

Justice

...unity of all nations.

After 500 years

of **knowing** the importance of hope

we remain ready and willing to share with the world

our **fortitude** our **endurance** and our
survival.

Native American Rights Fund - Annual Report 2008

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Main Office - Native American Rights Fund
 1506 Broadway
 Boulder, CO 80302
 303-447-8760
<http://www.narf.org>

Washington, D.C. Office - Native American Rights Fund
 420 L Street, Suite 505
 Anchorage, Alaska 99501
 907-276-0680

Alaska Office - Native American Rights Fund
 Native American Rights Fund
 1712 N Street, NW
 Washington, D.C. 20036
 202-785-4166

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.

The cover for the NARF Annual Report: HOPE – a word that has permeated throughout our nation this past year. Hope that the world that we now live in can be changed for the better to insure the survival of our future generations. Hope that all peoples come to realize that we all share this land together. Hope that we can truly comprehend that showing respect for our differences is what binds us as one. Hope for the understanding that the issues posed to us today are worldwide and require Indigenous peoples and other peoples around the world to work together to protect their common interests. Indigenous cultures, with their close ties to the earth and to the universe, bring valuable empirical knowledge to the world. Tribal oral histories are a tremendous resource as they reach into data-sparse time periods unavailable to modern society. After over 500 years of knowing the importance of hope – we remain ready and willing to share with the world our fortitude, our endurance, and our survival. 🌟

Are you ready to hear our voices? We hope so.

Justice HOPE

Introduction | NARF

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 eroded or undermined.

At its inception in 1970, NARF believed that the best hope for Indian survival and development rests with the maintenance of the tribe as an institution. The inherent sovereign powers of a tribe to hold land, to govern tribal members and to command the respect of other units of government are essential to an Indian nation concept. Throughout the past 38 years, NARF has held fast to this hope and through its work has insured that this concept has become a reality.

Every year NARF receives far more requests for assistance than it can afford to take on. Our ability to take on most of our cases continues to be dependent on the generous support of the thousands of individuals who contribute to us, but unfortunately these contributions fall short of the legal support needs in Indian country. NARF takes on cases on behalf of tribes and Native organizations that may have a potential precedent setting impact on all Indigenous peoples. Our battles continue to be against the federal government, state governments, local governments, and corporations who are impeding on tribal sovereignty and culture. Our resources are limited and we must choose those battles carefully. Our energy and resources are aimed at those governments who refuse to accept that the United States Constitution recognizes that Indian tribes are independent governmental entities with inherent authority over their members and territory. In treaties with the United States, Indian tribes ceded millions of acres of land in exchange for the guarantee that the federal government would protect the tribes' right to self-government.

NARF's existence would not be possible without those contributions of the thousands of individuals who have



offered their knowledge, courage, and vision to help guide NARF on its quest. Of equal importance, NARF's financial contributors have graciously provided the resources to give our efforts life. Contributors such as the Ford Foundation have been with NARF since its inception. The Open Society Institute, the Bay and Paul Foundations, and the Unger Foundation have also made contributions the past several years. Finally, the positive effects of NARF's work are reflected in the financial contributions by a growing number of tribal governments. United, these financial, moral, and intellectual gifts provide the framework for NARF to fulfill its goal of securing the right to self-determination to which all Native American peoples are entitled.

NARF's Priorities

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

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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. ❁



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Executive Director's Message | NARF



2008 marked the 38th year that the Native American Rights Fund has provided legal advice and representation to Native Americans on major issues throughout the United States. As a result of our advocacy efforts, we were able to win several important victories

on behalf of our Native American clients during the year.

In *Ahtna Tene Nene Subsistence Committee v. Alaska Board of Game*, NARF represents several Alaska Native tribes and communities who depend on subsistence hunting and fishing for their livelihood. We were successful in convincing a state court to overturn state regulations that severely restricted and, in some cases, eliminated Alaska Native subsistence uses of moose and caribou in violation of their subsistence hunting and fishing rights under Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

In *State v. Dementieff*, the Ninth Circuit Court of Appeals upheld the Federal Subsistence Board's customary and traditional use finding for subsistence users of moose by members of the Chistochina Tribe of Alaska in a challenge brought by the State of Alaska. The positive customary and traditional use finding entitles Chistochina tribal members to the priority for subsistence users over other users of the resource under ANILCA.

The American Civil Liberties Union (ACLU) of Louisiana and NARF were successful in their representation of a five-year-old Native American child attending public school in St. Tammany Parish who wore his hair in a neat braid down his back in accordance with his religion. The school had advised the child's mother that he would be required to cut his hair to continue to attend school even though it violated his family's religion. After negotiations by ACLU and NARF, the school reversed its position and allowed the child to attend school without cutting his hair.

The ACLU of Alaska and NARF were also successful in *Nick v. Bethel*, a lawsuit against the State of Alaska on behalf of Yup'ik speaking Alaska Native voters for violating the Voting Rights Act's provisions requiring language assistance at the polls. The U.S. District Court in Alaska

ordered the State to provide written ballots in the Yup'ik language, to publicize all election notices and information in Yup'ik, and create a new statewide position to oversee Native language assistance.

In *Tanana v. State*, an Alaska Superior Court held that Alaska tribes possess inherent power to adjudicate proceedings in tribal courts involving their children under the Indian Child Welfare Act. NARF represents several tribes in the case who challenged the position of the State of Alaska that state courts have exclusive jurisdiction over child custody proceedings. The State has appealed the decision.

NARF also won a federal lawsuit in Alaska involving the Indian Child Welfare Act in *Kaltag v. State*. The U.S. District Court in Alaska held that an adoption in the tribal court of the Kaltag Tribe was entitled to full faith and credit so that the State of Alaska had to recognize the adoption decree. The State has appealed the decision.

In another Indian Child Welfare Act case, NARF successfully represented the Osage Nation of Oklahoma and secured their absolute and unconditional right to intervene in child custody proceedings involving an Indian child eligible for membership in their tribe. In *People ex rel A.T.*, a Colorado state court allowed the Osage Nation to appear in the proceedings by any representative of its choosing, including a representative that is not an attorney. If it is an attorney, the court held the Act does not require that attorney to associate with local counsel.

These achievements on behalf of our Native American clients and many other activities on their behalf carried out in 2008 would not have been possible without the ongoing support of our many financial contributors. We take this opportunity to thank you again for your support and we urge you to continue that support as we continue to provide access to justice to Native Americans across the country. 🌟

John E. Echohawk
Executive Director

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Chairman's Message | NARF



I come from the Ak-Chin Indian Community in Southern Arizona. Ak-Chin is an O'odham word translated to mean "place where the wash loses itself in the sand or ground." My people have inhabited our lands for thousands of years. We relied on a farming technique that depended on "washes" which captured seasonal floods created by winter snows and summer rains. We employed this natural form of irrigation by planting downslope from a wash, allowing flood waters to slide over our plots of corn, squash, and beans. As the result of continued growth in the surrounding communities, the water that we depended on was being depleted. Our community then began a twenty year struggle with the United States government to secure our water rights. In 1988 our water rights settlement act was passed and guaranteed us 75,000 acre feet of permanent water from the Colorado River. During this struggle for protecting our way of life – NARF was there for us.

In representing over 250 tribes since 1970, NARF and its Board of Directors have come to understand the deep responsibility that we all have in preserving the very foundation of our cultures. Although some issues and conflicts have been resolved, history has taught us to be wary of our hard fought victories and to be prepared for a continued fight, and prepared NARF continues to be.



NARF's reputation in achieving justice on behalf of Native American people and in bringing excellent and highly ethical legal representation to tribes has not gone unnoticed in national and international levels. The newly elected Obama Administration has called on the Native American Rights Fund to help formulate its policies for our tribal nations. NARF Executive Director John Echohawk, and former NARF attorneys Bob Anderson and Keith Harper were called upon by President Obama to serve on his Transition Team. President Obama is also considering NARF Alaska attorney Heather Kendall-Miller for the position of Native American Affairs Senior Advisor in his Administration. President Obama has already appointed Jodi Archambault Gillette, Standing Rock Sioux Tribe and daughter of former NARF Board member Dave Archambault, as one of the three Deputy Associate Directors of the Office of Intergovernmental Affairs. This is the first time a Native has been appointed to this position. Other Natives have been appointed or are being mentioned for other important positions in the Department of the Interior. We do have hope.

NARF's importance in Indian country cannot be overlooked. As our tribal nations ready themselves to address the issues that we are facing in the 21st Century – NARF must be by our side. As we begin to address the issues of climate change and its impact on our lands and way of life – NARF can help lead the way. As we battle our adversaries in the courts – NARF can provide us direction. Indian country needs NARF now more than ever. However, NARF's efforts cannot continue without your financial contributions. We sincerely ask for your continued support so that we can meet these challenges and help heal our people and our lands. ❁

Delia Carlyle
Chairman

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Board of Directors | NARF

The Native American Rights Fund has a governing board composed of Native American leaders from across the country -- wise and distinguished people who are respected by Native Americans nationwide. Individual Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as their tribal affiliation, to ensure a comprehensive geographical representation. The NARF Board of Directors, whose members serve a maximum of six years, provide NARF with leadership and credibility, and the vision of its members is essential to NARF's effectiveness in representing its Native American clients. 🌟

NARF's Board of Directors: *(left to right)*

Richard Luarkie (Pueblo of Laguna); **Jim Gray** (Osage Nation - Oklahoma); **Fred Cantu, Jr.** (Saginaw Chippewa); **Woody Widmark** (Sitka Tribe - Alaska); **Paul Ninham**, (outgoing Board member Oneida Nation of Wisconsin); **Lydia Olympic** (Yupik/Aleut - Alaska); **Billy Frank** (Nisqually Tribe - Washington); **Kunani Nihipali**, Vice-Chairman (Native Hawaiian - Hawaii); seated - **Delia Carlyle**, Chairman (Ak Chin Indian Community - Arizona). *(Not Pictured)* – **Elbridge Coochise** (Hopi - Arizona); **Anthony Pico** (Viejas Band of Kumeyaay Indians - California); and new Board members **Gerald Danforth** (Oneida - Wisconsin); **Miko Beasley Denson** (Mississippi Band of Choctaw Indians); **Ron His Horse Is Thunder** (Standing Rock Sioux Tribe).



