to tribes, Native organizations and individual Indians in cases of major significance across the country. Once again during the year, we were able to help our Native American clients achieve several important legal victories and accomplishments.

In Alaska, after many years of litigation in federal courts in Washington, D.C., we were finally able to secure the right of Alaska Native tribes to have lands taken into trust for them by the Secretary of the Interior like tribes in the lower 48 states. The Agua Caliente Band of Cahuilla Indians of California received a favorable ruling from a federal district court that equitable defenses like the passage of time could not be asserted against the Agua Caliente Band's Indian reserved water rights claim by the defendant water agencies.

After several years of litigation and negotiations, the Kickapoo Tribe of Kansas executed an agreement with the State of Kansas recognizing the

Seven Native Americans from North Dakota were successful in asserting that North Dakota's recently enacted voter ID law violated the Voting Rights Act and the U.S. and North Dakota Constitutions because it disproportionately burdened Native Americans and denied qualified voters the right to vote. The North Dakota federal court formally required the State to provide an affidavit fail-safe mechanism to ensure that all qualified voters would be permitted to vote in the 2016 general election.

Establishing a body at the United Nations to monitor implementation of the Declaration on the Rights of Indigenous Peoples within the UN and

by Nation States has been a goal for indigenous peoples. After a series of meetings, the UN Human Rights Council passed a resolution expanding and improving the mandate of the Expert Mechanism on the Rights of Indigenous Peoples which will enable it to review compliance with the Declaration. The Organization of American States, after twenty-five years negotiations, finally approved an American Declaration on the Rights of Indigenous Peoples, a major victory for indigenous peoples.

Settlements were negotiated and finalized for eleven tribes resolving their litigation against the federal government seeking full and accurate

accountings of their tribal trust funds. Such accountings have never been provided by the federal government which is the trustee for the funds.

All of these successful efforts on behalf of Native Americans would not have been possible without the support of all of the funders of our non-profit organization. We thank you for your grants and contributions and hope that your support will continue into 2017 and beyond to enable us to make more progress for Native people.

John E. Echohawk

Executive Director

CHAIRMAN'S MESSAGE

Aloha mai kAkou

As the end of my final term as a board member nears, I am left with the undeniable realization that my experiences as a board member have blessed me with so much more than I deserve. All I did was show up and I received the loyal and loving friendship and hospitality of my fellow board members, each member of the staff and their families, and the members of each of our tribal hosts. Mahalo nui loa (thank you very much) for welcoming me into the NARF 'ohana (family). I am deeply grateful for such a rewarding experience and please know that I will remain committed to doing whatever I can to ensure the health and wellbeing of this organization and the people and cultures it serves.

As warriors of NARF, each and every one of us have a critical part to play in ensuring justice is served! And, without all of us working together we fail to be everything we can be. And so, on behalf of the staff and board of NARF, mahalo nui loa (thank you very much) for your continuing support! NARF's ability and capacity to continue and build on its valuable work depends on each of us. A hui hou (until we meet again).



Mahalo,

Moses K. N. Haia III

Chairman, Board of Directors

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): **Anita Mitchell**, (Muckleshoot Indian Tribe), **Julie Roberts-Hyslop** (Native Village of Tanana), **Larry Olinger** (Agua Caliente Band of Cahuilla Indians), **Robert McGhee**, Vice-Chairman (Poarch Band of Creek Indians), **Gary Hayes** (Ute Mountain Ute Tribe).

Second Row (left to right): **Richard Peterson** (Central Council of the Tlingit and Haida Indian Tribes), **Kurt BlueDog** (Sisseton-Wahpeton Sioux), **Michael Smith** (Chickasaw Nation), and, **Tex Hall**, Board Treasurer (Three Affiliated Tribes). (Not Pictured): **Moses Haia**, Chairman, (Native Hawaiian), **Stephen Lewis**, (Gila River Indian Community), **Jefferson Keel** (Chickasaw Nation), and, **Peter Pino**, (Zia Pueblo).



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 29 volunteers on the Committee are committed to upholding the rights of Native Americans.

Randy Bardwell

(Pechanga Band of Luiseno
Mission Indians)

Jaime Barrientoz

(Grand Traverse Band of Ottawa
& Chippewa Indians)

John Bevan**Wallace Coffey**

(Comanche Nation)

Ada Deer

(Menominee)

Harvey A. Dennenberg**Lucille A. Echohawk**

(Pawnee)

Jane Fonda**Eric Ginsburg****Jeff Ginsburg****Rodney Grant**

(Omaha)

Chris E. McNeil, Jr.

(Tlingit-Nisga'a)

Billy Mills

(Oglala Lakota)

Amado Pena Jr.

(Yaqui/Chicano)

Wayne Ross**Nancy Starling-Ross****Marc Rudick****Pam Rudick****Ernie Stevens, Jr.**

(Wisconsin Oneida)

Andrew Teller

(Isleta Pueblo)

Verna Teller

(Isleta Pueblo)

Rebecca Tsosie

(Pascua Yaqui)

Tzo-Nah

(Shoshone-Bannock)

Aíne Ungar**Rt. Rev. William C.**

Wantland (Seminole)

W. Richard West, Jr.

(Southern Cheyenne)

Randy Willis

(Oglala Lakota)

Teresa Willis

(Umatilla)

Mary T. Wynne

(Rosebud Sioux)



m n i w i c o n i
w a t e r i s l i f e - L a k o t a



THE PRESERVATION OF TRIBAL EXISTENCE

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 tradi-

"It was foretold that each generation would be challenged in their time with threats to the gifts of the Creator and our right to exist. How well we respond would be the ultimate measure and expression of our love and commitment to a way of life as prescribed by the Creator. What we are doing today is no different from what our forefathers did to respond to the challenges in their time." Pueblo Prophecy

tional 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 September 2016, the U.S. Supreme Court granted review in *Lewis v. Clarke*, a petition seeking review of a decision of the Connecticut Supreme

Court which held that doctrine of tribal sovereign immunity extends to an employee of the tribe who is acting within the scope of his employment. The petitioners—the Lewises—are a non-Indian couple who were rear-ended by a limousine owned by the Mohegan Tribal Gaming Authority on I-95. The petitioners – the Lewises – sued the Tribal Gaming Authority and Mr. Clarke (the driver and an employee of the Tribal Gaming Authority) in state court for negligence caused by a car accident outside the Tribe’s reservation. However, prior to the filing of the motion to dismiss based on tribal sovereign immunity, the petitioners dropped their suit against the Tribal Gaming Authority, and proceeded against Mr. Clarke in his individual capacity. The trial court, relying on *Maxwell v. San Diego* (9th Cir. 2013), held that the doctrine of tribal immunity does not apply when the Tribe is neither a party, nor the real party in interest because the remedy, and the damages sought will be paid by the defendant himself, and not the Tribe. The Connecticut Supreme Court distinguished *Maxwell* (a case involving claims of gross negligence), reversed the trial court, and held that the doctrine of tribal sovereign immunity extends to the driver as an employee of a Tribe who was acting within the scope of his employment when the accident occurred.

The question presented in the cert petition is: “Whether the sovereign immunity of an Indian tribe bars individual-capacity damages actions against tribal employees for torts committed within the scope of their employment.” Although sovereign immunity does not bar personal-capacity suits against employees of a sovereign, employees who are sued in their personal capacities may raise the related but distinct defense of official immunity.

In December 2016, the Tribe filed its response brief and argued that tribal sovereign immunity bars this suit based on the fact that the Tribe is the real party in interest. The petitioners have sued a tribal employee for negligent conduct that was performed within the scope of his official duties. In addition, the Tribe’s obligation to pay comes from a legally binding indemnity law enacted by the Tribe. In the alternative, the common-law doctrine of official immunity bars this suit. The

THE PRESERVATION OF TRIBAL EXISTENCE

Project worked directly with the attorneys representing Mr. Clarke and the interests of the Mohegan Tribe to develop an effective amicus brief strategy. A total of four amicus briefs were filed in support: (1) Brief amici curiae of the National Congress of American Indians, the Navajo Nation, et al. (joined by the States of Texas, New Mexico, Colorado, Arizona and Oregon); (2) Brief amici curiae of Ninth and Tenth Circuit Tribes (a total of 21 Tribes); (3) Brief amici curiae of Seminole Tribe of Florida, et al.; and (4) Brief amici curiae of The Otoe-Missouria Tribe of Indians, et al.

In November 2016, an amicus brief on behalf of Native American Organizations (NAI, Morning Star Institute, Cherokee Nation, Navajo Nation, and Yocha Dehe Wintun Nation) was filed in *Lee v. Tam*, a case in which the Court will review an en banc decision of the U.S. Court of Appeals for the Federal Circuit which held that the disparagement clause in § 2(a) of the Lanham Act is facially invalid under the free speech clause of the First Amendment. This case is directly related to the Project's participation in *Pro-Football v. Blackhorse* which is currently pending before the U.S. Court of Appeals for the Fourth Circuit on appeal from the decision of the District Court to affirm the Trademark Trial and Appeal Board's 2014 cancellation of the mark for the Washington Football team.

The Judicial Selection Project is about research and education: to educate the federal judiciary about tribal issues; to educate tribal leaders about the federal judiciary and the judicial nomination process; and to reach out to elected officials and the public at large about the need for judges in the federal courts who understand the unique legal status of Indian tribes. The research objective of the Project evaluates the records of judicial nominees on their knowledge of Indian issues. The analysis and conclusions are shared with tribal leaders and federal decision-makers in relation to their decision whether to support or oppose a particular nomination. 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.

President Trump announced his nomination of Judge Neil Gorsuch to fill the vacancy on the Supreme Court of the United States created by the death of Justice Antonin Scalia. Judge Gorsuch has served on the United States Court of Appeals for the Tenth Circuit since 2006, nominated by President George W. Bush and confirmed by the U.S. Senate by unanimous consent (voice vote). The U.S. Senate Judiciary Committee announced that Committee will begin confirmation hearings on March 20, 2017 to consider Judge Gorsuch as the next Associate Justice of the Supreme Court. In preparation for these hearings, the Tribal Supreme Court Project, through the National Congress of American Indians and the Native American Rights Fund, will closely review Judge Gorsuch's background and record as it relates to federal Indian law and the sovereign interests of Indian tribes. NARF will provide a full report to tribal leaders and advocates prior to the confirmation hearings.

Judge Gorsuch hails from the West, with the Tenth Circuit encompassing six states: Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming; and the territory of 76 federally recognized Indian tribes. NCAI, NARF and other advocates throughout Indian country have long sought the nomination of Justices with knowledge of federal Indian law, and more generally with experience on western issues directly impacting Indian tribes such as water law and public lands. Western experience is lacking in the current makeup of the Court, and is a vitally important perspective. As an example, Justice Sandra Day O'Connor came to the Court in 1981 as a former attorney, legislator and judge for the State of Arizona, and participated in the 2001 historic visit to Indian reservations to learn more about tribal judicial systems and federal Indian law. Judge Gorsuch appears to share a similar interest, joining a group of Tenth Circuit Judges in 2007 to attend the NCAI Annual meeting in Denver and to participate in a dialogue with the Litigation and Governance Committee, chaired by John Echohawk. Judge Gorsuch appears to have significantly more experience with Indian law cases than other recent Supreme Court nominees. His opinions have commonly recognized Tribes as sovereign governments,

THE PRESERVATION OF TRIBAL EXISTENCE

although these cases only addressed a relatively narrow set of issues.

In addition to the one Supreme Court vacancy, there are a total of 113 vacancies on the federal bench: 17 on the U.S. Courts of Appeal; 88 on the U.S. District Courts; 2 on the Court of International Trade; and 6 on the U.S. Court of Federal Claims. NARF is working directly with the National Congress of American Indians, the National Native American Bar Association and others to identify qualified Native American attorneys, tribal court judges and state court judges who may be interested in being considered for vacancies on the federal bench. We are expanding our search to include qualified non-Native attorneys with substantial experience in the field of federal Indian law. Of particular interest are the current vacancies on the U.S. Court of Appeals for the Ninth Circuit (4 vacancies), the U.S. District Courts for the Western District of Oklahoma (3 vacancies), the Western District of Washington (3 vacancies), and the District of Arizona (2 vacancies).

