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.
EXECUTIVE DIRECTOR’S REPORT

John E. Echohawk
Executive Director

Twenty-two was the 52nd year that the Native American Rights Fund has served as the national Indian legal defense fund, providing legal advice and assistance to tribes, Native organizations, and individual Indians in cases of major importance. We were proud 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 Ninth Circuit Court of Appeals upheld Crow tribal court jurisdiction over a non-member utility company for failure to follow tribal law limiting service disconnections during winter months for elderly and disabled residents. The court held that the Crow Tribe, represented by NARF, has legislative jurisdiction over the cooperative on the tribal trust land where Mr. Big Man, an elderly tribal member, resides.

The Ninth Circuit Court of Appeals overturned that ruling and remanded the case back to the district court.

In the Ninth Circuit Court of Appeals, NARF represented the National Indian Education Association, Tribal Education Departments National Assembly, American Indian Higher Education Association, and National Congress of American Indians as amicus curiae in support of the students at Havasupai Elementary School, a K-8 school in Arizona operated by the Bureau of Indian Education. The students allege that the Bureau failed its duty to provide basic special and general education. Special education claims were settled, but the court dismissed the general education claims. The Ninth Circuit reversed that dismissal and returned the case back to the district court.

On the right side of the image, the Ninth Circuit Court of Appeals represented the Klamath Tribes of Oregon in the appeal of the Distribution of Judgment Fund Act, which was adopted as part of the 1954 legislation that terminated the Tribes’ government-to-government relationship with the U.S. The relationship was restored but the legislation was not repealed. Congress finally repealed the act, and the fund will be disbursed back to the Tribes.

These legal victories and accomplishments are only possible with the contributions and grants from the many supporters of our nonprofit organization. We thank you and hope that your support will continue in 2023 and beyond, as we continue to pursue justice for Native Americans.

John E. Echohawk
Executive Director

It was a pleasure to see many of you in April at the long- overdue celebration of the Native American Rights Fund’s first fifty years. The anniversary was a wonderful way to transition back to in-person events—seeing so many champions for Indian Country in the same room!

Events like this remind us how much of what we do today depends on those who came before—the generations of strong women and men who fought to ensure that our peace, our cultures, and our rights would stay intact. It also highlights how what we do today directly serves tomorrow’s Indian Country.

Likewise, we feel the effects of what came before. Right now, the United States is having to do some reckoning around historic and ongoing systemic attempts to make Native American peoples and cultures disappear. The government is being forced to acknowledge and address repeated hateful attempts to wipe out Native American cultures and communities through cultural genocide. True to form, NARF serves an essential role in this national dialog and undertaking.

Like Our Past, NARF’s related work prioritizes Native American families and children, which are essential to our cultural continuity. Keeping families and communities intact is required for traditional knowledge, language, and understanding to flow from one generation to the next. To this end, NARF has grown its Boarding School Healing Project, to address the long scars left by the devastating U.S. policy of ripping Native American children from their families, often to never return. NARF also addresses that policy’s direct legacy in its Indian Child Welfare Act work, including Brackeen v. Haaland (currently at the U.S. Supreme Court).

It seems especially right that this year’s annual report features illustrator Michaela Goede (Tlingit and Haida). Michaela’s work is beautiful, but it also is a vessel for sharing cultural knowledge with future generations. The art in this annual report provides a beautiful complement to NARF’s ongoing work to protect Native cultures. It vividly illustrates why the work that NARF does is so necessary—and why your support of that work is so important.

Wishing the best for you, your family, and your community in the upcoming year.

Lacey A. Horn
Chair, NARF Board of Directors

Wado,
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: Chair Lacey Horn, (Cherokee Nation); Vice Chair Kenneth Kahn, (Santa Ynez Band of Chumash Indians); Treasurer Rebecca Crooks-Stratton (Stsstiton-Walpeton Ovate); Rhonda Pitka (Beaver Village Council); Rebecca Miles (Niz Pooe Tribe); Jamie Azure (Turtle Mountain Band of Chipewa); Michael Petoskey (Grand Traverse Band of Ottawa and Chipewa Indians); Geoffrey Cravatt Blackwell, (Muscoee (Creek) Nation); Louie Ungaro (Muckleshoot Indian Tribe). Not pictured: Gayla Hoseth (Curyung Tribal Council); Robert Miguel (Ak-Chin Indian Community); Stephanie Bryan (Poarch Band of Creek Indians).

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

NATIONAL SUPPORT COUNCIL

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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.

1. Preserve tribal existence
2. Protect tribal natural resources
3. Promote Native American human rights
4. Hold governments accountable to Native Americans
5. Develop Indian law and educate the public about Indian rights, laws, and issues
PRESERVE TRIBAL EXISTENCE

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 based on the idea that a strong, coordinated approach at the U.S. Supreme Court can reduce, and even reverse, the erosion of tribal sovereignty by Justices who are unfamiliar with federal Indian law and the practical challenges tribal governments face. The Project monitors cases at or headed to the U.S. Supreme Court.

