



# NARF Legal Review

Native American Rights Fund

## Eroding Alaska Town Sues 24 Oil and Energy Companies for Destruction Caused by Global Warming



The Native American Rights Fund (NARF) and The Center on Race, Poverty & the Environment – plus six law firms – filed a lawsuit on behalf of a tiny and impoverished Alaskan village of Inupiat Eskimos located in the Arctic Circle against industrial corporations that emit large quantities of greenhouse gases. The Native Village of Kivalina faces imminent destruction from global warming due to the melting of sea ice that formerly protected the village from coastal storms during the fall and winter. The

diminished sea ice, due to global warming, has caused a massive erosion problem that threatens the village’s existence and urgently requires the village be relocated. The Native Village of Kivalina, which is a federally recognized Indian Tribe, and the City of Kivalina, which is an Alaskan municipality, filed the lawsuit in the United States District Court for the Northern District of California, located in San Francisco. They filed the case on their own behalves and on behalf of all tribal members against defen- ▶

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dants ExxonMobil Corp., Peabody Energy Corp., Southern Company, American Electric Power Co., Duke Energy Co, Chevron Corp., and Shell Oil Co., among others. In total there are nine oil company defendants, fourteen electric power company defendants and one coal company defendant. The suit claims damages due to the defendant companies' contributions to global warming and invokes the federal common law of public nuisance. The suit also alleges a conspiracy by some defendants to mislead the public regarding the causes and consequences of global warming. The residents of Kivalina are among the nation's poorest people.

Colleen Swan, Tribal Administrator of the Native Village of Kivalina, said "The campaign of deception and denial about global warming must stop." She added, "Global warming and its effects are a reality we have to deal with. Peoples'

*All Alaska photos by Jenni Monet.*

lives are in danger because of it." Swan noted that "official reports from the U.S. Army Corps of Engineers and the Government Accountability Office have found that Kivalina is directly harmed by global warming and must relocate at an expense that could cost \$400 million or more."

"We need to relocate now before we lose lives," echoed Janet Mitchell, City Administrator for the City of Kivalina. "We are seeing accelerated erosion because of the loss of sea ice. We normally have ice starting in October, but now we have open water even into December so our island is not protected from the storms."

"In recent years it has become evident that

another, perhaps more impending threat to Alaska Native lifeways looms,” stated NARF Alaska attorney Heather Kendall-Miller. “Global climate changes are wreaking havoc on the Arctic causing loss of habitat and widespread erosion. Subsistence practices, too, are being threatened. Upon learning that many villages along Alaska’s coastline were eroding into the ocean necessitating relocation, NARF’s Alaska office took on the challenge of developing new litigation that would seek compensation from industry polluters for the cost of village relocation.”

Kendall-Miller further added that, “Working with the environmental public interest firm, Center on Race, Poverty & the Environment, NARF reached out to the private bar to establish a team of top notch attorneys to develop the first climate change case that seeks damages from industry for the loss of property due to global warming. While the private firm attorneys bring the workforce and tort experience to the case, NARF brings the client and the relationship. Together this coalition of law firms hope to establish the climate change equivalent of the tobacco cases.”

**Alaska Natives are the canary in the coal mine regarding climate change**

Climate Change is wreaking havoc in Alaska. Scientists agree that Alaska has warmed more than any other place on Earth – over four times the global average. In recent years, scientists have documented melting ocean ice, rising ocean levels, rising river temperatures, thawing permafrost, increased insect infestations and threats to Arctic wildlife. As a result, Alaska Native peoples are those who are most dramatically experiencing the consequences.

Because of Alaska Natives close relationship and reliance on the land, water, vegetation, animals and weather conditions for subsistence, virtually every aspect of their traditional culturally lifeways practiced for more than 4,000 years are severely impacted by climate change. In 2006, during the Alaska Forum on the Environment, Alaska Native participants



described increased forest fires, more dangerous hunting, fishing and traveling conditions, visible changes in animals and plants, and infrastructure damage from melting permafrost and costal erosion as well as from fiercer storms. A number of traditional Alaska Native villages are also literally being washed away as result of the dramatic changes in the environment and their very existence is now endangered.

According to Deborah Williams, Executive Director of the Alaska Conservation Foundation, “The polar ice cap’s retreat due to global warming threatens a vast circumpolar ecosystem and its polar bears, walruses, seals and whales, while northern Alaska communities are left ▶



increasingly vulnerable to unprecedented storm-wave erosion.”