The education objective of the Project seeks to replicate the success of the historic visit by U.S. Supreme Court Justices O'Connor and Breyer to reservation communities during the summer of 2001. Since then, judges from the U.S. Courts of Appeals for the Ninth Circuit, Tenth Circuit and Eighth Circuit have attended the NCAI Conferences held in Sacramento, Denver and Rapid City respectively. In August 2011 during the Eighth Circuit Judicial Conference, Chief Judge Riley was joined by Supreme Court Justice Alito on a tour of the Pine Ridge Indian Reservation in a visit coordinated by NCAI and the South Dakota Tribes. In September 2011, Supreme Court Justice Sotomayor visited the Jemez Pueblo, the Santa Domingo Pueblo, the Leadership Institute at the Santa Fe Indian School and the University of New Mexico. At the 2014 Tenth Circuit Judicial Conference held in Colorado Springs, NARF Executive Director John Echohawk was able to meet and talk with Justice Sotomayor regarding a possible visit to Indian country. In September 2014, on her own initiative, Justice Sotomayor visited with tribal leaders during her visit to the University of Tulsa College of Law, the Oklahoma

City University and the University of Oklahoma College of Law. In her public remarks during her visit, she is reported as saying "Indian law was 'an area of law I virtually know nothing about' before joining the high court in 2009 ... 'I needed to be a good student [so I did] a lot of reading,' going back to early court decisions about tribal sovereignty." At the 2016 Tenth Circuit Judicial Conference held in Colorado Springs, Colorado, Justice Sotomayor talked about the importance of tribal courts as part of her presentation. Justice Kagan also spoke at the Conference and John Echohawk invited her to tour tribal courts.

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 July 2000 the Assistant Secretary for Indian Affairs (AS-IA) published a Preliminary Determination in favor of recognition. In October 2009, the Acting AS-IA issued a Final Determination against recognition of the Tribe, overruling the decision in the Preliminary Determination notwithstanding the fact that no substantial negative comments were received. The stated rationale for the 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. 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).

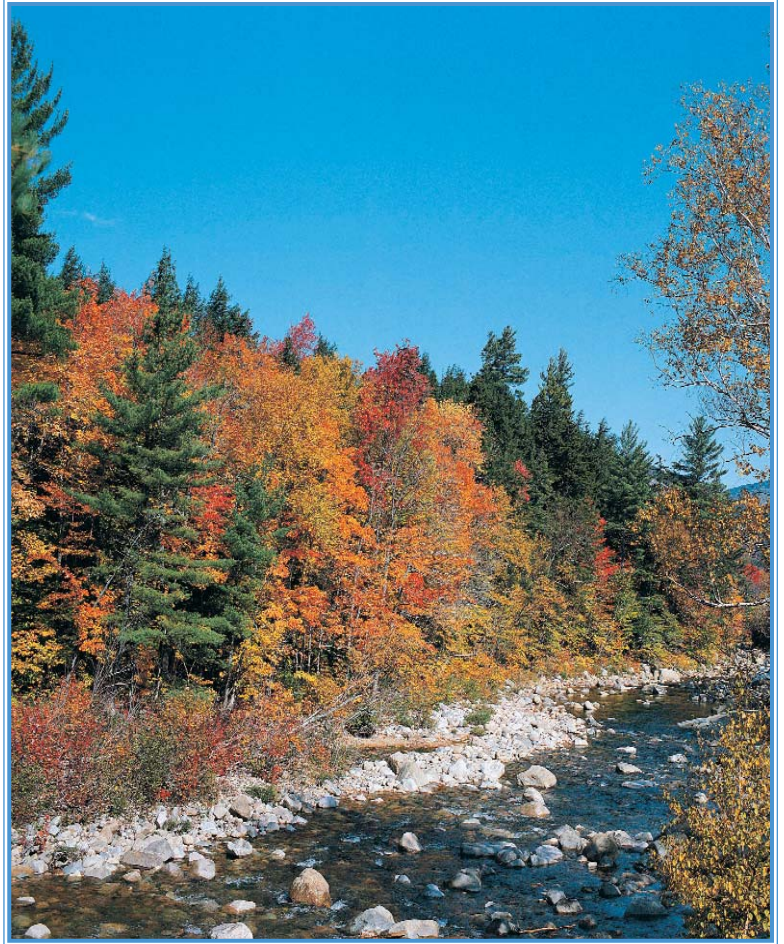
THE PRESERVATION OF TRIBAL EXISTENCE

In an important development after the IBIA decision, but also in June 2013, the AS-IA made an announcement of “Consideration of Revision to Acknowledgment Regulations” along with preliminary discussion draft regulations which proposed major changes in the regulations. In light of this announcement, NARF urged the SOI to request the AS-IA to suspend consideration of the Final Determination pending completion of the revision process. The Tribe submitted extensive comments on the draft regulations in September 2013.

Also in September 2013, the SOI referred all five questions 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 the request for suspension as well. In January 2014, the AS-IA granted the Tribe’s request to place its petition on suspension pending completion of the process to amend the acknowledgment regulations.

In May 2014, the AS-IA issued proposed regulations for comment and the final rule was published on July 1, 2015. All of the comments the Tribe had raised were addressed to some extent. The Tribe is now proceeding under the new, substantially changed rules.

In an historic day for the Pamunkey Indian Tribe, in July 2015, after decades of research and participation in the federal acknowledgment regulatory process, the Assistant Secretary – Indian Affairs, U.S. Department of the Interior published a Final Determination acknowledging that the Tribe exists as an Indian tribe within the meaning of Federal law. A request for reconsideration, however, was filed in October 2015, with the Indian Board of Indian Appeals (IBIA), an independent appellate review body within the Department’s Office of Hearings and Appeals. In January 2016, the Pamunkey Indian Tribe’s Final Determination became effective as a result of the IBIA’s final dismissal of the request for reconsideration. The IBIA ruled that Stand Up for California, an organization that focuses on gambling issues affecting



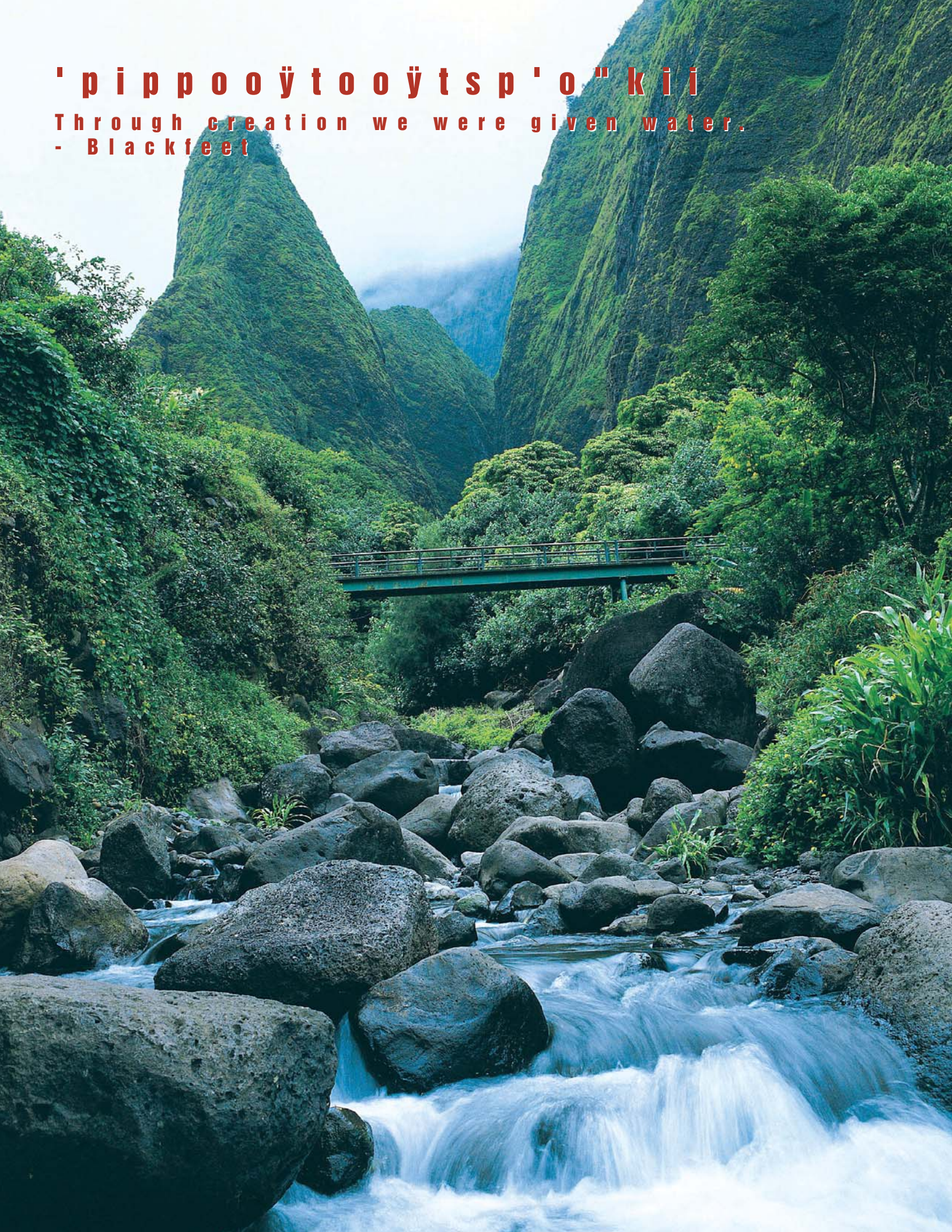
California, failed to show that it is an “interested party” to the Final Determination within the meaning of the Federal acknowledgment regulations, and was therefore not entitled to seek reconsideration of the Final Determination.

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.

' p i p p o o ŷ t o o ŷ t s p ' o " k i i

Through creation we were given water.

- Blackfeet



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 (1905 Act), and other legislation and cases, to determine their implications for the boundaries of the Reservation. The EST and the Northern Arapahoe Tribe (NAT), which also is located on the Reservation, filed a joint application to the U.S. Environmental Protection Agency (US-EPA) for delegation of certain Clean Air Act (CAA) programs. US-EPA approved the delegation in December 2013 including the conclusion that the boundaries of the Reservation were not altered by the 1905 Act. While this case is pending, the EST filed an amicus brief in the U.S. Supreme Court in the case of *Nebraska, et al. v. Parker*. Like the Wind River case, the Parker case involved the question whether the boundary of the Omaha Indian Reservation had been diminished by a statute that opened the Tribe's Reservation to non-Indian settlement. In March 2016, the U.S. Supreme Court issued a unanimous opinion that, pursuant to well settled principles of diminishment analysis, the boundaries of the Omaha Reservation had not been diminished. The EST sent a letter to the Tenth Circuit Court of Appeals notifying the Court of this decision, and urging application of the

"Our land and its resources are at the center of our culture. We closely follow the seasons and cycles of the year and honor every living thing. Our lands and resources exist only because of the balance of the universe and the balance between Mother Earth and Father Sky. In everything that we do, we seek to maintain this balance. By respecting the earth's cycles and preserving this sacred balance, we are able to cultivate and gather the earth's resources. These resources provide the necessities for daily living and prayer, which are both essential for our survival."

Pueblo

same principles to reach a similar result in EST's Wind River case.

In 2006, the Akiachak Native Community, the Chilkoot Indian Association, the Chalkyitsik Village Council, and the Tuluksak Native Community IRA, represented by NARF, brought suit in federal 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 – Akiachak Native Community, et al. v. Department of Interior, et al.* This federal regulation governs the procedures used by Indian tribes and individuals requesting the Secretary of the Interior to acquire title to land in trust on their behalf. At the time, the regulation barred the acquisition of land in trust in Alaska other than for the Metlakatla Indian Community or its members.



interests and the Interior Department in handling future trust land applications in Alaska.

NARF represents the Hualapai Indian Tribe of Arizona in preparing and submitting applications for the transfer into trust status of 8 parcels of land owned in fee by the Tribe. 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 which is preparing draft Approval Decisions for the properties.

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.