On June 13, 2022, the Court issued its opinion in Doneski v. United States (20-7622) and allowed successive criminal prosecutions of a tribal citizen arising from a single act that violates both tribal law and federal law.

On June 15, 2022, the Court issued its opinion in Ybilo del Sar Pueblo v. Texas (20-493) and sided with the Tribe’s interpretation of their Restoration Act and limited the statute’s prohibition against gaming.

On June 29, 2022, the Court issued its opinion in Oklahoma v. Castro-Huerta (20-429) and held that the federal government and states have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian Country.

For October Term 2022, the Project is closely watching Beacheen v. Haaland (21-380), and related petitions, which raise issues about the Indian Child Welfare Act. As of this writing, the Court also has granted review in Oklahoma v. Sims (21-1102), Artemus v. Navajo Nation (21-1484), and Lac du Flambeau Band of Lake Superior Chippewa Indians v. Conklin (22-227).

− Judicial Selection Project

The Judicial Selection 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.

In May 2022, the Senate confirmed Sunshine Sykes, a citizen of the Navajo Nation, for a seat on the United States District Court for the Central District of California. She is the first Native American federal judge in California, and only the fifth Native American to serve as an Article III judge.

Big Horn Electric Cooperative v. Alden Big Man

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 a non-member utility company. Mr. Big Man appealed the ruling to the Apsaalooke Appeals Court. In 2017, the Apsaalooke Appeals Court held that the trial court did have jurisdiction. 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.

NARF represented the Apsaalooke Appeals Court judges and Crow Tribal Health Board members. In 2020, the Magistrate concluded that the Crow Tribe has legislative jurisdiction over Big Horn on the tribal trust land where Big Man resided and the Crow Tribal Court has jurisdiction. In 2021, the court adopted the magistrate’s recommendations in their entirety. Big Horn appealed to the U.S. Court of Appeals for the Ninth Circuit. In March 2022, a three-judge panel unanimously affirmed the district court’s judgment that the Tribe has regulatory and adjudicatory jurisdiction over Big Horn’s activities and conduct at Big Man’s residence. Big Horn filed a petition for a writ of certiorari to the U.S. Supreme Court. In December 2022, the Court denied the petition.

Cheyenne & Arapaho Tribes Tax Dispute

In 2021, Continental Resources, Inc., contested severance taxes levied by the Cheyenne & Arapaho Tribes of Oklahoma Tax Commission on the production of oil and gas from trust allotments dating back several years.

Continental disputes, among other things, the authority of the commission to tax a non-Indian entity. In 1996, the U.S. Circuit Court of Appeals for the Tenth Circuit affirmed the commission’s authority to levy a tax on oil and gas produced by non-Indians in Mustang Production Co. v. Harrison, a case argued by NARF). In December 2021, the commission produced an updated assessment and administrative record. In June 2022, Continental filed a amended objection. Based on that, the commission produced a revised assessment. Briefing continued throughout the fall.

Yvonne Ito v. Copper River Native Association

NARF represents Arctic Village Council, the Alaska Native Tribal Health Consortium, the Council of Athabascan Tribal Governments, Matilaq Association, the Southeast Alaska Regional Health Consortium, and the United Tribes of Bristol Bay as amici curiae, in Ito v. Copper River Native Association, a tribal sovereignty immunity case currently pending before the Alaska Supreme Court. This case centers on whether tribal consortia—organizations comprised of and directed by sovereign tribes to carry out essential governmental functions—may assert the sovereign immunity of their member tribes. This is a particularly important question in Alaska, where Alaska Native tribes often work collaboratively to take advantage of economies of scale while providing essential government services to their citizens, including social, educational, advocacy, and health services. The Alaska Superior Court concluded that Copper River Native Association (CRNA) is a tribal consortium and could assert the sovereign immunity of its member tribes. CRNA had not waived its sovereign immunity or consented to be sued, and therefore the Superior Court dismissed Ito’s lawsuit.

The Superior Court also concluded that CRNA was shielded by sovereign immunity under existing Alaska law as laid out in Runyon v. Association of Village Council Presidents, which established a single-factor test for determining whether a consortium could assert sovereign immunity. Runyon is out of step with the federal courts of appeal, which have adopted a multi-factor test for determining if a consortium can assert tribal sovereign immunity. Tribal amici’s brief to the Alaska Supreme Court urges them to bring state law into alignment with federal law and adopt the multi-factor test. The Alaska Supreme Court heard oral arguments in the case during the summer of 2022.
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

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. Applications were submitted to the BIA, and two new parcels were taken into trust in September 2018. After a long delay, the Cholla Canyon Ranch parcel was approved to be taken into trust in October 2021. On January 5, 2023, the Hualapai Tribe Water Rights Settlement Act of 2022 was signed into law. It contained provisions which added Hunt Parcels 1-5 to the Hualapai Reservation. It also authorized and directed the Secretary of the Interior to take the Cholla Canyon Ranch Parcels into trust. BIA is in the process of updating their files to reflect that these applications are complete.

