

NATIVE AMERICAN RIGHTS FUND

Annual Report 2021



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.”

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.

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Cover and Photography: Sean Sherman, Oglala Lakota, born in Pine Ridge, SD, has been cooking across the US and internationally. His main culinary focus is revitalizing Indigenous food systems in a modern culinary context. Sean’s determination to understand the foundations of these food systems include understanding the knowledge of Native American farming techniques, wild food usage and harvesting, land stewardship, salt and sugar making, hunting and fishing, food preservation, Native American migrational histories, fundamental cooking techniques, and Native culture and history.

In 2014, he founded The Sioux Chef, a food education and catering operation in the Minneapolis/Saint Paul area. The following year, he debuted Tatanka Truck, a food truck featuring pre-colonized foods of the Dakota and Minnesota territories in partnership with the Little Earth Community of United Tribes in Minneapolis. Sean also founded the nonprofit North American Traditional Indigenous Food Systems (NATIFS) and its public-facing training center, Indigenous Food Labs, at the Midtown Global Market in Minneapolis. Most recently, in June 2021, Owamni by The Sioux Chef opened its doors in Minneapolis, showcasing a decolonized dining experience

and menu of Indigenous North American foods. In its first year, Owamni has been recognized by The New York Times, The Chicago Tribune, Esquire, Food & Wine, and Vanity Fair.

Chef Sean and his vision of modern Indigenous foods are featured in numerous articles, radio segments, and educational dinners at esteemed associations like the James Beard House in Manhattan. He has also shared his knowledge with audiences at Yale, the Culinary Institute of America, the United Nations, and many more. Sean has received accolades for his work, such as the 2015 First Peoples Fund Fellowship, 2018 Bush Foundation Fellowship, National Center’s 2018 First American Entrepreneurship Award, 2018 James Beard Award for Best American Cookbook, 2019 James Beard Leadership Award, and 2021 Esquire Chef of the Year. COVER PHOTO: Walleye Three Ways

EXECUTIVE DIRECTOR'S REPORT

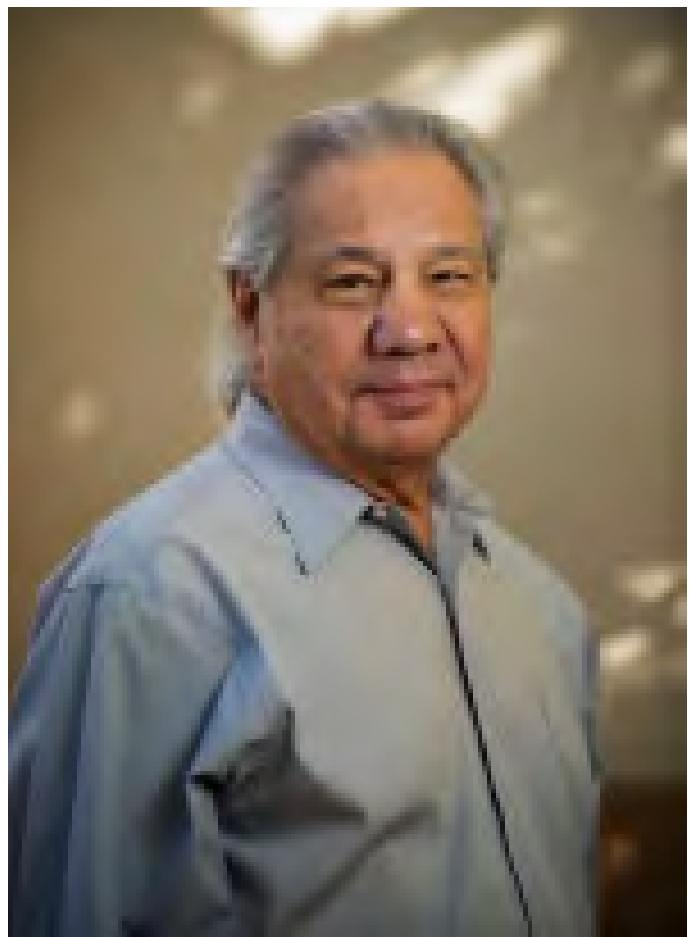
2021 was the fifty-first year that the Native American Rights Fund has been serving as the national Indian legal defense fund providing legal advice and assistance to tribes, Native organizations, and individual Indians in cases of major importance across the country. Once again, we were proud that we were able to help our Native American clients achieve several significant legal victories and accomplishments during the year.

In *Big Horn Electrical Cooperative v. Alden Big Man*, the Montana federal district court upheld Crow tribal court jurisdiction over a non-member utility company for failure to follow a Crow tribal statute limiting heat and electricity service disconnections during winter months for homes where elderly and disabled individuals reside. The court held that the Crow Tribe, represented by NARF, has legislative jurisdiction over the non-member utility company on the tribal trust land where Mr. Big Man, an elderly tribal member resides.

The new Biden Administration took action to reverse several actions taken by the Trump Administration that adversely affected NARF's clients. The incoming Biden Administration revoked the illegally issued permit for the Keystone XL Pipeline which was opposed by the Rosebud Sioux Tribe and the Fort Belknap Indian Community. President Biden issued a proclamation restoring the Bears Ears National Monument to its original size plus some additional acreage. President Trump had previously issued an Executive Order greatly diminishing the National Monument over the objections of tribes including the Hopi Nation, Ute Mountain Ute Tribe, and the Pueblo of Zuni, NARF's clients. The Biden Administration also stopped the National Park Service from adopting regulations implementing the National Register of Historic Places that would have prevented traditional cultural properties, cultural landscapes, and places of traditional religious and cultural significance from being listed. NARF represented the Native Village of Tyonek, the Blue Lake Rancheria, and the National Association of Tribal Historic Preservation Officers in this process.

In *Alaska Department of Fish and Game v. Federal Subsistence Board*, the Alaska federal district court upheld the Federal Subsistence Board's authority to authorize emergency subsistence hunts for rural residents. NARF represented the Organized Village of Kake who intervened in the case to support the Federal Subsistence Board's authority.

The Biden Administration also took several actions which benefitted NARF's tribal clients in Alaska by reversing previous Trump Administration actions. President Biden signed an Executive Order reinstating the



John E. Echohawk
Executive Director

Northern Bering Sea Climate Resilience Area which will protect the sensitive ecosystem and the subsistence lifestyle of the Alaska tribes in the area. The Biden Administration denied a permit for the proposed Pebble Mine which NARF's tribal clients in the Bristol Bay area oppose. President Biden also placed a full moratorium on all further oil and gas activities in the Arctic National Wildlife Refuge which NARF's tribal clients in that area want to protect from development. After the Trump Administration had denied NARF's Alaska tribal clients participation in the Bering Sea-Western Interior Proposed Resource Management Plan, President Biden signed an Executive Order that now has the Alaska tribes participating.

In *Brackeen v. Haaland*, the Fifth Circuit Court of Appeals *en banc* generally upheld the authority of Congress to enact the 1978 Indian Child Welfare Act, held that the Act's definition of "Indian Child" did not operate on the basis of race, but found certain sections of the Act to be unconstitutional. All the parties in the case

are asking the U.S. Supreme Court to review the Fifth Circuit's decision. NARF has filed a tribal amicus brief supporting review on behalf of 180 tribal nations and 35 tribal organizations

NARF continues its Voting Rights Project and its work with the Native American Voting Rights Coalition. In addition to litigation and the work associated with leading the Coalition, we are currently engaged in securing polling places on the reservations, securing address reform for Native voters so they can register and receive ballots in the mail, and a redistricting project to undo much of the damage to Native American representation across the country.

The U.S. District Court for the District of Columbia has granted final approval of the \$59 million settlement in *Pembina Chippewa v. United States*. NARF represents

the Turtle Mountain Chippewa, Chippewa Cree, White Earth Band of Minnesota Chippewa, and the Little Shell Chippewa Tribe in this case against the federal government for misaccounting and mismanagement of their tribal trust fund, the Pembina Judgment Fund.

These legal victories and accomplishments would not have been possible without the contributions and grants from the many supporters of our nonprofit organization. We thank you for your support and hope that your support will continue in 2022 and beyond so we can continue to pursue justice for Native Americans.

John E. Echohawk
Executive Director



BOARD CHAIR'S MESSAGE

Osiyo,

This past year has been another cycle of challenges and hardship across Indian Country and the United States. So many have struggled in the face of this pandemic. It can feel overwhelming and unending. For the staff of the Native American Rights Fund, the work to serve Indian Country and assert Native American rights has multiplied exponentially.

In fact, it was exactly these perpetual challenges that led Native leaders and allies to envision a nonprofit legal organization to work on behalf of tribes. NARF was created in the face of generation upon generation of adversity. NARF began at a time when so many challenges stood in our way as Native peoples, governments, and cultures. Over the past fifty-one years, like Native cultures, NARF has proven to have the stamina, the strength, and the fortitude to not only continue, but to succeed in the face of these hardships.

In many ways, this year was no different than the fifty before. When states passed discriminatory legislation, NARF was there to fight for Native people. When corporations prioritized profits over the rights of Native peoples and the sovereignty of Native nations, NARF provided the legal support and resources to protect tribal sovereignty, natural resources, and sacred places. When states tried to divide and dilute the power of Native communities through gerrymandered districts, NARF supported and amplified tribal voices demanding justice and equal representation. In the face of Indian Country's challenges, NARF rose to the call with big wins.

As the chair of NARF's Board of Directors, I am happy to report that NARF also managed to create these successes while maintaining fiscal soundness and conservation. Despite the economic chaos brought on by the pandemic, the organization has continued to develop a financial foundation that will ensure that we are able to continue these important fights on behalf of Indian Country into the years to come.



Lacey A. Horn
Chair, NARF Board of Directors

Of course, that financial security would not be possible without the generous support of the individuals, tribes, foundations, and other organizations that prioritize the fight for Native rights and the need for justice after hundreds of years of inequity and systemic racism. Even as each of us have faced “year two” of the pandemic, we have stood together to ensure justice for this land's first peoples. We thank you for that and looking forward to moving forward with you by our side.

To end on a joyful note, I am happy to share with you that plans to celebrate the first fifty years of NARF are underway. I hope that you can join us on April 16, 2022. Find the details at <https://www.narf.org/50thgala/>. It will be a celebration of much accomplished, and much to look forward to, indeed. Looking forward to seeing you there!