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National Support Committee | NARF

The National Support Committee (NSC) assists NARF with its fund raising and public relations efforts nationwide. Some of the individuals on the Committee are prominent in the field of business, entertainment and the arts. Others are known advocates for the rights of the underserved. All of the 32 volunteers on the Committee are committed to upholding the rights of Native Americans. 🌸

Randy Bardwell, *Pechanga Band of Luiseno Indians*

Katrina McCormick Barnes

Jaime Barrientoz, *Grand Traverse Band of Ottawa and Chippewa Indians*

John Bevan

Wallace Coffey, *Comanche*

Ada Deer, *Menominee*

Harvey A. Dennenberg

Lucille A. Echohawk, *Pawnee*

Jane Fonda

James Garner

Eric Ginsburg

Jeff Ginsburg

Rodney Grant, *Omaha*

Chris E. McNeil, Jr., *Tlingit-Nisga'a*

Billy Mills, *Oglala Lakota*

Amado Peña, Jr., *Yaqui/Chicano*

Nancy Starling Ross

Wayne Ross

Marc Rudick

Pam Rudick

Ernie Stevens, Jr., *Wisconsin Onieida*

Andrew Teller, *Isleta Pueblo*

Verna Teller, *Isleta Pueblo*

Richard Trudell, *Santee Sioux*

Rebecca Tsosie, *Pasqua Yaqui*

Tzo-Nah, *Shoshone Bannock*

Aine Ungar

Rt. Rev. William C. Wantland, *Seminole*

W. Richard West, *Southern Cheyenne*

Randy Willis, *Oglala Lakota*

Teresa Willis, *Umatilla*

Mary Wynne, *Rosebud Sioux*



The Preservation of Tribal Existence

NARF works to construct the foundations that are necessary to empower tribes so that they can continue to live according to their Native traditions, to enforce their treaty rights, to insure their independence on reservations, and to protect their sovereignty. Specifically, NARF's legal representation centers on sovereignty and jurisdiction issues, federal recognition and restoration of tribal status, and economic development. Thus, the focus of NARF's work involves issues relating to the preservation and enforcement of the status of tribes as sovereign governments. Tribal governments possess the power to regulate the internal affairs of their members as well as other activities within their reservations. Jurisdictional conflicts often arise with states, the federal government, and others over tribal sovereignty.

Tribal Sovereignty

The focus of NARF's work under this priority is the protection of the status of tribes as sovereign, self-governing entities. The United States Constitution recognizes that Indian tribes are independent governmental entities with inherent authority over their members and territory. In treaties with the United States, Indian tribes ceded millions of acres of land in exchange for the guarantee that the federal government would protect the tribes'

right to self-government. From the early 1800s on, the Supreme Court has repeatedly affirmed the fundamental principle that tribes retain inherent sovereignty over their members and their territory. However, beginning with the decision in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) and with increasing frequency in recent years, the Supreme Court has steadily chipped away at this fundamental principle, both by restricting tribal jurisdiction and by extending state jurisdiction. These decisions by the Supreme Court have made this priority more relevant than ever, and have led to a Tribal Sovereignty Protection Initiative in partnership with the National Congress of American Indians (NCAI) and Tribes nationwide to restore the traditional principles of inherent tribal sovereignty where those have been undermined and to safeguard the core of sovereignty that remains.

This initiative consists of three components. The first component is the Tribal Supreme Court Project, the focus of which is to monitor cases potentially headed to the Supreme Court and those which have already been accepted for review. An effort is made to help keep cases that have no chance of winning out of the Court. When cases are accepted, the Project helps ensure that the attorneys representing the Indian interests have all the support they need, and helps coordinate the filing of a



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limited number of strategic amicus briefs. A second component of the Initiative is to weigh in on judicial nominations at the lower court and the Supreme Court levels. Finally, there is a legislative component to fight bills that are against tribal interests and to affirmatively push legislation to overturn adverse Supreme Court decisions.

In addition to the tribal sovereignty protection initiative, other work within this overall priority is related to the federal recognition of tribal status and the concomitant establishment of a government to government relationship with tribes, and the environmental law and policy initiative. NARF launched the Tribal Supreme Court Project in conjunction with NCAI in 2001. Since 2001, the Project has been involved with ten cases – four wins, four losses, and two draws. This is an impressive track record given that before the inception of the Project tribes were losing 90% of these cases. In addition, the Project works behind the scenes to ensure that tribal victories in Courts of Appeals are denied review by the Supreme Court.

The Tribal Supreme Court Project is housed at NARF's office in Washington, D.C., and is staffed by one NARF attorney and by support staff. In an effort to foster greater coordination in advocacy before the Supreme Court, an Advisory Board of tribal leaders, comprised of NCAI Executive Committee members and other tribal leaders willing to volunteer their time, also assists the Project. The Board's role is to provide necessary political and tribal perspective to the legal and academic expertise. The Project has also established a Working Group – a group of more than 200 noted attorneys and academics from around the nation who participate in the Project as their interest, time, and resources allow.

To achieve the goals of the Project, NARF monitors cases which appear to be headed for the Supreme Court, and organizes, coordinates and contributes to a nationwide Indian amicus brief writing network. Amicus briefs allow those not directly involved in litigation, but potentially impacted by the outcome, to provide information and arguments directly to the Court. By bringing together



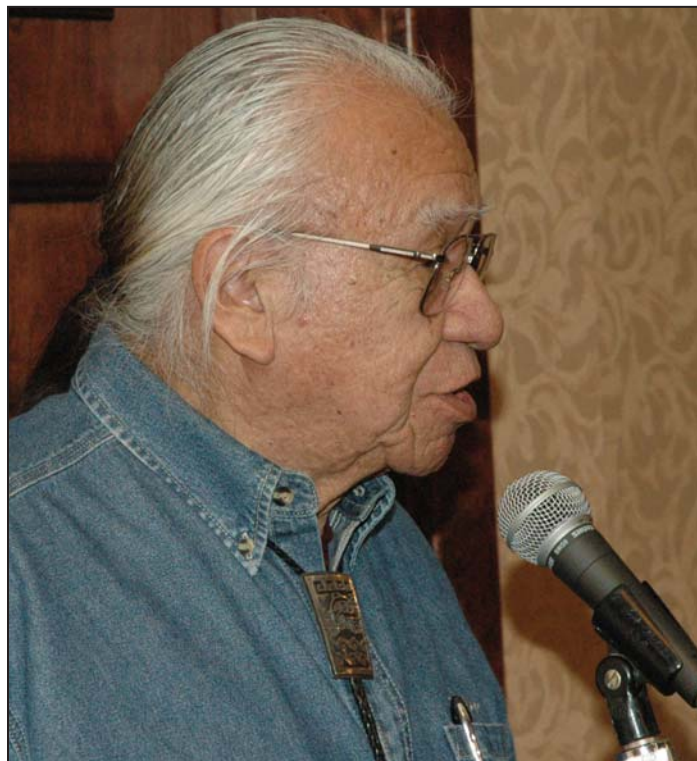
experienced Indian law practitioners and scholars to discuss and agree upon a coordinated amicus brief writing strategy in each case, and by assisting the parties, NARF ensures that the most effective and focused arguments are made before the Court on behalf of Indian Country.

Unfortunately, there were two significant setbacks for the Supreme Court Project. In June 2008, in a disappointing 5-4 decision authored by Chief Justice Roberts, the Supreme Court ruled that tribal courts do not have jurisdiction over a discrimination action by tribal members against a non-Indian bank arising out of the sale of non-Indian fee land on a reservation to non-Indians. *Plains Commerce Bank v. Long Family Land & Cattle Co.* was the first Indian law case since the addition of Chief Justice Roberts and Justice Alito to the Court. Although it is only one case, the opinion is disturbing since a majority of the Court was willing to ignore the Bank's extensive on-reservation dealings including its successful use of the Tribal Court in numerous other cases against tribal members and to rely on a hyper-technical distinction to further chip away at tribal sovereignty. It is unclear what the long-term effects of the decision will be, but it is not a promising beginning to the Roberts era. NARF was co-counsel on this case.

In another disappointing outcome, the Supreme Court

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issued its opinion in *Exxon Shipping Company v. Baker*, vacating the opinion of and remanding the case to the Court of Appeals for the Ninth Circuit which had upheld an award of \$2.5 billion in punitive damages in a class action lawsuit against Exxon as a result of the 1989 Exxon Valdez oil spill in Prince William Sound. This decision impacts a number of Alaska Native villages that depend on subsistence fishing, hunting and gathering and were among the most affected by the disaster. Their members are included within a larger group of class action plaintiffs. The Court was equally divided (Justice Alito did not participate) on the question of whether maritime law allows corporate liability for punitive damages based on the acts of its agents, leaving the Ninth Circuit opinion which had held that it does allow punitive damages undisturbed. However, a majority held that the award of \$ 2.5 billion was clearly excessive under maritime common law, and that in the circumstances of this case should be limited to the award of compensatory damages, or \$507.5 million. Each class plaintiff will now receive about



\$15,500 in compensatory damages and an equal amount in punitive damages, for a total award of roughly \$31,000 per class member. NARF filed an amicus brief in this case on behalf of the many Alaska Natives who suffered from the oil spill.