In March 2013, the court granted Plaintiffs' complete relief on all of their claims – a major victory for Alaska tribes. In December 2014, the Interior Department published its final rule rescinding the "Alaska Exception", which became effective in January 2015. The State of Alaska then moved to suspend briefing in this appeal, to "explore a range of policy options on this issue and related tribal issues in Alaska, including potential alternatives to continuing this litigation." The Court granted the stay. In August 2015, the State filed its Appellate brief. The Federal agencies filed a motion to dismiss their appeal in October 2015, on the ground that the Secretary's rescission of the "Alaska Exception" moots the case. In December 2015 NARF and the Interior Department filed their response briefs and Alaska filed its reply brief. A three judge panel of the Court of Appeals heard oral argument in March 2016. In July 2016, the Court published its decision in favor of the Tribal Appellees. In August 2016, Alaska's Attorney General announced she would not seek further appeals in the case. Instead, she announced the Administration's intent to work closely with tribal

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 unadjudicated 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

THE PROTECTION OF TRIBAL NATURAL RESOURCES

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 before injecting that water into the aquifer. The recharge water, which contains higher total dissolved solids, nitrates, pesticides, and other contaminants, is reinjected 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 court issued its ruling in March 2015. The court ruled largely in the Tribe's favor, holding that the Tribe has a reserved right to water, and that groundwater is a water source available to fulfill that right. The water agencies moved to stay proceedings before the district court while the Ninth Circuit reviews the court's decision on the Tribe's reserved right to groundwater and the district court granted their motion in part in September 2015. However, Phase 2 proceeded on a limited basis, with the court agreeing to hear arguments on the issue of whether the equitable defenses raised by the water agencies apply to tribal water rights claims. Briefing on that issue was completed in November 2015 and oral argument was heard in December 2015. In February 2016, the court granted the Tribe's and United States' motions for partial summary judgment, ruling that the defenses asserted by the water agencies could

not, as a matter of law, be asserted against an Indian water rights claim. The remainder of the Phase 2 issues was stayed by the court pending the Ninth Circuit's resolution of the water agencies' appeal. The court also denied the Tribe's motion for summary judgment on its claim for aboriginal title to groundwater. The water districts filed a petition with the U.S. Court of Appeals for the Ninth Circuit for interlocutory review of the portion of the Court's order addressing the Tribe's reserved right to groundwater. The Tribe opposed interlocutory review but in June 2015, the Ninth Circuit granted the water districts' petition for interlocutory review. Briefing to the Ninth Circuit was completed, and oral argument on the interlocutory review of the district court's Phase 1 ruling on the Tribe's reserved right to groundwater was heard by a three judge panel of the Ninth Circuit in October 2016 and we now await a decision from that court.

NARF 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. NARF's work with the Tribe has now turned to development of water rights claims in the Palouse River Basin Adjudication (PRBA). The State of Idaho recently petitioned the Idaho Water Court to commence the PRBA, and in October 2016, the Court issued the commencement order. Under the Order, there will be an initial hearing on the PRBA in January 2017, in Moscow, Idaho. NARF and the Tribe are working with the United States to examine the nature and scope of the Tribe's water rights claims in the Palouse Watershed.

The Klamath Tribes' water rights were recognized in the federal courts in the *United States v. Adair* litigation in 1983, but the federal courts left quantification of the Tribal water rights to the State of Oregon's general stream adjudication – the Klamath Basin Adjudication (KBA). Following conclusion of the 38-year-long administrative phase of the KBA, the Tribes were able to enforce their water rights during the 2013 irrigation season for the first time ever. The Oregon Water

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Resources Department's (OWRD's) Findings of Fact and Order of Determination (FFOD) issued in the KBA are now subject to judicial review in the Klamath County Circuit Court in Klamath Falls, Oregon. The Klamath Court has adopted a phased approach for the judicial review of the FFOD.

The Klamath County Circuit Court has continued to deal with matters related to the first two sub-phases of the KBA proceedings, concerning the resolution of jurisdictional and other threshold legal issues (Phase 1A) and general procedural issues (Phase 1B). Judge Wogan denied three Phase 1A motions in December 2016, which the Tribes had opposed; there are three other motions still pending and the Court has indicated rulings on those will be issued by January 2017. Parties filed motions on Phase 1B procedural issues in December 2016. Ten motions were filed by seven KBA parties or groups of parties (including the Klamath Tribes). It is anticipated that briefing and oral argument on the Phase 1B motions will be completed sometime in May 2017.

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 River Reservation.

New Federal Negotiation Team members were appointed by the Secretary's Indian Water Rights Office in 2014. The Tribal Water Team assisted the Federal Negotiation Team in developing an appraisal level study of several alternatives that were identified in a February 2015 meeting. The Federal Team promised to be done with the study by November 2015 so that the Tribe and Federal Negotiation Team could proceed to negotiate an appropriate settlement to present to Congress for introduction and possible enactment in 2016. Only in December of 2016 did the Federal Team

deliver its report to the Tribe, approximately 14 months late. The Tribe is dissatisfied with the results and analysis of the report, and has set a meeting with the Federal representatives for January 2017, to discuss ways to attempt to find common ground on an affordable water storage and delivery system.

According to the Environmental Protection Agency, the water supply for the Kickapoo 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. 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 two decades 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. 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 have also discussed funding to quantify the Tribe's water rights.

In September 2016, the Tribe and the State executed the "Global Settlement Agreement" which includes a negotiated water right for the Tribe, including sufficient water for losses from storage due to seepage and evaporation, and all of the details for the State's administration of the Tribe's water right as the senior water right in the

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Delaware River watershed. The Tribe and NARF are now developing federal legislation in consultation with the Kansas congressional delegation to approve the water right negotiated with the State. This draft legislation will also be vetted with the federal Departments of Interior, Agriculture and Justice.

Protection of Hunting and Fishing Rights

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.

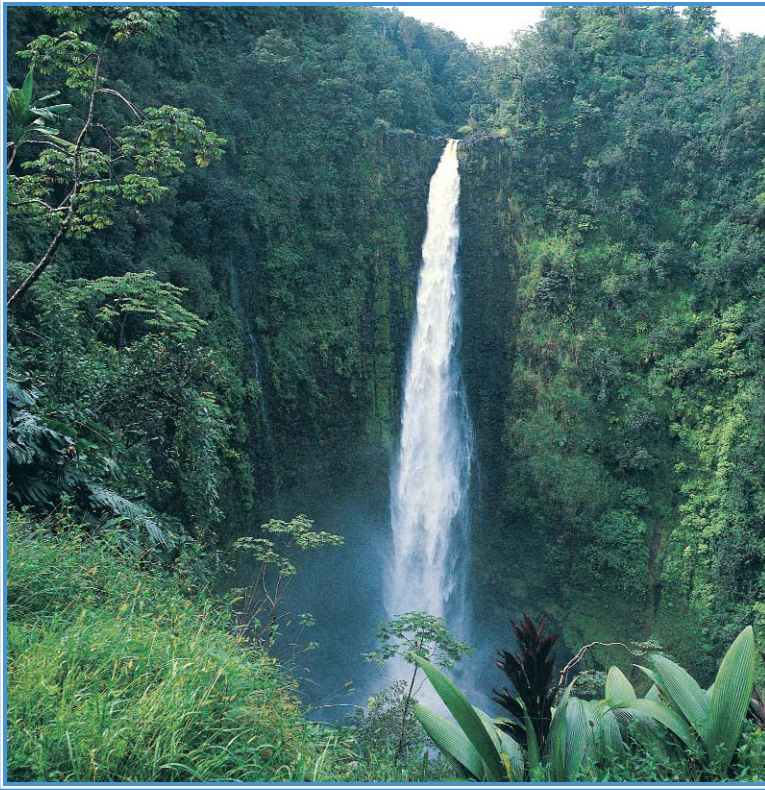
The Bering Sea Elders Group (BSEG) is an alliance of thirty-nine Yup'ik and Inupiaq villages that seeks to protect the sensitive ecosystem of the Bering Sea, the subsistence lifestyle, and the sustainable communities that depend on it. NARF has designed a comprehensive plan to help this group of Alaska 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 worked with BSEG on their efforts to protect the northern Bering Sea. In December 2016, this work resulted in President Barack Obama signing a historic Executive Order creating the Northern Bering Sea Climate Resilience Area. This was an incredible victory for NARF's clients. Yup'ik and Inupiaq tribal communities in the region have a deeply personal and cultural connection to the Northern Bering Sea and its rich marine resources. Their lives have been linked with the Northern Bering Sea for thousands of years. It is their highway, their grocery store, their way of life, and their children's inheritance.



The Executive Order established an important set of policies aimed at promoting resilient tribal communities and protecting the Alaska Native subsistence way of life in the face of increasing effects of climate change. It also, for the first time, creates a formal role for the region's tribes in federal decision-making, so as to ensure that Native voices continue to be heard as they deal with the increasing pressure on their resources. The Executive Order elevates the voice of Alaska Native tribes and the role of indigenous knowledge in decision-making within the region by establishing a Federal Task Force on the Northern Bering Sea Climate Resilience Area (Bering Task Force) and mandating that the Task Force establish and engage in regular consultation with a Bering Intergovernmental Tribal Advisory Council, which will consist primarily of tribal government representatives with participation from Federal, state, and local officials for coordination purposes.

The Alaska National Interest Lands Conservation Act (ANILCA) provides a subsistence harvest priority to Alaska's "rural" residents. ANILCA itself, however, does not define which individuals or



communities qualify as “rural.” Saxman Village is a coastal community of 411 residents. The population is overwhelmingly Alaska Native. Saxman has its own federally recognized tribal government, its own state recognized municipality, and its own Alaska Native Claims Settlement Act (ANCSA) village corporation. Saxman is connected to the city of Ketchikan by a two-mile long road. In 2007, the Federal Subsistence Board (FSB) promulgated a final rule revoking Saxman’s rural community status. The FSB reasoned that Saxman’s close proximity to Ketchikan justified aggregating the two communities as one non-rural community. The Tribe pursued its administrative remedies in order to reinstate its rural status. Implementation of the 2007 Final Rule was delayed by the Secretary of the Interior as the FSB engaged in an overhaul of the rural determination criteria used to designate communities “rural or non-rural” under ANILCA.

In June 2014, NARF filed a complaint for declaratory and injunctive relief in Alaska’s federal district court challenging the merits of the FSB’s 2007 decision to classify Saxman as non-rural. Soon after the Complaint was filled, the Deputy

Secretary of the Interior announced the initiation of administrative rule-making aimed at requiring “the Federal Subsistence Board to use more flexible criteria to designate rural communities” during the rural/nonrural determination process. Subsequently, NARF and the U.S. Department of Justice jointly moved to stay the litigation during the pendency of the administrative rule-making. The court granted the stay in December 2014. In January 2015, a proposed rule for the rural determination process was published in the Federal Register. NARF assisted the Tribe in drafting written comments on the proposed rule and appeared with tribal officials at public hearings. In May 2015, Senator Murkowski and Congressman Young introduced bills which would legislatively reinstate Saxman as a rural community. One week after the hearing, the FSB voted unanimously to adopt the proposed administrative rule favoring Saxman’s rural status. The proposed rule and updated community list were published in the Federal Register in November 2015. With the rule in effect, NARF moved to voluntarily dismiss the federal lawsuit. NARF continues to work with the Tribe on issues surrounding the FSB and federal subsistence management program – including future policy issues surrounding rural community status.

In *John Sturgeon v. Sue Masica et al.*, the federal courts upheld the right of the National Park Service to prohibit the use of a hovercraft on a river inside a National Park or Preserve. The hovercraft was being used on the Nation River, which is a navigable river inside the Yukon-Charley Rivers National Preserve. The lower federal courts ruled in favor of the federal government on the basis that nationwide Park and Preserve rules generally apply to all lands and waters that are inside a Park or Preserve. Yet, a key provision of the 1980 Alaska National Interest Lands Conservation Act (ANILCA) was intended to exempt those kinds of lands from precisely these kinds of federal Park rules.

Because the Ninth Circuit’s ruling resulted in ANCSA lands being subject to Park regulations, ANCSA corporations joined Mr. Sturgeon and the state of Alaska in petitioning for review of the case by the U.S. Supreme Court. The Court granted

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review in October 2015. NARF elected to file an amicus brief on behalf of subsistence users in support of the federal government in the Supreme Court because of concern that the case may inadvertently implicate subsistence fishing rights established by the *Katie John* litigation.