Wado,

Lacey A. Horn
Chair, NARF Board of Directors

BOARD OF DIRECTORS

The Native American Rights Fund has a governing board composed of Native American leaders from across the country. Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as tribal affiliation, to ensure comprehensive geographical representation. The vision of the Board members is essential to NARF's effectiveness in representing its Native American clients.

NARF's Board of Directors: **Lacey Horn**, Chair (Cherokee Nation); **Kenneth Kahn**, Vice-Chair (Santa Ynez Band of Chumash Indians); **Derek Valdo**, Treasurer (Pueblo of Acoma); **Anita Mitchell** (Muckleshoot Indian Tribe); **Rhonda Pitka** (Athabaskan/Inupiaq); **Robert Miguel** (Ak-Chin Indian Community); **Rebecca Miles** (Nez Perce Tribe); **Gayla Hoseth** (Curyung Tribal Council); **Stephanie Bryan** (Poarch Band of Creek Indians); **Rebecca Crooks-Stratton** (Sisseton-Wahpeton Sioux); **Jamie Azure** (Turtle Mountain Band of Chippewa); **Michael Petoskey** (Grand Traverse Band of Ottawa and Chippewa Indians)



Not pictured: **Camille Kalama** (Native Hawai'ian)

NATIONAL SUPPORT COUNCIL

The National Support Council assists NARF with fundraising and public relations efforts. Some members are prominent in the fields of business, entertainment, and the arts. Others are known advocates for the rights of the underserved. All are committed to upholding the rights of Native Americans.

Randy Bardwell, Pechanga Band of Luiseño Mission Indians
Deborah Bardwell
Jaime Barrientoz, Grande Traverse Band of Ottawa and Chippewa Indians
John Bevan
Wallace Coffey, Comanche
Ada Deer, Menominee
Harvey A. Dennenberg
Lucille A. Echohawk, Pawnee
Jane Fonda
Eric Ginsburg
Jeff Ginsburg

Rodney Grant, Omaha
Dr. Marion McCollom Hampton
Chris E. McNeil, Jr., Tlingit-Nisga'a
Billy Mills, Oglala Lakota
Amado Peña, Jr., Yaqui/Chicano
Wayne Ross
Nancy Starling-Ross
Mark Rudick
Pam Rudick
Michael G. Sawaya
Ernie Stevens, Jr., Wisconsin Oneida
Andrew Teller, Isleta Pueblo

Verna Teller, Isleta Pueblo
Richard Trudell, Santee Sioux
Rebecca Tsosie, Pascua Yaqui
Tzo-Nah, Shoshone Bannock
Aine Ungar
Rt. Rev. William C. Wantland, Seminole
W. Richard West, Southern Cheyenne
Randy Willis, Oglala Lakota
Teresa Willis, Umatilla
Mary Wynne, Rosebud Sioux

INTRODUCTION

The Native American Rights Fund holds governments accountable. We fight to protect Native American rights, resources, and lifeways through litigation, legal advocacy, and expertise. NARF's first Board of Directors developed five priorities that still lead us today. In this annual report, you will find NARF's recent work within each of these priority areas.

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

PRESERVE TRIBAL EXISTENCE

Tribal governments possess the power to regulate the internal affairs of their members and activities within their reservations. In treaties, 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. Under the priority to *preserve tribal existence*, NARF supports tribes' rights to live according to traditions, enforce treaty rights, ensure independence on reservations, and protect their right to self-govern (sovereignty).

TRIBAL SOVEREIGNTY AND JURISDICTION

Tribal Sovereignty Protection Initiative

NARF partners with the National Congress of American Indians (NCAI) on the Tribal Sovereignty Protection Initiative to monitor legislation, judicial appointments, and cases related to tribal interests.

~ Tribal Supreme Court Project (sct.narf.org)

The Tribal Supreme Court Project is a major component of the Initiative through which the NARF and NCAI staff monitor cases at or headed to the U.S. Supreme Court. The Project is based on the idea that a strong and coordinated approach can reduce, and even reverse, the erosion of tribal sovereignty by Justices who appear to lack an understanding of federal Indian law and are unfamiliar with the practical challenges facing tribal governments. On June 1, the Court issued its opinion in *Cooley v. United States* (19-1414) and held that a tribal police officer may detain a non-Indian on a public highway running through the reservation or suspected violations of federal or state law and may perform a search while the suspect is held for transport to the state

or federal authorities. On June 25, the Court issued its opinion in *Alaska Native Vill. Corp. Assoc. v. Confederated Tribes of the Chehalis Reservation* (20-544) and *Mnuchin v. Confederated Tribes of the Chehalis Reservation* (20-543). The Court held that Alaska Native regional and village corporations are "tribal governments" for purposes of the Coronavirus Aid, Relief, and Economic Security Act.

For October Term 2021, the Project is closely watching *Brackeen v. Haaland* (21-380), and related petitions, which raise issues about the Indian Child Welfare Act. In addition, the State of Oklahoma filed a series of petitions encouraging the Court to reverse its holding in *McGirt v. Oklahoma*.

At this writing, *Denexpi v. United States* (20-7622) (double jeopardy) and *Ysleta del Sur Pueblo v. Texas* (20-493) (Indian gaming) also were granted review.

~ Judicial Selection Project

Another component of the Tribal Sovereignty Protection Initiative is the Judicial Selection Project. The Project's focus is research and education: to educate the federal judiciary about tribal issues, to educate tribal leaders about the federal judiciary, and to raise awareness about the need for federal judges who understand the unique legal status of Indian tribes.

On October 5, the Senate confirmed Lauren King, a Muscogee Nation citizen, for a seat on the United States District Court for the Western District of Washington. She is the first Native American federal judge in the Western District of Washington.

Big Horn Electric Cooperative v. Alden Big Man, et al.

In 2012, Alden Big Man, an elderly member of the Apsaalooke (Crow) Tribe sued the Big Horn Electric Cooperative in the Crow Civil Court pursuant to an Apsaalooke tribal statute limiting heat and electricity service disconnections during winter months for homes where elderly and disabled individuals reside. In 2013, the tribal court dismissed the case, holding that it lacked jurisdiction over the case against a non-member utility company. Mr. Big Man appealed the ruling to the Apsaalooke Appeals Court. In April 2017, the Apsaalooke Appeals Court held that the trial court did have jurisdiction and remanded the case to the Crow Civil Court. Big Horn Electric then filed a complaint in federal district court, asking the court to find that tribal court remedies had been exhausted and that the tribal court lacked jurisdiction over the suit.

NARF, representing the Apsaalooke Appeals Court judges and Crow Tribal Health Board members, filed motions to dismiss. Those motions were denied, and the court found that exhaustion had occurred. Motions for summary judgment on the issue of tribal jurisdiction were filed in November 2019. In July 2020, the Magistrate concluded that the Crow Tribe has legislative jurisdiction over Big Horn on the tribal trust land where Big Man resides and the Crow Tribal Court has jurisdiction to hear Big Man's claims. In February 2021, the court adopted the magistrate's recommendations in their entirety. The order upholds the Tribe's legislative and adjudicative jurisdiction. Big Horn appealed to the U.S. Court of Appeals for the Ninth Circuit. Briefing of the appeal was completed in late 2021 and oral argument is set for February 2022.

Cheyenne River Sioux et al. v. Mnuchin

In March 2020, Congress passed the Coronavirus Aid, Relief and Economic Security Act (CARES Act) to respond to the devastating impacts of the pandemic. Title V of the CARES Act appropriates \$150 billion for

"payments to States, Tribal governments and units of local government." with \$8 billion reserved for tribal governments. In April 2020, Treasury announced its intention to include Alaska Native Corporations (ANC) in disbursement. Three separate groups of plaintiffs sued on the grounds that ANC are not tribal governments. NARF represents the Rosebud Sioux, Nondalton, Arctic Village, and Venetie Tribes. In June 2020, the court reversed its earlier stance and granted summary judgment to the government. The court held that ANC are "Indian tribes" and that their boards of directors are "tribal governments" for purposes of the CARES Act. The court's decision rested on interpretation of those terms in the Indian Self-Determination Education Assistance Act (ISDEAA). Tribal plaintiffs appealed and the District of Columbia Court of Appeals reversed, holding that Alaska Native Corporations are not tribes for the purposes of the CARES Act. The corporations and the federal government petitioned for certiorari, which the U.S. Supreme Court granted January 2021. Oral argument was heard in the case in April 2021. In June, the Court held that ANC were eligible for funding under the CARES Act. We continue to monitor the spend-out of CARES Act funds.

Cheyenne and Arapaho Tribes Tax Dispute

In April 2021, Continental Resources, Inc., contested mineral severance taxes levied by the Cheyenne & Arapaho Tribes Tax Commission dating back several years. Twenty-five years ago, the U.S. Circuit Court of Appeals for the Tenth Circuit affirmed the Commission's authority to tax mineral extraction by non-Indians in *Mustang Production Co. v. Harrison*, a case argued by NARF's Melody McCoy. Continental now argues that *Mustang Production* is no longer good law. In December 2021, the Commission produced an updated tax bill and a record, which Continental is reviewing. If Continental continues to object to the updated bill, then the matter will be briefed in the first half of 2022.



DUCK PATE



PROTECT TRIBAL NATURAL RESOURCES

During colonization, tribes' lands diminished to a mere 2.3 percent of their original size. An adequate land base and control over natural resources are necessary for economic self-sufficiency and self-determination. They are vital to tribal existence. Thus, much of NARF's work is to *protect tribal natural resources*.

INDIAN LANDS

Keystone XL Pipeline

The TransCanada (TC Energy) Keystone XL Pipeline is a massive oil pipeline intended to link the oil producers in Canada with the refiners and export terminals on the Gulf Coast. It would cross, or comes very close to, the boundaries of many reservations and tribal land holdings, including the Oceti Sacowin (Great Sioux Nation) lands from before the Fort Laramie Treaty of 1868. Moreover, the proposed route crosses sacred Sioux land, cultural sites, and burials. However, no consultation occurred between the federal government and the tribes affected. For these and other reasons, President Obama rejected the permit required for the Canada-U.S. boundary crossing in 2015.