Unfortunately, Native peoples face another difficult term in the Supreme Court because it has just granted certiorari in three cases in which the Native interests were victorious in the Courts of Appeals. The first case, *United States v. Navajo Nation*, concerns the royalty rates negotiated for resource extraction on the Navajo reservation and whether the United States has met its trust responsibility in negotiating these rates. The second, *State of Hawaii v. Office of Hawaiian Affairs*, concerns whether the State of Hawaii should be enjoined from selling or transferring “ceded lands” held in trust until the claims of Native Hawaiians to the ceded lands have been resolved. The third *Carciere v. Kempthorne*, is a case involving a challenge by the State of Rhode Island to the authority of the Secretary of the Interior to take land into trust for the benefit of the Narragansett Indian Tribe under the provisions of the 1934 Indian Reorganization Act. Rhode Island argued that the Secretary’s authority to take land into trust for the benefit of “Indians” was limited by Congress to recognized Indian tribes now under federal jurisdiction in 1934 or in the alternative, that the 1978 Rhode Island Settlement Act repealed any such authority.

Through the Judicial Selection Project of the Tribal Sovereignty Protection Initiative, NARF continues its work with the National Congress of American Indians in researching the backgrounds and evaluating the records of judicial nominees to the U.S. District Courts, the U.S. Courts of Appeals and the U.S. Supreme Court whose decisions will have a direct impact on Indian tribes and Indian people.

The Project continues to seek opportunities to educate the federal judiciary and to provide opportunities for federal judges to meet with tribal judges. In December 2007, Tribal leaders and attorneys from NARF and NCAI were invited by Chief Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit, to meet with over 30 active

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appellate judges during their business meeting in Pasadena, California. Building on that meeting, Judge Kozinski arranged for a meeting with Justice Kennedy during the Ninth Circuit Judicial Conference in Sun Valley, Idaho, in July 2008. Separately, invitations were extended to Justices Kennedy and Alito and Chief Justice Roberts to visit Indian country in 2009 and tour tribal court systems as did Justices Breyer and O'Connor in 2001. The Justices declined the invitations, but indicated an ongoing interest in learning more about tribal law and tribal judicial systems.

The Project is seeking to establish a network of tribal and federal judges through active participation at judicial conferences to further educate the federal judiciary about Indian law and tribal sovereignty. In addition, we continue to work with the U.S. Senate Judiciary Committee to ensure that all nominees are asked about their experience with Indian tribes and their understanding of federal Indian law during confirmation proceedings. The Project is developing a primer on Indian tribes and federal Indian law for distribution to all newly appointed members of the federal judiciary who have Indian tribes in their jurisdiction.

Federal Recognition of Tribal Status

The second category of NARF's work under this priority is federal recognition of tribal status. NARF currently represents Indian communities who have survived intact as identifiable Indian tribes but who are not federally recognized. Tribal existence does not depend on federal recognition, but recognition is necessary for a government-to-government relationship and the receipt of many federal services.

In 1998, NARF filed a petition for federal recognition on behalf of the Shinnecock Indian Nation in Southampton, New York. The BIA (Bureau of Indian Affairs) finally placed Shinnecock on the Active consideration list in 2008. This is a milestone for the Nation after many years of waiting. Shinnecock appears to be well on its way to achieving federal recognition. NARF has also assisted the Little Shell Tribe of Chippewa Indians of Montana. After many delays, in 2000 the BIA published a preliminary



finding in favor of recognition. The Office of Federal Acknowledgment (OFA) began active consideration of the Tribe's new material in 2007 and conducted a three week site visit. OFA had previously indicated it would reach a final determination on the Tribe's petition by the end of calendar 2007. This deadline was not met. Then the date moved to the end of July 2008, then to January 2009, and now to July 2009. In addition, in 2007 Montana Congressman Danny Rehberg, Senator Max Baucus, and Jon Lester introduced federal legislation to grant the Little Shell Tribe the recognition they have long been denied. NARF continues to track and monitor the legislation.

Finally, NARF has been working with the Pamunkey Tribe in Virginia to prepare the necessary historical, legal, and anthropological documentation to support a petition for federal acknowledgment. The petition is nearing completion and is expected to be filed in 2009 with OFA. NARF has also continued representation of the Mashpee Wampanoag Tribe who received federal recognition in 2007. Since that time, NARF has devoted its time to matters related to tribal governance and international repatriation.

Environmental Law and Policy Initiative

The third category of NARF's work under this priority is the environmental law and policy initiative. NARF has played a key role in the implementation of federal environmental law and policy that recognizes tribal

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governments as the primary regulators and enforcers of federal environmental laws on Indian lands.

A scientific consensus has emerged in recent decades that human activities are causing significant changes to our climate and environment. Among the documented changes are higher temperatures, rising sea levels, warming oceans and melting polar ice sheets. Climate change is a global phenomenon and will affect everyone under even the most conservative scientific projections.

However, climate change will not affect everyone equally. Native peoples find themselves already at ground zero in a fight that will ultimately determine the survival of their tribal nations. Native communities are exceptionally vulnerable to the effects of climate change and the devastating results have already begun to fall disproportionately on tribes. Despite the fact that Native peoples have historically left a negligible carbon footprint, they are suffering and will suffer disproportionately from the effects of climate change. Native peoples are often the first to see, and the first to feel changes in the natural environment. Traditional tribal practices and relationships with the natural world form the spiritual, cultural and economic foundation for many Native American nations that will be and, in some cases already are, threatened by climate change. Mother Earth is definitely in crisis and Native peoples knowledge and their intimate and direct relationships with our ecosystems point the way toward an urgent need for a paradigm shift and change in lifestyle for all humanity.

In Alaska, NARF is now working on a cutting edge, multi-faceted global warming project. Global warming is wreaking havoc in Alaska. In recent years scientists have documented melting ocean ice, rising oceans, rising river temperatures, thawing permafrost, increased insect infestations, animals at risk and dying forests. Alaska Natives are the people who rely most on Alaska's ice, seas, marine mammals, fish and game for nutrition and customary and traditional subsistence uses; they are thus experiencing the adverse impacts of global warming most acutely. Virtually every aspect of traditional Alaska Native life is impacted. As noted in the recently released Arctic Climate

Impact Assessment 2004 (ACIA), indigenous peoples are reporting that sea ice is declining, and its quality and timing are changing, with important negative repercussions for marine hunters. Others are reporting that salmon are diseased and cannot be dried for winter food. There is widespread concern about caribou habitat diminishing as larger vegetation moves northward. Because of these and other dramatic changes, traditional knowledge is jeopardized, as are cultural structures and the nutritional needs of Alaska's indigenous peoples. To begin addressing this issue, NARF successfully gathered 162 Tribal and Corporate Resolutions in 2007 calling on Congress and the Executive Office to adopt legislation that would reduce carbon emissions. The resolutions were carried to Washington, D.C. by tribal leaders and presented to the Alaska Delegation on Climate Change.

In addition, a law suit was filed by NARF and private co-counsel in February 2008 – *Native Village of Kivalina v. ExxonMobil*, et al. The Native Village of Kivalina, which is a federally recognized Indian Tribe, and the City of Kivalina, which is an Alaskan municipality, filed suit on their own behalf and on behalf of all tribal members against defendants 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.

NARF continues work to protect the interests of tribes' in Congressional legislation. The Climate Security Act of 2008 is the first serious attempt in the United States to address the issue of climate change. It would fundamentally change the way the economy of the United States works, adapting a cap and trade system for carbon emissions. The bill provides for set asides for mitigation of the affects of climate change and adaptation to any

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effects. Tribes must compete for these funds. The bill in present form largely ignores the sovereign role which tribes should play in dealing with this issue. The stakes are enormous and the players, generally huge businesses or well-established environmental groups, have very deep pockets. Neither side will look out for Native peoples interests. Native Peoples must weigh into this critical legislative debate as the Act will be back before Congress after the Presidential election this Fall and Administration change in early 2009. NARF seeks to help tribes and Indigenous peoples to have a “seat at the table” in these discussions, not only in the formulation of the Act, but also to help to advocate for its passage. NARF will be partnering with the National Tribal Environmental

Council (NTEC) to protect tribes’ interests in Congressional legislation. NTEC is a not-for-profit organization comprised of 184 member tribes with a mission to enhance each tribe’s ability to protect, preserve and promote the wise management of air, land, and water for the benefit of current and future generations.

The issues posed by climate change are worldwide and require Indigenous peoples around the world to work together to protect their common interests. The Climate Security Act of 2008 has specific provisions which would affect Indigenous peoples outside the United States. In addition, the talks for the post Kyoto accords are set to begin and numerous U.N. agencies deal with climate change and need Indigenous input. Also, the Convention of Biological Diversity specifically provides for participation by Indigenous peoples. Indigenous peoples must have a presence to protect their interests at the international level. As the saying goes – “If you are not at the table, you are on the menu.” NARF will use all the means at its disposal to ensure that Indigenous peoples are given a voice in these important national and international legislative and policy debates regarding climate change.

NARF and the Oglala Sioux Tribe (OST) have been working on the delivery of a safe, reliable and adequate source of municipal, industrial and rural water supply through the federally authorized and funded Mni Wiconi Project. A critical element of the delivery of a safe source of drinking water to the OST is to ensure the security of the pipeline that distributes the water to the users. NARF has assisted the OST Department of Water Maintenance and Conservation in fulfilling its responsibility to secure the pipeline through the development and adoption of the OST Pipeline Security Ordinance. The Department of Water Maintenance and Conservation is now faced with enforcement of the Ordinance against individuals who do not accept that they cannot waste the water provided through the Mni Wiconi Distribution System on the OST’s Reservation. NARF is assisting the Department with the development of the necessary forms and protocols to accomplish enforcement of this critically important law of the Tribe. 🌻

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The Protection of Tribal Natural Resources

Over time, Indian tribes have experienced a steady diminishment of their land base to a mere two percent of its original size. 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. Therefore, protection of tribal natural resources is a high priority at NARF.