Up to nine Alaska Native villages are in danger of being washed away and literally destroyed by the effects of global warming within the next few years. Several villages have already lost many buildings to the ocean due to melting permafrost and increased storms from global warming. Villagers are now faced with the imminent reality of relocation that could cost hundreds of millions of dollars.

Because of these and other dramatic changes, the cultural and traditional lifeways of Alaska Natives and their very basic nutritional needs are jeopardized. As a result, NARF attorney Heather Kendall-Miller is spearheading the NARF Climate Change Project to address these life-threatening issues in Alaska. The Project has already begun to make some headway on behalf

of several Alaska Native villages.

NARF successfully gathered 162 Tribal and Corporate Resolutions calling on Congress and the Executive Office to adopt legislation reducing carbon emissions. The resolutions were carried to Washington, D.C. by tribal leaders and presented to the Alaska delegation on Climate Change Crisis Day last March. NARF also assisted the Alaska Native “Mothers” from throughout rural Alaska to travel to Anchorage to provide testimony before the Alaska Climate Impact Assessment Commission. Their testimony highlighted the devastating impacts that climate change is having on infrastructure, habitat, subsistence and culture.

*To learn more about NARF’s Climate Change Project, visit [www.narf.org](http://www.narf.org)* 🌟

## CASE UPDATES

# *NARF and ACLU ask federal court to stop disenfranchisement of Alaska Natives who need language assistance*

Government continues to violate voting rights act

On behalf of four Alaska Natives and four tribal governments, the Native American Rights Fund (NARF) and the American Civil Liberties Union filed a motion in federal court ordering state and local elections officials to provide effective oral language assistance and voting materials to citizens who speak Yup'ik, the primary language of a majority of voters in the Bethel region of Alaska. The motion comes in a lawsuit filed in 2007 charging state and local elections officials with ongoing violations of the federal Voting Rights Act.

“The state of Alaska and city of Bethel continue to violate the Voting Rights Act by blocking Alaska Natives from participating in the democratic process,” said NARF attorney Natalie Landreth, who is lead co-counsel in the case. “Election officials expect Yup'ik voters to understand translations which are incomprehensible, inaccurate, confusing, and cause them to vote the wrong way. Under federal law, state and local elections officials must provide oral language assistance in Yup'ik and ballots and other voting materials translated into Yup'ik – an obligation with which they have never complied.”

In the motion filed in federal district court in Anchorage, plaintiffs Anna Nick of Akiachak, David O. David of Kwigillingok, Billy McCann and Arthur Nelson of Bethel, and the Native Villages of Kasigluk, Kwigillingok, Tuluksak, and Tuntutuliak asked the court to order state and local election officials to comply with the voter and language assistance provisions of the Voting Rights Act before the August primary elections and to appoint federal observers to oversee future elections in the Bethel area through the end of 2012. Specifically, NARF and the ACLU are seeking to ensure that people who need assistance to vote receive it from someone of their own choosing, and that election



officials provide bilingual staff to help voters at the polls and translate ballots and other election materials and information into Yup'ik.

With the exception of two incomplete and poorly translated radio ads aired in 2006, no election information has been publicized in Yup'ik. All information is in English only. Bilingual translators have been absent from over one-third of polling places, and poll workers are trained less than 10 percent of the time. Even when Yup'ik translators are in polling places, many of their translations are incomplete and ineffective. For example, a 2002 statewide natural gas ballot question used the Yup'ik word for bodily function.

This case has uncovered the systematic disenfranchisement of Yup'ik speaking voters in Bethel. Election officials have failed to ensure that Yup'ik speaking voters in this area are able to understand a ballot and cast their vote – as required by the Constitution and the Voting Rights Act,” said Jason Brandeis, a staff attorney at the ACLU of



Alaska. “The lack of adequate voting assistance, qualified translators, and meaningful outreach from the state or local officials to inform voters of their rights represent clear violations of the law. We are confident the court will provide these voters with the necessary and constitutionally mandated tools they need to participate in the most fundamental act of citizenship.”

“The high illiteracy rates of Yup’ik voters are a result of the state’s segregated public schooling system that the voters grew up with. As a result, more than one in five non-English speaking Yup’iks cannot read and write today,” said James Tucker, an attorney with the ACLU’s Washington Legislative Office. “The state and city view compliance with the Voting Rights Act as optional, something that gets in their way of running an election instead of one of their core responsibilities. Federal law requires language assistance for Yup’ik voters for every election, not merely when it is convenient for election officials.”