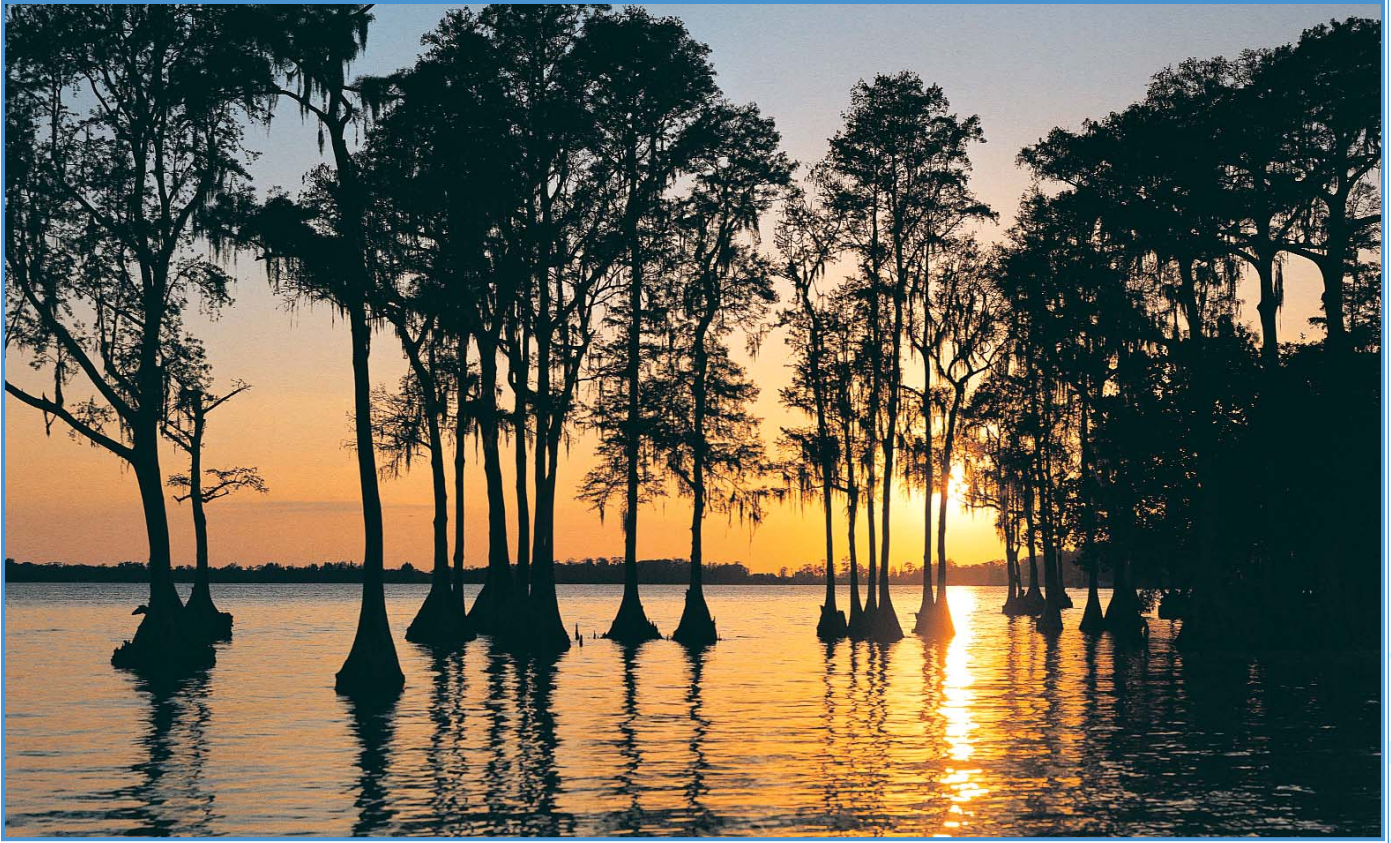
In *Katie John*, the federal courts ruled that the government owns a federal interest in navigable rivers running inside Parks and Preserves under the reserved water rights doctrine. On that basis the courts upheld the right of the federal government to protect subsistence fishing in those rivers. The same, one would think, would be the case here—since the government owns an interest in navigable waters inside a Preserve, the government can regulate other uses of those waters. But Mr. Sturgeon and the state of Alaska argued in *Sturgeon* that the State owned the submerged lands and navigable waters that run through Parks and thus the federal government has no interest in navigable waters inside Parks and Preserves. If the Supreme Court had agreed, the basis for federal regulation of subsistence fishing could be severely undermined.

Oral argument in *Sturgeon* was held in January 2016 and the Court issued an opinion reversing and remanding to the lower court in March 2016. The Supreme Court agreed with the State and the ANCSA corporations that their lands get special treatment under ANILCA, and are not to be treated as if they were federal “public” lands. But the Court went no further than that.

The Supreme Court said it is for the lower courts to decide if the Nation River is “public land” for purposes of ANILCA (which is how the *Katie John* court viewed the issue). The Supreme Court also said it is for the lower courts to decide whether the Park Service has the power to regulate activities in the River even if the River does not qualify as federal “public land.” The Ninth Circuit heard oral argument in October 2016. NARF filed an amicus brief earlier in October 2016 supporting the federal government’s position and the subsistence fishing rights established by the *Katie John* line of cases. A decision in the case is pending.

Alaska’s Bristol Bay region is home to the largest wild salmon runs in the world. It is also home to the Yup’ik, Dena’ina, and Alutiiq peoples 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. Exercising its delegated governmental authority, with NARF as legal counsel, UTBB has actively engaged the federal government in direct government-to-government consultation on large scale mining in Bristol Bay.

In February 2014, EPA gave notice that it would initiate a Clean Water Act 404(c) process for the Pebble Mine. The State of Alaska immediately filed a statement requesting a stay to allow the developer to submit a permit under the NEPA process. EPA granted the State and the Corp. of Engineers an extension until April 28, 2014, to respond to the notification of 404(c) process. Public hearings were held over the 2014 summer season. In May 2014, Pebble Limited Partnership (PLP) filed suit in federal district court in Alaska against EPA and the Region 10 Administrator challenging EPA’s Section 404(c) review process as exceeding its statutory authority under the Clean Water Act. The State of Alaska filed a motion to intervene as a plaintiff which was granted in June 2014. Both parties moved for a preliminary injunction. UTBB, represented by NARF, filed a motion to intervene as Intervenor-Defendants which was granted in July 2014. In September 2014 Judge Holland heard oral argument, and then ruled from the bench dismissing PLP and the State of Alaska’s Motion for a Preliminary Injunction on the ground that the agency action was not final. PLP appealed to the U.S. Court of Appeals for the Ninth Circuit where oral argument was held in May 2015. Two weeks later, the Ninth Circuit issued a per curiam opinion affirming Judge Holland in all respects – effectively ending the case in favor of our clients.



However, in September 2014, PLP had filed a separate complaint in federal district court in Alaska against EPA for declaratory and injunctive relief under the Federal Advisory Committee Act (FACA). In November 2014, Judge Holland held oral argument on PLP's motion for preliminary injunction and again issued a ruling from the bench granting the preliminary injunction, thereby halting EPA's work on the 404(c) process in Bristol Bay. PLP then filed an amended complaint, and EPA filed an updated motion to dismiss on the grounds that PLP had not properly stated a claim for relief and that FACA did not apply to EPA's 404(c) action. In October 2015, Judge Holland issued a broad order quashing PLP's subpoenas, specifically finding that PLP's efforts pushed the federal discovery rules to their very limits. After Judge Holland issued his order, PLP withdrew its remaining subpoenas, but less than four months later PLP began serving narrower subpoenas on third parties, which Judge Holland again quashed. In the last days of 2016, the parties requested a stay of the proceedings in order to negotiate a possible mediated settlement of the

case. Judge Holland granted the stay until March 2017. In the interim, Judge Holland's preliminary injunction remains in effect.

NARF represents the Native Village of Tyonek (NVT) as a co-operating agency in the development of a Supplemental Environmental Impact Statement (SEIS) in response to a permit proposal by PacRim to mine coal from the Beluga coal fields in the Cook Inlet. NARF continues to be actively engaged in a multifaceted approach to assist NVT in its opposition to the proposed Chuitna Coal Project.

NARF continues to retain experts to analyze SEIS component parts. Experts have been retained to respond to each draft chapter of the draft SEIS, all appendices and related studies within the SEIS. NARF submitted its comprehensive comments to the Corps in January 2016. These comments and the Corp's response will form the basis of the administrative record supporting or rejecting the Chuitna coal development.

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Climate Change Project

Climate change 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 climate change 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 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.

NARF is now representing NCAI on international 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.

On the international stage, the first meetings on the specifics of the new "protocol to be adopted by December 2015, were held in Bonn, Germany in April/May and June, 2013. At the March 2014 meeting of the United Nations Framework

Convention on Climate Change in Bonn, an open-ended consultation occurred where countries exchanged views on the elements of the 2015 agreement. No text was produced and developing countries expressed their view that more formal negotiations that allowed for the tabling of text were due. In the June 2014 session, it was anticipated that draft text would be tabled but this did not happen, as more discussion occurred on the elements of a draft text. An additional session was held in Bonn in October 2014. In anticipation of the COP 20, a meeting was held in Lima, Peru in late November 2014.

In December 2015, the Paris Agreement, the first ever universally binding accord on climate change, was adopted under the United Nations Framework Convention on Climate Change (UNFCCC) and achieves the universality which was missing from the last attempt at such an agreement – the Kyoto Protocol. The International Indigenous Peoples Forum on Climate Change (IIPFCC or indigenous caucus), which NARF has participated in, has been involved in the UNFCCC process for years. It is clear that without the presence of Indigenous Peoples' representatives, the Agreement and Decision would have had no reference to them. While the indigenous caucus did not achieve all that it sought, it did achieve some very significant references which can be built on going forward. The language in the Agreement states that when taking action on climate change the rights of indigenous peoples must be acknowledged and that traditional knowledge, knowledge of indigenous peoples and local knowledge systems shall help guide the science used to address climate change. This language recognizes the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples, related to addressing and responding to climate change, and establishes a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner.

G á n d l u u x í n a a n g í i j a n g

water is life - H a i d a



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 has a long history in the protection of Native religion and cultural property, including sacred sites. NARF's Sacred Places Project focuses on monitoring legal issues impacting sacred places for Native peoples, collaborating with various groups that are already working to protect sacred places, monitoring and participating in litigation to protect sacred places, and advocating for greater protection and access for sacred places at the congressional and administrative levels. A website will be developed to act as a clearing-

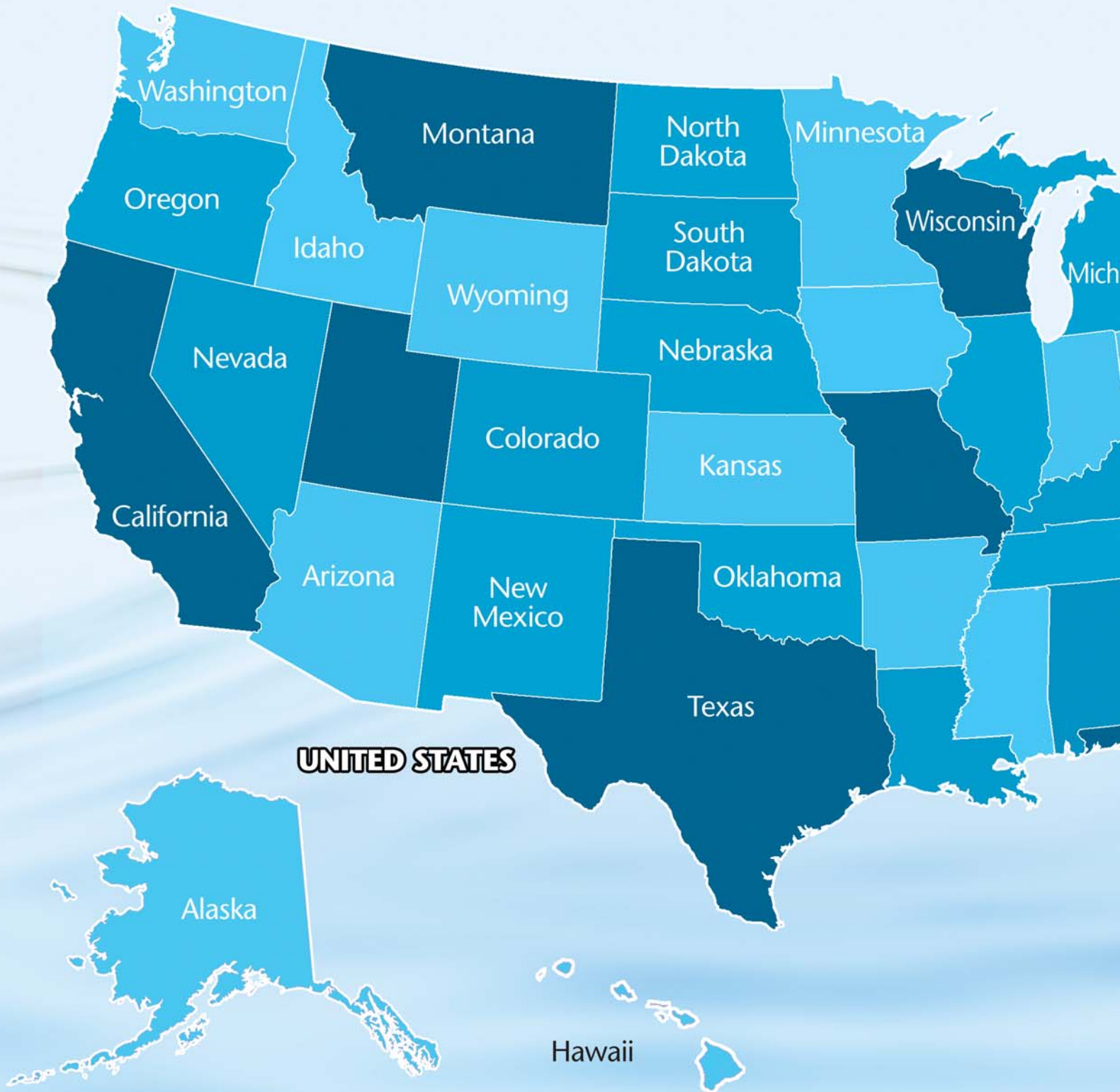
"We are all the People of this land. We were created out of the forces of earth and sky, the stars and water. We must make sure that the balance of the earth be kept. There is no other way. We must struggle for our lives. We must take great care for each other. We must share our concern with each other. Nothing is separate from us. We are all one body of People. We must struggle to share our human lives with each other. We must fight against those forces which will take our humanity from us. We must ensure that life continues. We must be responsible to that life. With that humanity and the strength which comes from our shared responsibility for this life, the People shall continue." Simon J. Ortiz

house of information regarding sacred places protection laws and cases.

