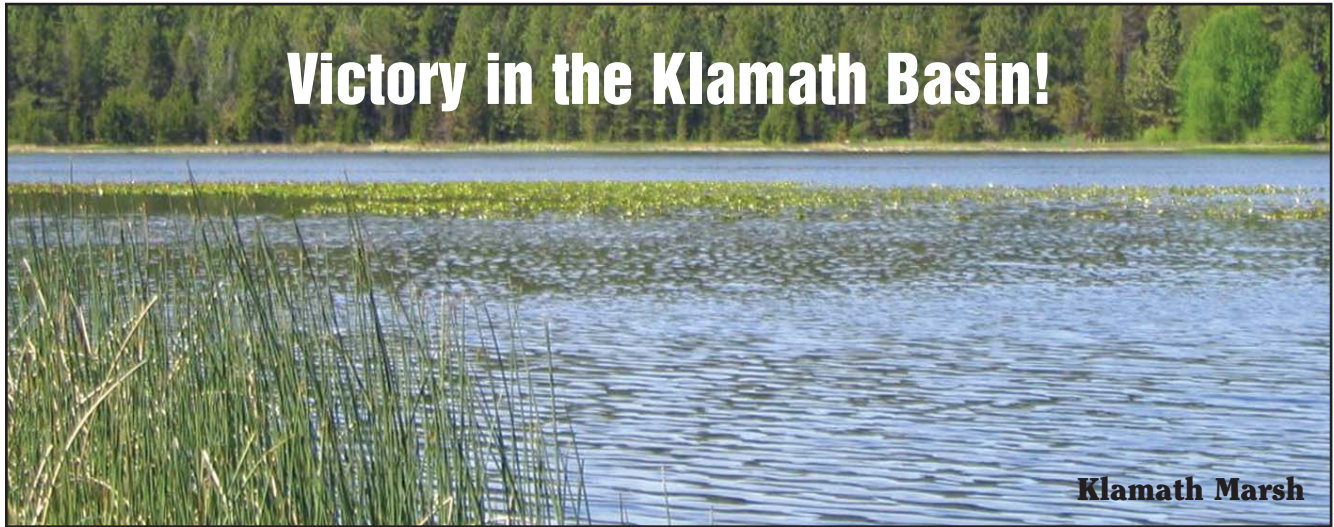




Legal Review

NATIVE AMERICAN RIGHTS FUND



Victory in the Klamath Basin!

Klamath Marsh

In the world of tribal water rights there has long been a distinction between “paper water” and “wet water.” For the Klamath Tribes of Oregon this has been particularly true because their Treaty-protected rights to water have been recognized by the courts at least since the *United States v. Adair* decisions in 1979 and 1984, but the rights have remained unquantified and unenforced. However, with the Oregon Water Resources Department’s March 7, 2013 issuance of the Final Order of Determination (FOD) in the Klamath Basin Adjudication, that situation has finally changed. Under Oregon statutory law the Tribal water rights as confirmed and quantified in the FOD are now enforceable, meaning that water use by junior water rights holders may be curtailed where necessary to fulfill the Tribes’ senior water rights. Yet the struggle for the Tribes is not over. The battleground now shifts from the administrative to the judicial arena, with the FOD determinations facing challenge by the Tribes’ opponents in the state courts.

The road leading to quantification and enforcement of the Tribes’ water rights has been a long one. The journey began with the 1975 filing of the *Adair* litigation, in which the federal courts

confirmed the Tribes have reserved Indian water rights in the Klamath Basin to support the Tribes’ treaty hunting, fishing, trapping and gathering rights with a time immemorial priority date, as well as water rights needed to satisfy the agricultural purposes of the Klamath Reservation established in the Tribes’ 1864 treaty with the United States. But the federal courts left to later state proceedings the question of “how much” water the Tribes reserved for those purposes. In 1997, the Tribes and the United States as trustee for the Tribes filed claims for quantification of ▶

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C'waam on spawning ground

the Tribal water rights in the State of Oregon's Klamath Basin Adjudication. The Adjudication was initiated by the State in 1975 as a general stream adjudication to determine all state law water rights in the Klamath Basin predating enactment of Oregon's Water Code in 1909, as well as the federal reserved water rights of the United States and the Tribes. After 38 years, issuance of the FOD represents the conclusion of the first, "administrative," phase of the Adjudication and commencement of the second, "judicial" phase. In the FOD the State Administration, in the form of the Oregon Water Resources Department, has quantified the Tribal rights and also determined the claims of hundreds of other claimants in the Adjudication.

The FOD represents an emphatic victory for the Tribes, but not a complete one. In December 2011 and April 2012, Administrative Law Judge Joe L. Allen of the Oregon Office of Administrative Hearings, who presided over the hearings of the Tribal water right cases in the administrative phase, issued Proposed Orders recommending to the Department that the Tribal water rights be quantified, across the board, in the amounts sought by the Tribes. While the FOD generally confirms the Tribes' earlier successes before Judge Allen, significant changes include the Department's denial of the Tribes' rights to water in "off-reservation" water sources, that is, water sources located entirely outside, and not bordering,

the boundaries of the former Klamath Reservation. Still, overall the FOD is overwhelmingly positive for the Tribes, and will require a serious change in water management in the Basin now that Tribal water rights can and must be recognized. And the Tribes will have the opportunity to challenge the Department's denial of the Tribes' off-reservation water rights during the judicial review of the FOD in the state courts.