Alaska is one of just five states that is covered in its entirety by the language assistance provisions

of the Voting Rights Act. Those provisions, sections 4(f)(4) and 203, apply to areas that meet certain threshold requirements for numbers of citizens with limited English proficiency. Section 208 has nationwide applicability and gives “any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write” a right to receive “assistance by a person of the voter’s choice.” The temporary provisions of the Voting Rights Act, including sections 4(f)(4) and 203, were reauthorized by Congress in 2006 for an additional 25 years.

Defendants in the lawsuit include Lt. Governor Sean Parnell, Division of Elections Director Gail Fenumiai, Regional Elections Supervisors Becka Baker and Michelle Speegle, and Bethel Municipal Clerk Lori Strickler.

Attorneys for the Alaska Natives are Landreth of NARF, Brandeis of the ACLU of Alaska, Neil Bradley of the national ACLU Voting Rights Project, and Tucker of the ACLU’s national Legislative Office in Washington, D.C.

## ***NARF Helps Defend Tribal Court Jurisdiction in Supreme Court***

On April 14, 2008, the United States Supreme Court heard oral argument in *Plains Commerce Bank v. Long Family Land and Cattle Company*, one of the most significant Indian law cases to reach the Court in the past decade. As Chief Justice John Roberts recognized during the argument, “[If we rule in favor of the Long Family], this would be the first case in which we have ... allowed Indian tribal jurisdiction to be asserted over a nonmember [defendant in tribal court].” “It’s a big ‘IF,’” commented John Echohawk, Executive Director of NARF which is co-counsel for Ronnie and Lila Long, tribal members who operate a cattle ranch on the Cheyenne River Sioux Reservation in South Dakota... “But in this case,” continued Echohawk, “we have a chance.”

Ronnie and Lila Long joined a packed courtroom to watch the Bank argue that the law requires nonmembers to consent expressly to tribal

court jurisdiction. But as the Longs countered, for many years, the Bank made multiple loans-with Bureau of Indian Affairs guarantees – to the Long Company, a majority-Indian-owned corporation. In 1996, the Bank restructured, changed the terms, and refused to provide some of the Company’s loans. As a result, hundreds of the Longs’ cattle died during the harsh winter of 1996-97, and the Bank sought to evict the Longs from some of their remaining land. A two-day jury trial in Tribal Court resulted in a judgment of \$750,000 against the Bank. This judgment and the Tribal Court’s jurisdiction were upheld by the Tribal Court of Appeals, the federal district court, and the federal appeals court.

The Longs’ Supreme Court position was argued by NARF’s co-counsel, David Frederick, a veteran Supreme Court practitioner who co-chairs the University of Texas Law School Supreme Court



*Ronnie and Lila Long with NARF attorneys Melody McCoy and Richard Guest and members of the Sacred Circle National Resource Center to End Violence against Native Women outside the Supreme Court after the oral argument. Photo by Marsha Miller*

Clinic. The argument was the culmination of over three months of intensive preparation and advocacy by a team of attorneys, law professors, and law students assembled by NARF and the Tribal Supreme Court Project to represent the Longs and their supporting amici curiae, including the National Congress of American Indians, the Cheyenne River Sioux Tribe and the National American Indian Court Judges Association. The United States as amicus also sided with the Longs although nine states as amici sided with the Bank. “We are very grateful,” said Ronnie Long. “The attorneys came to our Reservation, saw the little bit of land and few cattle we have left, and dug into this case night and day for weeks on end. I still can’t believe it.”

After the oral argument, NARF is “cautiously optimistic.” “If ever there was a case where the Court should uphold tribal court jurisdiction, this is it” explained Melody McCoy, a senior staff attorney at NARF. “But will the Court do so? I don’t know. It’s been almost 20 years since the Court has found any tribal jurisdiction over non-Indians.” Nevertheless, at least some members of the Court seemed willing to say that based on the facts of this case, there is tribal court jurisdiction. The Court’s decision is expected by the end of June 2008.

## ***NARF & Tribal Leaders Call on Government to Pay “Fair Share” of Water Settlement Costs***

NARF’s John Echohawk testifies before House Subcommittee on Water and Power

NARF Executive Director John Echohawk was among several tribal leaders who testified before the House Committee on Natural Resources’ Subcommittee on Water and Power on April 16, 2008 at an Oversight Hearing on “Indian Water Rights Settlements.” With several American Indian water rights settlements heading to Congress soon, including three from Montana, NARF, tribal and state leaders called Wednesday for a federal fund to pay the government’s share and for a more robust federal role in talks.