In March 2018, the Trump administration reversed course and granted a Presidential permit. In response, NARF filed a complaint on behalf of the Rosebud Sioux Tribe and the Fort Belknap Indian Community in August 2018. The President issued a second permit to circumvent injunctions preventing construction. As a result, the Tribes amended their complaint to reflect new claims. The government and TC Energy filed motions to dismiss and a hearing was held in September 2019. In December 2019, the court denied the government's and TC Energy's motions to dismiss. All of the Tribes' claims relating to the new permit were allowed to proceed, including the treaty claims, constitutional claims, trespass claims against TC Energy, and claims that TC Energy and the Keystone XL Pipeline are subject to tribal regulatory jurisdiction. The order allowing the case to continue was a major victory. In January 2020, TC Energy filed a notice with the court that it would begin "pre-construction" activities in February. Given construction and the rise of the pandemic, the Tribes were forced to move for a preliminary injunction and temporary restraining order. The court did not rule on those motions before an April hearing; however, the court did issue an injunction in another case that prevented TC Energy from crossing any rivers. In October, the judge ruled against the Tribes on many claims finding that the permit only applied to the border crossing, but he requested supplemental briefing and noted that the tribes could file a new suit against the Bureau

of Land Management. In November 2020, the Tribes, represented by NARF, filed a lawsuit against the U.S. Department of Interior and the Bureau of Land Management over the KXL permit. The lawsuit was filed because the United States failed to honor the treaties and take a hard look at the impact the pipeline will have on tribal communities. In January 2021, the incoming administration revoked the illegally issued presidential permit for the KXL pipeline. The litigation against the president has been dismissed as moot. The litigation against the agencies, however, is stayed pending the administration's decision on the permits it has issued to TransCanada. TransCanada has since abandoned the project, relinquished its permits and most of the right of way, removed the installed pipeline, and reclaimed the disturbed land. Once the Bureau of Land Management determines that the land has been successfully reclaimed, they will approve TransCanada's relinquishment of the remaining right of way.

Shoalwater Bay Indian Tribe

NARF is assisting the Shoalwater Bay Indian Tribe with a litigation request to the United States. The Tribe occupies a small, coastal reservation southwest of Seattle, WA. A state highway crosses through the reservation, and its surface water drainage inundates a portion of the reservation. On behalf of the Tribe, NARF submitted a litigation request requesting that the United States, as the Tribe's trustee, sue the Washington Department of Transportation.

Hualapai Tribe Fee to Trust Applications

NARF represents the Hualapai Indian Tribe of Arizona in applying for the transfer into trust status of eight 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. Applications were submitted to the BIA. Two new parcels were taken into trust in September 2018, and after a long delay (in 2017 the Acting Assistant Secretary-Indian Affairs withdrew authority from BIA Regional Directors to approve off-reservation fee-to-trust applications and placed that authority with the Assistant Secretary-Indian Affairs) the Cholla Canyon Ranch parcel was approved to be taken into trust in October 2021. In December, the BIA issued a Notice of Decision approving the Tribe's application for Hunt Ranch Parcels 1-4 to be taken into trust. Only Hunt Ranch Parcel 5, which requires an additional site visit, remains outstanding. Recent progress on this matter, which was slowed significantly by the COVID-19 pandemic, makes us hopeful that work might be completed in 2022.

PROTECT TRIBAL NATURAL RESOURCES

Akiachak Native Community, et al. v. Department of Interior, et al.

In 2006, the Akiachak Native Community, the Chilkoot Indian Association, the Chalkyitsik Village Council, and the Tuluksak Native Community IRA, represented by NARF, sought judicial review of 25 CFR Part 151. 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 putting Alaskan land in trust other than for the Metlakatla Indian Community.

In March 2013, the court granted plaintiffs complete relief on all of their claims—a major victory for Alaska tribes. In December 2014, DOI published its final rule rescinding the “Alaska Exception.”

DOI completed one Alaskan trust land acquisition in 2017. However, in 2018, the Trump Administration officially withdrew the Solicitor’s opinion supporting land-into-trust for Alaska tribes and announced the Department would review whether to reinstate the “Alaska Exception.” NARF represented clients at tribal consultations, making clear Alaska tribes will tolerate nothing more than full reinstatement of the Alaskan trust lands program. On January 19, 2021, the Department decided that lands cannot be taken in trust for Alaska tribes. The Biden Administration withdrew the January decision in April 2021. The Department will again be accepting trust applications from Alaska tribes.

WATER RIGHTS

Under federal law, Indian tribes are entitled to sufficient water for present and future needs. These water rights are superior to all water rights created after the tribes’ priority dates, at least as early as the establishment of their reservations. In most cases, this gives tribes senior water rights in the water-short West. Unfortunately, many tribes have not used their reserved water rights and the rights are unquantified. The current need is to define and quantify the amount of water to which each tribe is entitled.

Agua Caliente Band of Cahuilla Indians

NARF, with co-counsel, represents the Agua Caliente Band of Cahuilla Indians in a lawsuit filed in 2013 in the U.S. District Court for the Central District of California. The Agua Caliente asked the court to declare their water rights senior in the Coachella Valley, quantify those rights, and prevent Coachella Valley Water District and Desert Water Agency from further impairing the quantity and quality of aquifer water. 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. Upon appeal, the decision was upheld.

With “phase one” done, the parties addressed “phase two” legal issues. Phase two dealt with the method for quantifying the Tribe’s water share, the right to water of a certain quality, and whether the Tribe owns the groundwater storage space under its reservation. In April 2019, the court dismissed the claims holding that, since the Tribe could not show that it presently had a shortage of water, it was not sufficiently injured to prove standing. This decision was made despite unrefuted evidence that the aquifer depth underlying the reservation had lowered substantially and the water had been degraded by the water districts’ activities.

In July 2020, the Tribe filed an amended complaint, adding allegations relating to the Tribe’s injuries and the Tribe’s pumping of groundwater, and to more accurately frame the issue of the ownership of the pore space under the reservation. In the meantime, the parties entered into mediation and the case has been stayed until January 2022.

Palouse River Basin Adjudication – Nez Perce Tribe Water Rights

NARF represents the Nez Perce Tribe in its water rights claims in the Palouse River Basin Adjudication. In October 2016, the Idaho Water Court issued a commencement order, and an initial hearing was held in January 2017. The Tribe is working with the United States to examine the nature and scope of the Tribe’s water rights claims. In late 2019, the U.S. and the Tribe filed claims for instream flows in 24 reaches of the Palouse River and its tributaries, for nearly 200 springs claims on private and federal lands, and for water for consumptive uses on two allotments in the Palouse watershed. The Idaho Department of Water Resources released its Director’s Report on all federal/tribal and private Palouse Basin water claims in late July 2021. Those claims are under review.

Klamath Basin Water Rights

Represented by NARF, the Klamath Tribes’ water rights were recognized in 1983 in *United States v. Adair*, but the courts left quantification of the water rights to Oregon’s Klamath Basin Adjudication (KBA). After finishing the KBA’s 38-year administrative phase, the Tribes were able to enforce their water rights for the first time in 2013. The Klamath County Circuit Court is now reviewing the Oregon Water Resources Depart-



ment's (OWRD's) Findings of Fact and Order of Determination (FFOD) issued in the KBA. In 2017 and 2018, the Klamath County Circuit Court resolved jurisdictional and other legal issues as well as general procedural issues. Importantly, the court issued rulings limiting discovery and the introduction of new evidence, preventing a complete do-over of the administrative proceedings. However, the court ruled that a *de novo* standard of review would apply, in which the court will "look anew" at the determinations of OWRD in the FFOD and may give deference to OWRD's determinations. Now the KBA is in Phase 3, which addresses the substantive exceptions filed to the individual water right claim determinations in the FFOD. Part 1 of Phase 3 addresses crosscutting legal issues applicable to three claim groups: Group A – pre-1909 and non-tribal federal reserved water right claims; Group B – Walton right and Klamath Termination Act claims; and Group C – Tribal claims. Phase 3, Part 1 has been completed for all three groups. KBA Phase 3 Part 2 began in December 2020 to determine exceptions to legal issues or disputed factual issues. The KBA judge retired on April 30, 2021. A new judge was appointed on December 20, 2021. The new judge will schedule motions to introduce non-record evidence in the tribal Group C claims.

Tule River Tribe

After almost 30 years of advocacy, the Tule River Indian Tribe, represented by NARF, successfully settled its water rights in November 2007. The settlement agreement secured a domestic, municipal, industrial, and commercial water supply for the Tribe. The Tribe now seeks federal legislation to ratify the agreement and authorize appropriations to develop the water rights through the creation of water infrastructure and reservoirs on the Tule River Reservation. The Tribe's team assisted the federal team in developing an appraisal of several alternatives. The federal team promised to be done with

the study by November 2015 so that the Tribe could proceed to negotiate an appropriate settlement to present to Congress. In December 2016 the federal team delivered its report to the Tribe. The Tribe and its team performed a detailed analysis and critique of the report and met with Interior Department officials in March 2018 to bring them up to speed. In spring of 2019, the Interior Department committed to some funding, but not enough to construct a meaningfully sized water storage project. Legislative efforts continued throughout 2020 and 2021.

Kickapoo Tribe in Kansas

At times in recent decades, the water supply for the Kickapoo Reservation has violated the Safe Drinking Water Act of 1974. Consequently, the Kickapoo people fear they are unable to safely drink, bathe, or cook with tap water. There also is not enough water on the reservation to provide basic municipal services to the community—the Tribe is not able to provide local schools with reliable, safe running water, and the fire department cannot provide adequate protection. In June 2006, the Kickapoo Tribe in Kansas, represented by NARF, filed a federal court lawsuit to enforce express promises made to the Tribe to build a reservoir project, the most cost-effective way to improve the water supply. Despite promises made to the Tribe, Nemaha Brown Watershed Joint Board #7, the Natural Resources Conservation Service of the U.S. Department of Agriculture, and the State of Kansas continued to develop the region's water resources. The result was the near depletion of the Tribe's senior federal water rights. The federal government, 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 of that water. In September 2016, the Tribe and the state executed a settlement agreement that in-

PROTECT TRIBAL NATURAL RESOURCES

cludes a negotiated water right for the Tribe, as well as all of the details for the administration of the Tribe's right in the Delaware River watershed. The Tribe developed legislation in consultation with the Kansas congressional delegation to approve the negotiated water right. Over the years, several bills were introduced, but not enacted into law. Finally, late in 2020, the Kickapoo Tribe water project study was passed as part of the final omnibus appropriations act. The legislation kicks off a new study and re-evaluation of the Plum Creek Project that the Tribe has been pursuing for years. The Tribe's team, led by NARF, has retained water engineering and agricultural economic consultants. Given the Tribe's successful negotiation in 2016 of its water rights with the State of Kansas, the final settlement approving legislation can move forward once the study provides the appropriations numbers necessary for water storage and usage in the Plum Creek Project.