As required by Oregon statutory law, the Oregon Water Resources Department has filed the FOD with the Klamath County Circuit Court for judicial review, thus initiating the "judicial" phase of the Adjudication. During this phase, parties who dispute the Department's determinations in the FOD will have an opportunity to file exceptions to the FOD with the court. Following a hearing on the exceptions, the court will issue a water rights decree, affirming, denying or modifying the FOD's determinations. Although no schedule has been set at this time, judicial review of the FOD is likely to be a lengthy process.

Pending the circuit court's review of the FOD, the Oregon statutes provide that the FOD is enforceable. That is, the water rights recognized in the FOD, including those of the Tribes, will now be enforced in accordance with Oregon's "first in time, first in right" priority system. With a priority date of "time immemorial," the Tribal water rights to support hunting, fishing, trapping, and gathering are the most senior rights in

the Basin. Enforcement of the Tribal water rights will help to ensure that species of importance to the Tribes, including for example the endangered c’waam and kuptu, often called by non-Indians the Lost River and shortnose suckers, finally have access to sufficient water to become healthy and productive.

One possible hitch in enforcement is that under the statutes a party may seek a stay of enforcement of the FOD, in whole or in part, provided that the party posts a sufficient bond, and conditioned that the party will pay all damages resulting from the stay if the stayed rights are ultimately upheld by the court. To date, no party has requested a stay of enforcement of the Tribal water rights. Presumably the amount of any bond for staying enforcement of the Tribal water rights would be substantial.

It is anticipated that the Tribes’ victory in the FOD may serve to foster broader support for the Klamath Basin Restoration Agreement (KBRA)

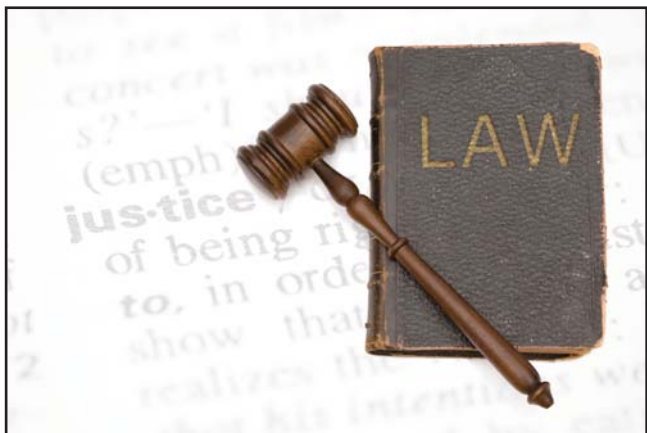
which was drafted by many Basin water interests to address water and other resource dilemmas in the Basin. Upon learning of the FOD’s results, the Tribes called for renewed attention to be given to the KBRA. Don Gentry, Vice-Chairman of the Klamath Tribes expressed the view that that “[w]hatever the outcome of the FOD, the KBRA still represents the Basin’s best opportunity for resolving water issues.” Gentry explained that the KBRA can be used to assist junior water users in transition from unregulated, overdeveloped irrigation to more appropriate, balanced and sustainable water management, and stated that the Tribes “will continue to work with people of good will in the Basin to use the KBRA to resolve these issues in an effective, peaceful manner.”

NARF has represented the Klamath Tribes on treaty resource issues since 1970 with the work on the Klamath Basin Adjudication being one of NARF’s oldest cases. 🌻

The adoption industry’s ugly side

The Supreme Court heard arguments on April 16, 2013 in the case of *Adoptive Couple v. Baby Girl*. The facts of the case are straightforward: A South Carolina couple is seeking to force Dusten Brown, an Iraq war veteran and member of the Cherokee Tribe, to give his daughter Veronica up for adoption. Brown, who is now raising Veronica at his home in Oklahoma, has prevailed so far in every court that has considered this matter, including after a full, four-day trial by the South Carolina Family Court and in a decision by the South Carolina Supreme Court.

Poke beneath the basic facts, though, and you will find the ugly underbelly of the American adoption business. All across this country – but especially in states that are home to multiple Native American Tribes – unethical adoption attorneys are purposely circumventing the federal law that is meant to protect Native American children. Even worse are the continuing attempts by some adoption lawyers to take advantage of active duty service members in the process of being deployed to combat, or in active deployments.



Brown’s case is a sad example of both of these disturbing trends. At its very heart, this case is about a father’s deep desire to raise his daughter, named Veronica. Veronica’s mother and Brown were engaged when she was conceived, but her mother broke off the engagement while Brown was serving in the Army and stationed at Fort Sill, Okla. Unbeknownst to Brown, his fiancé began the process of placing her child up for adoption.



In the final months of pregnancy, the mother cut off all communication with Brown and worked closely with an agency and attorney to place the child with a non-Indian couple from South Carolina, the Capobiancos. Brown was not informed of Veronica’s birth on September 15, 2009. Instead, Veronica was placed with the Capobiancos three days after her birth in Oklahoma, and they relocated her to South Carolina shortly thereafter.

Four months later, the day before Brown’s scheduled deployment to Iraq, the couple’s lawyer (who was also the lawyer for the adoption agency) finally served Brown with notice of their intent to adopt Veronica. The notice was served to Brown in the parking lot of a mall.