During the Obama administration, NARF provided input to the federal Departments of the Interior, Agriculture, Defense, and Energy, which signed a Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites to improve the protection of, and tribal access to, Indian sacred sites through enhanced and improved interdepartmental coordination and collaboration. The MOU was followed with an "Action Plan" calling for establishment of working

MAJOR ACTIVITIES 2016

NARF CASE MAP





CANADA



ALASKA

NARF ANCHORAGE OFFICE

Akiachak Native Community – Land into Trust
Aleut Community of St. Paul Island – Tribal Trust Funds
Bering Sea Elders Group – Subsistence
Bristol Bay – Subsistence
Chilkoot Indian Association – Land into Trust
Chalkyitsik – Land into Trust
Organized Village of Saxman – Subsistence
Stickwan – Subsistence
Native Village of Toyukuk – Voting Rights Act
Native Village of Tyonek – Subsistence & Cultural Preservation
United Tribes of Bristol Bay – Environmental/Subsistence
ARIZONA
Arizona Inter Tribal Council – Education Trust Funds
Hualapai Tribe – Boundary Issue
San Juan Southern Paiute – Northern Arizona Withdrawl
CALIFORNIA
Agua Caliente Band of Cahuilla Indians – Tribal Water Rights
Tule River Tribe – Tribal Water Rights
Santa Ynez Band of Chumash Indians – Tribal Consultation
COLORADO
NARF HEADQUARTERS BOULDER, COLORADO
Indian Boarding School Healing Project
Indigenous Peacemaking Initiative
National Indian Law Library
Native American Church of North America
Sacred Places Project
Southern Ute Tribe – Tribal Trust Funds/Sacred Sites

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

Menominee Indian Tribe – Equitable Tolling

White Earth Band of Chippewa Indians - Tribal Trust Funds

MISSISSIPPI

Mississippi Band of Choctaw Indians – Tribal Civil Jurisdiction

MONTANA

Blackfeet Tribe – Sacred Sites

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

Jemez Pueblo – Sacred Site Protection/Aboriginal Title

NORTH DAKOTA

Turtle Mountain Chippewa Tribe - Tribal Trust Funds

North Dakota Voting Rights Law

OKLAHOMA

Comanche Nation – Tribal Trust Funds

Kickapoo Tribe – Tribal Trust Funds

Muscogee Creek Nation – Tribal Trust Funds

OREGON

Klamath Tribes - Water Rights & Tribal Trust Funds

Confederated Tribes of the Umatilla Reservation – Tribal Trust Funds

SOUTH DAKOTA

Sisseton Wahpeton Oyate – Tribal Trust Funds

TEXAS

Native American Church of North America – Religious Freedom

UTAH

Northwestern Band of Shoshone Nation – Sacred Sites

Paiute Indian Tribe – Sacred Sites

Indian Peaks Band of Paiute Indians – Sacred Sites

VIRGINIA

Pamunkey Tribe – Tribal Recognition

WASHINGTON

Quinault Indian Nation – Tribal Trust Funds

Skokomish Tribe – Tribal Trust Funds

WASHINGTON, D.C.

NARF WASHINGTON, D.C. OFFICE

National Congress of American Indians – International Representation

Tribal Supreme Court Project

Morningstar Institute – Arizona Withdrawl

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



groups to perform various listed activities to facilitate better coordination and access. It was hoped that the working group would have a series of consultations on some proposals they have received for better protecting and providing access to sacred sites, but that has not occurred in any meaningful way. NARF and partner, the Morningstar Institute, did participate in development of preliminary training materials to be shared across the agencies, spearheaded by the Department of Defense. During and after the transition in Presidential administrations, NARF will monitor the intent of the Trump administration for intent to continue to advance the principles of the MOU. Once we identify opportunities to continue to constructively press for better access and protection, we will act accordingly.

NARF, representing the Indian Peaks Band of Paiute Indians, the San Juan Southern Paiute Tribe, and the Morningstar Institute, filed an amicus brief in *Yount v. Jewell*, a case in the federal district court of Arizona about the Northern Arizona Withdrawal. In 2012, then-Interior Secretary Salazar announced that he was withdrawing over a million acres of Bureau of Land Management and Forest Service land around the Grand Canyon from future uranium mining claims. The Northern Arizona Withdrawal would prohibit future mining claims from being perfected as of January 2012, but would permit claims that were valid as of that date to go forward. Several mining companies and individuals challenged the Withdrawal on many grounds, including that the Withdrawal

violated the Establishment Clause of the U.S. Constitution because it relied on American Indian spiritual beliefs and therefore constituted an impermissible establishment of religion. NARF's amicus brief addressed the Establishment Clause argument as well as the other American Indian cultural arguments that the mining companies raised. The amicus brief was in support of the United States, the Havasupai Tribe, and other environmental groups that intervened in the matter. Oral argument was held in September 2014. The court upheld the Northern Arizona Withdrawal, preventing new future mining claims. The Court gave little attention to the Plaintiff's Establishment Clause and American Indian cultural arguments indicating they were without merit. The mining companies appealed this decision to the U.S. Court of Appeals for the Ninth Circuit. NARF, representing the Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, Kaibab Band of Paiute Indians, Hualapai Tribe of the Hualapai Reservation, Northwestern Band of the Shoshone Nation, the Morning Star Institute, and the National Congress of American Indians filed an amicus brief in the Ninth Circuit. The brief asks the Court of Appeals to uphold the withdrawal and counters arguments made against tribal interests by the mining companies and other amicus parties. The Ninth Circuit held oral argument in this case in December 2016.

In May 2015, environmentalists and historic preservation advocates secured a victory in *Southwest Utah Wilderness Alliance, et al. v. Schneider* when a Utah federal district court ordered the Bureau of Land Management (BLM) to conduct on-the-ground surveys to identify cultural artifacts in need of protection on more than 4,000 miles of dirt roads and trails where BLM permits off-road vehicles to be driven. BLM appealed that decision in the U.S. Court of Appeals for the Tenth Circuit. NARF, representing the Paiute Indian Tribe of Utah, Indian Peaks Band of Paiutes, the Southern Ute Indian Tribe, and the Morning Star Institute, filed an amicus brief in the Tenth Circuit in support of the environmentalists and requested that the surveys be conducted. In December 2015, The Tenth Circuit confirmed that BLM must comply. BLM is now required to survey

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the routes designated for off-highway vehicle use within three years. Further issues, however, remain to be litigated in this case.

In September 2014, NARF filed an amicus brief on behalf of the Blackfeet Tribe in the federal district court case of *Solonex v. Jewell*. The energy company is challenging the United States government's process and decision to limit oil and gas development in areas that would threaten the Tribe's sacred sites. When the court ordered the federal government to decide whether it would seek to cancel or to lift a suspension on Solonex's gas permit on lands sacred to the Tribe, the United States decided to cancel the oil and gas lease. Solonex since has amended its complaint challenging the authority of the United States to cancel the lease. In October 2016, NARF filed an amicus brief on behalf of the Tribe on certain legal issues raised by the amended complaint. The parties recently completed briefing on motions for summary judgment, so the matter is before the court.

The Standing Rock Sioux Tribe requested NARF's assistance, in conjunction with the National Congress of American Indians (NCAI), to work alongside the Tribe's attorneys, Earthjustice, to develop and coordinate an effective amicus brief strategy in support of the Tribe in their lawsuit against the U.S. Army Corps of Engineers in relation to the Dakota Access Pipeline (DAPL). The litigation involves two broad issues surrounding the proposed construction of a major crude-oil pipeline that passes through the Tribe's ancestral lands. First, the pipeline would pass under the Missouri River (at Lake Oahe) just a half a mile upstream of the tribe's reservation boundary, where a spill would be culturally and economically catastrophic. Second, the pipeline would pass through areas of great cultural significance, such as sacred sites and burial grounds that the National Historic Preservation Act (NHPA) was enacted to protect.

Based on their years of experience with the work of the Tribal Supreme Court Project, NCAI and NARF agreed to provide direct assistance in channeling the overwhelming support received by the Tribe from across Indian country in order to pro-

vide a strong, unified voice in the federal courts. In September 2016, Judge Boasberg, U.S. District Court for the District of Columbia, issued a 58-page opinion and order denying the Tribe's motion for a preliminary injunction to stop construction of the DAPL, finding that "the Corps has likely complied with the NHPA and that the Tribe has not shown it will suffer injury that would be prevented by any injunction the Court could issue." Immediately following the issuance of the court's opinion, the Department of Justice, the Department of the Army and the Department of the Interior issued a joint statement: The Army will not authorize constructing the Dakota Access pipeline on Corps land bordering or under Lake Oahe until it can determine whether it will need to reconsider any of its previous decisions regarding the Lake Oahe site under the National Environmental Policy Act (NEPA) or other federal laws. Therefore, construction of the pipeline on Army Corps land bordering or under Lake Oahe will not go forward at this time. The Army will move expeditiously to make this determination, as everyone involved — including the pipeline company and its workers — deserves a clear and timely resolution. In the interim, we request that the pipeline company voluntarily pause all construction activity within 20 miles east or west of Lake Oahe.

The Tribe filed its notice of appeal and an emergency motion for a stay pending appeal. In October 2016, the D.C. Circuit issued an order denying the Tribes' emergency motion for a stay, but recognized: Although the Tribe has not met the narrow and stringent standard governing this extraordinary form of relief, we recognize Section 106 of the National Historic Preservation Act was intended to mediate precisely the disparate perspectives involved in a case such as this one. Its consultative process—designed to be inclusive and facilitate consensus—ensures competing interests are appropriately considered and adequately addressed. But ours is not the final word. A necessary easement still awaits government approval—a decision Corps' counsel predicts is likely weeks away; meanwhile, Intervenor DAPL has rights of access to the limited portion of pipeline corridor not yet cleared—where the Tribe

alleges additional historic sites are at risk. We can only hope the spirit of Section 106 may yet prevail.

In December 2016, the U.S. Army Corps of Engineers issued a statement that it would not grant an easement to allow the Dakota Access Pipeline to cross under Lake Oahe. The Corps has determined that further environmental review is warranted and, if necessary, will prepare an Environmental Impact Statement to evaluate alternative routes. In response, DAPL filed a motion for summary judgment in the district court seeking a declaration that the Army Corps had issued a legal right-of-way for the pipeline under Lake Oahe as set forth in the July 2016 Mitigated Findings of No Significant Impact, and that DAPL is entitled to a judgment as a matter of law that no further permission (*e.g.*, easement) is required.

Judge Boasberg held a status conference in relation to the issuance of the statement by the Army Corps that it would not grant an easement at this time and set the deadlines for the Tribes and the Army Corps to respond to the DAPL's motion for summary judgment. Judge Boasberg indicated that a motions hearing could take place as early as mid-February, but he briefly acknowledged the possibility that the incoming Trump Administration could moot this case. Following the status conference, NARF met briefly with the attorneys for the Tribes to discuss how the members of this Workgroup could best provide support moving forward. Based on narrowness of the issue raised in the motion for summary judgment, the consensus was that amicus briefs are not warranted at this stage of the litigation. However, there are other possible avenues where support could be provided by members of this Workgroup, including: (1) Securing Support for Tribes in Congress (Tribes are concerned that legislation may be introduced early next year to moot their litigation); (2) Providing Support During EIS Process (Tribes would ask that other tribes and tribal organizations weigh-in during the Army Corps upcoming "robust consideration of reasonable alternatives"); and (3) Supporting Tribes in International Human Rights Forums (United Nations and Organization of American States).