Those involved with negotiations for numerous tribes told of a lack of federal funding and problems with the process that result in many settlements moving at a snail’s pace. An Interior official said the costs of such settlements could rise to \$4 billion.

A U.S. Supreme Court ruling 100 years ago gave tribes water rights on their reservations, but since then only 21 claims have been resolved or are near resolution, said Rep. Grace Napolitano, D-Calif., who heads the Natural Resources panel’s water and power subcommittee.

Four bills addressing Indian water rights are before Congress, and nine more are expected this session, Napolitano said. Montana has concluded agreements with six of the seven tribes in the state and has three settlements being readied for congressional approval this year, said Susan Cottingham, director of the Montana Reserved Water Rights Compact Commission. She also testified on behalf of the Western Governor’s Association.

The settlements have avoided costly and lengthy litigation, and have come up with practical solutions to difficult allocation issues and fostered sound management practices, she said. But for years they have faced two problems: the lack of funding and the difficulty states and tribes “have had getting the federal folks engaged at an early stage,” Cottingham said. Because there is no permanent fund, settlements have had to compete

with other Interior programs, she said. Montana has spent more than \$50 million on settlements, she said.

A recent idea to pay for the federal share out of the Reclamation Fund, which takes in revenue from water resource development and some sales, leases and rentals of Western federal lands, is a “very exciting development,” she said.

“Even though they seem expensive now, they’re going to be even more exorbitantly expensive 10 or 20 years down the road, and they are an obligation that the United States has to these tribes and to Western communities,” she said.

The funding and process problems are the same as they were in the early 1990s, said Jeanne S. Whiteing, who is legal counsel to the Blackfeet Tribe of Montana in its water rights negotiations and is a member of the tribe. Despite significant water resources on the reservation, the tribe has been unable to benefit in any meaningful way, she said. The federal negotiating process has made the road to Congress a rocky one, she said. The federal criteria have been used as an “actual impediment to settlements.”

“The key in my opinion is a clear and firm funding mechanism. It frees up the department to be involved in the settlements in a more substantive way, and it frees up the department to come up with creative solutions,” she said.

The funding issue is the most difficult in negotiations, agreed John Echohawk, Executive Director of the Native American Rights Fund. “Getting the federal government to pay its fair share of these settlement costs is still the most important issue that we’re facing,” he said.

Cottingham and Echohawk also agreed that tribes thought the federal government would be on their side during negotiations, but, actually, states and tribes have agreed on settlements only to have to try to persuade Congress to approve them, usually without administration support.

(Excerpts of article by Noelle Straub, Gazette Washington Bureau reprinted courtesy of BillingsGazette.com) 🌟



# CALLING TRIBES TO ACTION!

It has been made abundantly clear that non-Indian philanthropy can no longer sustain NARF's work. Federal funds for specific projects are also being reduced at drastic rates. Our ability to provide legal advocacy in a wide variety of areas such as religious freedom, the Tribal Supreme Court Project, tribal recognition, human rights, trust responsibility, tribal water rights, Indian Child Welfare Act, and on Alaska tribal sovereignty issues has been compromised. NARF is now turning to the tribes to provide this crucial funding to continue our legal advocacy on behalf of Indian Country. It is an

honor to list those Tribes and Native organizations who have chosen to share their good fortunes with the Native American Rights Fund and the thousands of Indian clients we have served. The generosity of Tribes is crucial in NARF's struggle to ensure the future of all Native Americans. We encourage other Tribes to become contributors and partners with NARF in fighting for justice for our people and in keeping the vision of our ancestors alive. We thank the following tribes and Native organizations for their recent support since October 1, 2007:

- Ahtna, Inc.
- Bear River Band of Rohnerville Rancheria
- Chickasaw Nation
- Fond du Lac Band of Lake Superior Chippewa
- Institute of American Indian Arts
- Little Traverse Bay Band of Odawa Indians
- Lower Sioux Indian Community of Minnesota
- Manilq Association
- Mashantucket Pequot
- Miccosukee Indian Gaming
- Native American Bank
- Nez Perce Tribe
- San Manuel Band of Mission Indians
- Seminole Tribe of Florida
- Seneca Nation of Indians
- Shakopee Mdewakanton Sioux Community of Minnesota
- Siletz Tribe
- Tulalip Tribes
- Yurok Tribe
- Viejas Band of Kumeyaay Indians



# National Indian Law Library

Your Information Partner!

## About the Library

The National Indian Law Library (NILL) located at the Native American Rights Fund in Boulder, Colorado is a national public library serving people across the United States. Since 1972 NILL has collected nearly 9,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States; legal pleadings from major American Indian cases; law review articles on Indian law topics; handbooks; conference materials; and government documents.