Akiachak Native Community v. Department of Interior
In 2006, the Akiachak Native Community, the Chilkoot Indian Association, the Chalkyitsik Village Council, and the Tululikak Native Community IRA, represented by NARF, sought judicial review of 25 CFR Part 151. This federal regulation governs the procedures used by tribes and individuals requesting 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, the “Alaska Exception.” In March 2013, the court granted plaintiffs complete relief on all of their claims—a major victory for Alaska tribes. In 2014, the Department of the Interior (DOI) rescinded the “Alaska Exception.” However, in 2018, the Trump Administration withdrew support for land-into-trust for Alaska tribes and announced it would review whether to reinstate the “Alaska Exception.” In January 2021, the DOI decided lands cannot be taken in trust for Alaska tribes, which was withdrawn in April 2021. The Biden Administration issued a new Solicitors Opinion in November 2022 confirming the authority to take land into trust for Alaska Tribes under the IRA. Alaska tribes continue to weigh options on putting tribal fee land into trust.

WATER RIGHTS

Under federal law, Indian tribes are entitled to sufficient water for present and future needs. These rights are superior to all those created after the tribes’ priority dates, at least as early as the establishment of their reservations. 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 v. Coachella Valley Water District
NARF, with co-counsel, represents the Agua Caliente Band of Cahuilla Indians in a 2013 lawsuit 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.

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 March 2023.

ANNUAL REPORT 2022
In January 2022, the Tribe and United States filed objections to the private land claims filed by landowners, and filed a motion to file late springs claims on an additional ten springs located on private land that was unknown until the private landowners filed their claims. The court granted the motion to file late springs claims.

**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 Department’s (OWRD’s) Findings of Fact and Order of Determination (FFOD) issued in the KBA.

In 2017 and 2018, the Klamath County Circuit Court issued in the KBA. Findings of Fact and Order of Determination (FFOD) Part 1 of Phase 3 addresses crossingcut legal issues applicable to three claim groups: Group A – pre-1969 and non-tribal federal reserved water rights claims; Group B – Walton right and Klamath Termination Act claims; and Group C – tribally held water 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 in April 2021 and a new judge was appointed later that year. The court completed Phase 3, Part 2, for Groups A and B in 2022. Briefing on the Group C tribal claims started in late 2022 and will continue in 2023.

**Tule River Tribe**

Since 1971 the Tule River Tribe has sought to secure its federally reserved water rights on the South Fork of the Tule River in California through a storage project on its reservation. Eighty-five percent of the South Fork watershed is contained within the Tribe’s 48,000-acre Tule River Reservation. In 2007, after almost 30 years of advocacy, the Tule River Indian Tribe, represented by NARF, successfully settled its water rights claims with the affected state-based parties.

To fully settle the agreement, Congress must ratify it and make its terms federal law. Since reaching the 2007 agreement, the Tribe has sought federal legislation to ratify the agreement and authorize appropriations to create water storage and delivery infrastructure on the reservation. The effort centers on negotiating the terms of the 2007 Agreement with the Federal government and performing multiple studies, culminating with a 2018 Bureau of Reclamation Technical Evaluation Report and Reservoir Yield Analysis.

In 2021-2022 the Tribe negotiated support for legislation. In September 2022, Senators Padilla and Feinstein took the notable step of introducing legislation to ratify the terms of the 2007 Agreement with the Federal government and performing multiple studies, culminating with a 2018 Bureau of Reclamation Technical Evaluation Report and Reservoir Yield Analysis.

**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 to drink, bathe, or cook with tap water. There also is not enough water to provide basic municipal services—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 lawsuit to enforce express promises made 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 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 and source of water needed.

In September 2016, the Tribe and state executed a settlement that included water right for the Tribe and 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, in 2020, the Kickapoo Tribe water project study was passed as part of the omnibus appropriations act. The legislation kicked off a study 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. They are working closely with the federal government, and the draft feasibility report was completed in December 2022. The next phase will be a multi-year formal project planning stage leading to the design and construction stages.

**HUNTING AND FISHING RIGHTS**

Tribe 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 2020, the State of Alaska filed a complaint challenging three decisions made by the Federal Subsistence Board related to subsistence hunting. (The board 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, in taking action on two emergency hunts and the closure of certain federal lands to non-subsistence hunting, the board acted outside of its authority. NARF filed a motion to intervene on behalf of the Organized Village of Kake to defend the board’s authority to authorize emergency hunts.

In September 2020, the court heard oral argument. The court denied the state’s effort to stop the closure of federal lands and concluded that the state’s arguments of harm were overstated. In December 2021, the court upheld the board’s authority in all respects of the case—marking a significant victory for the Organized Village of Kake and subsistence hunters. The state appealed the decision to the appeals court. Oral argument was held in December 2022; we await a decision.

**United States v. State of Alaska**

Western Alaska, including the Kuskokwim River, is experiencing a severe, multi-year, multi-species salmon crash. This crisis has been devastating for communities in the region who rely on salmon for nutritional, spiritual, and cultural wellbeing.