Pauma Band of Luiseno Indians

The Pauma Band of Luiseno Indians is one of the five tribes party to the San Luis Rey Water Rights Settlement. The San Luis Rey tribes' water rights were initially addressed by a Congressionally-approved settlement act in 1988. However, for a wide variety of reasons, the settlement was unenforceable and did not address the needs of the tribes. In 2016, a bill amending the original settlement act was passed by Congress, and the San Luis Rey Water Rights Settlement is now in its implementation stage. NARF represents the Pauma Band in the implementation, which includes allocating water and funding as well as examining groundwater management strategies.

HUNTING AND FISHING RIGHTS

Tribal hunting and fishing rights are grounded in sovereignty and affirmed in treaties and agreements. Because of their remoteness, 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.

Alaska Department of Fish and Game v. Federal Subsistence Board

In August 2020, the State of Alaska filed a complaint in the Alaska federal district court challenging three decisions made by the Federal Subsistence Board (FSB) related to subsistence hunting in the state. (The FSB is the body responsible for setting all rules and regulations related to the taking of wild fish and game by qualified subsistence users within Alaska's federal lands.) Alaska alleged that the FSB acted outside of the authority granted to it by the Alaska National Interest Lands Conservation Act of 1980.

NARF filed a motion to intervene on behalf of the Organized Village of Kake to defend the FSB's authority to authorize emergency hunts. In September 2020, the court heard oral argument. Shortly thereafter, the court denied the state's effort to enjoin the Game Unit 13 closure. The court also concluded that the state's arguments of harm were overstated based on the evidence before the court. In December 2021, the court issued its final order on summary judgment upholding the FSB's authority in all respects of the case—marking a significant victory for the Organized Village of Kake and subsistence hunters in GMU 13.

Bering Sea Elders Group

The Bering Sea Elders Group (BSEG) is an alliance of 39 Yup'ik and Inupiaq villages that seeks to protect the sensitive ecosystem of the Bering Sea, as well as the subsistence lifestyle and the communities that depend on it. NARF has represented BSEG since 2010 and has designed a comprehensive plan to help their efforts to protect the area and become more engaged in its management.

In December 2016, NARF's work with BSEG resulted in President Barack Obama signing an historic Executive Order creating the Northern Bering Sea Climate Resilience Area. This was an incredible victory for our clients and the first of its kind for tribes anywhere in the United States. However, in April 2017, President Trump signed an executive order called "Implementing an America-First Offshore Energy Strategy." While the order was aimed at re-opening Arctic and Atlantic areas for offshore drilling, it also entirely revoked Executive Order 13754. BSEG responded immediately, determined to restore the important conservation, economic, and cultural provisions. President Biden signed an Executive Order that reinstated Executive Order 13754 and the Northern Bering Sea Climate Resilience Area. BSEG is now working on the implementation of the reinstated order. In addition to work implementing the order, NARF assists BSEG with other work, including salmon bycatch, the reauthorization of the Magnuson Stevens Act, engaging with federal funding agencies about the need to restructure their grants process to more equitably include tribes, and other subsistence advocacy efforts.

Pebble Mine

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 sustainable salmon runs. In 2013, NARF helped create the United Tribes of Bristol Bay (UTBB), a consortium formed to address mining proposals threatening salmon-rearing streams. The proposed Pebble Limited Part-



for the proposed mine. Section 404(c) authorizes EPA to prohibit or restrict the discharge of material in waters when such disposal would have adverse impacts. In September 2014, PLP filed a complaint against EPA. The court granted PLP's request for a preliminary injunction to halt the 404(c) process. As the case continued, the judge issued a broad order quashing PLP's subpoenas, finding that they pushed the limits of federal rules. PLP withdrew its remaining subpoenas, but began serving narrower subpoenas, which also were quashed. In the last days of 2016, the parties requested a stay in order to negotiate settlement.

In May 2017, the parties reached a settlement of the litigation. Settlement terms included: (1) dismissing all PLP lawsuits against the EPA; (2) EPA withdrawing the proposed Section 404(c) determination; (3) EPA agreeing to not finalize any Section 404(c) action for four years or until the U.S. Army Corps of Engineers issued its final environmental impact statement. PLP filed its federal permit application in December 2017, beginning the NEPA review. UTBB continued to work to protect Bristol Bay throughout the federal and state permitting process surrounding the mine.

In June 2019, Gov. Dunleavy briefly met with President Trump on Air Force One; subsequently, he told reporters that he was convinced that the president was

"doing everything he can to work with us on our mining concerns." In July 2019, the Trump Administration announced it would formally withdraw the proposed 404(c) determination from the Bristol Bay watershed. The action was undertaken with no public input, no tribal consultation, and no prior notice to Bristol Bay's tribes.

In response to this illegal act, local interests formed the Bristol Bay Defense Alliance, consisting of UTBB, Bristol Bay Native Association, Bristol Bay Regional Seafood Development Association, Bristol Bay Reserve Association and Bristol Bay Economic Development Corporation. Throughout 2020, the Alliance took legal action on behalf of the local people who rely on the Bristol Bay fishery and all it sustains. The Army Corps ultimately denied Pebble's permit application for its deficient compensatory mitigation plan—marking the first permit denial for an Alaska hard rock mine in modern memory. NARF and the Tribes continue to work on securing lasting, permanent protections for the Bristol Bay watershed. A major milestone came in September 2021, when the EPA announced the initiation of a new Section 404(c) process in Bristol Bay.

Arctic National Wildlife Refuge

The Arctic National Wildlife Refuge's Coastal Plain is home to the calving grounds of the Porcupine Caribou Herd—one of the largest wild herds in the world—and of great cultural importance to the Gwich'in Tribes of Alaska, who refer to the area as *Iizhik Gwats'an Gwandaii Goodlit* (the sacred place where life begins). Since 1980, when the Coastal Plain was first considered for development, the Gwich'in Tribes have worked tirelessly to protect the Refuge and the caribou. NARF represents the Native Village of Venetie Tribal Government, Venetie Village Council, and Arctic Village Council, three federally recognized Gwich'in tribes, and advises them on their rights and strategic options surrounding proposed development of the Coastal Plain.

In 2017, Congress enacted tax reform legislation that contained a provision opening the Arctic National Wildlife Refuge's Coastal Plain to oil and gas development. The Bureau of Land Management (BLM) began the environmental review process to open the Coastal Plain to oil and gas leasing. In December 2018, the BLM published its draft environmental impact statement (EIS). Despite months of government-to-government meetings, the draft EIS was based on pre-existing data and research from other regions in Alaska that brushed aside the effects on subsistence and cultural resources. The final EIS, released in September 2019, identified the most development-intensive alternative as the preferred option.

PROTECT TRIBAL NATURAL RESOURCES

In August 2020, the BLM's authorized oil development in the entirety of the Coastal Plain, with few restrictions. In September 2020, NARF filed a lawsuit challenging the final EIS as well as the decision. Unfortunately, the Trump Administration held a leasing sale on January 6, 2021, after the court denied NARF's motion for preliminary injunction. Fortunately, the lease sale was a failure: less than half of the land even received a bid. On his first day in office, President Biden placed a full moratorium on all further oil and gas activities in the refuge. With the immediate threat removed, the Tribes continue to work towards protective measures for the refuge.

Bering Sea-Interior Tribal Commission

The Bering Sea-Interior Tribal Commission is a tribal consortium of 27 Tribes working in unity to protect traditional ways of life by advocating for land use planning processes and sustainable natural resource management decisions that meaningfully reflect member Tribes' values. Currently, the Tribal Commission is participating in the resource management planning processes for the Bering Sea-Western Interior and Central Yukon planning areas. These vast areas of land encompass Tribal Commission member-tribes' traditional lands and contain vital resources, which sustain member Tribes' traditional subsistence-based ways of life. As BLM's land use planning processes move forward, NARF is providing legal and technical support to the Tribal Commission and member Tribes.

In December 2020, the BLM released the Bering Sea-Western Interior Proposed Resource Management Plan and Final Environmental Impact Statement. The Tribal Commission submitted a protest letter, raising the BLM's exclusion of tribes from the planning process and failure to adopt adequate protections for cultural and subsistence resources. Eleven days after the protest period closed, the BLM dismissed or denied every protest they received. Inexplicably, the BLM concluded that the Tribal Commission did not have standing and dismissed the protest without addressing any of the issues raised. A few days later, on the day before the inauguration, the BLM released its record of decision approving the proposed plan. On his first day in office, President Biden specifically identified the Bering Sea-Western Interior Resource Management Plan as an action to be reviewed. Since Executive Order 13990 went into effect, NARF and the Tribes have met with BLM multiple times to identify next steps. In October 2021, the BLM agreed to prioritize the Bering Sea-Western Interior Plan in its continuing resource management planning work.

Bay Mills Indian Community Challenge to Enbridge's Line 5 Pipeline Tunneling Project

NARF and Earthjustice have teamed up with the Bay Mills Indian Community to fight a proposed oil pipeline tunnel that threatens the Community's treaty rights, tribal fisheries, and the environment. In August 2020, a judge granted Bay Mills Indian Community the right to intervene in an ongoing process pending before the Michigan Public Service Commission. The decision allows Bay Mills to be a party to the Enbridge's permit application to build a tunnel beneath the Straits of Mackinac, and relocate a new segment of its Line 5 pipeline. The contested case process was extended in May 2021. Direct testimony was filed in September, with rebuttal testimony in December. Cross-examination hearings are expected in January 2022, and post-hearing briefing is to conclude in March 2022.