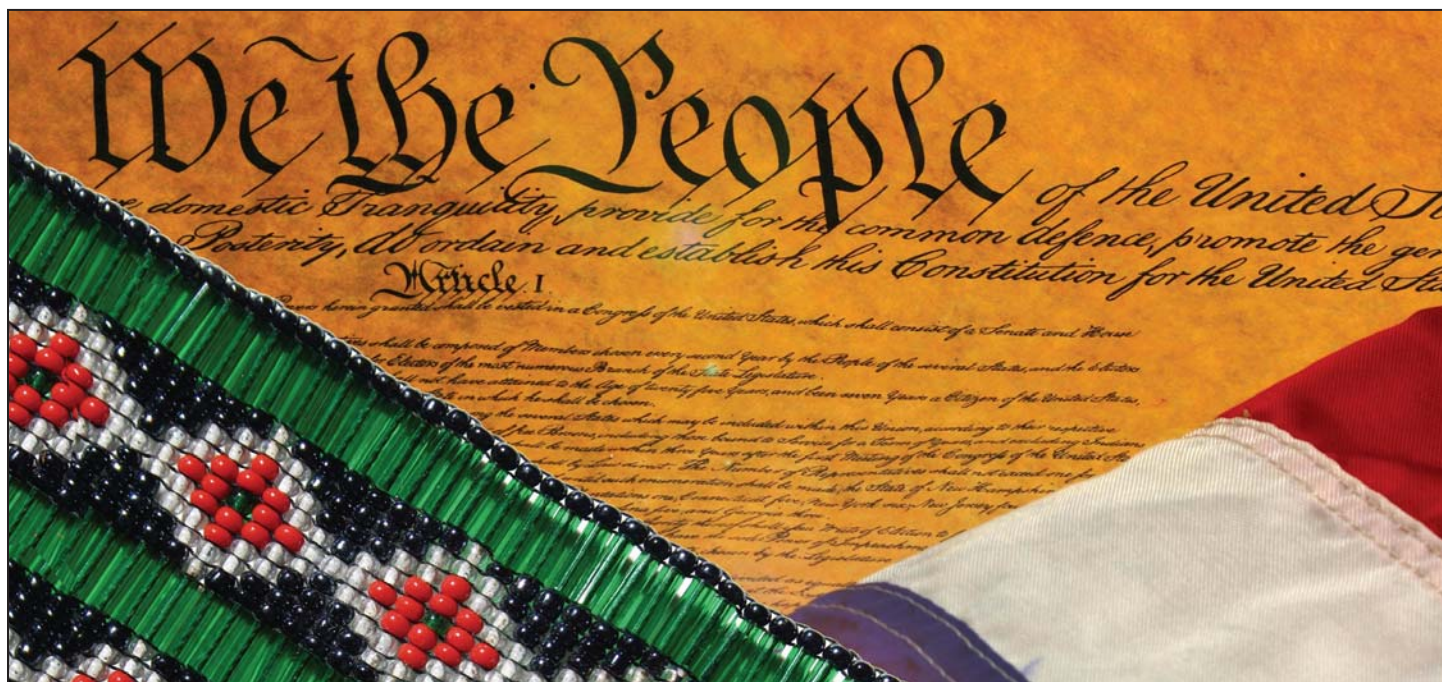
Protection of Indian Lands

Without a sufficient land base, tribal existence is difficult to maintain. Thus NARF helps tribes establish ownership and control over lands which are rightfully theirs.

Since 1981, NARF has represented the Alabama-Coushatta Tribe of Texas in their quest to secure compensation for the loss of use of millions of acres of fertile forest land they once occupied in southeast Texas. In 2002, the U.S. Court of Federal Claims ruled in favor of the Tribe in their breach-of-trust claim against the United States, holding the government liable for the Tribe's loss of use of over 2.85 million acres of land between 1845 and 1954. The Court also ruled that 5.5 million acres of

aboriginal title has never been extinguished. Negotiators for the U.S. and Tribe reached an agreement on the amount of damages for the loss of land - \$270 million- and the Court recommended the agreement to Congress in 2002. NARF continues to work with other private attorneys to settle the Tribe's damages claim.

NARF represents the Pottawatomi Nation of Canada, a band of descendants from the Historic Pottawatomi Nation, which from 1795 to 1833 signed a series of treaties with the United States. While the American Pottawatomi bands recovered the payment of annuities in the Indian Claims Commission (ICC), the Canadian Pottawatomi members could not bring a claim in the ICC. In 1993, NARF brought suit on behalf of the Canadian Pottawatomi in the Court of Federal Claims, and the parties reached an agreement in principle which was approved by the Court in 2000 and recommended to Congress in 2001. In 2002, Senator Inouye introduced a bill "For the Relief of the Pottawatomi Nation in Canada for Settlement of Certain Claims Against the United States." The bill was reintroduced by Senator Inouye in 2003, was referred to the Senate Judiciary Committee,



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but did not pass in 2004. In January 2007, Senator Inouye introduced Senate Bill No. 56 in the 110th Congress which has been referred to the Senate Judiciary Committee. NARF met with staff for Chairman Leahy and Senator Schumer and are optimistic that the bill will move through Committee this session. On the House side, we continue working with Congressman Kildee who has agreed to introduce a House companion bill.

NARF represents the Native Village of Tuluksak in Alaska in their quest to have the land owned by the Village corporation transferred in fee simple to the Village tribal council. The Department of the Interior would then be petitioned to place the land into trust on behalf of the Village. Currently tribes in Alaska are not permitted to seek having their lands placed into trust as can tribes in the "Lower 48." The Native Village of Tuluksak has decided to pursue litigation to establish the right of Alaska Tribes to petition Interior to place lands in trust. The litigation was filed in 2006 in the federal court in the District of Columbia. Federal defendants moved to transfer venue to the District of Alaska, but in 2007 Judge Robertson denied the motion, thus keeping the case in Washington, D.C. where it belongs. The government filed its answer in 2007 and then certified the administrative record. The State of Alaska has moved to intervene, and the plaintiffs opposed, but the court did grant their motion in October 2008.

NARF has been retained by the Eastern Shoshone Tribe of the Wind River Indian Reservation to analyze the legal implications of a Surplus Land Act of March 3, 1905 as it may have affected the boundaries of the reservation. The Wyoming Supreme Court recently ruled that the reservation boundaries had been diminished when it upheld the conviction of a member of the Northern Arapaho Tribe for a crime committed within the City of Riverton, Wyoming. Riverton is within the original boundaries of the reservation as they existed immediately prior to the 1905 Surplus Land Act. Separately, however, the defendant in that case, Andrew Yellowbear, filed a petition for a writ of habeas corpus in the U.S. District Court for Wyoming seeking a ruling from the federal courts that the boundary

has not been diminished and the State therefore lacks jurisdiction. Although the district court initially dismissed the petition, it was appealed and the Court of Appeals for the Tenth Circuit recently remanded the matter to the district court with instructions to reconsider an amended petition. The petition challenges Mr. Yellowbear's incarceration by the State of Wyoming resulting from his conviction in state court on the basis that the state had no jurisdiction over the crime because it took place within the undiminished boundaries of the reservation, and was therefore within the exclusive jurisdiction of the federal government.



In addition, the Northern Arapaho Tribe has filed a case against state and county employees challenging the collection of certain taxes, which may implicate the boundary question. The Eastern Shoshone and Northern Arapaho Tribes are also cooperating in an application to the U.S. Environmental Protection Agency for delegation of "treatment in the same manner as a state" in the administration of certain Clean Air Act authorities which will require determination of the boundary. Finally, the Eastern Shoshone Tribe is working with local and state governments to seek common grounds for agreement on a range of shared interests. In sum, NARF is working with the Tribe's Attorney General and the Shoshone Business Council on a variety of fronts to secure vindication of the reservation boundaries.

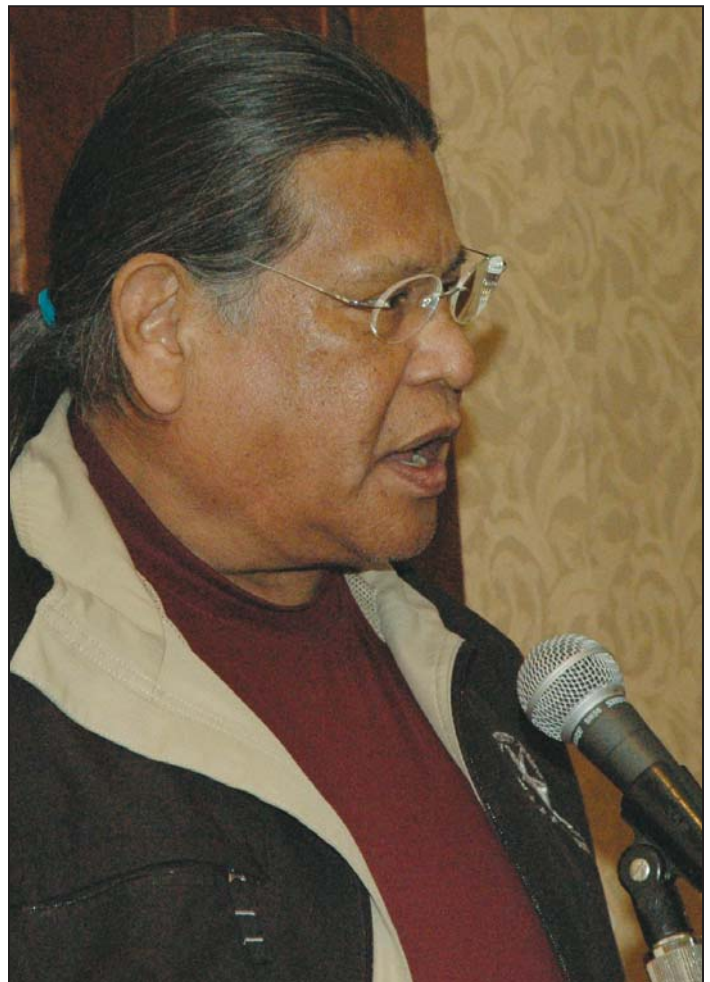
The Protection of Tribal Natural Resources

NARF continues to do legal work for the Hualapai Indian Tribe of Arizona. The Tribe is located on the south rim of the Grand Canyon in Arizona, and claims a boundary that runs to the center of the Colorado River. The Tribe asked that NARF provide an interpretation of key provisions of their Constitution concerning the management and development of the Tribe's natural resources. In addition, the Tribe owns the Cholla Canyon Ranch near Wikiup, Arizona. The Ranch was gifted to the Tribe by its owners and is presently being operated as a palm tree plantation. NARF is also assisting the Tribe in the transfer of the Cholla Canyon Ranch lands from fee status to be held in trust by the United States for the benefit of the Tribe.