**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 of 1988. However, the settlement was unenforceable and did not meet the Tribe’s needs. In 2016, Congress passed a bill amending the settlement act, and the updated 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.
In 2021, the United States closed the Kuskokwim River fishery within the Yukon Delta National Wildlife Refuge in response to the ongoing salmon crash, but allowed limited openings only for local, federally qualified users to fish for salmon. This action was taken in an effort to conserve the salmon population for continued subsistence uses, and it fulfilled the federal government’s responsibility to provide a rural preference for subsistence users under the Alaska National Interest Lands Conservation Act (ANILCA). However, at the same time, the State of Alaska issued orders that purported to open the same stretch of the river to fishing by all Alaskans. This caused confusion among residents of the region and interfered with attempts to provide the subsistence priority that is essential to Alaska Natives.

The very same pattern was cued up to repeat for 2022: the United States planned to limit openings to qualified users but the state intended to open its fisheries to all Alaskans during the same times.

In response, the United States sued Alaska for interfering with ANILCA’s rural subsistence preference along the Kuskokwim River. On behalf of the Association of Village Council Presidents and two subsistence users, NARF intervened in the case on the side of the United States. After June 2022 oral arguments, the court issued a preliminary injunction preventing the state from authorizing fishing on the Kuskokwim River within the refuge. The court concluded that federally qualified subsistence users would be “irreparably harmed” if the state’s openers were allowed to take place.

**Bering Sea Elders Group**
The Bering Sea Elders Group (BSEG) is an alliance of 39 Yup’ik and Inupiaq villages that seek to protect the sensitive ecosystem of the Bering Sea, as well as the communities that depend on it. NARF has represented BSEG since 2010.

In December 2016, BSEG’s work resulted in President Obama creating the Northern Bering Sea Climate Resilience Area. However, in April 2017, President Trump signed the “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 the Bering Sea protections. BSEG responded immediately, determined to restore the important conservation, economic, and cultural provisions. President Biden signed an Executive Order that reinstated the Northern Bering Sea Climate Resilience Area, and BSEG is working on implementing the reinstated order, including work on an intergovernmental advisory council and integration of traditional knowledge into decision making. The Tribal Advisory Council met for the first time in-person in June 2022.

NARF assists BSEG with other work, including salmon bycatch issues, the reauthorization of the Magnuson Stevens Act, engaging with federal funding agencies about the need to restructure grant processes to include tribes, tribal consultations, 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 Partnership (Pebble) mine would have sat on the headwaters of the largest salmon-producing river in Bristol Bay. In February 2014, Environmental Protection Agency (EPA) initiated a Clean Water Act Section 404(c) process for the proposed mine, which could restrict the discharge of material in waters when such disposal would have adverse impacts.

In 2014, Pebble filed a complaint against EPA and successfully asked the court to put the 404(c) process on hold. During the case, the judge issued a broad order quashing Pebble’s subpoena, finding that they pushed the limits of federal rules. Pebble withdrew its remaining subpoenas, but began serving narrower subpoenas, which also were quashed. In late 2016, the parties requested a stay to negotiate. In 2017, the parties reached a settlement that included: (1) dismissing Pebble lawsuits against the EPA; (2) EPA withdrawing the proposed Section 404(c) determination; (3) EPA agreeing to not finalize any action for four years or until the U.S. Army Corps of Engineers issued its final environmental impact statement.

Pebble filed its federal permit application in December 2017. 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, 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 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 hardrock mine in modern memory. A milestone came in May 2022, when the EPA announced the initiation of a new Clean Water Act Section 404(c) process in Bristol Bay and published a 2022 proposed 404(c) action for the Pebble Deposit. EPA will make a final 404(c) decision by January 2023.

**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, Venetic Village Council, and Artic 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 December 2020, 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.

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 identified the Bering Sea-Western Interior Resource Management Plan as an action to be reviewed. The commission has engaged with BLM to identify how to remedy the deficiencies in the Bering Sea-Western Interior Plan.

Bay Mills Indian Community Challenge to Enbridge Line 5
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 2020, Bay Mills Indian Community intervened in an ongoing process pending before the Michigan Public Service Commission. The commission is evaluating Enbridge’s permit application to build a tunnel beneath the Straits of Mackinac and relocate a segment of its Line 5 pipeline. In July 2022, the commission requested additional information. Currently, the parties are presenting evidence on the tunnel project’s safety risks.

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 been accruing 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. The Tribe appealed to the Tenth Circuit. Briefing is complete, and the court held oral argument in March 2022. We now await a decision. As in Herrera, NARF is assisting in this matter by the Tribal Justice Clinic at the University of Arizona James E. Rogers College of Law and Lazzari Legal.

ENVIRONMENTAL PROTECTION

NC AI 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. It states that, when taking climate change action, Indigenous peoples’ rights must be acknowledged. Also, traditional knowledge shall help guide climate change science. It also recognizes the need to strengthen that knowledge and establishes a platform for sharing information. 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.

Since the Paris Agreement, the Indigenous caucus has worked to make the traditional knowledge platform a reality. In 2018, a working group was established. It met in 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. In 2019, the group prepared a two-year plan that was approved at Conference of the Parties 25 (COP 25) in December 2019.