## Library Services

**Information access and delivery:** Library users can access the searchable catalog which includes bibliographic descriptions of the library holdings by going directly to: <http://www.narf.org/nill/index.htm> or by accessing the catalog through the National Indian Law Library/Catalog link on the Native American Rights Fund website at [www.narf.org](http://www.narf.org). Once relevant materials are identified, library patrons can then choose to request copies or borrow materials through interlibrary loan for a nominal fee.

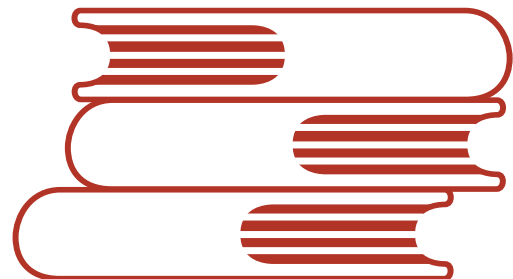
**Research assistance:** In addition to making its catalog and extensive collection available to the public, the National Indian Law Library provides reference and research assistance relating to Indian law and tribal law. The library offers free assistance as well as customized research for a nominal fee.

Keep up with changes in Indian law with NILL's Indian Law Bulletins: The Indian Law Bulletins are published by NILL in an effort keep NARF and the public informed about Indian law developments. NILL publishes timely bulletins covering new Indian law cases, U.S. regulatory action, law review articles, and news on its web site. (See: <http://www.narf.org/nill/bulletins/ilb.htm>) New bulletins are published on a regular basis, usually every week and older information is moved to the bulletin archive pages. When new



information is published, NILL sends out brief announcements and a link to the newly revised bulletin page via e-mail. Send an e-mail to David Selden at [dselden@narf.org](mailto:dselden@narf.org) if you would like to subscribe to the Indian Law Bulletin service. The service is free of charge!

**Support the Library:** The National Indian Law Library is unique in that it serves the public but is *not* supported by local or federal tax revenue. NILL is a project of the Native American Rights Fund and relies on private contributions from people like you. For information on how you can support the library or become a sponsor of a special project, please contact David Selden, the Law Librarian at 303-447-8760 or [dselden@narf.org](mailto:dselden@narf.org) For more information about NILL, visit: <http://www.narf.org/nill/index.htm> Local patrons can visit the library at 1522 Broadway, Boulder, Colorado. 🌟



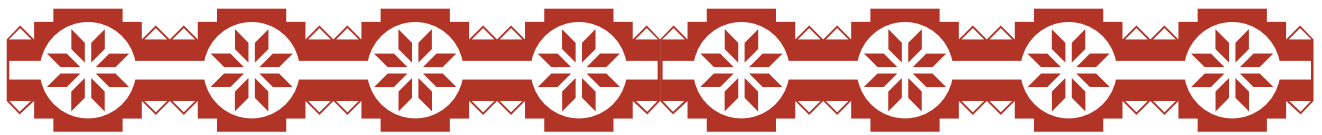
# THE NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund (NARF) was founded in 1970 to address the need for legal assistance on the major issues facing Indian country. The critical Indian issues of survival of the tribes and Native American people are not new, but are the same issues of survival that have merely evolved over the centuries. As NARF is in its thirty-eighth year of existence, it can be acknowledged that many of the gains achieved in Indian country over those years are directly attributable to the efforts and commitment of the present and past clients and members of NARF's Board and staff. However, no matter how many gains have been achieved, NARF is still addressing the same basic issues that caused NARF to be founded originally. Since the inception of this Nation, there has been a systematic attack on tribal rights that continues to this day. For every victory, a new challenge to tribal sovereignty arises from state and local governments, Congress, or the courts. The continuing lack of understanding, and in some cases lack of respect, for the sovereign attributes of Indian nations has made it necessary for NARF to continue fighting.

NARF strives to protect the most important rights of Indian people within the limit of available resources. To achieve this goal, NARF's Board of Directors defined five priority areas for NARF's work: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law and educating the public about Indian rights, laws, and issues.

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

NARF's success could not have been achieved without the financial support that we have received from throughout the nation. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance.



**NARF Annual Report.** This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request. Ray Ramirez Editor, [ramirez@narf.org](mailto:ramirez@narf.org).

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**Tax Status.** The Native American Rights Fund is a non-profit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501 C (3) of the Internal Revenue Code, and contributions to NARF are tax deductible. The Internal

Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

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