Water Rights

The culture and way of life of many indigenous peoples are inextricably tied to their aboriginal habitat. For those tribes that still maintain traditional ties to the natural world, suitable habitat is required in order to exercise their treaty-protected hunting, fishing, gathering, and trapping rights and to sustain their relationships with the animals, plants, and fish that comprise their aboriginal habitats.

Establishing tribal rights to the use of water in the arid west continues to be a major NARF priority. The goal of NARF's Indian water rights work is to secure allocations of water for present and future needs for four Indian tribes represented by NARF and other western tribes generally. Under the precedent established by the Supreme Court in 1908 in *Winters v. United States* and confirmed in 1963 in *Arizona v. California*, Indian tribes are entitled under federal law to sufficient water for present and future needs, with a priority date at least as early as the establishment of their reservations. These tribal reserved water rights are superior to all state-recognized water rights created after the tribal priority date. Such a date will in most cases give tribes valuable senior water rights in the water-short west. Unfortunately, many tribes have not utilized their reserved water rights and most of these rights are unadjudicated or unquantified. The major need



in each case is to define or quantify the amount of water to which each tribe is entitled through litigation or out-of-court negotiated settlements. Tribes are generally able to claim water for any purpose which enables the Tribe's reservation to serve as a permanent homeland.

NARF represents the Nez Perce Tribe of Idaho in its water rights claim in the Snake River Basin Adjudication (SRBA). The Nez Perce Tribe is located in northern Idaho near the confluence of the Snake and Clearwater Rivers. The Nez Perce claims dispute has been the biggest outstanding dispute in the SRBA, which includes a legal inventory of about 180,000 water rights claims in 38 of Idaho's 44 counties. In early 2005, the Nez Perce Tribal Executive Committee (NPTEC) accepted the final terms

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of the water rights claims in the State of Idaho's Snake River Basin Adjudication. The Nez Perce Tribe has agreed to: 50,000 acre feet of water decreed to the Tribe for on-reservation uses; instream flows decreed on almost 200 Tribal priority streams to be held by the State of Idaho; 600 springs claims decreed on about 6 million acres of Federal land in the Tribe's 1863 ceded area; over 11,000 acres of on-reservation Bureau of Land Management land transferred to the Tribe in trust; and, \$96 million in three separate funds, for Tribal drinking water and sewer projects, water development projects, in addition to various Tribal projects including cultural preservation and fishery habitat improvements. Congress enacted the Snake River Settlement Act of 2004 and President Bush signed it into law the same year. The Governor signed the approval legislation in 2005. The approval by NPTEC represented the final sign-off by the three sovereigns. This is a major accomplishment for the Nez Perce Tribe and its members. This settlement represents the merging of traditional Indian water rights settlement elements with other major environmental issues confronting all of the people of Idaho. It could well be looked at by other states and tribes and federal land management agencies in the west seeking to sort out Indian water claims and other challenges presented by the federal Endangered Species Act and the Clean Water Act. We continue to work with the Tribe on the federal appropriations process. Work is complete on 2008 appropriations, and is underway on FY 2009 appropriations.

NARF represents the Klamath Tribes of Oregon who hold reserved water rights in the Klamath River Basin to support their treaty hunting, fishing and gathering rights, as well as to satisfy the agricultural purposes of the Klamath Reservation. NARF filed about 150 contests on behalf of the Tribes against unsubstantiated private water right claims and has actively prosecuted them for the past four years. During 2004 and 2005, in one of the largest contests, a four-week trial was held concerning water rights for the Bureau of Reclamation's Klamath Project. A ruling on the merits upheld NARF's position that the United States, not private water users or irrigation

districts, owns the water rights for the enormous Klamath Irrigation Project. Accordingly, the claims of the water users and the districts were denied, and the holding ensures that the Klamath Project will continue to be operated pursuant to the Endangered Species Act and tribal trust obligations. Exceptions to this order were briefed in 2007, with NARF filing three briefs and related papers on behalf of the Tribes. In 2007, NARF filed an amicus curiae brief in *Klamath Irrigation District, et al. v. United States* now on appeal before the U.S. Court of Appeals for the Federal Circuit, which raises the same issues in Case 003, in order to protect the favorable judgment in both Case 003 and in the Court of Federal Claims.

In 2005 and 2006, adjudication of the Tribes' water rights claims began in earnest. Sixty-four briefs were filed by the parties in eight tribal cases on legal issues defining the nature of the tribal water rights claims and various defenses against those water rights. Oral argument was held and the Alternative Law Judge (ALJ) entered Orders in all eight cases in 2006 that upheld the Tribes' legal position in a sweeping set of victories. The ALJ held that the Tribes are entitled to a sufficient amount of water for a healthy habitat and productive fishery. The eight tribal cases are in the final discovery stages culminating with depositions. Following discovery the Tribes will then proceed with written testimony, which will extend into hearings later in 2009.

NARF represents the Tule River Indian Tribe of California in on-going negotiations to settle the Tribe's claims to reserved water rights on its Reservation. After legal and technical analyses of its water rights claims, the Tribe decided to pursue a negotiated settlement of its water rights claims before engaging in litigation. After almost 30 years of advocacy work, the Tule River Indian Tribe has successfully settled its water rights. In 2007 the Tribe signed a Settlement Agreement with water users on the South Fork Tule River of California. The Settlement Agreement secures a domestic, municipal, industrial, and commercial water supply for the Tribe. The Tribe is engaged in preparing federal legislation that will ratify

The Protection of Tribal Natural Resources

the Settlement Agreement and authorize appropriations to develop the water rights through the creation of water infrastructure and reservoirs on the Tule Reservation. In addition, HR 2535 was introduced by California representative Damon Nunez on behalf of the Tribe. The bill authorizes a feasibility study to evaluate the appropriate location of a reservoir on the Reservation to store the Tribe's water rights. Most recently, HR 2535 was passed out of the House Committee on Natural Resources and is awaiting a vote by the House.

In 2006, the Kickapoo Tribe in Kansas filed a federal lawsuit in U.S. District Court in an effort to enforce express promises made to the Tribe to build the Plum Creek Reservoir Project in the Upper Delaware and tributaries watershed. The Nemaha-Brown Watershed Joint Board # 7, the Natural Resources Conservation Service of the U.S. Department of Agriculture, and the State of Kansas made these promises to the Tribe over a decade ago. In the intervening years these parties have been actively developing the water resources of the watershed, resulting in the near depletion of the Tribe's senior federal water rights in the drainage.

The water quality on the reservation is so poor it is harmful to human health and unsuitable for human consumption according to the EPA. The water supply is in violation of the Safe Drinking Water Act of 1974. As a result the Kickapoo people are unable to safely drink, bathe or cook with tap water. The Plum Creek Reservoir Project is the most cost-effective and reliable means by which the Tribe can free its members from the dire living conditions forced upon them by their unreliable and dangerous water supply.

A thirty-year era of unreliable water supplies on the Kickapoo Reservation located in Brown County, Kansas has disabled the Kickapoo Tribe from providing basic municipal services necessary to protect its residents from illness, fire, and unsanitary living conditions. There is not enough water on the reservation to provide basic municipal services to the community. The Tribe is unable to provide local schools with safe and reliable running water and the Fire Department cannot provide adequate fire

protection due to the water shortage.

In 2007, the parties expressed an interest in taking a break from the litigation track to explore mutual benefits from settlement. The United States, the State and the local watershed district all concede the existence of the Tribe's senior Winters water rights; the real issue ultimately will be the amount of water to satisfy the Tribe's needs, and the source or sources of those rights. Overall, progress has been slow but steady and negotiations extended throughout 2008. The Tribe and the U.S. are also discussing funding to quantify the Tribe's water rights.

Protection of Hunting and Fishing Rights in Alaska

The subsistence way of life is essential for the physical and cultural survival of Alaska Natives. As important as Native hunting and fishing rights are to Alaska Natives' physical, economic, traditional, and cultural existence, the State of Alaska has been and continues to be reluctant to recognize the importance of the subsistence way of life.

In 2004 in the case *Eyak, Tatitlek, Nanwalek, Chenega, Port Graham v. Gutierrez, Secretary of Commerce*, the U.S. Court of Appeals for the Ninth Circuit en banc remanded for determination of whether the tribes can establish aboriginal rights in their traditional-use areas. The District Court ordered parties (the plaintiff Chugach Tribes are represented by NARF) to refile Motions for Summary Judgment. The federal government moved for summary judgment (the Chugach did not) but the court denied the motion a mere five days after the oral argument. A two-week trial was conducted in the second half of August 2008 and the parties are currently engaged in post-trial briefing. A decision is expected within six to twelve months. If successful, the five tribes will regain the right to hunt and fish in their traditional areas in the Gulf of Alaska federal waters.