Because of COVID, COP 26 did not convene until 2021, when it was preceded by the fifth meeting of the working group. Despite shortcomings in negotiations, there was an historic gathering of traditional knowledge holders from around the world, per the working group’s plan. The meeting represents growing recognition of the importance of traditional knowledge to addressing climate change.

The UNFCCC resumed in-person intersessional meetings in June 2022 which NARF attended, as well as meetings of the Facilitative Workgroup (FWG) of the Local Communities and Indigenous Peoples Platform the week before. COP 27 and the eighth meeting of FWG took place late in 2022, with NC AI representatives attending.
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 tribal 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 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 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. In 2019, President Biden restored the Bears Ears National Monument. In October 2021, President Biden restored the Bears Ears National Monument. Tribal leaders from the Bears Ears Coalition hailed the decision and were in attendance at the White House for the signing.

In August 2022, the State of Utah filed suit against President Biden. The state is arguing that President Biden abused his authority in creating Bears Ears and Grand Staircase Escalante and the monuments are too large. The Tribes intervened in the lawsuit in late 2022.

**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 2016, the Army Corps determined that further environmental review was warranted before issuing an easement to the Dakota Access Pipeline to cross under Lake Oahe. However, in 2017, the Army Corps reversed course and announced its intention to grant an easement. Both Standing Rock Sioux Tribe and Cheyenne River Sioux Tribe filed amended complaints. NARF and NCAI are coordinating *amicus brief* strategies to support the Tribes. When the Tribes filed motions for summary judgment, NARF filed an *amicus brief* on behalf of 22 tribes and Native organizations. In March 2020, the court remanded the matter to the Corps for preparation of an Environmental Impact Statement (EIS). The Court ordered an additional briefing on whether it should vacate the easement pending completion of the EIS. NARF filed an *amicus brief* supporting vacatur.

In July 2020, the district court judge ordered that the pipeline be emptied of oil. Dakota Access filed a notice of appeal and the DC Circuit Court of Appeals. NARF submitted an *amicus brief* on the emergency motion to stay on behalf of several tribal organizations and tribes. In 2021, the appellate court agreed that the Army Corps needed to perform further environmental review, but reversed the district court's order to shut down the pipeline. The Army Corps of Engineers is currently developing an environmental impact statement for the pipeline.

**Indigenous Peyote Conservation Initiative**

NARF has represented the National Council of Native American Churches and the Native American Church of North America for four decades. Most recently, NARF has been working to develop and support access to and the use of peyote for religious and ceremonial purposes.
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 (IPC)—was created to hold the land's title and put a peyote conservation project on the land. An adobe duplex, two bathhouses, and a peyote nursery were built on the land. Most recently, IPC received its final 501c3 non-profit status determination from the Internal Revenue Service. NARF is transferring all funds and title to the Texas land.

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 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 co-counseled with Rothstein Donatelli LLC, on Waln v. Dysart School District to bring suit against an Arizona district for a violation of a Native student’s religious freedom rights to wear an eagle feather at her graduation in 2019. In 2021, the U.S. District Court ruled against the Walns and dismissed the case. The Walns appealed to the U.S. Court of Appeals for the Ninth Circuit. In December 2022, the court overturned the lower ruling, and, in favor of the Walns, remanded the matter back to the district court for further proceedings.

Indian Education

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 Departments (or Agencies). NARF represents TEDNA on national legislative and administrative matters and provides training and technical assistance regarding TEDs to TEDNA and its partner organizations. For example, in the 2015 Every Student Succeeds Act (ESSA), Congress added a new tribal consultation requirement. States must consult with tribes located with their states when states submit plans required for ESSA grants. Thirty-four states have tribes located within their states and all submitted ESSA plans, but it is unclear whether they complied with the tribal consultation requirement. NARF and TEDNA are referring to determine options and next steps.

Stephen C. v. Bureau of Indian Education

In the appeal of this case 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 amicus curiae in support of the students (and guardians) at Havasupai Elementary School, a K-8 school operated by the Bureau of Indian Education (BIE). Students allege that the BIE has failed its statutory duty to provide basic special and general education at the school. 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 and NARF coordinated the filing of five amicus briefs in support of the students. In March 2022, the court reversed the district court. The parties have returned to the lower court.

Yellow Kidney v. Montana Office of Public Instruction

In July 2021, NARF, along with the American Civil Liberties Union, the American Civil Liberties Union-Montana, and the Robins Kaplan law firm, filed an 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 and Montana tribes. Despite years of funding for the provisions, the state is not implementing the provisions.

The plaintiffs are Montana students and their guardians, both Indian and non-Indian, and six tribes: the Fort Belknap Indian Community, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Northern Cheyenne Tribe, Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Little Shell Tribe of Chippewa Indians of Montana, and Crow Tribe. In October 2021, the defendants moved to dismiss this action. Plaintiffs filed an amended complaint in December 2021. In March 2022, the parties requested oral argument on the motion. However, the presiding judge recused himself. In January 2023, a new judge was assigned.

Rosebud Sioux Tribal Education Code Revision Project

NARF assisted the Rosebud Sioux Tribe in developing their precedent-setting tribal education code in 1991. In 2015, the Rosebud Sioux Tribe received a federal grant 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 approval of the proposed revised Code continues under the Tribe’s process.