Immediately, Brown went to court to request a stay of the adoption until after his deployment (which, because of his military status, is provided for by federal law). He also began the legal steps to establish paternity and gain custody. He was then deployed to Iraq. Because the Capobiancos waited until just days before Brown was deployed, the adoption hearing was not completed until he returned home.

At this hearing, the South Carolina Family Court denied the Capobiancos’ petition to adopt and ordered Veronica’s transfer to her father. The court found that federal Indian Child Welfare Act (ICWA) applied in this case, that Brown had acknowledged and established paternity, and that an exception to ICWA called the “Existing Indian Family Exception” (EIFE) was inapplicable. Most decisively, it found that Brown had not voluntarily consented to the termination of his parental rights or the adoption.

The Capobiancos appealed to the South Carolina Court of Appeals to stay the transfer of custody, where they lost. They then appealed to the South Carolina Supreme Court, which upheld the family court’s decision. Last October, they asked the U.S. Supreme Court to review the case. In early January, the U.S. Supreme Court accepted review.

The tragedy of this case is the failure of some of the adoption lawyers involved in that process – failures that have caused great heartache for all of the families involved. Had the adoption lawyers done their jobs from the start, the child would never have left Oklahoma.



The adoption lawyers knew from the outset that the father was Native American and that, once he learned of their plans, he intended to fight them to be able to raise his daughter. The adoption lawyers also knew from the start that ICWA would protect the rights of the father and the child.

Nonetheless, the lawyers forged ahead, ignoring the law, providing inaccurate information to Oklahoma authorities, and removing the child from the Cherokee Nation prematurely.

Brown’s cause is supported in briefs filed with the Supreme Court by U.S. Solicitor General Donald Verrilli on behalf of the United States of America, 19 state attorneys general, current and former members of Congress, and a wide array of other groups. Many of the briefs highlight the findings of the South Carolina Family Court, which found that “the birth father is a fit and proper person to have custody of his child” who “has convinced [the Court] of his unwavering love for this child,” – findings upheld by the South Carolina Supreme Court.

Unfortunately, though, Brown’s case is not unique, and other fathers in his position – particularly those serving in the military – are not able to battle the adoption system in the way he has. It is time for the Congress to hold hearings and expose for all to see the tactics of lawyers who are continuing to evade the federal law designed to protect Native American families.

John Echohawk, Executive Director, Native American Rights Fund; Jacqueline Pata, Executive Director, National Congress of American Indians; and Terry Cross, Executive Director, National Indian Child Welfare Association. ❁

CASE UPDATES

Tribal Supreme Court Project

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review.

The Supreme Court of the United States granted review in *Adoptive Couple v. Baby Girl, Birth Father and Cherokee Nation*, a troubling case which involves a challenge to provisions within the Indian Child Welfare Act (ICWA) protecting the rights of Indian parents, families and tribes in relation to Indian children. The case was fully briefed and oral argument was held on April 16, 2013.

In response to the Adoptive Couple's and their amici's assault on ICWA, the Tribal Supreme Court Project fully mobilized its resources in coordination with the attorneys for the Father and the Cherokee Nation to broaden support for the protections provided under ICWA to Indian children, Indian families and Indian tribes. In all, 24 amicus briefs in support of the Father and the Cherokee Nation have now been filed. One key amicus brief was submitted by the U.S. Solicitor General which emphasizes the importance of ICWA and states: "the United States has a substantial interest in the case because Congress enacted ICWA in furtherance of 'the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people.'" The brief further defends the constitutionality of ICWA, arguing that "ICWA, which is predicated on Congress's considered judgment that application



of its protections serves the best interests of Indian children and protects vital interests of their parents and Tribes, does not violate any substantive due process protections." It concludes that "[t]he South Carolina courts properly awarded custody of Baby Girl to Father."

A second key brief was filed by Arizona Attorney General Tom Horne, who was joined by attorneys general from 17 other states—Alaska, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Maine, Michigan, Mississippi, Montana, New Mexico, New York, North Dakota, Oregon, Washington, and Wisconsin—and argued against interference in the relationship between states and tribes in matters regarding ICWA. The message of the brief is that "States and tribes have collaborated to ensure that the mandates and spirit of ICWA are fulfilled.... Early and complete compliance with ICWA ensures the security and stability of adoptive families as well as tribes and Indian families." And it is important to note that not one state submitted a brief in support of Adoptive Couple.

In another brief, 17 current and former members of Congress joined together to educate the Court about the circumstances and evidence that led to the enactment of ICWA in 1978. The members included nearly every Chair of the Senate Committee on Indian Affairs who reminded the Court that Congress has exclusive power to legislate with respect to Indian tribes:



“In 1978, Congress enacted ICWA in direct response to state adoption policies that were draining Indian tribes of their future citizens. Such practices threatened the very existence of Indian tribes. Without children to grow up as their citizens, tribes would be left with no one to speak their language, carry on their traditions and culture, or participate in their tribal governments... Ultimately, any decision limiting Congress’s authority to pass legislation like ICWA... would effectively preclude Congress from exercising its plenary authority in Indian affairs, and render Congress unable to fulfill its historic duties as trustee to the Indian tribes.