In 2005, the State of Alaska filed a lawsuit in the District of Columbia challenging the final rule implementing the mandate in the prior subsistence case, *John v. United States*. This prior NARF case established that the United States must protect subsistence uses of

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fisheries in navigable waters where the United States possesses a reserved water right. The State challenged the Secretaries' implementation of the mandate by arguing that the reserved waters doctrine requires a quantification of waters necessary to fulfill specific purposes. Alaska Native subsistence user Katie John filed a motion for limited intervention for purposes of filing a motion to dismiss for failure to join an indispensable party. The United States filed a motion to transfer venue to Alaska. The court entered an Order transferring the case to the District of Alaska. The case was then consolidated with *John v. Norton* filed by Katie John.

Katie John had filed *John v. Norton* in the District of Alaska challenging the Secretaries' final rule implementing the prior Katie John mandate as being too restrictive in its scope. Katie John's complaint alleges that the Secretaries should have included Alaska Native allotments as public lands and further that the federal government's interest in water extends upstream and downstream from the Conservation Units established under the Alaska National Interest Lands Conservation Act. The two cases have now been consolidated. In 2007, the district court entered an order upholding the agency's rule-making process identifying navigable waters in Alaska that fall within federal jurisdiction for purposes of Title VIII's subsistence priority.

In *Ahtna Tene Nene' Subsistence Committee v. Alaska Board of Game* the suit was brought on behalf of tribal organizations and communities who live a subsistence way of life to overturn a series of regulations adopted by the Alaska Board of Game in 2007. The regulations severely restrict, and in some cases eliminate, the plaintiffs' subsistence uses of moose and caribou. Plaintiffs sought a preliminary injunction in state court requesting that the court enjoin the State from implementing these regulations for the fall hunt.

In 2007, the court found that plaintiffs had shown that they satisfied the "balance of hardships" standard for granting preliminary injunction by raising serious and substantial questions going to the merits of the case and by demonstrating that the balance of hardships tip



sharply in their favor. The State of Alaska has decided not to seek review of the court's grant of preliminary relief. In April 2008, a decision was rendered granting plaintiffs relief in part and denying it in part. Ahtna is preparing to appeal the part of the opinion denied relief.

In *State v. Dementieff* in 2006, the State of Alaska brought suit challenging the Federal Subsistence Board's customary and traditional use finding for subsistence uses of moose by members of the Chistochina Tribe. A positive customary and traditional use finding entitles residents of a specific community to the subsistence priority under Title VIII of the Alaska National Interest Lands Conservation Act. Chistochina was granted intervention in this action to protect its customary and traditional use status for moose.

In 2007, the district court entered an Order in favor of defendant United States and Chistochina against the State and upholding the Federal Subsistence Boards customary and traditional use finding for subsistence uses of moose by members of the Chistochina Tribe. The State appealed its loss, but the decision in favor of the subsistence priority was upheld by the Ninth Circuit Court of Appeals in September 2008. ❁

The Promotion of Human Rights

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. NARF strives to enforce and strengthen laws which are designed to protect the rights of Native Americans to practice their traditional religion, to use their own language, and to enjoy their culture. NARF also works with Tribes to improve education for and ensure the welfare of their children. In the international arena, NARF is active in efforts to negotiate declarations on the rights of indigenous peoples.

Religious Freedom

Because religion is the foundation that holds Native communities and cultures together, religious freedom is a NARF priority issue. Legal work continues on a number of Native American Graves Protection and Repatriation (NAGPRA) implementation issues. First, NARF offered testimony in 2004 and 2005 before the Senate Committee on Indian Affairs at Oversight Hearings regarding NAGPRA. NARF supports legislation to amend NAGPRA to correct problems created by the Court of Appeals for the Ninth Circuit's decision in the *Bonnichsen* case, which was introduced in 2007 as S. 2087 and marked-up by the Senate Indian Affairs Committee. Second, NARF represents the Pawnee Nation in the reburial of about 800 human remains in the State of Nebraska. This reburial entails facilitation of a transfer of private land located within the heart of the Pawnee homeland to the Nation for use as a reburial and cultural site. The Nebraska Attorney General issued an opinion in 2006 clarifying that reburials may be done on private land in Nebraska. In 2007, the historic conveyance of 60 acres of land took place with the formal transfer of the deed by landowners Roger and Linda Welsch during a tribal ceremony held in their honor. The reburial on that land occurred later in 2007. Third, NARF continues to monitor and participate in litigation affecting the implementation of NAGPRA. In 2005 it filed an *amicus* brief in the Spirit Cave litigation supporting a tribal repatriation claim

against the BLM in *Fallon-Piaute Shoshone Indian Tribe v. United States*. The district court upheld the Tribe's contentions and remanded the matter back to BLM. However, BLM has appealed the decision to the Court of Appeals for the Ninth Circuit.



In November 2008, the ACLU of Louisiana and the Native American Rights Fund were successful in their representation of a Native American child attending public school in St. Tammany Parish. The child is a five-year-old Native American who wears his hair in a neat braid down his back. The family's religion, like that of many Native Americans, includes a belief that hair should not be cut, except as a symbol of mourning upon the death of a loved one. The principal at the child's elementary school advised his mother that he would be required to cut his hair to continue to attend school even though to do so would violate his family's religion.

The ACLU and NARF represented the child and his mother in their fight to stand up for the rights of all Americans to exercise their religion, and to express themselves culturally. The principal rejected the family's request for an exemption to the dress code. The family appealed, but the Superintendent of Schools ruled that the child could only attend school if he wore his hair in a bun. Because doing so still suggests that the child must hide his religious beliefs, the family appealed that

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decision to the St. Tammany Parish School Board. The Superintendent later reversed her previous decision, and has decided to allow the child to attend school and continue to wear his hair in the single neat braid with which he began the school year, and which is consistent with his religious principles.

NARF and the Colorado Commission of Indian Affairs (“CCIA”) were first asked in 2003 to become involved in the City of Boulder’s process to decide whether to site two facilities – a biosolids composting facility and a fire training center – at Valmont Butte, located just east of the City. In the midst of these legal processes, curious phenomena began to unfold. Given a voice and means of expression by NARF and CCIA’s involvement, the Native American community came forward with powerful evidence that (1) the Butte is a place of significant prehistoric connections to Native peoples who inhabited Boulder Valley long before Euro American settlers came into the area in the 19th Century; and (2) the Butte is a place of contemporary religious importance to many Indian people in the metropolitan Denver area, as well as to Indian people of Ute, Arapaho and Cheyenne descent who reside on reservations in Oklahoma, Wyoming and southwest Colorado. Important spirit voices are believed to reside in and around the Butte itself and it is the locus of an active sweat lodge being utilized by several Indian religious leaders. In 2005, the City Council heard and respected the wishes of the Indian Community by rejecting the planning staff recommendations to locate the composting and fire training facilities on the Butte property. NARF is working with the CCIA, the local Indian community in the Denver metropolitan area, the interested tribes, and the residents of the Valmont Butte area to identify a means of acquiring the property from the City.

Civil and Cultural Rights

NARF, along with co-counsel American Civil Liberties Union, took the enormous step of filing the first VRA Section 203 case on behalf of Alaska Natives. The lawsuit, called *Nick v. Bethel*, alleges that Alaska (through its agents the Lieutenant Governor and the Division of

Elections, among others) have violated the VRA by failing to provide language assistance to the thousands of Yup’ik speaking voters in the Bethel Census Area. The first claim is under the VRA’s Section 203, which requires that jurisdictions covered by the Act provide oral and written assistance sufficient to enable the voter to cast a meaningful ballot.