Lecce Lake Band of Ojibwe Education Code

NARF represents the Lecce 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 courts and placed in non-Native 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. The past decade has seen a number of legal challenges brought by opponents of ICWA, all with the goal of undermining ICWA and tribal sovereignty.

The most high-profile and potentially consequential case is Haaland v. Brackeen (formelly Brackeen v. Zinke and Brackeen v. Bernhardt).

In October 2018, the U.S. District Court for the Northern District of Texas ruled that both ICWA and 2016 ICWA regulations are unconstitutional. The arguments the court relied on are contrary to the Constitution, congressional intent, and decades of well-established federal Indian law. Tribal defendants appealed, and NARF worked closely with partners to coordinate amicus briefs, including one signed by 325 Tribes and 57 Native organizations. The Fifth Circuit overturned the district court’s opinion and affirmed the constitutionality of ICWA. Plaintiffs successfully petitioned the Fifth Circuit to rehear the case en banc. NARF coordinated the amicus briefing strategy for the rehearing, and had 486 tribes and 59 tribal organizations sign on. The Fifth Circuit reheard oral argument in January 2020.

The appeals court 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 late 2021, the Department of Justice, intervening tribal nations, as well as Texas and individual plaintiffs all asked the U.S. Supreme Court to review the decision. NARF signed a tribal amicus brief, which was signed by 318 tribal nations and 35 tribal organizations. In February 2022, the Supreme Court granted all four petitions and
consolidated the case under Haaland v. Brackeen. At all phases of this case, NARF, along with our co-counsel at Dentons, filed an amicus brief on behalf of federally recognized tribes and Native organizations. The tribal amicus brief filed in August 2022 was signed by 497 Tribes and 62 Native organizations—to our knowledge, the largest show of Indian Country support for any brief before the U.S. Supreme Court. Oral argument was heard in November and a decision is expected June 2023.

VOTING AND CIVIL RIGHTS

Rosebud Sioux Tribe v. Barnett

In September 2020, NARF filed suit on behalf of Rosebud Sioux and Ogallala 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. Jacobson

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 ends same-day registration, which constitutes more than 4.5% of votes statewide. Of the ballots rejected, about 3% were rejected because of ballot defects that could not have been corrected if voters had been notified of the defects, such as a missing witness signature, voter identifier, or voter signature. Though Alaska is a no-excuse absentee state, permitting anyone to request and vote by absentee ballot, the Division of Elections has no procedure in place to timely notify voters of defects in their absentee ballots and provide a meaningful opportunity to fix curable defects. Instead, the state does not notify voters that their absentee ballot has been rejected until after election day and does not allow voters to correct any deficiencies. The ballot rejection rate was significantly higher in rural Alaska, with an outsized impact on Alaska Native voters. The four majority-Alaska-Native house districts experienced rejection rates in the double digits. In the Bethel and Lower Kuskokwim region, the rejection rate was a staggering 16.5%. In the Bering Straits/Nome/Yukon Delta region, the rejection rate was more than 14%. For the Arctic/Unalakleet/Kotzebue region, it was more than 12%, and in the Bristol Bay/Aleutians/Dillingham/Unalaska region it was just less than 11%.

In July 2022, NARF, ACLU of Alaska, and Lawyers’ Committee for Civil Rights sent a letter to the Division of Elections requesting an opportunity to cure absentee ballot defects in future elections. After the state refused to address the ballot curing issues, NARF, ACLU of Alaska, Lawyers’ Committee for Civil Rights, and Perkins Coie filed suit on behalf of Arctic Village Council, League of Women Voters, and two individual voters.

Arctic Village Council v. Thompson

During the June 2022 special primary election, the Alaska Division of Elections rejected more than 7,500 ballots, constituting more than 4.5% of votes statewide. Of the ballots rejected, about 3% were rejected because of ballot defects that could have been corrected if voters had been notified of the defects, such as a missing witness signature, voter identifier, or voter signature. Though Alaska is a no-excuse absentee state, permitting anyone to request and vote by absentee ballot, the Division of Elections has no procedure in place to timely notify voters of defects in their absentee ballots and provide a meaningful opportunity to fix curable defects. Instead, the state does not notify voters that their absentee ballot has been rejected until after election day and does not allow voters to correct any deficiencies. The ballot rejection rate was significantly higher in rural Alaska, with an outsized impact on Alaska Native voters. The four majority-Alaska-Native house districts experienced rejection rates in the double digits. In the Bethel and Lower Kuskokwim region, the rejection rate was a staggering 16.5%. In the Bering Straits/Nome/Yukon Delta region, the rejection rate was more than 14%. For the Arctic/Unalakleet/Kotzebue region, it was more than 12%, and in the Bristol Bay/Aleutians/Dillingham/Unalaska region it was just less than 11%.