Wyoming v. Herrera

Clayvin Herrera, a member of the Crow Tribe of Indians, is charged with taking elk out of season, and Wyoming state courts have barred him from asserting his treaty rights in defense. In 2019, the U.S. Supreme Court affirmed the continued existence of the Crow Tribe's right to hunt on unoccupied lands and remanded the case to the Wyoming courts; NARF represented the Crow Tribe as *amicus curiae* in that case. Now, Wyoming argues that Mr. Herrera is precluded from asserting his treaty rights because the U.S. Court of Appeals for the Tenth Circuit, in *Crow Tribe of Indians v. Repsis*, made alternative holdings that Wyoming's prosecution of Crow Tribe treaty hunters is warranted by conservation necessity, and the Bighorn National Forest is no longer "unoccupied" land.

The trial court sided with Wyoming; on appeal, however, the Wyoming District Court, 4th Judicial District, reversed the lower court in December 2021, holding that issue preclusion did not apply. The State petitioned for review in the Wyoming Supreme Court, but on January 4, 2022, the Wyoming Supreme Court refused to hear the case. The State is now considering whether to seek review in the U.S. Supreme Court. NARF again represents the Crow Tribe as *amicus curiae*, this time working with the Tribal Justice Clinic at the University of Arizona James E. Rogers College of Law and local counsel Bailey Lazzari of Lazzari Legal in Lander, WY, and filed an amicus brief on behalf of the Crow Tribe in the Wyoming District Court.

Crow Tribe of Indians v. Repsis

This matter is related to *Herrera*, above, in which the State of Wyoming argues that the judgment in *Crow Tribe of Indians v. Repsis*, a declaratory judgment action filed by the Tribe and decided in Wyoming's favor in the

1990s, precludes the Tribe from making certain arguments today. As a result of the U.S. Supreme Court's decision in *Herrera v. Wyoming*, the Tribe seeks relief from the *Repsis* judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. If the court grants relief, then the *Repsis* judgment would have no further force or effect, and the State could no longer argue preclusion in the remanded *Herrera* case. On July 1, 2021, the District Court denied the motion—not on the merits, but instead concluding that the District Court lacked authority to disturb holdings reached by the U.S. Court of Appeals for the Tenth Circuit. The Tribe has appealed to the Tenth Circuit, and filed its opening brief on September 27. Briefing is complete, and we are waiting for the Tenth Circuit to schedule oral argument.

ENVIRONMENTAL PROTECTION

NCAI Climate Change Matters

The effects of climate change on Indigenous peoples throughout the world are acute and will only get worse. NARF represents the National Congress of American Indians (NCAI) at the international level through the United Nations Framework Convention on Climate Change (UNFCCC). The goal is ensuring indigenous rights are protected in any international agreement governing greenhouse gas emissions reductions.

In December 2015, the Paris Agreement was adopted under the UNFCCC. The International Indigenous Peoples Forum on Climate Change (indigenous caucus), in which NARF participates, did not achieve all that it sought, but it achieved significant references that can be built on going forward. The Agreement states that,

when taking climate change action, indigenous peoples' rights must be acknowledged. Also, traditional, indigenous knowledge shall help guide the climate change science. It also recognizes the need to strengthen that knowledge and establishes a platform for sharing information and best practices. Since the Paris Agreement, the Indigenous caucus has made efforts to make the traditional knowledge platform a reality. In December 2018, a Facilitative Working Group (FWG) for the platform was established. The working group met in June 2019 with seven country representatives and seven indigenous representatives. For the first time, indigenous representatives (chosen by indigenous peoples) participated on an equal basis with states within a United Nations body. At the June meeting, the working group prepared a two-year work plan that was approved at Conference of the Parties 25 (COP 25) in December 2019. Because of COVID-19, COP 26 was delayed.

In November, 2021, COP 26 convened in Scotland. It was preceded by the fifth meeting of the FWG. Despite shortcomings in climate and other negotiations, Indigenous representation saw positive growth. There was an historic gathering of Indigenous traditional knowledge holders from around the world, per the FWG work plan. The meeting represents growing recognition of the importance of traditional knowledge to addressing climate change. Similarly positive, was the announcement of an historic \$1.7 billion commitment for Indigenous-led solutions for forests and lands protections. In addition, an additional three-year FWG work plan was approved.



CHAGA CAKE

CORN CRAB DUMPLINGS



PROMOTE HUMAN RIGHTS

To *promote Native American human rights*, NARF focuses on equal protection and freedom from discrimination in areas such as voting, education, incarceration, and religion. NARF also helps develop laws that provide unique protections for Native collective rights, traditions, culture, and property such as sacred places, peyote, eagle feathers, burial remains, and funerary objects.

RELIGIOUS FREEDOM AND SACRED PLACES

Bears Ears

For years, the Bears Ears Inter Tribal Coalition, a consortium of five sovereign Indian nations (Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute Tribe, and Pueblo of Zuni) worked to protect the Bears Ears region, America's most significant unprotected cultural landscape. Located in Utah, the Bears Ears region contains at least 100,000 archaeological sites, some dated back to 12,000 BCE, and remains critical to many tribes today for spiritual as well as hunting and gathering purposes. In response to tribal efforts, in December 2016, President Obama designated the Bears Ears National Monument and established the Bears Ears Commission "to provide guidance and recommendations on the development and implementation of management plans and on management of the monument." The Commission included one elected officer each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe, and Pueblo of Zuni.

In April 2017, President Trump directed the Department of the Interior to review the Bears Ears National Monument to determine if it was created without "public outreach and proper coordination." The suggestion that the monument's designation lacked outreach and coordination is disingenuous. The Bears Ears National Monument was created after years of advocacy and many public meetings in the Bears Ears region and in Washington, DC. The effort to protect Bears Ears was very long, very public, and very robust.

Despite an outpouring of public support for Bears Ears, in December 2017, President Trump issued an Executive Order revoking and replacing the national monument. Representing the Hopi, Zuni, and Ute Mountain Ute Tribes, NARF sued the Administration for violations of the Antiquities Act, the Separation of Powers, the Property Clause and the Administrative Procedures Act. The Tribes filed their First Amended Complaint on November 7, 2019 followed by a Mo-

tion for Summary Judgment in January 2020. Briefing was completed in 2020; however, the incoming Biden administration requested a stay pending a 60-day monuments review. Secretary of Interior Deb Haaland completed the review and submitted recommendations to the president. On October 8, President Biden issued a proclamation restoring the Bears Ears National Monument to its original size, plus some additional acreage. Tribal leaders from the Bears Ears Coalition hailed the decision and were in attendance at the White House for the signing. We have recently filed a status report with the court requesting additional time to consider the impact the proclamation has on the litigation.

Standing Rock Sioux Tribe v. Army Corp of Engineers - Amicus Brief Strategy

NARF and the National Congress of American Indians (NCAI) are assisting the Standing Rock Sioux Tribe and their attorneys to develop and coordinate an effective *amicus* brief strategy in their lawsuit against the U.S. Army Corps of Engineers in relation to the Dakota Access Pipeline (DAPL). In December 2016, the 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 determined that further environmental review was warranted.

However, in January 2017, President Trump directed the Corps to take "any and all actions appropriate" to review and approve the easement, rescind or modify the December memo, and consider any prior determinations in the matter. In February, the Corps provided notice of its intention to grant an easement to Dakota Access, LLC, to construct a pipeline under Lake Oahe. Both Standing Rock Sioux Tribe and Cheyenne River Sioux Tribe filed amended complaints and motions for summary judgment. NARF, in conjunction with NCAI, coordinated an *amicus* brief strategy to support the Tribes.

In June 2017, the court issued a favorable ruling for the Tribes, finding that the Corps "did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline's effects are likely to be highly controversial." In April 2018, Dakota Access filed its oil spill response plan. Then, in August 2018, the Corps affirmed its decision to issue a permit for DAPL. The Corps concluded that the "... review on remand did not reveal 'significant new circumstance[s] or information relevant to environmental concerns.'" The Tribes



filed motions for summary judgment in August 2019. NARF filed an *amicus* brief supporting the Tribes' motions for summary judgment on behalf of 14 tribes and eight tribal organizations. In March 2020, the court granted summary judgment in favor of the Tribes and remanded the matter to the Corps for preparation of an Environmental Impact Statement (EIS). Much as it had done when remanded to the Corps in June 2017, the Court ordered an additional briefing on whether the it should vacate the easement pending completion of the EIS. NARF filed an *amicus* brief supporting vacatur.

In July 2020, the judge ordered that the pipeline be emptied of oil by August 5. Dakota Access filed a notice of appeal and the DC Circuit Court of Appeals issued an administrative stay of the shut-down until further notice. NARF submitted an *amicus* brief on the emergency

motion to stay on behalf of NCAI, the Great Plains Tribal Chairmen's Association, and several other tribal organizations and tribes. NARF and NCAI continue to work with the Tribes' attorneys and coordinate *amicus* strategy as requested.

National Register of Historic Places Rulemaking

In early 2019, the National Park Service (NPS) announced proposed rulemaking that would change the regulations that implement the National Register of Historic Places (NRHP). Among some minor house-keeping and administrative changes, the NPS proposed substantive changes that are targeted specifically at tribes and Native Hawaiian organizations. The changes are intended to prevent traditional cultural properties, cultural landscapes, and places of traditional religious and cultural significance from being listed on

the NRHP and considered in the Section 106 review process. The proposed changes discredit the value of protecting these types of cultural resources and sideline tribes and Native Hawaiian organizations.

Initially, the NPS refused to consult with tribes (and Native Hawaiian organizations), but relented under significant pressure. The NPS held a single “consultation” meeting in Nevada in June 2019, and a single teleconference in July 2019. Along with over seventy tribes and Native organizations, NARF submitted extensive comments on the proposed rulemaking on behalf of the Native Village of Tyonek and attended the “consultations.” Of the more than 3,000 comments the NPS received, only five were in support of the rulemaking.

In October 2020, the NPS submitted its final rule for review. NARF represents the Native Village of Tyonek, the Blue Lake Rancheria, and the National Association of Tribal Historic Preservation Officers (NATHPO) in the final rulemaking process. The final rule was not published before inauguration, the Biden Administration stopped the NPS from moving forward with the rulemaking. On July 28, 2021, the NPS formally withdrew the rulemaking. There still remains a need to update the NRHP regulations; to bring the regulations in line with 2016 amendments to the National Historic Preservation Act, and to provide Tribes, tribal historic preservation officers, and Native Hawaiian organizations a more meaningful role in the nomination of historic properties.