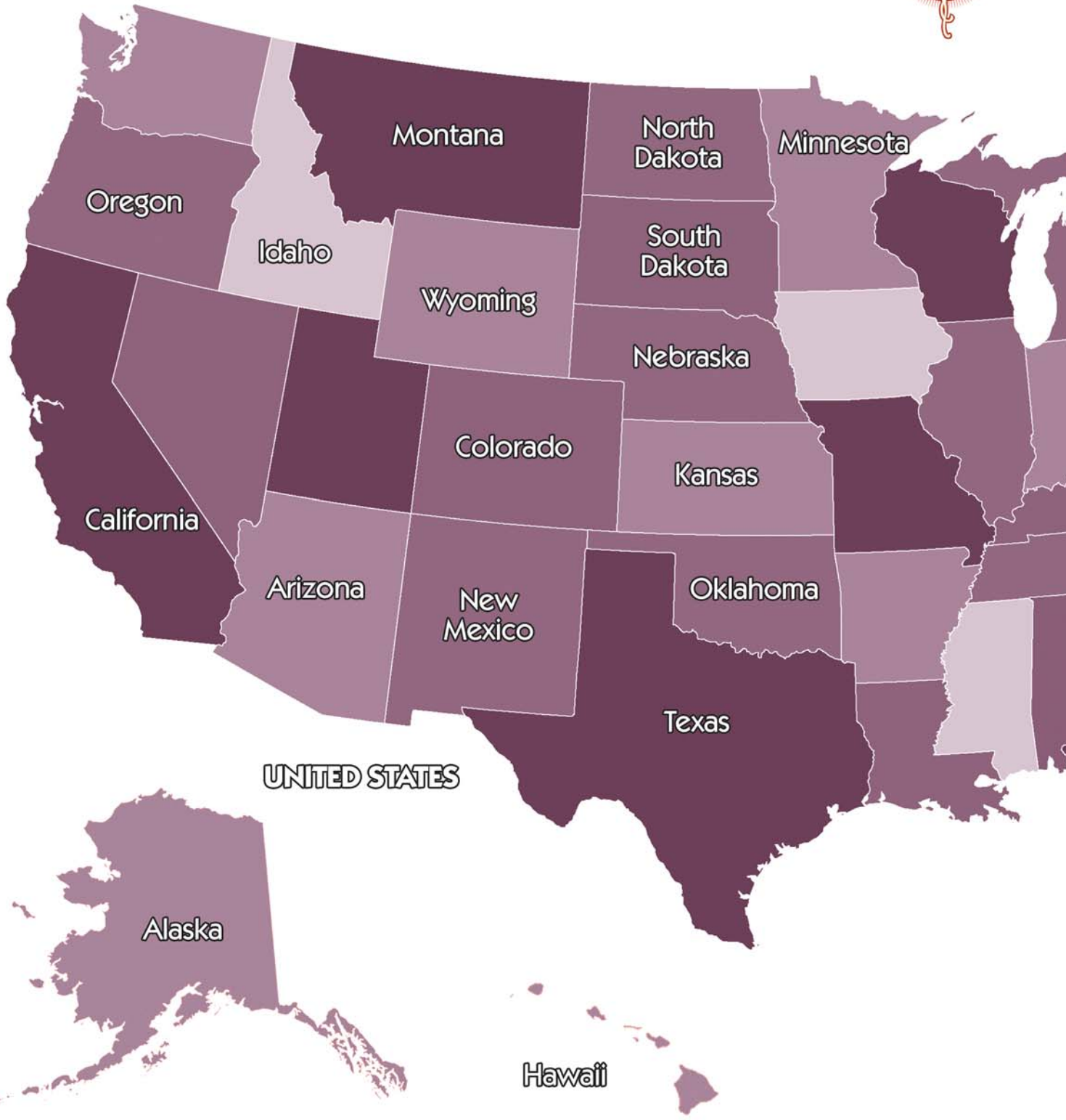
While the languages covered (meaning those for which the State has to provide assistance) varies statewide to correspond to the number of people who speak that language, in the Bethel Census Area, the covered language is Yup’ik. However, as the complaint alleges, there is little to no oral language assistance provided and absolutely no written assistance provided to the Yup’ik voter. The second claim is under Section 208 of the VRA which provides that a voter who needs help reading and writing may bring anyone they like into the voting booth to help them cast a ballot. The complaint was filed in 2007 and in July 2008 the U.S. District Court issued a Preliminary Injunction ordering the State to provide comprehensive language assistance in time for the August primary and November general elections. This relief includes providing written ballots in the Yup’ik language, publicizing all election notices and information in Yup’ik, and the creation of a new statewide position to oversee Native language assistance. Additionally, the State must report to the Court before and after each election that they have taken these steps.

From the embryonic days of our Nation, Indian tribes have long struggled against the assimilationist policies instituted by the United States which sought to destroy tribal cultures by removing Native American children from their tribes and families. As an example, the federal government failed to protect Indian children from misguided and insensitive child welfare practices by state human service agencies, which resulted in the unwarranted removal of Indian children from their families and tribes and placement of those children in non-Indian homes. Statistical and anecdotal information show that Indian children who grow up in non-Indian settings become spiritual and cultural orphans. They do not

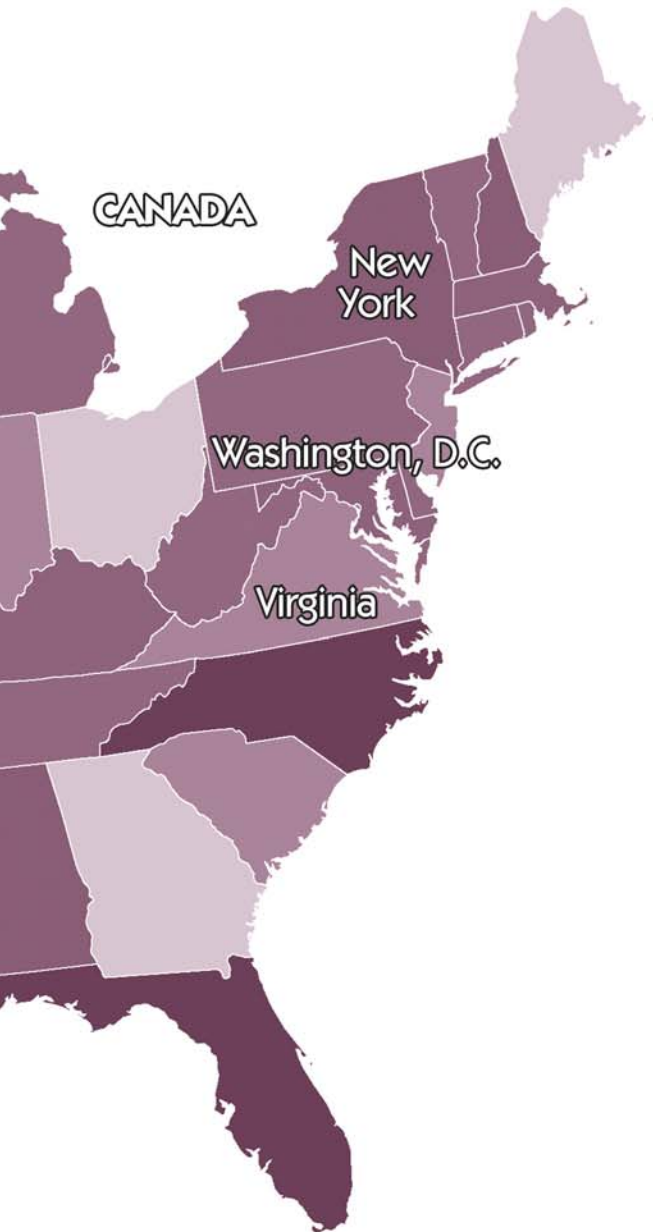
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Justice HOPE

Major Activities - 2008 NARF Case Map



Native American Rights Fund



ALASKA

NARF ANCHORAGE OFFICE

- Chistochina Tribe – Subsistence
- *Curing v. Alaska* – ICWA
- Kaltag Tribe – ICWA
- *Katie John v. Norton* – Subsistence
- Global Warming Project
- Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham – Subsistence & Aboriginal Title
- Gwich'in Steering Committee – Environmental/Subsistence
- Native Village of Nulato - ICWA
- Ninilchick Tribe – Subsistence
- Native Village of Tuluksak – Trust Lands
- Native Village of Venetie - Subsistence
- Tlingit and Haida Indian Tribes – Tribal Trust Funds
- Voting Rights Act Suit

ARIZONA

- Hualapai Tribe – Boundary Issue

CALIFORNIA

- Tule River Tribe – Water, Tribal Trust Funds
- Yurok Tribe – Tribal Trust Funds

COLORADO

NARF HEADQUARTERS

BOULDER, COLORADO

- ICWA Site
- TEDNA Headquarters
- Valmont Butte – Sacred Site Issue

IDAHO

- Nez Perce Tribe – Water Rights, Tribal Trust Funds

KANSAS

- Kickapoo Tribe – Water Rights

MINNESOTA

- White Earth Band of Chippewa Indians – Tribal Trust Fund

MONTANA

- Chippewa-Cree Tribe of the Rocky Boys Reservation – Tribal Trust Fund
- Little Shell Tribe – Recognition & Tribal Trust Fund

NEBRASKA

- Santee Sioux Tribe – Tribal Trust Fund

NEW MEXICO

- Mescalero Apache Tribe – Tribal Trust Fund

NEW YORK

- Shinnecock Indian Nation – Recognition

NORTH DAKOTA

- Fort Berthold Reservation – Water Rights
- Turtle Mountain Reservation – Tribal Trust Fund

OKLAHOMA

- Cheyenne-Arapaho Tribes – Tribal Trust Fund
- Pawnee Nation – Education, NAGPRA & Tribal Trust Fund
- Sac & Fox Nations – Tribal Trust Fund

OREGON

- Klamath Tribes – Water Rights & Tribal Trust Fund

SOUTH DAKOTA

- Lower Brule Sioux Tribe – Trust Lands
- Oglala Sioux Tribe – Environmental

TEXAS

- Alabama-Coushatta Tribe – Land Claim

VIRGINIA

- Pamunkey Tribe – Recognition

WASHINGTON

- Yakama Nation – Tribal Trust Funds

WASHINGTON, D.C.

NARF WASHINGTON, D.C. OFFICE

- *Cobell v. Norton* & Tribal Supreme Court Project
- *Harjo et al v. Washington Redskin Football* – Cultural Rights

WYOMING

- Eastern Shoshone Tribe – Land Issue

CANADA

- Northern Lakes Pottawatomi Nation – Land Claim

INTERNATIONAL

- Declaration on the Rights of Indigenous Peoples – United Nations & Organization of American States

Justice HOPE

The Promotion of Human Rights

entirely fit into the culture in which they are raised and yearn throughout their lives for the family and tribal culture denied them as children. Many Native children raised in non-Native homes experience identity problems, drug addiction, alcoholism, incarceration and, most disturbing, suicide.

In order to address these problems facing tribes as a result of the loss of their children, the Indian Child Welfare Act (ICWA) was enacted in 1978. It established minimum federal jurisdictional, procedural and substantive standards aimed to achieve the dual purposes of protecting the right of an Indian child to live with an Indian family and to stabilize and foster continued tribal



existence. Since that time, there has been misinterpretations and in some cases, outright refusal to follow the intent of the law by state agencies and courts.