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

The goal of the Voting Rights Project is Native political power. What would that look like? (1) Every tribe has polling places where they need them and at least one or more on each reservation. (2) Those polling places are open the same times as polling places in non-Native communities. (3) Every tribe’s members can easily register to vote absentee, the Division of Elections has no procedure in place to timely notify voters of defects in their absentee ballots and provide a meaningful opportunity to fix curable defects. Instead, the state does not notify voters that their absentee ballot has been rejected until after election day and does not allow voters to correct any deficiencies. The ballot rejection rate was significantly higher in rural Alaska, with an outsized impact on Alaska Native voters. The four majority-Alaska-Native house districts experienced rejection rates in the double digits. In the Bethel and Lower Kuskokwim region, the rejection rate was a staggering 16.5%. In the Bering Straits/Nome/Yukon Delta region, the rejection rate was more than 14%. For the Arctic/Unalakleet/Kotzebue region, it was more than 12%, and in the Bristol Bay/Aleutians/Dillingham/Unalaska region it was just less than 11%.

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Tovakak v. Dahlstrom

In 2013, Arctic Village Council, Native Village of Hooper Bay, Traditional Village of Tokigak, Venetie Village Council, and two individual Alaska Native voters, represented by NARF and co-counsel, sued the Alaska Division of Elections and Alaska Lieutenant Governor to enforce the statutory guarantee of language assistance under Section 203 of the Voting Rights Act (VRA) and the voting guarantees of the Fourteenth and Fifteenth Amendments of the United States Constitution. For Alaska’s Natives, the state must provide language assistance to Alaska Native voters as required by the VRA. Plaintiffs were unable to meaningfully participate in the electoral process because of it.

In a 2014 trial, the court held that Alaska had violated the VRA. Alaska had improperly relied on what it called “outreach workers” in Alaska Native communities to translate the election pamphlet, even though the workers had never been asked to do so. The end result was an absence of pre-election information such as candidate statements and ballot measures available to English speaking voters. The court ordered translation of all pre-election materials distributed in English and posting of bilingual translators at all polling places. In 2015, the court approved a settlement agreement with the Alaska Division of Elections and Alaska Lieutenant Governor that provided a comprehensive language assistance program. Unfortunately the state has never meaningfully complied with the order, and the case is still under court supervision. NARF is reviewing reports from the 2022 elections.
2. Coalition: 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 strategy on a nationwide basis. The Coalition has also developed a detailed strategic plan that it uses to determine what projects it will pursue next.

3. Legislation: The Frank Harrison, Elizabeth Patratovich, and Miguel Trujillo Native American Voting Rights Act (NAVRA) was introduced in August 2021. The legislation is intended to address the unique challenges Native Americans face when exercising their right to vote.

4. Advocacy and Projects:

   -- Polling Places and Addressing: NARF is working toward securing polling places for reservations and tribal communities. Too many 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. We are analyzing where reservations-in-need are and reaching out to affected communities. Additionally, we work on addressing issues in Rural Country. Post office boxes and other non-traditional addresses make it 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.

   -- Redistricting: NARF has created a comprehensive Indian Country redistricting project. Census enumerator data 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.

   -- Election Protection: NARF has created the first ever Election Protection Project to cover Indian Country at-large. Project goals include: Preparing voters to navigate election barriers. Removing as many election barriers as possible by securing voting and registration opportunities. Planning for election-day monitoring and data collection.

   -- 203 Language Assistance: As a result of the new determinations made by the Director of the Census in 2022, American Indian language assistance must now be provided in 94 political subdivisions in 12 states. Our newly developed 203 Project consists of five primary components: (1) notice letters to covered jurisdictions; (2) outreach to Native communities in covered jurisdictions to educate about the requirements; (3) outreach to covered jurisdictions and their election officials; (4) garnering resources to assist with translations; and (5) litigation.

   Smith v. State

   In 2017, NARF filed an amicus brief in Smith v. State in support of Smith’s arguments that costs savings alone are not a sufficient government interest to exclude thirty percent of the Alaska Native community from serving on juries. After technical findings from the Alaska appeals court, NARF and the State of Alaska filed a NARF Co-authored amicus brief to take his case in 2021. NARF filed an amicus brief 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, noting in its denial that “[t]he denial of the petition should not be read as a comment on the merits of the constitutional argument about certain communities’ exclusion from jury service.”

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 adopted the Declaration on the Rights of Indigenous Peoples (Declaration). The Declaration 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 common concern. In 2018, the Human Rights Council began to establish an appropriate status for Indigenous Peoples representatives and institutions to participate. After a couple of years of being on the back burner, there was a meeting in December 2022 to restart the discussion on the status of Indigenous Peoples at the UN. There were four questions that NARF proposed how to enhance participation be allowed and what are the criteria to qualify and the process for determining eligibility for the enhanced status. NARF submitted a concept paper prior to the event, which went very well.

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 2019, which generated valuable discussion. A Project website was launched in 2020. In 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 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. Currently, the Project is developing an “Indigenous Peoples Guide to the United Nations” as well as UN Declaration booklets. 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. In 2022, events included a side event to the UN Permanent Forum on Indigenous Issues, an Indigenous Peoples Day event, and a panel at the National Congress of American Indian’s annual convention.