And in a brief of filed by the Casey Family Programs and 17 leading child welfare organizations, the Court was informed that ICWA represents the “best practices” for all child custody determinations:

“No one understands the human toll custody disputes can take more than amici, 18 child welfare organizations who have dedicated literally scores of years to the on-the-ground development and implementation of best practices and policies for child placement decision making. Amici have seen up close what works, and what does not. In amici’s collective judgment, ICWA works very well and, in fact, is a model for child welfare and placement decision making that should be extended to all children. Much forward progress in the child welfare area would be damaged by rolling the law back.

To complement these and other powerful amicus briefs from non-Indian governments and organizations, two national tribal amicus briefs were submitted along with six state-specific tribal amicus briefs. The first national tribal amicus brief focused on the legislative history and importance of ICWA and was submitted on behalf of the Association on American Indian Affairs, the National Congress of American Indians and the National Indian Child Welfare Association, who were joined by 30 Indian tribes and five Indian organizations. The second national tribal amicus brief addressed the constitutional issues raised by the petitioners and also includes over 70 tribes

from across the nation who filed individually or as members of regional tribal organizations.

A decision by the Court is expected before the end of the term in June 2013.

United States v. Samish Indian Nation (No. 11-1448) – On October 9, 2012, the Court issued an order granting the petition of the United States, vacating the judgment with respect to all matters relating to the Samish Tribe’s Revenue Sharing Act claim and remanding the case to the U.S. Court of Appeals for the Federal Circuit with instructions to dismiss that claim as moot. This case arose from a series of suits brought by the Samish Tribe to obtain treaty rights and statutory benefits from the United States as a result of its efforts to be a “federally recognized” Indian tribe which began in 1972. The U.S. had sought review by the Court of a decision by the Federal Circuit which held that the Samish Tribe may pursue its claims for money damages under the State and Local Fiscal Assistance Act of 1972 (Revenue Sharing Act). The Federal Circuit had held that the Revenue Sharing Act is a “money mandating statute” and is not limited by operation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

Petitions For A Writ Of Certiorari Pending

Currently, several petitions for a writ of certiorari have been filed in Indian law and Indian law-related cases and are pending before the Court:

Native Village of Kivalina v. Exxon Mobile Corporation (No. 12-1072) – On February 25, 2013, petitioners Native Village of Kivalina and the City of Kivalina, a federally-recognized tribe and an Alaskan municipality, filed a petition seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which affirmed the district court’s dismissal of their claims for damages for lack of subject matter jurisdiction, holding that the Clean Air Act displaces their federal common law claims. Petitioners are the governing bodies of an Inupiat village located on an Arctic barrier island that is being destroyed by global warming. Petitioners allege that greenhouse gases have caused the Earth’s temperature to rise, especially in the Arctic, which has melted the land-fast sea ice that protects the village from

powerful oceanic storms. As a result, Kivalina is now exposed to erosion and flooding from the sea and must relocate or face imminent destruction. Petitioners make clear that they seek damages - not injunctive relief - from the largest U.S. sources of greenhouse gases under the federal common law of public nuisance. The question presented is: “Whether the Clean Air Act, which provides no damages remedy to persons harmed by greenhouse gas emissions, displaces federal common-law claims for damages.”

Rude v. Cook Inlet Region, Inc. (No. 12-988) – On February 6, 2013, former shareholders and board members of the Cook Inlet Region, Inc. (“CIRI”), an Alaska Native Regional Corporation formed under the Alaska Native Claims Settlement Act (“ANCSA”), filed a petition seeking review of a decision of the U.S. Court of Appeals for the Ninth Circuit which affirmed the district court’s finding of federal question jurisdiction over claims brought by CIRI against petitioners for violations of certain provisions of ANCSA regarding petitions to lift alienability restrictions.

Native Village of Eyak v. Blank (No. 12-668) – On November 28, 2012, the Native Village of Eyak filed a petition seeking review of an en banc decision of the U.S. Court of Appeals for the Ninth Circuit which held that the Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham do not possess aboriginal hunting and fishing rights in the areas of the Outer Continental Shelf they traditionally used. The question presented in the petition is: “The Ninth Circuit agreed with the district court’s findings that at the time of first contact with Europeans, the Chugach were a culturally, ethnically and linguistically related people who had made actual and continuous use and occupancy of an area of the Outer Continental Shelf for a long time. The courts also agreed there was no evidence that others used the area, except for the periphery. Based on these showings by the Chugach, did the Ninth Circuit err in concluding that the exclusive use required to establish aboriginal title was defeated by a failure to demonstrate an ability to expel a hypothetical invader, by other groups’ use of the periphery of the Chugach territory, and by the fact that the Chugach villages were politically independent?”

Madison County v. Oneida Indian Nation of New York (No. 12-604) – On November 12, 2004, Madison County and Oneida County filed a petition seeking review of a decision by the U.S. Court of Appeals for the Second Circuit which affirmed the district court’s dismissal of their counterclaim that the Oneidas’ reservation was disestablished. The question presented in the petition is: “Does the 300,000-acre ancient Oneida reservation in New York still exist, neither disestablished nor diminished, despite (1) the federal government’s actions taken in furtherance of disestablishment (including, but not limited to, the 1838 Treaty of Buffalo Creek); (2) this Court’s holding in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197, 214 (2005) (“Sherrill”) that the Oneida Indian Nation of New York cannot exercise sovereignty over lands it purchases in the ancient reservation area; and (3) this Court’s finding in that case that land in the ancient reservation area has not been treated as an Indian reservation by the federal, state or local governments for nearly two centuries?” Three amicus briefs in support of the petition have been filed by: the State of New York; Cayuga and Seneca Counties; and, the Citizens Equal Rights Foundation. The Tribe’s brief in opposition was filed on January 16, 2012, and the petition was scheduled for conference on February 15, 2013. On February 19, 2013, the Court issued a CVSG, inviting the Solicitor General to file a brief expressing the views of the United States.