In January 2017, the Army Corps, the Standing Rock Sioux Tribe and the Cheyenne River Sioux Tribe each filed a response in opposition to DAPL's motion for summary judgment and a motion to dismiss DAPL's cross-claim. In addition, both Tribes filed cross-motions for summary judgment. At this time, NARF is moving forward with Earthjustice on the strategies discussed following the December status hearing. NARF, along with NCAI, is also active in monitoring the progress of the consultation sessions hosted by the Department of the Interior, Department of Justice, Department of the Army, and other Federal agencies on "how the Federal Government can better account for, and integrate tribal views, on future infrastructure decisions throughout the country."

NARF has represented the Native American Church of North America (NACNA) and its member chapters for four decades in the litigation and legislative arenas. NARF represented NACNA and its several dozen local membership chapters throughout the United States to successfully enact federal legislation in 1994 that finally created national protection for the traditional, indigenous use of Peyote by Native peoples. For the past two years, NARF has been working with the NACNA on a project to research the impact of peyote decline on Native American Church members and to develop and support access to and the use of peyote for NACNA. Because importation from Mexico, where most of the naturally occurring peyote grows, is presently not legal, and because artificial cultivation is difficult and extraordinarily expensive, North American peyotists currently depend on the only region where Peyote abundance occurs in the United States, the Rio Grande River Valley in south Texas. In recent years it has become increasingly apparent that the domestic supply of peyote is under threat of unsustainability due to a myriad of factors. The decline in the availability of peyote is attributed to four major factors: growing Indian demand; exploitation and commercialization by non-Indian people; damage from private landowner land use practices including cattle ranching; and damage from incorrect harvesting practices and over-harvesting of the peyote cactus.

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There is a limited amount of available, published scholastic research that supports this hypothesis. NARF's Peyote Research Project team met twice in 2015 and developed a specific plan to guide its work through 2016. Near term action focused on Texas and developing a relationship with private landowners to heighten the awareness of the need to protect the sacrament. NARF and NACNA representatives met three times in 2016 with landowners, peyoteros, and botanists to develop essential relationships in Texas. Additional meetings in Texas are scheduled for February, March and April, 2017.

Indian Education

During the 19th and into the 20th century, pursuant to federal policy, Native American children were forcibly abducted from their homes to attend Christian and government-run boarding schools. The purpose was to "civilize" the Indian 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 human beings with none of the acculturated skills – community, parenting, extended family, language, cultural practices – gained by 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 indi-



viduals and communities of tribal nations. Lawsuits by individuals have been turned aside, and unlike other countries that implemented similar policies – e.g. Canada, Australia – there has been no official U.S. proposal for healing or reconciliation.

NARF represents the Native American Boarding School Healing Coalition (NABS or the "Coalition") in seeking appropriate acknowledgment by the United States and major Christian denominations of their roles in establishing and implementing the Boarding School Policy of cultural genocide aimed at Native American children. The Coalition continues education and outreach in four general areas: (1) Indian Country, (2) Churches and the non-Indian public, (3) Congress, and (4) International pressure on the United States to disclose and address the fate of Boarding School students. Recent activities include seeking acknowledgment by the United States of its responsibilities, both through requests for information to the Department of the Interior and by international filings, to establish data on the population of numbers and fates of children affected by the Boarding School Policy.

NARF also continues to provide additional assistance in various, case-by-case situations concerning work towards boarding or industrial school healing. NARF has also worked with three tribes and Tribal Tech, a contractor with the Substance Abuse and Mental Health Services

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Administration (SAMHSA), to support those tribes in conducting healing programs. Two tribes have held successful gatherings and a third is in the works. NARF and the Intertribal Council of Arizona organized a tribal leaders' roundtable and experts forum on historical trauma (held in conjunction with NCAI's 2016 Annual Conference), and in November 2016, NARF Executive Director John Echohawk delivered the keynote address at the international conference, Quakers, First Nations, and Native Americans. The Quakers are beginning to document and analyze their roles and responsibilities in the historic Boarding School Policy.

After over 20 years of work, NARF and the Tribal Educations Departments National Assembly (TEDNA) secured the first source of direct federal funding – \$2 million – for tribal education departments ("TEDs") in the Labor, Health, and Human Services FYs 2012 and 2015 Appropriations Bills. These funds were 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. The first 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. The second round of grant awardees included the Confederated Salish and Kootenai Tribes, the Muscogee (Creek) Nation, the Nez Perce Tribe, the Coeur d'Alene Tribe, and the Chickasaw Nation and Cheyenne and Arapaho Consortium. TEDNA has since worked to ensure continued funding for the STEP program by helping to make it a permanent program as part of the 2015 long-awaited reauthorization by Congress of the Elementary and Secondary Education Act, the Every Student Succeeds Act (ESSA).

In FY 2015, the U.S. Department of the Interior's Bureau of Indian Education (BIE) announced its new direct funding for TEDs, the Sovereignty in Education (SIE) Program. Six tribes were awarded grants under this pilot program.

For FY 2016, Congress appropriated an additional \$2 million for TEDs to be distributed by BIE via a competitive grant under its 1988 statutory authorization which has never before been funded. The following TEDs were provided BIE TED funds: Cohort 1: Hopi Tribe, Navajo Nation, Oglala Sioux Tribe, Pueblo of Acoma, Rosebud Sioux Tribe, Santa Clara Indian Pueblo, and Standing Rock Sioux Tribe; and Cohort 2: Sault Ste. Marie Tribe of Chippewa Indians, Leech Lake Band of Ojibwe, Mississippi Band of Choctaw Indians, and the Muscogee (Creek) Nation.

NARF and TEDNA worked closely with NCAI and the National Indian Education Association (NIEA) on the ESSA which was signed by President Obama in December 2015. The ESSA generally rejects the overuse of standardized tests and one-size-fits-all mandates on public schools, promises that our education systems will prepare every child to graduate from high school ready for college and careers, and provides more children access to high-quality state preschool programs. With regard to Indian Education Act programs, the ESSA moved Title VII to Title VI. Within Title VI, the ESSA incorporates several suggestions from TEDNA and its education partners on the formula grant funds that typically go to Local Education Agencies (LEAs). The ESSA provides that, should an LEA or Indian Tribe not apply for an Indian Education Formula grant, an Indian Organization or Indian Community Based Organizations can now apply for and receive a grant so long as certain conditions are met. The broad definition of "organization" will permit additional grants to be awarded to ensure that the maximum number of Indian students is receiving the supplemental education programs and services provided for by the Indian Education Act.

The ESSA requires State Education Agencies to engage in timely and meaningful consultation with tribes in the development of State plans for Title I grants. Additionally certain LEAs with a high percentage of Indian students must engage in timely and meaningful consultation with tribes on certain education grant programs prior to the submission of those grant plans or applications. These remarkable new requirements are reflective of

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TEDNA's, NCAI's and NIEA's efforts to move more K-12 public school education under co-governance by states and tribes.

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 January 2015, the BIA published its new revisions to the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings. The new Guidelines represent major progress in addressing many of the problematic areas which have arisen since ICWA was enacted in 1978 – such as the Existing Indian Family exception, which the Guidelines expressly repudiate. In February 2015, the BIA announced it intended to take its reforms even further by proposing, for the first time ever, to promulgate binding federal regulations governing the implementation of ICWA. These reforms, however, have drawn the ire of ICWA opponents nationwide.

The first response from ICWA opponents came in May 2015, when the National Council for Adoption (NCA) filed a suit against the BIA in federal district court for the Eastern District of Virginia. The case, *National Council for Adoption v. Jewell*, claims that the BIA exceeded its authority in publishing the updated 2015 Guidelines; that the Guidelines themselves violate the Constitutional rights of Indian children and parents; and, that provisions of ICWA itself are unconstitutional under the Tenth Amendment. Days after the case was filed, NARF began working with other attorneys from the National Indian Child Welfare Association (NICWA), the National Congress of American Indians (NCAI), and the Association of American Indian Affairs (AAIA) to develop a response. Together, this informal working group has worked to develop a litigation defense strategy. The BIA filed a motion to transfer venue in July 2015, which the court denied. Plaintiffs then filed for summary judgment, which the BIA opposed, and filed a motion to dismiss for lack of subject-matter jurisdiction and for judgment on the pleadings. NARF representing NICWA, NCAI, and AAIA, filed an amicus brief in support of the BIA in September 2015. In September 2015, the court denied Plaintiff's motion for summary judgment on the grounds that (1) Plaintiffs lacked standing to challenge the Guidelines, (2) the Guidelines are not a "final agency action" within the meaning of the

APA because they do not create legal rights and obligations, and (3) the Guidelines are non-binding interpretive rules not subject to the Administrative Procedures Act's notice-and-comment procedures. The court later issued a full order dismissing the case in its entirety. In addition to the points raised in its order denying Plaintiff's motion for summary judgment, the Court held: (1) that ICWA is a law rationally related to American Indians as a political class and therefore did not offend due process, and (2) that the Plaintiff foster parents did not have a cognizable constitutionally-protected right to raise the Native foster children in their care. With the Court's order on dismissal, the case is formally closed at the district court level. An appeal of the decision is unlikely.

In Minnesota, leading members of the Academy of Adoption Attorneys filed a constitutional challenge in state court to the Minnesota Indian Family Preservation Act. The case, *Doe v. Jessor*, makes many of the same constitutional challenges to the MIFPA as the plaintiffs make in *National Council for Adoption v. Jewell*; specifically, that the MIFPA violates the rights of Indian children and parents by requiring them to notify the tribe of the adoptive proceeding and by allowing a tribe to intervene in the case. Plaintiffs filed for a preliminary injunction and requested expedited consideration of the case. NARF immediately reached out to the attorneys for the Tribe involved, the Mille Lacs Band of Ojibwe, and provided research and technical assistance in forming a response. The Tribe was ultimately successful in defeating the preliminary injunction, with the court finding the plaintiffs would suffer no irreparable harm by having to notify the Tribe on the adoptive proceeding in state court. The Tribe and the State have since filed separate motions to dismiss the case. Because many states have enacted similar state-ICWAs like Minnesota's MIFPA, NARF is working in conjunction with the attorneys from the Minnesota based firm BlueDog, Paulson & Small, P.L.L.P. in developing an amicus strategy on behalf of Minnesota's other tribal governments. The court heard oral arguments on the motions to dismiss in early August 2015. NARF is awaiting a decision from the bench.

Finally, in July 2015, the Goldwater Institute—a conservative think tank located in Phoenix, Arizona—filed a lawsuit challenging the constitutionality of ICWA and the revised Guidelines. The suit, filed in Arizona federal district court as *A.D. v. Washburn*, seeks declaratory and injunctive relief and specifically targets the transfer, active efforts, burdens of proof for removal and termination of parental rights, and placement preferences provisions of the ICWA, as well as corresponding sections in the Guidelines. The complaint requests that the court declare these provisions of ICWA, and the corresponding Guidelines, unconstitutional as beyond the authority of Congress and the Department of the Interior. It further requests that the court enjoin the defendants from ensuring enforcement of the provisions. NARF, together with NICWA, NCAI, and others immediately began formulating a media and legal response to the suit. NARF has been coordinating with the two tribes with member children in the case—the Navajo Nation and the Gila River Indian Community. NARF also continues to coordinate with NICWA, NCAI, and AAIA and filed an amicus brief in the case on behalf of the organizations. In addition to the federal cases listed above, NARF's ICWA Defense team is monitoring important cases in Michigan and Oklahoma.

Voting Rights

In January 2016 in *Brakebill, et al. v. Jaeger*, seven Native Americans from North Dakota filed a case in federal district court in North Dakota under the Voting Rights Act and the U.S. and North Dakota Constitutions challenging North Dakota's recently enacted voter ID law on the grounds that it disproportionately burdens Native Americans and denies qualified voters the right to vote.

The case challenges the North Dakota laws requiring North Dakota voters to present one of only four qualifying IDs with a current residential address printed on it in order to vote. Before enactment of these laws, North Dakota required a poll clerk to request an ID, but a voter without one could still vote if the clerk vouched for their qualifications or the voter signed an affidavit of identity. While other states also have voter ID requirements,

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North Dakota is the only state without a fail-safe provision, such as provisional balloting that allows a voter to produce their ID within a few days of the election or an affidavit of identity. Additionally, North Dakota's list of acceptable IDs is much more limited than other states, which, for example, allow U.S. passports and military IDs to be used.

Many Native Americans living on Indian reservations in North Dakota do not have IDs needed to qualify under the new state laws, such as driver's licenses or state ID cards containing a residential address. Thus, in both the primary and general elections in 2014, many qualified North Dakota Native American voters were disenfranchised because their IDs did not qualify.

The lawsuit alleges that North Dakota's new voter ID requirements arbitrarily and unnecessarily limit the right to vote and disproportionately burden Native American voters in North Dakota. The burdens are particularly substantial for a number of Native Americans who cannot afford to drive to the nearest driver's license site ("DMV"). There are no DMV locations on any of the four Indian reservations in North Dakota, and for many Native Americans. Many Native Americans live below the poverty line, and do not have dependable access to transportation or cannot afford travel to a distant DMV location.