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

The Organization of American States (OAS) approved the American Declaration on the Rights of Indigenous Peoples in 2016. The United States commented it had been a persistent objector to the text and could not be bound by it. NARF, representing NCAI, joined a coalition of Indigenous representatives calling for the OAS to fully carry out its plan to implement the American Declaration. NARF and NCAI continue to be part of the Indigenous Nations and Organizations Coalition and made a statement at the 52nd session held in September 2022.

World Intellectual Property Organization

NARF represents NCAI in ongoing negotiations for an international instrument to protect intellectual property, including Traditional Knowledge, Genentic Resources and Associated Traditional Knowledge (GRAATK), and Traditional Cultural Expressions (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, federal agencies participating in WIPO negotiations, attended a listening session that NARF organized. NARF wrote about 2020 negotiations in The Indigenous World 2021.

IGC 41 took place in August 2021 in a hybrid format, and they approved the work program for 2022-2023. Subsequently, four sessions were held in 2022. The first two focused on the GRAATK text and the second two focused on the TK and TCE texts. The Indigenous Caucus selected NARF to present at an ad-hoc expert group the day before the final session of 2022.
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 Summer 2021 issue of the NARF Legal Review featured the Pembina settlement. November 2022, the United States completed payments into a qualified settlement fund. The parties are now focused on settlement proceeds distribution.

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, which 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, and Congress approved the exchange 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. ITCA filed an amended complaint in April 2018, which the United States moved to dismiss. The court dismissed all but a portion of ITCA’s claims. In 2019, ITCA appealed to the U.S. Court of Appeals for the Federal Circuit, and the court heard oral argument. In April 2020, they decided 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 go forward. In December 2022, the case was reassigned to a new judge after the death of the presiding judge. The parties have submitted a briefing schedule on simultaneous motions for summary judgment.

Klamath Tribes Judgment Fund Repeal Act
The Klamath Tribes retained NARF to seek repeal of the Judgment Fund Distribution 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. In February 2021, Senator Merkley introduced S.314, which passed in May 2021. The bill was referred to the House Natural Resources Committee and thereafter to the Subcommittee for Indigenous Peoples of the United States. Chairman Gentry testified before the subcommittee in April 2022. In December, the bill was brought to the floor of the House of Representatives and passed. President Biden signed the bill, which became Public Law No: 117-261. NARF is working to ensure that the remaining money in the judgment fund is disbursed back to the Tribes in a timely fashion.
INDIGENOUS PEACEMAKING INITIATIVE  
(peacemaking.narf.org)

Indigenous peacemaking is a community-directed conflict resolution process that addresses the concerns of all interested parties and uses traditional rituals to involve the parties to a conflict, their supporters, elders and interested community members. Within the circle, people can speak from the heart in a shared search for understanding of the conflict, and together identify the steps necessary to assist in healing all affected parties and to prevent future occurrences and conflicts. The 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) distributing peacemaking materials; (2) providing technical assistance to tribes; (3) training on tribal peacemaking; and (4) advocating for tribal peacemaking. The project is guided by an advisory committee of traditional peacemaking experts and peacemaking committee of traditional peacemaking experts and peacemaking professionals.

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 230,000 users and 305,000 sessions in 2022. Each week, NILL provides free updates through the Indian Law Bulletins, which more than 8,000 subscribers receive. Recently, NILL has worked with the University of Wisconsin, the Open Law Library to develop a platform for publishing tribal laws. The platform allows libraries to curate collections of tribal laws, based on interest, region, or other factors, while allowing tribes to maintain control over their laws. At this time, two tribes are publishing their laws on the NILL website through the new library platform: Stockbridge Munsee Community, Wisconsin and Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.

FY 2022 FINANCIAL REPORT

Based on our audited financial statements for the fiscal year ending September 30, 2022, NARF reports total revenue and net assets of $5,861,978 and $62,780,364, 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, expenses and other cash outlays exceeded revenues resulting in a decrease of $9,330,581 to NARF’s reserve fund. When compared to fiscal year 2021: The decrease in public contributions is attributed to a downturn in corporate giving. The decrease in foundation grants is due to the additional new grants we received in FY21 restricted to our important projects and cases (many of these grants are multi-year and support our work beyond fiscal year 2021). The decrease in tribal contributions is mostly due to a generous $1 million donation from a tribe in FY21 that covered a two-year period. The decrease in legal fees is mostly related to a large settlement awarded last fiscal year. Along with the overall market, NARF’s investments experienced a significant decline in performance.

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 FORVIS, LLP. Complete audited financials are available, upon request, through our Boulder office, or at www.narf.org.
NARF ACKNOWLEDGEMENT OF CONTRIBUTIONS:

FISCAL YEAR 2022

Fiscal year 2022 (October 1, 2021 through September 30, 2022). We gratefully acknowledge these donors for fiscal year 2022.

TRIBES AND NATIVE ORGANIZATIONS


FOUNDATIONS, CORPORATIONS, AND LAW FIRMS

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.


BEQUESTS AND TRUSTS

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 2022 (October 1, 2021 through September 30, 2022).
IN-KIND DONATIONS

American Indian Services, Timothy & Margaret Connors, W.K. Kellogg Foundation

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