Indigenous Peyote Conservation Initiative

NARF has represented the National Council of Native American Churches and the Native American Church of North America (NACNA) for four decades. For the past five years, NARF has been working with the National Council and NACNA on a project to research the impact of peyote decline on Native American Church (NAC) organizations and to develop and support access to and the use of peyote for religious and ceremonial purposes.

Importing from Mexico, where most naturally occurring peyote grows, is presently not legal. Artificial cultivation is difficult and extraordinarily expensive. The only domestic supply of peyote (in Texas) is becoming less sustainable due to growing NAC demand; exploitation and commercialization by non-Indian people; damage from land use practices including cattle ranching; and damage from incorrect harvesting practices and over-harvesting. NARF, National Council, and NACNA representatives developed a plan in 2015 and in 2016-7 held many meetings with Texas landowners, peyoteros, and botanists to develop relationships and raise awareness of the need to protect the sacrament.

In 2017, NARF closed on the purchase of 605 acres of Texas land, made possible by a grant from the RiverStyx Foundation of California. A nonprofit organization—the Indigenous Peyote Conservation Initiative—was created to hold the land’s title and put a peyote conservation project on the land. Meetings on the land took place throughout 2018-2019 and early 2020. Work coordinating with the local ranching community continues, and an adobe duplex and two bathhouses have been built on the land. Due to the pandemic, it is not possible to hold business or ceremonial activities on-site at this time. Work on the project continues remotely.

Graduation Eagle Feather and Regalia Project

Every spring, NARF is contacted by Native American students from across the country who are being prohibited from wearing eagle feathers at graduation ceremonies. By and large, once schools come to understand the religious and cultural significance of eagle feathers, they make accommodations and exceptions for Native American students. Unfortunately, there are a handful of school districts that persist in restricting Native American religious liberty and speech. This insistence on uniformity puts Native American students in the position of having to choose between celebrating with their classmates or following their Native religious and cultural traditions. When appropriate and as resources permit, NARF may send a letter to the school explaining the religious significance of eagle feathers, and how both federal and state law protects their use. Additionally, we are exploring the viability of targeted legislative campaigns that could lead to a “fix” on a state-by-state basis.

On occasion, NARF pursues litigation on behalf of affected students. For example, NARF partnered with Connor & Winters to file suit in Texas alleging a violation of a Native student’s right to adorn his high school graduation cap. The parties resolved this litigation through a negotiated agreement. NARF also co-counseled with Rothstein Donatelli LLC to bring suit against an Arizona school district for a violation of a Native student’s religious freedom rights to wear an eagle feather at graduation in 2019. The case is *Waln v. Dysart School District, et al.* On March 1, 2021, the Court ruled against the Walns and dismissed the case. The Walns have appealed the decision to the U.S. Court of Appeals for the Ninth Circuit and briefing is underway.

INDIAN EDUCATION

Tribal Education Departments National Assembly

NARF founded the Tribal Education Departments National Assembly (TEDNA) in 2003 with funding from the U.S. Department of Education to start a national membership organization for Tribal Education Depart-

PROMOTE HUMAN RIGHTS

ments (or Agencies). TEDNA has become a leading Indian education organization that focuses on tribal governance over K-12 education provided by state, federal, and tribal schools. NARF continues to represent TEDNA on national legislative and administrative matters and provides training and technical assistance regarding TEDs to TEDNA and its partner organizations. For example, NARF helped TEDNA prepare for an April 2021 tribal consultation with the U.S. Department of Education.

TEDNA and five tribes in Virginia were awarded State-Tribal Education Partnership grants to assist establish education departments, develop education codes, and work with the state to improve education for tribal students. NARF will assist with this work.

In October 2020, TEDNA was awarded a grant from the U.S. Department of Education to work with five tribes and two schools in Oklahoma and research the effectiveness of expanding choices of education services to support over 1,000 tribal secondary school students. NARF provides training and technical assistance on this project.

Stephen C. v. Bureau of Indian Education

In the appeal of this case from the federal district court in Arizona to the U.S. Court of Appeals for the Ninth Circuit, NARF represents the National Indian Education Association, the Tribal Education Departments National Assembly, the American Indian Higher Education Association, and the National Congress of American Indians as amici curiae in support of the stu-

dents (and guardians) at Havasupai Elementary School, which is a K-8 school operated by the Bureau of Indian Education (BIE). Students allege that the BIE has failed its statutory duties to provide basic special and general education at the school. This is a case of first impression – never before has the BIE been sued for failing to provide basic education at any of the elementary and secondary schools that it operates. In the district court, the parties settled the special education claims. The district court dismissed the general education claims, finding that they rose to the level of a “systemic challenge” not reviewable by courts under the Administrative Procedures Act. Students appealed the dismissal of the general education claims. Briefing of the appeal has been completed and oral argument is scheduled for February 2022.

Yellow Kidney, et al. v. Montana Office of Public Instruction, et al.

In July 2021, NARF, along with the American Civil Liberties Union, the American Civil Liberties Union-Montana, and the Robins Kaplan law firm, filed a new action in Montana district court alleging that state agencies and officials have failed to implement the Montana provisions known as “Indian Education for All,” which state that all Montana public school students will be instructed in American Indian cultural heritage in cooperation with Montana tribes. Despite years of funding for the provisions, the state is not implementing the provisions. This action will seek declaratory and injunctive relief for future compliance with the. The plaintiffs are Montana public school students and their guardians,



both Indian and non-Indian, and six Montana tribes: the Fort Belknap Indian Community, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Northern Cheyenne Tribe, the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, the Little Shell Tribe of Chippewa Indians of Montana, and the Crow Tribe. In October 2021, the defendants moved to dismiss this action. Plaintiffs filed an amended complaint in December 2021.

Rosebud Sioux Tribal Education Code Revision Project

In 1987 NARF accepted the request of the Rosebud Sioux Tribe to develop a precedent-setting tribal education code to regulate all K-12 schools on its reservation. The Rosebud Sioux Tribe adopted its Education Code in 1991. In 2015, the Rosebud Sioux Tribe received a grant from the Department of the Interior to revise its 25-year-old Education Code. In October 2020, the Tribal Education Committee approved a final draft of the proposed revised Code. The formal approval and enactment of the proposed revised Code continues under the Tribe's process.

Leech Lake Band of Ojibwe Education Code

NARF represents the Leech Lake Band of Ojibwe in drafting a comprehensive education code. Development continues with community meetings upcoming.

INDIAN CHILD WELFARE ACT DEFENSE

The Indian Child Welfare Act (ICWA) was passed by the U.S. Congress in 1978 in response to the disproportionate numbers of American Indian and Alaska Native children being removed from their families by state agencies and state courts and placed in non-Native foster or adoptive homes or residential institutions. Congress found that many of these removals and placements were due to state officials' inability or unwillingness to understand tribal cultures and societies. The removals were extremely detrimental to the children, their families, and tribes. In 2016, the Bureau of Indian Affairs (BIA) issued regulations and guidelines for the implementation of ICWA. The past several years have seen a dramatic increase in the number of legal challenges brought by opponents of ICWA, all with the goal of undermining ICWA and tribal sovereignty. The ICWA Defense Project is a partnership formed to protect the rights of children, families, and tribes in ICWA proceedings nationwide. The most prominent case right now is *Brackeen v. Haaland* (formerly *Brackeen v. Bernardt* and *Brackeen v. Zinke*).

In October 2018, Judge Reed O'Connor of the U.S. District Court for the Northern District of Texas ruled that both ICWA and the 2016 ICWA regulations are unconstitutional. The arguments Judge O'Connor relied on to hold ICWA and the regulations unconstitutional are contrary to the Constitution, congressional intent, and decades of well-established federal Indian law. Tribe defendants asked the United States Court of Appeals for the Fifth Circuit to stay the decision, which it did, and initiated the appeal. NARF worked closely with partners to coordinate *amicus* briefs, including a tribal brief, which was signed by 325 Tribes and 57 Native organizations. The Fifth Circuit held oral argument in March 2019.

We are delighted to report that in August 2019, the Fifth Circuit overturned the district court's opinion and affirmed the constitutionality of ICWA. On October 1, the Individual Plaintiffs and the State Plaintiffs petitioned the Fifth Circuit to rehear the case en banc and, unfortunately, rehearing was granted. NARF coordinated the *amicus* briefing strategy for the rehearing. We had 486 tribes and 59 tribal organizations sign on to the *amicus* brief. The Fifth Circuit heard oral argument in January 2020.

The Fifth Circuit decision was issued April 2021. Although the court generally upheld the authority of Congress to enact ICWA, and held that ICWA's definition of "Indian child" did not operate on the basis of race, it also found certain sections of ICWA to be unconstitutional. In September, the Department of Justice, intervening tribal nations, and Texas and individual plaintiffs all asked the U.S. Supreme Court to review the Fifth Circuit's decision. NARF filed a tribal *amicus* brief, which was signed by 180 tribal nations and 35 tribal organizations. That brief was joined by two other briefs supporting ICWA: one filed by Casey Family Programs and 10 other child welfare organizations, and one filed by 25 States and the District of Columbia. All four petitions are now fully briefed and we await their decision whether to grant cert.

Finally, NARF has been heavily involved in recent efforts in Alaska to transfer more control over the state's child welfare system to tribes through a compacting process. The Alaska Tribal Child Welfare Compact was signed in October 2017. It allows tribes to enter into an agreement with the state to provide services and functions that currently are provided by the Alaska Office of Children's Services. For fiscal year 2022, there are six scopes of work available to tribal co-signers.

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VOTING AND CIVIL RIGHTS

Brakebill v. Jaeger and Spirit Lake Tribe v. Jaeger

In January 2016, 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.

These are two companion cases challenging the North Dakota voter ID law. The lawsuit alleged that North Dakota's voter ID requirements limited the right to vote and disproportionately burdened Native American voters. On October 30, 2018, the Spirit Lake Tribe and six individual plaintiffs filed suit the week before the election seeking a temporary restraining order against the law's implementation. In February, 2020, the Parties held a mediation and came to an agreement in principle resolving the cases. They were settled to the Tribes' benefit with a final ruling from U.S. Court of Appeals for the 8th Circuit in 2021.