The State moved to dismiss the case for failure to state a claim, but the Court denied the motion in April 2016. In June 2016, the Plaintiffs moved the Court to enjoin North Dakota's voter ID law and to reinstate the voter identification procedures that were in place before the new laws. Following briefing on the motion, in August 2016, the Court granted a preliminary injunction. In September 2016, the Court formally required the state to provide an affidavit fail-safe mechanism to ensure that all qualified voters will be permitted to vote in the 2016 general election. The plaintiffs are represented by NARF, Richard de Bodo of Morgan, Lewis & Bockius LLP, and Tom Dickson of the Dickson Law Office.

In January 2015, NARF proposed an ambitious new project: gathering voting rights advocates,



lawyers, experts, and tribal advocates into one room to discuss current problems with voting in Indian Country and begin to develop solutions to these problems. The meeting was held in May 2015 in Washington, DC. This meeting was conceived and planned specifically to address the shifting and increasingly complex issues surrounding American Indian/Alaska Native (AIAN) voting. The specific goals of the meeting were: (1) Bring together in one room lawyers, advocates, and grassroots organizers involved in litigating voting rights cases in Indian Country and others who have information to share about current problems in Indian Country; (2) Conduct a series of work sessions in which the participants discuss common issues, brainstorm approaches to these challenges, and generate a strategy and litigation plan to address the highest priority voting rights issues in Indian Country; (3) Allocate or assign issues to specific people or organizations and form collaborative partnerships to execute our strategy and litigation plan; and (4) Have an organized and prepared litigation strategy for the 2016 election cycle.

In addition, in the wake of the U.S. Supreme Court's decision in *Shelby County*, numerous state legislatures have passed new election laws that impose significant barriers to AIAN voters. Previously, individuals and organizations working on AIAN voting rights issues did so independent of one another, with no coordinated strategy in place to address voting rights issues in Indian Country.

This work was generally (but not exclusively) reactive – in response to an immediate threat – rather than proactive or planned in advance of a specific election. That is what this project was meant to change.

With the completion of this initial meeting, the participants developed an ongoing project called the Native American Voting Rights Coalition (NAVRC). It has met on a monthly basis for the last 18 months and developed a strategic plan that set out short and long term goals and priorities for the 2016 election, as well as the 2018 and 2020 election cycles. It met in-person at NCAI in June 2016 and again in July 2016 in Washington, D.C. to plan how it will address the many election problems throughout by Indian Country.

With the results of the 2016 election, and mounting evidence of voter suppression and violations of voting rights laws, NARF has pivoted and accelerated the work of the NAVRC. This includes: (1) adding new partners to the Coalition; (2) seeking out a permanent home for the Coalition in a large civil rights organization, to increase efficiencies and maximize ability to raise funds; (3) setting out a plan for redistricting work related to the 2020 census; (4) placing one of our members on the National Advisory Committee for the Census to ensure AIAN communities are counted properly; (5) amending our strategic plan to account for violations observed in the 2016 elections; and (6) overseeing the largest survey of AIAN voters ever conducted to discover the extent of voting problems in Indian Country.

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 the National Congress of American Indians (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 (Declaration). The vote was 143 in favor, 4 opposed, and 11 abstaining. The votes in opposition were Canada, Australia, New Zealand, and the United States. NARF has represented the National Congress of American Indians (NCAI) in this matter since 1999. The Declaration recognizes that Indigenous Peoples have important collective human rights in a multitude of areas, including self-determination, spirituality, cultural and linguistic heritage, lands, territories and natural resources. It sets 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 Declaration. Canada endorsed the Declaration 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 Declaration.

Subsequently, NARF and NCAI coordinated with Tribes and other indigenous organizations in identifying key themes to be addressed by the UN at the High Level Plenary Meeting of the General Assembly, to be known as the World Conference on Indigenous People (WCIP). NARF and NCAI participated in Indigenous preparatory meetings which produced an outcome document used by Indigenous Peoples to lobby states in advance of the WCIP. The outcome document as adopted by the General Assembly addresses all of the elements proposed by NARF, NCAI, and the other indigenous organizations and tribal governments: 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; Violence against indigenous women; and, Sacred Sites.

NARF attended an Expert Workshop in Geneva in April 2016 on the review of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), as well as other indigenous mechanisms, with the goal of strengthening the mandate to enable it to review states' compliance

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with the Declaration. NARF attended the Ninth Session of EMRIP in Geneva in July 2016, and gave statements on indigenous participation in the UN system and on the improvement of the EMRIP mandate. NARF attended the 33rd Session of the Human Rights Council in September 2016, during which a series of informal consultations on the EMRIP mandate took place, as well as meetings with various state delegations. Ultimately, the Council passed by consensus a resolution expanding and improving the mandate of the EMRIP by adding members, additional meeting days, and providing for more autonomy and responsiveness for the mechanism.

A series of consultations on the issue of enhanced participation of indigenous institutions at the UN is ongoing. Until now, indigenous peoples have had to appear in most UN bodies as non-governmental organizations (NGOs), which is precisely what they are not. A meeting of Indigenous Peoples' representatives from around the world, including one from NCAI, met in November 2016 among themselves and then with indigenous advisers appointed by the President of the General Council to discuss areas of consensus. Informal consultations with member states began in December 2016 and will continue into May 2017 at the Permanent Forum.

The Organization of American States (OAS) has been working on an American Declaration on the Rights of Indigenous Peoples for over twenty-five years. NARF also has been representing NCAI on this matter. Nineteen rounds of negotiations were held between member states and Indigenous Peoples, and in a final session of negotiations that was held in May 2016, in Washington, D.C., an agreement on a Declaration was reached. The General Assembly of the OAS, by consensus, approved the American Declaration on the Rights of Indigenous Peoples in June 2016, in the Dominican Republic. This Declaration marks a major victory for indigenous peoples. The American Declaration goes beyond the UNDRIP in several respects including, among others, treaties, the rights of children, and the rights of peoples in voluntary isolation. The American Declaration is important because of these and other provisions in

particular and in general because it will be used by the Inter-American Court on Human Rights and the Inter-American Commission on Human Rights to build on an existing body of decisions supporting indigenous rights. Three states, the United States, Canada, and Colombia made statements in regard to the Declaration and requested their inclusion as footnotes to the Declaration. The United States commented it had been a persistent objector to the text and could not be bound by it, despite the fact many of the provisions are identical, or nearly so, to the UN Declaration. Canada stated it had not participated in recent years and was therefore not able to take a position at this time. Colombia stated that it was breaking consensus as to several provisions of the text, including some it approved in the UN Declaration and issued various interpretational notes as to other provisions.

NARF recently has agreed to represent NCAI in the ongoing negotiations for an International Treaty to protect various intellectual property, including Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions. The United States has been participating in these Treaty negotiations at the World Intellectual Property Organization (WIPO) since 2000, and since 2016 there has been draft text of the potential treaties. The United States Department of State has delegated authority to the U.S. Patent and Trademark Office (PTO) for these negotiations, but neither the PTO, the State Department, nor any federal agency has ever consulted with American Indian and Alaska Native Tribes regarding the negotiations. At its 2016 Annual Convention, NCAI passed a resolution calling for such consultation. It is expected that the PTO will conduct listening sessions with Tribes on this matter in 2017.

H a a d a s é i g u x h s i t e e h é e n
w a t e r i s l i f e - T l i n g i t



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.

In *Pembina Chippewa v. United States*, 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. In July 2015 the parties reached agreement on a monetary amount for a potential settlement of the Plaintiffs' claims in this case. Since that time the parties have been discussing numerous non-monetary components of a potential settlement, and preparing various documents.

In *Nez Perce Tribe, et al. v. Jewell*, NARF represented forty plaintiffs: the Nez Perce Tribe; the Mescalero Apache Tribe; the Tule River Indian Tribe; the Hualapai Tribe; the Klamath Tribes; the Yurok Tribe; the Pawnee Nation of Oklahoma; the Sac and Fox Nation; the Santee Sioux Tribe of Nebraska; the Tlingit and Haida Indian Tribes of Alaska; Aleut Community of St. Paul Island; Bad River Band of Lake Superior Chippewa Indians; Bois Forte Band of Chippewa; Cachil Dehe Band of Wintun Indians of Colusa Rancheria; Confederated Salish & Kootenai Tribes; Confederated Tribes of Siletz Indians; Grand Traverse Band of Ottawa and Chippewa Indians; Kaibab Paiute Tribe; Kenaitze

"We, our people, have been here before, and as before we will stand for what is right and good. They will come for us and others and we will not turn our backs on those who need our protection. We will never forget our sacred responsibility to all as we have been taught by our Creator and as we have promised our ancestors."
Abby Abinanti, Yurok Tribe

Indian Tribe; Kickapoo Tribe in Kansas; Lac Courte Oreilles Band of Ojibwe; Lac Du Flambeau Band of Lake Superior Chippewa; Leech Lake Band of Ojibwe; Minnesota Chippewa Tribe; Native Village of Atka; Nooksack Indian Tribe; Prairie Island Indian Community; Pueblo of Zia; Qawalangin Tribe; Rincon Luiseno Band of Indians; Samish Indian Nation; San Luis Rey Indian Water Authority; Sault Ste. Marie Tribe of Chippewa; Shoalwater Bay Tribe; Skokomish Tribe; Spirit Lake Dakota Nation; Spokane Tribe; Summit Lake Paiute Tribe; Tulalip Tribes; and, Ute Mountain Ute Tribe, in this action filed in the federal district court for the District of Columbia in December 2006 seeking full and accurate accountings of their trust funds. Such accountings never have been provided by the federal government which is the trustee for the funds.

Pending before the Court is the government's motion to dismiss the action for lack of jurisdiction, which the Tribes have opposed. In 2009 the Tribes represented by NARF in this case were among the over 90 Tribes who wrote President Obama regarding his campaign promise to resolve equitably all Indian trust fund mismanagement litigation against the federal government, by beginning settlement negotiations in this case and other tribal trust cases. In 2010 and 2011, NARF



attorneys along with the attorneys for dozens of other Tribes litigating trust accounting and mismanagement claims coordinated and attended many meetings hosted by the President's appointees in Washington, D.C. in preparation for settlement negotiations. In December 2011, active claims settlement negotiations on a tribe-by-tribe basis began for many Tribes. To date, all of NARF's client Tribes in this case have reached settlement agreements or other resolution of their claims with the United States. The settlement agreements have been filed in, and approved by, the Court. Per the settlement agreements, once the Tribes have received their settlement payments their claims are dismissed with prejudice.

In *Sisseton Wahpeton Oyate, et al. v. Jewell*, NARF represents 10 tribes – Sisseton Wahpeton Oyate; Quinault Indian Nation; White Earth Chippewa Nation; Oklahoma Kickapoo Tribe; Comanche Nation; Penobscot Indian Nation; Pueblo of Acoma; Seminole Tribe of Florida; Southern Ute Indian Tribe; and Confederated Tribes of the Umatilla Indian Reservation – in this case filed in April 2013 in the federal district court for the District of Columbia seeking historical accountings of the Tribes' trust accounts, funds, and resources. In November 2013 the government filed a Motion to Dismiss the case for lack of jurisdiction, but in

September 2015, the Court denied the Motion. In October 2015, the parties' joint request that the Court stay further active litigation in this case while the parties engage in settlement negotiations of the Tribes' trust accounting and trust fund and asset mismanagement claims was approved. The parties then proceeded with their settlement negotiations pursuant to court-approved joint stipulations of confidentiality. By September 2016 all 10 plaintiff Tribes had reached settlement agreements in principle with the United States regarding their claims. By October 2016 all of the settlement agreements had been filed with and approved by the Court. By December 2016, all of the Tribes had received their settlement payments, and their claims had been dismissed with prejudice. This case has now concluded.

In January 2014, the Muscogee Creek Nation retained NARF to represent it in its pending action in the federal district court for the District of Columbia for an historical accounting of its trust funds and assets. NARF and experts retained by NARF reviewed the Nation's trust account data provided by the government and assisted the Nation in its settlement negotiations with the government. In September 2015 the parties reached agreement on a settlement in principle of the Tribe's claims in this case. In August 2016, the final settlement agreement was filed with and approved by the Court. The Joint Stipulation of Dismissal was filed in September 2016 and is awaiting approval by the Court.