Michigan v. Bay Mills Indian Community (No. 12-505) – On October 23, 2012, the State of Michigan filed a petition seeking review of a decision by the U.S. Court of Appeals for the Sixth Circuit which held that federal courts lack jurisdiction to adjudicate their IGRA claims to the extent those claims are based on an allegation that the Tribe’s casino is not on Indian lands and that such claims are also barred by the doctrine of tribal sovereign immunity. The Tribe filed its brief in opposition on November 26, 2012, and the petition was scheduled for conference on January 4, 2013. On January 7, 2013, the Court issued a CVSG, inviting the Solicitor General to file a brief expressing the views of the United States.

Young v. Fitzpatrick (No. 11-1485) – On June 4, 2012, Mr. Young, as representative of the estate of

his brother, filed a petition seeking review of an unpublished decision by the Washington State Court of Appeals which held that, based on the doctrine of tribal sovereign immunity, state courts do not have subject matter jurisdiction over claims against tribal police officers acting in their official capacity on tribal lands. The tribal police officers filed their brief in opposition on

July 9, 2012, and the petition was scheduled for conference on September 24, 2012. On October 1, 2012, the court issued a CVSG, inviting the Solicitor General to file a brief expressing the views of the United States.

You can find copies of briefs and opinions on the major cases we track on the NARF website (www.narf.org/sct/index.html). 🌟

NARF Applauds Sponsors Of Proposed Legislation To Curtail Offensive “Redskin” Trademark

The Native American Rights Fund (NARF) fully supports the introduction of H.R. 1278, a new landmark bill in the U.S. House of Representatives that would amend the Trademark Act of 1946 regarding the disparagement of Native Americans through marks that use the term “redskin.”

NARF commends Rep. Faleomavaega and all the original sponsors of this important bill, which sends a clear signal that some members of Congress do not take anti-Native stereotyping and discrimination lightly. These Representatives now join Native American nations, organizations and people who have lost patience with the intransigence of the Washington pro football franchise in holding on to the indefensible – a racial epithet masquerading as a team name.

NARF also commends all those individuals in the on-going *Harjo* and *Blackhorse* proceedings in federal agencies and courts for their tireless advocacy attempting in righting this wrong. While these cases have yet to succeed, they have provided the springboard for legislative efforts like the new bill.

For over 20 years NARF has been involved in the cases, attempting to accomplish what this bill, if enacted, would do. NARF represented the National Congress of American Indians (NCAI), the National Indian Education Association (NIEA), the National Indian Youth Council (NIYC), and the Tulsa Indian Coalition Against Racism (TICAR) as amici curiae in *Harjo et al v. Pro Football, Inc.* NARF also organized amici briefs in support of the Native petition for Supreme Court review, including one by a broad range of Native nations and organizations, and

others by law professors, psychology professors and social justice advocacy groups.

NARF, NCAI, NIEA NIYC, TICAR and other major Native American organizations all have raised concerns regarding race-based stereotyping and behaviors in sports, particularly the racially derogatory name and logo of the “Washington Redskins” professional football organization. Such concerns have been expressed through numerous communications, public statements, and meetings, including a 1972 meeting with then Washington Redskins president Edward Bennett Williams, after which no team owner ever met with Native people opposing the name.

The U.S. Patent and Trademark Office registered six trademarks between 1967 and 1990 that consist of racially derogatory and disparaging material, which opens Native Americans to contempt and public ridicule in violation of Section 2(a) of the Lanham Act, 15 U.S.c. § 1052(a). While there is enormous uplifting good in the human spirit, racism is the dark side of humanity that has caused much suffering among our diverse human family. Section 1052(a) wisely recognizes that one basic manifestation of prejudice, discrimination, or racism is the use of racially derogatory names, caricatures, or stereotypes that disparage peoples and persons and hold them up to contempt and ridicule; and this statute safeguards citizens through the registration of such trademarks.

In ruling unanimously in the *Harjo* case to cancel the “Redskins” trademarks, the PTO Trademark Trial and Appeal Board (TTAB) admitted that the six existing trademark licenses should not have been approved. That ruling was

overturned on a technicality, laches, which was interpreted to mean that the plaintiffs waited too long after turning 18 to file suit. The current Blackhorse case is identical, except that the plaintiffs filed when they were 18 to 24. In a recent hearing before the PTO TTAB, the Washington franchise argued that even these young plaintiffs waited too long and should have filed on the day they turned 18. In addition to this ongoing trademark cancelation case, Native people have filed Letters of Protest with the PTO to stop new requests for trademark licenses for the same disparaging name.

Should this legislation be enacted, it would provide justice to the plaintiffs and protestors in these cases, would free the PTO to automatically deny federal protection for this disparagement, and would spare present and future Native American peoples and persons from suffering public humiliation and discrimination from the name of the team in the nation's capitol.