Rosebud Sioux Tribe v. Barnett

On September 16, 2020, NARF filed suit on behalf of Rosebud Sioux and Oglala Sioux in federal district court in South Dakota alleging violations of the National Voter Registration Act (NVRA), also known as the Motor-Voter law, which allows voters to register at motor vehicle departments and public assistance offices. NARF is co-counseling with Demos, which initiated an investigation after it discovered an 84% decrease in the number of voter registration applications from public assistance offices despite an 80% increase in the number of those receiving benefits. The investigation unearthed violations of the NVRA in past and current practices, programs, and trainings. The parties are attempting to settle the state's NVRA compliance issues.

Western Native Voice v. Jacobsen

In May 2021, NARF filed this case on behalf of the Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Fort Belknap Indian Community, and the Northern Cheyenne Tribe. It challenges two discriminatory voting laws: HB 176 and HB 530. HB 176 ends same-day registration, which reservation voters have relied upon to cast votes in Montana since 2005. HB 530 attempts to block organized ballot collection on rural reservations, in spite of a similar law being ruled unconstitutional in *Western Native Voice v. Stapleton* in 2020.

Brnovich v. DNC

NARF represented the National Congress of American Indians as *amicus curiae* to the U.S. Supreme Court in a case that considered whether Arizona's ban on ballot collection and ban on out of precinct voting violated Section 2 of the Voting Rights Act. The brief provided a review of the barriers faced by Native Americans and the importance of Section 2 in defending the rights of Native Americans to vote.

Native American Voting Rights Project ***(vote.narf.org)***

The Voting Rights Project refers to all the voting rights work that NARF does. We used to have just one or two cases at a time and one project, but this work has expanded dramatically in the past few years. The goals and objectives of this work fall under this priority because we view voting and representation as a human right in any democracy.

The goal of the Voting Rights Project is Indian political power. When Indian people have enough power to determine their elected officials, or better yet to elect people from their own communities, their representatives will be truly answerable to their needs. When a congressional representative knows the tribe in her district is not big enough to un-elect her, she is unlikely to be responsive to their requests for legislation or appropriations. This is the lack of political power, and it is the situation of the vast majority of tribes. Political power means the ability to effect positive change for the benefit of your members. Political power can be gained through media, relationships, and—above all—voting. To reach its ultimate goal, this Project focuses on removing barriers to voting from the large to the small.

In 2015, NARF created the Native American Voting Rights Coalition to organize everyone working on voting in Indian Country so we could share information, resources and strategize on a nationwide basis. Members, led by NARF, have completed two major, original reports. The first is the largest voter survey ever conducted in Indian Country (almost 5,000 voters in five states) to help ascertain barriers to political participation. That report was published in 2018. We also completed a series of nine field hearings across Indian Country. A report on the hearings was published in 2020 and is available at vote.narf.org. We released report addendums in 2021.



In addition to litigation and the work associated with leading the coalition, NARF currently is engaged in three projects: (1) polling places for the 2022 election and beyond; (2) securing address reform for Native voters so that they can register and receive ballots in the mail; and (3) a new, first of its kind, redistricting project to undo much of the damage to Native American representation across the country.

-- Polling Places

NARF is working toward securing polling places for reservations and tribal communities. The vast majority of Native voters have to leave their reservations to vote and voter services can be as much as 98 miles one way. This is one of the most common ways to suppress the vote, just make the elections too far away. We are analyzing where reservations-in-need are and reaching out to affected communities.

-- Addressing

A second project works on addressing issues in Indian Country. Post office boxes and other non-traditional addresses make it very difficult for reservation residents to register to vote if their state requires a street address. The same problems carry over when voters need absentee ballots, such as during the pandemic. This project focuses on securing more post office boxes in locations and determining new criteria for home addresses.

-- Redistricting

NARF has created a comprehensive Indian Country redistricting project. Census undercounts and gerrymandered voting districts lead to diluted voting power. Once a tribe has been gerrymandered into an unfavorable district in which they are a minority, they cannot elect candidates to represent their interests. This is often paired with or followed by restrictions in voting itself. When the barriers are removed and participation increases, Native communities can elect representatives that are responsive to their concerns. The project is helping tribes overcome these structural barriers.

Smith v. State

For decades, the Alaska Court System has excluded the residents of over 150 rural villages from being called for jury service. The courts claim that it's too expensive to include rural residents; however, the exclusion of rural residents disenfranchises communities with lower incomes and that are predominately Alaska Native. Not including those communities in the jury pool results in thirty percent of Alaska Natives being excluded from participating in the justice system. It affects perceptions of the justice system—when excluded from jury service, then one only encounters the courts as a victim, witness, or defendant. And, it results in unrepresentative juries and likely disproportionate sentences.

In February 2017, NARF filed an *amicus* brief before the Alaska Court of Appeals in support of Appellant Smith's arguments that costs savings alone are not a sufficient government interest, under an equal protection and due process analysis, to exclude thirty percent of the Alaska Native community from serving on juries. In March 2019, the court held that it was an error to refuse Smith an evidentiary hearing on the issue of

PROMOTE HUMAN RIGHTS

whether the transportation and housing of prospective jurors from two Native villages would pose an unreasonable expense. After another round of technical findings from the superior court, Appellant Smith submitted a petition to the Alaska Supreme Court to take his case. NARF filed an amicus brief in July 2021 on behalf of a coalition of tribal organizations that support Smith’s petition. The Alaska Supreme Court declined to hear the case in January 2022.

INTERNATIONAL RECOGNITION
OF INDIGENOUS PEOPLES

*United Nations Declaration on the
Rights of Indigenous Peoples*

Since 1999, NARF has represented the National Congress of American Indians (NCAI) 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 Declaration recognizes that Indigenous Peoples have important collective human rights in a multitude of areas, including self-determination, spirituality, cultural and linguistic heritage, and 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. NARF’s most recent actions on behalf of the NCAI have focused on the participation of indigenous institutions at the United Nations (UN). Until now, Indigenous Peoples have had to appear in most UN bodies as non-governmental organizations,

which is precisely what they are not. Indigenous peoples’ representatives from around the world, including one from NCAI, met in November 2016 to discuss areas of consensus. Informal consultations with member states began in December 2016 and continued through July 2017. This series of consultations concluded without any real movement, but the UN General Assembly committed, in September 2017, to continue to consider the issue for the next five sessions.

In 2018, the Human Rights Council began to establish an appropriate status for Indigenous Peoples representatives and institutions to participate. Discussions continued through 2019 and was taken up at a meeting held in Ecuador in January 2020. An April 2020 meeting was canceled in light of the global pandemic. The Permanent Forum on Indigenous Issues met virtually in 2021, but with no meetings on the participation issue. A roundtable on participation was held virtually on July 16, 2021, in connection with meetings of the Human Rights Council.

*The Implementation Project
(un-declaration.narf.org)*

NARF and the University of Colorado Law School (CU Law) have initiated the Implementation Project to guide the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) in the United States. Guided by traditional values, contemporary challenges in Indian Country, and the needs of future generations, the goal of the project is to realize the promises of the Declaration in the U.S.



The project held a conference in March 2019, which generated valuable discussion. A Project website was launched in May 2020. In April 2021, working with UCLA's Native Nations Law and Policy Center's Tribal Legal Development Clinic, the project developed a UN Declaration Implementation Toolkit. In October 2021, the Project collaborated on a resolution adopted at NCAI's Annual Convention calling on President Biden to take specific actions related to implementation of the Declaration. With the support of generous funding from the Henry Luce Foundation, in 2021-2023, the Project will offer a series of workshops in different regions of the United States. Workshops were held in November 2021 at the Cherokee Nation and the Pawnee Nation. The Project is developing an "Indigenous Peoples Guide to the United Nations" and will be planning one or more side events for the next meeting of the UN Permanent Forum on Indigenous Issues.

Organization of American States Draft Declaration on the Rights of Indigenous Peoples

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 has been representing NCAI on this matter. The General Assembly of the OAS approved the American Declaration on the Rights of Indigenous Peoples in June 2016. The American Declaration goes beyond the United Nations Declaration on the Rights of Indigenous Peoples in several respects including addressing treaties, the rights of children, and the rights of peoples in voluntary isolation. The United States commented it had been a persistent objector to the text and could not be bound by it. In 2019, NARF joined a coalition of indigenous representatives calling for the OAS to fully carry out its plan to implement the American Declaration. After in-person meetings were cancelled, a virtual dialogue was held in October 2020. NARF and NCAI, its client on these matters, was once again part of the Indigenous Nations and Organizations Coalition making a virtual statement at the 51st session of the General Assembly.

World Intellectual Property Organization

NARF represents NCAI in the ongoing negotiations for an international instrument to protect intellectual property, including Traditional Knowledge, Genetic Resources and Associated Traditional Knowledge (GRAATK), and Traditional Cultural Expressions (TCE). The United States has been participating in these negotiations at the World Intellectual Property Organization (WIPO) since 2000. Since 2009, the ne-

gotiations have centered on the draft text of the three potential instruments concerning TK, GRAATK, and TCE.

In May 2017, NARF and CU Law hosted a drafting session on the TCE instrument. Some of that text was introduced into the WIPO draft. In October 2017, the new WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) mandate and work plan were approved by the WIPO General Assembly.

NARF and CU Law hosted another drafting session in May 2018 focusing on the GRAATK instrument. In June 2018, NARF spoke on the IGC Indigenous Panel on "Practical Measures Relating to Intellectual Property and Genetic Resources: Databases and Contracts – Indigenous Peoples' and Local Communities' Perspectives." A NARF article summarizing the 2018 WIPO IGC negotiations was published in *The Indigenous World 2019*.

IGC 40 took place in June 2019. The text focus was the TK and TCE texts. NARF published an article about the 2019 WIPO negotiations in *The Indigenous World 2020*.

In February 2020, at the NCAI Winter Session, federal agencies participating in the WIPO negotiations, attended a listening session that NARF organized. Also in 2020, the Indigenous Caucus held virtual meetings to discuss interim activities that could be pursued while waiting for negotiation sessions to resume. NARF wrote about 2020 negotiations in *The Indigenous World 2021* (www.iwgia.org/en/news/4335-launch-of-the-indigenousworld-2021.html).