In April 2015 in *Intertribal Council of Arizona v. United States*, NARF filed on ITCA's behalf a breach of trust case against the United States in the U.S. Court of Federal Claims (CFC) seeking damages for mismanagement of the Arizona Intertribal Trust Fund (AITF). The AITF was established by Congress in 1988 to compensate Arizona tribes for the closure of the Phoenix Indian School which was an off-reservation boarding school operated by the Bureau of Indian Affairs since 1891. The school's closure allowed the Department of the Interior to exchange the land on which the school had been located for privately owned lands of the Barron Collier Company in Florida that would become part of a national wildlife refuge. The

THE ACCOUNTABILITY OF GOVERNMENTS

Phoenix lands were more valuable than the Florida lands and Congress approved the land exchange only if the difference in value of the properties went to the AITF and a trust fund for the Navajo Nation. Collier has paid some, but not all, of the property value differential and has given the United States notice that he will no longer make the AITF or Navajo Nation trust fund payments. The lawsuit seeks to hold the United States liable for the remaining payments into the AITF. In July 2015 the United States filed a Motion to Dismiss this case, which ITCA opposed. Following briefing and an oral argument on the Motion to Dismiss, in February 2016 the court granted in part and denied in part the motion. In May 2016 the parties to this case – ITCA and the United States – attempted a voluntary global mediation effort of their claims along with claims between the United States and Collier, but the mediation was not successful, and the case was returned to active litigation. However, in October 2016 the United States and Collier announced that they had reached a settlement in principle of their claims against each other. It is possible this could lead to a successful negotiated settlement of ITCA's claims against the United States. Nevertheless, in the event that the claims must be litigated, ITCA filed a First Amended Complaint in December 2016. The United States has 60 days to respond to the Amended Complaint.

The Klamath Tribe has retained NARF to seek repeal of the Distribution of Judgment Fund Act (25 U.S.C. Sec 565). Section 565 was adopted as part of the legislation that terminated the Tribes' government-to-government relationship in 1954. That relationship was restored in 1986, but the remnant legislation contained in section 565 was not repealed. The Distribution Act requires distribution of judgments from the United States Treasury to descendants of those who appear on the final roll compiled pursuant to the Termination Act. That would include distribution of tribal funds to a significant number of non-Indians and individuals who are not enrolled members of the Tribes. Repeal would result in funds deposited in the Treasury from judgments against the United States being distributed pursuant the Distribution

of Judgment Funds Act for all Tribes. Discussions with congressional staff on this matter are ongoing.

In *Center for Biological Diversity, et al. v. U.S. Army Corps of Engineers, et al.*, NARF represents the Santa Ynez Band of Chumash Indians in a case challenging the issuance of a Clean Water Act Section 404 permit. The proposed Newhall Ranch Project area encompasses 12,000 acres along 5.5 linear miles of the Santa Clara River and calls for the construction of nearly 21,000 homes on approximately 2,550 acres. The Project Area is also the ancestral homeland of Chumash and includes at least two significant archaeological sites as well as a number of ancient burials. The Corps issued a final Clean Water Act Section 404 permit to Newhall in October 2012. The underlying suit followed. The Tribe joined this case in the Second Amended Complaint specifically to protect their right to government-to-government consultation under the Administrative Procedure Act and the National Historic Preservation Act. The Tribe's claim is simple: the Corps never even contacted, much less formally consulted, the Tribe about the Newhall Project. Accordingly, the Corps denied the Tribe the opportunity to participate in the identification of any historic properties, determine any adverse effects, or help resolve or mitigate those adverse effects even though the Project is in their traditional ancestral territory.

The NHPA and its detailed implementing regulations—as well as the Corps' own policies and instructions—required the Corps to consult early in the process and directly with the Tribe's leadership. The Corps failed to follow the statutory and regulatory mandates with respect to the Tribe. Thus the Section 404 permit the Corp's granted to Newhall is in violation of the NHPA and APA. The Tribe is requesting revocation of the permit unless and until the Corps complies with the NHPA. Briefing has been completed at the Ninth Circuit Court of Appeals and oral argument is scheduled in Pasadena, California in February 2017.

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water is life - Diné



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 the Indigenous Peacemaking Initiative (IPI) 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. 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.

The IPI program helped facilitate the planning of a two-site introductory peacemaking training for Oglala Sioux Tribe community members, attended a meeting and provided an expert plenary speaker at a University of Washington program that trains judges from state and tribal courts. IPI also continued discussions with a judge from a state court in Southern California who is interested in implementing peacemaking to help with a dependency and delinquency docket that includes a high number of Native children.

“Like the miner’s canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere, and our treatment of the Indian...marks the rise and fall in our democratic faith.”
Felix Cohen (1953)

The collaborative efforts with the National American Indian Court Judges Association and the Columbia and New Mexico Schools of Law continue. The collaborators recently provided a training workshop in St. Paul, Minnesota, in conjunction with Tekamuk Inc. (the training business wholly owned and operated by the Mesa Grande Band of Mission Indians). The St. Paul training was attended primarily by members of the various Minnesota Chippewa Tribes working in the Twin Cities or at their home reservations, as well as participants from tribes in Arizona, Idaho, South Dakota, and Michigan.

The collaborative group added the Chief Justice from the Mississippi Band of Choctaw Indians and a Michigan State Court judge to the faculty, and provided an innovative three-day training in peacemaking and integrating culture, sponsored by the Pokagon Band of Pottawatomi Tribal Court in Dowagiac, Michigan, as requested by that Tribe’s Court. IPI has also been asked to provide peacemaking training travel to the American Indian and Alaska Native program as well as other departments. The dates have been set for two days of trainings in this effort, with travel and fees paid. An existing relationship with Stanford University is already serving as a base for development of other potentially impactful relationships. For example, the Design School and Graduate School of Business are eagerly awaiting meetings with the IPI to discuss collaboration and application of their best practices technology to curriculum development and delivery in peacemaking.



NARF's National Indian Law Library staff have developed a web page and continue integrating that page with the electronic versions of resources on Peacemaking in the NILL catalog. The web-page 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 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. NARF's website has recorded over 336,000 visits each year. See www.narf.org/nill/index.htm.

The Access to Tribal Law Project continues to be an invaluable resource for researchers and practitioners in tribal law. In the last fiscal year, we received updates to 92 Constitutions or Codes from 43 tribes. NILL has developed good relationships with a number of tribes who regularly send updates to their laws as changes are made and we are working to develop relationships with others who have expressed interest. NILL is also working to move tribal law pages from our old tribal law index to our new Tribal Law Gateway. NILL has received several enthusiastic compliments on the new platform, with researchers saying it is helpful and easy to navigate.

The website for the Indigenous Peacemaking Initiative has been launched as NILL worked closely with IPI attorneys, the IPI Advisory Committee and other NARF staff members to create the new IPI website, which is available at <http://narf.org/peacemaking>. The website provides resources to help visitors learn about peacemaking as well as tools to help practitioners implement peacemaking in their community. Many of the resources highlighted are available online and NILL has obtained permission to post some resources that were not already available online.

NILL has partnered with the University of Colorado Indian Law Clinic on a project to add a Tribal Court Opinion Bulletin to the eight Indian law bulletins updated weekly by the library. Indian Law Clinic students are working with NILL to establish selection criteria and methods of

THE DEVELOPMENT OF INDIAN LAW

obtaining copies of appropriate opinions to be published on the NILL bulletin website. This partnership is expected to continue for many years.

In providing access to law review articles on Indian law, each week when the Indian Law Bulletin is published, NILL indexes the law review articles from the bulletin and puts them in our online catalog. By including a table of contents and subject headings for each article, we have created a searchable database of articles on Indian law for our patrons. Whenever an article is available for free online, we add a link, making it easy for researchers to access the article quickly. In the event an article is not available online, patrons can contact the library to request a copy of the article. Because NILL has been indexing articles for over 10 years, our online catalog is a useful place to start research on Indian law for attorneys and academics alike.

In providing for a Tribal Nation Pronunciation Guide, NILL is actively seeking funds as well as volunteers and/or interns to help develop and publish an audio index of tribal nations. We believe this unique guide will be a valuable resource for those who need to communicate with tribes. The guide will allow people to address a tribe in a respectful manner. This project would involve developing and implementing a plan to: 1) find authoritative pronunciations for each Indian nation's name; 2) lease/purchase proper recording equipment/technology to capture the correct pronunciation of each Indian nation's name for publication on the Internet; and 3) capture and publish the recorded names on the National Indian Law Library website.

Indian Law Support Center

NARF continues to perform Indian Law Support Center duties by sending regular electronic mail outs nationwide to the 24 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 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. However, funding was received in FYs 2010-2015 and made available to NARF for the ILS programs through the Bureau of Justice Assistance (BJA) in the Department of Justice. BJA will award \$1.2 million in 2016 supplemental funding for ILS, and NARF is in the midst of preparing all of the grant documents for 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 2016 FINANCIAL REPORT

Based on our audited financial statements for the fiscal year ending September 30, 2016, the Native American Rights Fund reports **unrestricted** revenues of \$11,331,017 against total expenditures of \$10,770,637. **Total** revenue and net assets at the end of the year came to \$13,343,983 and \$21,213,252, 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 \$447,469 to NARF's reserve fund. When compared to fiscal year 2015: The increase in Public Contributions is due to receiving approximately \$210,000 more in bequests (this area can vary widely from one year to the next) and taking on more ambitious direct mail campaigns. Also, included are additional contributions

for our 45th anniversary events. The increase in Tribal Contributions is mostly due to receiving sizable, one-time, contributions from two of our tribal trust funds clients. 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) and, although we continue to be awarded new contracts, the amounts vary from year to year. We continue to receive new Foundation Grants that are restricted to our work in Alaska. The decrease in Legal Fees is mostly due to a large settlement received in fiscal year 2015. Along with the overall investment markets, NARF's investments performed well in fiscal year 2016.

Unrestricted Revenue and Expense comparisons between fiscal year 2016 and fiscal year 2015 are shown below.

UNRESTRICTED SUPPORT AND REVENUE COMPARISON

	2016		2015	
	dollars	percents	dollars	percents
Public Contributions	\$ 2,064,991	18.2%	\$ 1,701,434	13.7%
Tribal Contributions	2,496,058	22.0%	1,004,250	8.1%
Federal Awards	1,011,476	8.9%	1,330,607	10.8%
Foundation Grants	2,067,375	18.3%	1,707,184	13.8%
Legal Fees	2,028,322	17.9%	7,065,520	57.1%
Return on Investments	1,604,562	14.2%	(443,858)	-3.6%
Other	58,233	0.5%	16,222	0.1%
TOTALS	\$ 11,331,017	100%	\$12,381,359	100%

EXPENSE COMPARISON

	2016		2015	
	dollars	percents	dollars	percents
Litigation and Client Services	\$ 7,749,780	71.9%	\$ 7,160,564	71.5%
National Indian Law Library	362,854	3.4%	358,675	3.6%
Total Program Services	8,112,634	75.3%	7,519,239	75.1%
Management and General	861,057	8.0%	789,122	7.9%
Fund Raising	1,796,946	16.7%	1,704,661	17.0%
Total Support Services	2,658,003	24.7%	2,493,783	24.9%
TOTALS	\$ 10,770,637	100%	\$ 10,013,022	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 2016

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 organizations, bequests and trusts, benefactors, private donations, and in-kind contributions. We gratefully acknowledge these gifts received for fiscal year 2016 (October 1, 2015 through September 30, 2016).

Tribes and Native Organizations

Agua Caliente Band of Cahuilla Indians
 Ak-Chin Indian Community
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 Chickasaw Nation
 Confederated Tribes of Siletz Indians
 Cow Creek Band of Umpqua Indians
 Klamath Tribe
 Miccosukee Tribe of Indians
 Mohegan Indian Tribe of Connecticut
 Muckleshoot Indian Tribe
 Muscogee Creek Nation
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 San Manuel Band of Mission Indians
 San Pasqual Band of Mission Indians
 Seminole Tribe of Florida
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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 individuals and organizations for their generosity:

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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 – an individual 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 recognize the constant need to stand firm for justice by pledging and making monthly contributions. Monthly contributions add up over the years to make a real difference for the tribes we serve.

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 donors 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, 11 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-News – Sign up at www.narf.org for our e-news 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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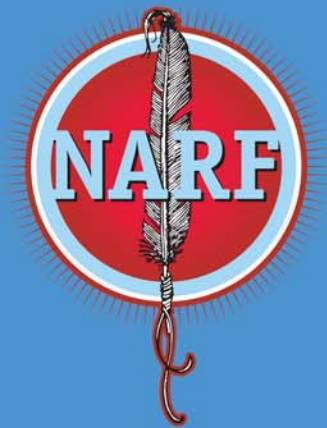
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The Native American Rights Fund Statement on Environmental Sustainability

“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.”



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