Native nations and citizens have a treaty, trust and special relationship with the United States, and rely on the federal government more than any other segment of society to make certain that its actions do no harm. Because of the duty of care owed to Indian tribes and people by the Department of Commerce, it is incumbent upon them to strictly enforce the provisions of 15 U.S.C. § 1052(a), in order to safeguard Indian tribes and citizens from racially or culturally disparaging federal trademarks. They are required by law to assess the issues in light of its federal Indian trust relationship and associated fiduciary duties to protect Indians and Indian culture from degrading federal trademark registrations. That trust relationship encompasses an affirmative duty on behalf of the Department of Commerce and the PTO TTAB to protect tribal culture and safeguard Native Americans from racism in sports conducted under color of federal law. 🌟

Federal Court Holds Interior Secretary Retains Authority To Make Trust Land Acquisitions For Alaska Natives

On March 31, 2013, the U.S. District Court for the District of Columbia issued an important ruling in *Akiachak Native Community, et al. v. Salazar*, that affirms the ability of the U.S. Secretary of Interior to take land into trust on behalf of Alaska Tribes and also acknowledges the rights of Alaska Tribes to be treated the same as all other federally recognized Tribes.

In 2006, four Tribes and one Native individual—the Akiachak Native Community, Chalkyitsik Village, Chilkoot Indian Association, Tuluksak Native Community (IRA), and Alice Kavairlook—brought suit to challenge the Secretary of the Interior's decision to leave in place a regulation that treats Alaska Natives differently from other Native peoples. On behalf of our clients, NARF and co-counsel Alaska Legal Services Corporation sought judicial review of 25 C.F.R. § 151 as it pertains to federally recognized Tribes in Alaska. This federal regulation governs the procedures used by Indian Tribes and

individuals when requesting the Secretary of the Interior to acquire title to land in trust on their behalf. The regulation bars the acquisition of land in trust in Alaska other than for the Metlakatla Indian Community or its members. Plaintiffs argued that this exclusion of Alaska Natives—and only Alaska Natives—from the land into trust application process is void under 25 U.S.C. § 476(g), which nullifies regulations that discriminate among Indian Tribes. The State of Alaska intervened to argue that the differential treatment is required by the Alaska Native Claims Settlement Act (ANCSA).

This decision is a victory for all Alaska Tribes. The ruling will allow Alaska Tribes to petition the Secretary to have non-ANCSA lands placed into trust and the opportunity to enhance their ability to regulate alcohol, respond to domestic violence, and generally protect the health, safety, and welfare of tribal members. 🌟

NEW NARF ATTORNEYS



Matt Campbell joined the Native American Rights Fund as a staff attorney in March of 2013. Prior to joining NARF, Matt was an attorney with Cuddy & McCarthy, LLP, in New Mexico, focusing his practice on Indian law, education, water law, and general civil litigation. Prior to that, Matt clerked for the Arizona Court of Appeals, Division One, with now retired Judge Patrick Irvine.

Matt received his J.D. from the Sandra Day O'Connor College of Law at Arizona State University. While attending law school, Matt worked with the Indian Legal Clinic and also clerked for Bledsoe-Downs and Rosier, PC. Matt received his B.A. from Fort Lewis College. In 2005, Matt attended the Pre-Law Summer Institute for American Indians and Alaska Natives ("PLSI"), and in 2006, Matt was a tutor for PLSI.

Matt is admitted to practice before the state courts of New Mexico and Colorado, the United States District Court for New Mexico, and the Pueblo of Isleta.

Matt is an enrolled member of the Native Village of Gambell on the Saint Lawrence Island in Alaska.



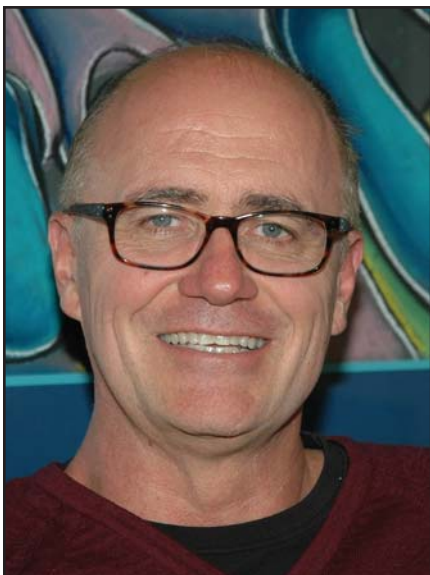
Sue Noe is an experienced water rights attorney and brings over twelve years water rights litigation experience to the NARF water team. She specializes in large, complex litigation. While in private practice Sue teamed up with NARF and worked on behalf of the Nez Perce Tribe in the Snake River Basin Adjudication in Idaho and the Klamath Tribes in the Klamath Basin Adjudication in Oregon, achieving success in both adjudications the first ending in a Congressionally-approved settlement and the latter securing resounding victories before Oregon's Office of Administrative Hearings. In addition to her work on behalf of Native American tribes, Sue has substantial international experience.

Sue received her J.D. from the University of North Carolina at Chapel Hill, graduating with high honors, and earned an LL.M. in Natural Resources and Environmental Law and Policy from the University of Denver College of Law, where she received several awards for Scholastic Excellence. Along with her former law professor, George (Rock) Pring, Sue has co-authored two book chapters on natural resource issues in international law published by Oxford University Press. She is licensed to practice law in Colorado and New York. Sue began work for NARF on December 1.