IGC 41 took place in August 2021 in a hybrid format, with no in-person participation by Indigenous representatives. Meanwhile, the Indigenous Caucus held virtual meetings. Due to limitations on in-person participation, no substantive negotiations took place and the IGC merely approved the work program for 2022-2023, which the General Assembly subsequently approved in October. The work program includes four negotiation sessions in 2022.

CACAO DESSERT WITH ARONIA SORBET



HOLD GOVERNMENTS ACCOUNTABLE

Within the unique trust relationship between the United States and Native nations is the inherent duty for all levels of government to recognize and enforce the laws and regulations applicable to Native peoples. NARF is committed to continuing to *hold governments accountable to Native Americans*.

TRUST FUND MATTERS

Pembina Chippewa v. United States

NARF represents the Turtle Mountain Chippewa, Chippewa Cree, White Earth Band of Minnesota Chippewa, and Little Shell Chippewa Tribe in this case against the federal government for misaccounting and mismanagement of their tribal trust fund, the Pembina Judgment Fund. Starting in August 2007, the parties engaged in alternative dispute resolution proceedings in the Court of Federal Claims. In July 2015, the parties reached agreement on a monetary amount for a potential settlement of the Plaintiffs' claims in this case. In March 2018, the parties reached agreement on the non-monetary components of a potential settlement. In December 2020, the parties began the process of seeking court approval of the settlement. In June 2021, the U.S. District Court for the District of Columbia granted final approval of the \$59 million settlement. The parties are now focusing on the settlement proceeds distribution. The Summer 2021 issue of the NARF Legal Review features the *Pembina* settlement.

Intertribal Council of Arizona v. United States

In April 2015, NARF filed on behalf of the Intertribal Council of Arizona (ITCA) a breach of trust case against the United States 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. The school's closure allowed the Department of the Interior to exchange the school's land for privately owned lands of the Barron Collier Company in Florida. The Phoenix lands were more valuable than the Florida lands, and Congress approved the land ex-

change only if the difference in value of the properties went to the AITF and a trust fund for the Navajo Nation. Collier partially paid the property value, but then gave notice that they would no longer make payments. The lawsuit seeks to hold the United States liable for the remaining payments into the AITF. After failed negotiations, ITCA filed an amended complaint in April 2018, which the United States moved to dismiss. The court granted virtually the entire motion, dismissing all but a portion of one of ITCA's claims. In early-2019, ITCA appealed to the U.S. Court of Appeals for the Federal Circuit. In February 2020, the Court of Appeals heard oral argument. In April 2020, they issued a decision. It stated that two ITCA claims were properly dismissed, but a third claim, that the United States failed to hold sufficient security for the trust fund payments, should not have been dismissed and should go forward. Following the decision, the parties are exploring settlement of the remaining claims.

Repeal of the Klamath Tribe Distribution of Judgment Act

The Klamath Tribe retained NARF to seek repeal of the Distribution of Judgment Fund Act, which was adopted as part of the legislation that terminated the Tribes' government-to-government relationship in 1954. The relationship was restored in 1986, but the remnant legislation was not repealed. Senators Merkley and Wyden introduced S.46 to repeal the act. S.46 was adopted by the Senate and forwarded to the House. The House Subcommittee on Indigenous Peoples of the United States held a hearing; NARF provided testimony in support of adoption. However, no action was taken, and the bill died at the expiration of the 116th Congress. In February 2021, Senator Merkley introduced S.314, which passed the Senate by unanimous consent in May 2021. It has not yet been assigned to a House committee.

DEVELOP INDIAN LAW

NARF is firmly committed to sharing its legal expertise in support of Indian rights. NARF maintains several projects to *develop Indian law and educate the public about Indian rights, laws, and issues*. NARF staff also participates in numerous conferences and events to share their knowledge and expertise in Indian law.

INDIGENOUS PEACEMAKING INITIATIVE (peacemaking.narf.org)

Indigenous peacemaking is a community-directed conflict resolution process 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, elder 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 mission of NARF's Indigenous Peacemaking Initiative (IPI) is to promote and support Native peoples in restoring sustainable traditional dispute resolution practices. Based on surveys of tribal justice system professionals, our priorities are: (1) making available materials from tribal peacemaking efforts and peacemaking in general; (2) providing technical assistance to tribes; (3) providing trainings in tribal peacemaking; and (4) providing advocacy supporting tribal peacemaking. The project is guided by an advisory committee of traditional peacemaking experts and practitioners.

The IPI team continues to be very busy. Trainings and technical assistance are a primary focal point for the project. Several trainings were held in 2021, including at Nez Perce and Tulalip Tribes and for the National American Indian Court Judges Association. Technical assistance was provided to tribes including Oglala Lakota Children's Justice Center, Native Village of Kake, Cow Creek Tribe, and Ho-Chunk Nation. IPI also ca-

pacitated a gathering of Native peacemakers in March and a peacemaking-focused colloquium in September.

NATIVE AMERICAN JOURNALISTS ASSOCIATION MEDIA GUIDES

The Native American Journalists Association (NAJA) produces media guides—typically, a one-page information sheet—with the goal of improving the quality of news coverage of complex Native American issues. Beginning in 2020, NAJA and NARF formed a partnership for media guides addressing legal issues. NAJA identifies the subject for each guide and produces an initial draft; NARF provides legal review, to ensure any legal claims or representations are accurate. The first NAJA-NARF guide was completed in July 2020, after the U.S. Supreme decided *McGirt v. Oklahoma*. The guide was cited by several news outlets in their coverage of the case.

THE NATIONAL INDIAN LAW LIBRARY (nill.narf.org)

The National Indian Law Library (NILL) is the only publicly available law library in the United States devoted to Indian law. In addition to the service that it provides to NARF's attorneys, the library is an invaluable resource supporting Indian Law and educating the public on Indian Law issues. The library's website recorded 245,000 users and 322,000 sessions in 2021. Each week, NILL provides free updates through the Indian Law Bulletins, which more than 9,000 subscribers receive. Throughout 2020, NILL has worked with the University of Wisconsin, the Open Law Library, the Stockbridge Munsee Community, and the Pueblo of San Ildefonso to develop a new platform for publishing tribal laws. The project reached a milestone in April 2021 when NILL was able to publish Stockbridge Munsee's official laws on its website.



FY 2021 FINANCIAL REPORT

Based on our audited financial statements for the fiscal year ending September 30, 2021, NARF reports total revenue and net assets of \$35,860,017 and \$71,273,133, 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 \$5,634,058 to NARF's reserve fund.

When compared to fiscal year 2020: The increase in public contributions is mostly due to escalated campaigns in areas such as direct mail, internet and corporations. The increase in tribal contributions is mostly due to a generous \$1 million donation from a tribe that we've had a long-standing relationship with. The increase in foundation grants is due to additional new

grants restricted to our important projects and cases (many of these grants are multi-year and support our work beyond fiscal year 2021). The increase in legal fees is mostly related to a large case settlement awarded in fiscal year 2021. The \$10,000 for federal awards in fiscal year 2020 relates to the SBA's Economic Injury Disaster payment. Along with the overall markets, NARF's investments continue to perform well. The gain on the sale of property reflects our move to another location for our headquarters.

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.

SUPPORT AND REVENUE COMPARISON

	2021		2020	
	\$	%	\$	%
Public Contributions	\$7,485,926	20.9%	\$4,581,770	28.5%
Tribal Contributions	1,740,800	4.8%	1,340,800	8.3%
Foundation Grants	8,087,601	22.6%	6,968,463	43.4%
Legal Fees	6,901,657	19.2%	583,904	3.6%
Federal Awards	-	0.0%	10,000	.1%
Return on Investments	7,543,952	21.0%	2,552,705	15.9%
Gain on Sale of Property	3,791,063	10.6%	-	0.0%
Other	309,018	0.9%	33,706	0.2%
TOTALS	\$35,860,017	100.0%	\$16,071,348	100.0%

EXPENSE COMPARISON

	2021		2020	
	\$	%	\$	%
Litigation and Client Services	\$9,369,090	67.7%	\$7,359,178	65.5%
National Indian Law Library	254,924	1.8%	206,046	1.8%
TOTAL PROGRAM SERVICES	9,624,014	69.5%	7,565,224	67.3%
Management and General	1,255,864	9.1%	1,033,813	9.2%
Fundraising	2,957,912	21.4%	2,647,657	23.5%
TOTAL SUPPORT SERVICES	4,213,776	30.5%	3,681,470	32.7%
TOTALS	\$13,837,790	100.0%	\$11,246,694	100.0%

NARF ACKNOWLEDGEMENT OF CONTRIBUTIONS:

FISCAL YEAR 2021

NARF's success relies on the generosity of our donors throughout the nation. We invite you to learn more about the benefits associated with each program listed below, please contact our Development Department at 303-447-8760. **We gratefully acknowledge these donors for fiscal year 2021 (October 1, 2020 through September 30, 2021).**

TRIBES AND NATIVE ORGANIZATIONS

AMERIND, Chickasaw Nation, Confederated Tribes of Siletz Indians, Cow Creek Band of Umpqua Tribe of Indians, Jamestown S'Klallam Tribe, Mohegan Sun, Muckleshoot Indian Tribe, National Indian Gaming Association, Poarch Band of Creek Indians, San Manuel Band of Mission Indians, Santa Ynez Band of Chumash Indians, Seminole Tribe of Florida, Shoalwater Bay Indian Tribe, Tulalip Tribes, United Tribes of Bristol Bay, Yavapai-Prescott Indian Tribe, Yocha Dehe Wintun Nation

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LIVING WATERS ENDOWMENT – *The Living Waters Endowment allows donors to honor friends and loved ones by making an endowment gift of \$10,000 or more, where the principal is invested and interest income is used for NARF's programs. By designating a gift to endowment, contributions generate annual funds and provide legal representation to our tribal clients in perpetuity.*

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PETA UHA – *Peta Uha in the Lakota (Sioux) language means firekeeper, an individual who makes a solemn commitment to ensure that the sacred flame—source of light, heat, and energy for the people—will be kept burning. Peta Uha is a membership program for donors making substantial annual commitments to NARF. Like the firekeepers of old, members of the Peta Uha Council demonstrate constancy and vigilance to ensure the protection of justice for Native Americans.*



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