Matthew Newman grew up in Fairbanks, Alaska. He graduated cum laude from the University of Alaska Fairbanks with a B.A. in Political Science. He received his J.D. from the University of Montana School of Law in 2012. During law school, Matt was an officer in UM's NALSA branch and the Managing Editor for the Public Land and Resources Law Review. At graduation, he received the Eddie McClure Service Award from Indian Law Section of the Montana State Bar for his work as a student attorney for the Indian Law Clinic.

During law school Matt clerked for the U.S. Attorney's Office in Helena, Montana, where he worked on Major Crimes Act prosecutions pending before Montana federal District Courts and the Ninth Circuit Court of Appeals. After graduation, he served as law clerk for Superior Court Judge Carl J.D. Bauman in Kenai, Alaska.



Brett Lee Shelton is a member of the Oglala Sioux Tribe and also has Itazipco Lakota and Cheyenne ancestors. His work at NARF will focus on the Indigenous Peacemaking Initiative, Boarding Schools, and Sacred Places.

Brett has extensive experience representing and advising tribal governments, agencies, and enterprises in general governmental, health and human services, employment, natural resources, construction, and economic and business development matters, as well as contributing legal advice and litigation support for various private individuals, businesses, and development initiatives.

This is Brett's third round at NARF. He previously worked as a research attorney, and was a Summer Clerk during law school. He has also worked as a policy analyst for the National Indian Health Board, as a grassroots organizer for international indigenous peoples in biotechnology evaluation, and assisting domestic violence victims in civil court for a nonprofit based on his home Reservation, the Pine Ridge Reservation in South Dakota and Nebraska,

He received his law degree from Stanford University, and a Master of Arts from the University of Kansas. While at Stanford Law School, he was honored by the Foundation of the State Bar of California with an Exceptional Merit Award for Public Service Leadership, and he received the Rocky Mountain Mineral Law Foundation Award and Scholarship, the John Milton Oskison award for best graduate student paper, and was named Indian Graduate Student of the Year. He is currently licensed to practice law in various courts including California, Colorado, South Dakota, the Oglala Sioux Tribe, and the Cheyenne River Sioux Tribe, as well as several United States courts.





Heather Whiteman Runs Him (Crow) comes to NARF from the Crow Tribe Office of Executive Counsel where she served as Joint Lead Counsel for the Tribe since July of 2009, and as Deputy Executive Counsel from 2006 - 2009. Heather was responsible for a wide variety of work, overseeing tribal prosecution and Indian Child Welfare attorneys; responsibility for legal issues pertaining to intergovernmental relations, tribal land management, water rights, elections, health, law enforcement, economic development, and general litigation issues. She also consulted on renewable energy development. Prior to working with the Crow Tribe, Heather practiced in New Mexico as an Assistant Public Defender in the Albuquerque Metro Division, worked as an Associate Attorney with Sonosky Chambers Sachse Endreson & Mielke, LLP and with Nordhaus Haltom Taylor Taradash & Bladh, LLP, serving tribal governmental clients on a wide variety of issues.

Heather received her B.A.F.A. with honors in Art History, and Studio Art from the University of New Mexico in 1999 and graduated from Harvard Law School in 2002. She received her A.F.A. from the Institute of American Indian Arts in 1999. She is licensed to practice law before the State Bar of New Mexico, the District of New Mexico, and the Crow Tribal Bar.



Joel Williams, a citizen of the Cherokee Nation, grew up in Little Rock, Arkansas. He obtained degrees in Psychology and Religious Studies from Naropa University. At Naropa, he was awarded the President's Leadership Scholarship and his senior project in the religious studies department focused on Cherokee history and religion. Joel attended Widener University School of Law, where he was a student attorney at the environmental law clinic and represented citizen groups pursuing lawsuits under the Clean Air Act, Clean Water Act, and Administrative Procedures Act. He was also awarded a certificate of achievement by Joseph R. Biden.

After graduating from law school, Joel was an Assistant Counsel with the Pennsylvania Governor's Office of General Counsel, where he represented the executive branch as a trial and appellate attorney.

Joel is currently an LLM Environmental Law candidate at Vermont Law School. Immediately before joining NARF, Joel was Senior Legislative Officer with Cherokee Nation and director of the tribe's Washington, DC office.

National Indian Law Library

Justice Through Knowledge!

The National Indian Law Library needs your financial support

You probably are familiar with the great work NARF does in court rooms and the halls of Congress relating to tribal recognition, treaty enforcement, trust fund settlements, NAGPRA, and more. Did you know that NARF also is the go-to resource for legal research in Indian law?

Advance Justice through Knowledge! Support the National Indian Law Library!

Historically, Indian people and advocates fighting for indigenous rights have found themselves limited by their ability to access relevant federal, state, and tribal Indian law resources. In direct response to this challenge, the National Indian Law Library (NILL) was established over forty years ago as a core part of the Native American Rights Fund (NARF). Today the library continues to serve as an essential resource for those working to advance Native American justice. As the only public library devoted to Indian law, we supply much-needed access to Indian law research, news updates, and tribal law documents. To extend the tradition of free public access to these services we ask for your financial support.

Each year, NILL responds to more than 1,000 individual research requests and receives several hundred thousand visits to its online resources. Whether it's through updates to the online Guide to Indian Child Welfare or additions to the extensive tribal law collection, NILL is committed to providing visitors with resources that are not available anywhere else! Additionally, our Indian Law Bulletins and news blog deliver timely updates about developments in Indian law and ensure that you have the information you need to fight for indigenous rights.



However, we are not resting on our laurels; we are constantly improving our online resources and access to tribal law materials. With your support we plan to develop an innovative and valuable community based wiki-source for Indian law information and greatly broaden the scope of the Tribal Law gateway.

The bulletins, research resources, extensive catalog, and personal one-on-one librarian assistance can only exist with your help. The National Indian Law Library operates on an annual budget of \$190,000—primarily from the donations of concerned and motivated individuals, firms, businesses, and tribes who recognize NARF and NILL as indispensable resources for Native American justice.

By donating, you stand with the National Indian Law Library in its effort to fight injustice through access to knowledge. You help ensure that the library continues to supply free access to Indian law resources and that it has the financial means necessary to pursue innovative and groundbreaking projects to serve you better. Please visit www.narf.org/nill/donate now for more information on how you can support this mission. 🌟

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 have also been reduced. 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.

The generosity of tribes is crucial in NARF's struggle to ensure the freedoms and rights of all Native Americans. Contributions from these tribes should be an example for every Native American Tribe and organization. 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 generous support of NARF for our 2013 fiscal year – October 1, 2012 to September 30, 2013:

- Amerind Risk Management Corporation
- Bois Forte Reservation Tribal Council
- Colorado River Indian Tribes
- Confederated Salish & Kootenai Tribes
- Forest County Potawatomi Foundation
- Kaibab Paiute Tribe
- Lac Courte Oreilles Band of Ojibwe
- National Indian Gaming Association
- Native Village of Eyak
- Native Village of Port Lions
- Pawnee Nation
- Pueblo of Zia
- Qawalangin Tribe of Unalaska
- San Manuel Band of Mission Indians
- Sault Ste. Marie Tribe of Chippewa
- Spirit Lake Dakotah Nation
- Suquamish Indian Tribe
- Tanana Chiefs Conference
- Tlingit and Haida Indian Tribes of Alaska
- Yavapai-Prescott Indian Tribe
- Yoche Dehe Wintun Nation
- Yurok Tribe



THE NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund (NARF) is the oldest and largest nonprofit national Indian rights organization in the country devoting all its efforts to defending and promoting the legal rights of Indian people on issues essential to their tribal sovereignty, their natural resources and their human rights. NARF believes in empowering individuals and communities whose rights, economic self-sufficiency, and political participation have been systematically or systemically eroded or undermined.

Native Americans have been subjugated and dominated. Having been stripped of their land, resources and dignity, tribes today are controlled by a myriad of federal treaties, statutes, and case law. Yet it is within these laws that Native Americans place their hope and faith for justice and the protection of their way of life. With NARF's help, Native people can go on to provide leadership in their communities and serve as catalysts for just policies and practices towards Native peoples nationwide. From a historical standpoint Native Americans have, for numerous reasons, been targets of discriminatory practices.

For the past 43 years, NARF has represented over 250 Tribes in 31 states in such areas as tribal jurisdiction and recognition, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides NARF has made in achieving justice on behalf of Native American people, perhaps NARF's greatest distinguishing attribute has been its ability to bring excellent, highly ethical legal representation to dispossessed tribes. NARF has been successful in representing Indian tribes and individuals in cases that have encompassed every area and issue in the field of Indian law. The accomplishments and growth of NARF over the years confirmed the great need for Indian legal representation on a national basis. This legal advocacy on behalf of Native Americans continues to play a vital role in the survival of tribes and their way of life. NARF strives to protect the most important rights of Indian people within the limit of available resources.

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

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

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.

The NARF Legal Review is published biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor, ramirez@narf.org. There is no charge for subscriptions, however, contributions are appreciated.

Tax Status: The Native American Rights Fund 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, and contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section

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

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

Although basic human rights are considered a universal and inalienable entitlement, Native Americans face an ongoing threat of having their rights undermined by the United States government, states, and others who seek to limit these rights. Under the priority of the promotion of human rights, NARF strives to enforce and strengthen laws which are designed to protect the rights of Native Americans to practice their traditional religion, to use their own language, and to enjoy their culture. Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the many laws and regulations applicable to Indian peoples. Because such laws impact virtually every aspect of tribal life, NARF maintains its involvement in the legal matters pertaining to accountability of governments to Native Americans.

The coordinated development of Indian law and educating the public about Indian rights, laws, and issues is essential for the continued protection of Indian rights. This primarily involves establishing favorable court precedents, distributing information and law materials, encouraging and fostering Indian legal education, and forming alliances with Indian law practitioners and other Indian organizations.

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

509(a) of the Internal Revenue Code.

Main Office: Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760) (FAX 303-443-7776). <http://www.narf.org>

Washington, D.C. Office: Native American Rights Fund, 1514 P Street, NW (Rear) Suite D, Washington, D.C. 20005 (202-785-4166) (FAX 202-822-0068).

Alaska Office: Native American Rights Fund, 801 B Street, Suite 401, Anchorage, Alaska 99501 (907-276-0680) (FAX 907-276-2466).

Workplace Campaigns: NARF is a member of America's Charities, a national workplace giving federation. Giving through your workplace is as easy as checking off NARF's box, #10350 on the Combined Federal Campaign (CFC) pledge form authorizing automatic payroll deduction. NARF is also a member of Community Shares of Colorado (CSC), member #5037.

Native American Rights Fund

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