In 2005, the Villages of Tanana, Nulato, Akiak, Kalskag, Lower Kalskag and Kenaitze along with Theresa and Dan

Schwietert filed a complaint against the State of Alaska, Attorney General Greg Renkes, and various state agencies challenging the policy adopted by the Attorney General of Alaska that state courts have exclusive jurisdiction over child custody proceedings involving Alaska Native children and Tribes in Alaska do not have concurrent jurisdiction to hear children's cases unless the child's tribe has successfully petitioned the Department of the Interior to reassume exclusive or concurrent jurisdiction under ICWA, or a state superior court has transferred jurisdiction of the child's case to a tribal court in accordance with ICWA.

In 2007, Judge Tan issued an opinion in the Tribe's favor rejecting all of the State's arguments. Judge Tan held that Alaska Tribes possess inherent power to adjudicate proceedings involving member children. The Tribes have moved for injunctive relief to prohibit the state and its agency's from denying full faith and credit to tribal court decrees pending appeal to the Alaska Supreme Court. The State has moved for entry of final judgment with a stay of the superior court ruling while the case goes up on appeal. At oral argument in 2007 Judge Tan instructed plaintiffs to submit their final judgment with requested permanent relief by January 2008. The court entered final judgment in favor of the tribal plaintiffs in August 2008.

In addition, NARF also filed and won a federal lawsuit in Alaska affirming ICWA's full faith and credit clause. The Kaltag Tribe had completed an adoption in tribal court and had applied for a new birth certificate, but the State refused to issue one on the grounds that the Tribe had not petitioned for reassumption of jurisdiction under ICWA. This argument assumes that a Tribe does not have inherent jurisdiction to adjudicate adoptions of its own tribal members. The Tribe and the parents (two individual Kaltag tribal members) brought suit against the State of Alaska Department of Health and Social Services and the Alaska Bureau of Vital Statistics for denying full faith and credit to a tribal adoption decree in violation of ICWA. The parents also have raised a violation of federal civil rights claim. Cross motions for summary judgment were

Native American Rights Fund

filed in 2007 and the court recently ruled in favor of the Tribe on all claims, holding that their decision was entitled to full faith and credit under the ICWA. The State has moved to stay the judgment but lost that motion as well, meaning the child in the adoption at issue will immediately receive her birth certificate. The State has appealed to the U.S. Court of Appeals for the Ninth Circuit but given the clear precedent, NARF is optimistic the decision will be upheld on appeal.

People ex rel A.T. is an action to enforce the absolute and unconditional right of tribes to intervene in child custody proceedings under ICWA. In the state of Colorado, an Indian child eligible for membership in the Osage Nation of Oklahoma was involved in a child custody proceeding as defined under ICWA. The Osage Nation's attorney filed a motion to intervene under ICWA. The motion was conditionally granted because the attorney for the Osage Nation was required to comply with the local counsel pro hac vice rule. Under this rule, an out-of-state counsel may participate in a Colorado court proceeding, but is required to associate with local counsel. As a result, the Osage Nation's attorney was required to associate with an attorney admitted to the Bar in Colorado.

NARF was retained as local counsel and filed a motion to reconsider challenging the judge's order. The motion for reconsideration argued that the Osage Nation has an absolute and unconditional federal right to intervene in the proceeding and that the local pro hac vice requirements are preempted by ICWA. Additionally, pro hac vice requirements constitute a burden that would effectively foreclose many tribes from intervening in out-of-state ICWA cases because of, among other things, the cost of hiring local counsel. NARF also argued that under ICWA a tribe has the right to appear by any representative of its choosing, including a representative that is not an attorney.

The court granted the motion to allow the Osage Nation to appear by any representative of its choosing and did not require the Nation's attorney to associate with local counsel under the pro hac vice rules. It was a



success for the Nation to appear on its own behalf unencumbered by state law.

Government suppression of Native American language, religion, and culture was done historically through the machinery of government in order to forcibly assimilate Native Americans into mainstream society and to stamp out their supposed inferior and backwards cultures. As a result of widespread ethnocide which occurred during the nineteenth and much of the twentieth centuries, much of the Native American cultures was destroyed. Yet indigenous peoples have struggled to preserve what little remains; and their contributions of art and American heritage have caused growing appreciation in the United States and around the world in recent years, as seen in the founding of the National Museum of the American Indian and in the collections of world-class art museums. Yet, most Native American artists live on a subsistence level and there is no government support for Native art and culture, with surprisingly little assistance from the American philanthropic community. There is a need for remedial measures, so NARF is participating in the birth and founding of a new national Native arts and culture foundation that will establish and manage a multi-million dollar permanent endowment from which monetary awards can be made to Native American artists and those local and regional organizations which currently support Native art and culture. With assistance and leadership from the Ford Foundation, a feasibility study demon-

The Promotion of Human Rights

strated the need and interest in such a national endowment in 2006. Significant initial funding was committed by the Ford Foundation and a founding board of directors was formed. The articles of incorporation and by laws have been approved and tax exempt status was awarded by the IRS. Fundraising and organizational development for the new foundation are underway and the new foundation will be operational in 2009. Funds are now being transferred to the foundation in 2009 by major donors, as the drive to create a multi-million dollar permanent endowment continues. The foundation has initiated a national search for a President and will open its offices in 2009.

This foundation holds enormous potential for assisting in the nation-wide tribal effort to preserve, sustain, and pass on our Native American art and cultures--including endangered traditional art forms (and associated practices), as well as all forms of contemporary art such as painting, sculpture, theater, dance, literature, film, and music. It is hoped that the foundation will become a powerful funding engine for the Native American cultural renaissance which is sweeping America.

Also in the area of cultural rights, NARF filed an amicus brief in the case of *Harjo et al v. Washington Redskin Football* in the U.S. Court of Appeals for the District of Columbia on behalf of the National Congress of American Indians, National Indian Educational Association, National Indian Youth Council, and the Tulsa Indian Coalition Against Racism in Sports in support of the Indian appellants. The brief argued that the federal trademark for the football team should be cancelled because the use of the "Redskin" mark is racially disparaging in violation of federal trademark law. A decision was rendered in 2005 holding that the case may have been prematurely dismissed as to the youngest Indian petitioner. The case was remanded to the district court to consider whether the youngest Indian plaintiff, who was a year old when the Redskins trademarks were first registered, should be barred from bringing his claim because of delay in bringing the claim. NARF will continue to monitor this important case on remand.

Education

From the founding of this country federal policy has effectively stripped tribes of control over the education of their children. The disempowerment of tribes over education has been devastating. In most tribal communities, formal schooling is resented and rejected. NARF's work in this area recently has been assisting in the development of the Tribal Education Departments National Association (TEDNA), a national, non-profit membership organization. TEDNA is growing in numbers and in strength. In July 2008, the U.S. Department's Office of Indian Education invited TEDNA to present on tribal education departments' capacity building at the Office's Partnerships in Indian Education Conference. In January 2008, TEDNA was awarded a grant from the private Indian Land Tenure Foundation (ILTF) to assist in the distribution of ILTF's tribal land based school curriculum, and to develop professional development materials to support the curriculum. TEDNA highlighted the ILTF curriculum at its National TED Forum at the 2008 National Congress of American Indians mid-year meeting in Reno, Nevada. In addition, TEDNA is working diligently to amend the Family Education Rights and Privacy Act to provide TEDs with better access to tribal members' public school records. TEDNA has continued its advocacy work in the area of Indian education by hosting various National TED forums, TED luncheons, TEDNA membership meetings and online Indian education seminars. Often in order to achieve its goal, NARF relies on avenues other than litigation and TEDNA is a good example. TEDNA's mission is capacity building toward more tribal control over education.

International Recognition of Indigenous Rights

The development of international laws and standards to protect the rights of indigenous peoples greatly benefits Native American peoples. NARF and the National Congress of American Indians entered into an attorney-client relationship several years ago for the purpose of working in the international arena to protect indigenous rights. There have been recent, significant developments

Native American Rights Fund

in both the United Nations and Organization of American States. In 2006, in an historic vote, the new United Nations' Human Rights Council overwhelmingly approved the United Nations' Draft Declaration on the Rights of Indigenous Peoples. The vote was thirty in favor, two opposed, and 12 abstaining. The only two countries voting against the Declaration were Russia and Canada. The Declaration approved was a combination of provisions agreed upon by indigenous peoples worldwide and states, and a compromise text of those provisions upon which consensus had not been reached. This compromise text was developed by the Chair of the Working Group on the Draft Declaration. Thus, while the Declaration as approved was not totally a consensus document, it was endorsed by most indigenous peoples worldwide as a major step forward in a process that has been going on since the 1970s.

In 2007, the United Nations General Assembly overwhelmingly adopted the Declaration on the Rights of Indigenous Peoples. The vote was 143 in favor, 4 opposed, and 11 abstaining. The only votes in opposition were Canada, Australia, New Zealand, and the United States. The new Prime Minister of Australia has indicated Australia will support the Declaration. This historic vote comes after 30 years of worldwide indigenous efforts.

The Declaration recognizes that indigenous peoples have important collective human rights in a multitude of areas, including self-determination, spirituality, and lands, territories and natural resources. The Declaration sets out minimum standards for the treatment of indigenous peoples and can serve as the basis for the development of customary international law. The seventh meeting of the Permanent Forum on Indigenous Issues took place at the UN in New York City in April and May 2008. The special theme of the session was climate change, a crucial issue for Indigenous Peoples worldwide.

The adoption of the U.N. Declaration on the Rights of Indigenous Peoples will have an import on the Organization of American States (OAS) process. In recognition of this, the OAS held a "reflection" session in Washington, D.C. in 2007 to discuss that import. It was



agreed that the United Nations' Declaration would be used as the foundation for the OAS document, in that all the terms of the OAS document would be consistent with, or more favorable to, Indigenous rights than the United Nations document. The group further agreed the all the terms would be met through a consensus based decision making process which includes the Indigenous representatives. The United States and Canada expressed their opposition to a document that would be consistent with the United Nations Declaration, against which they had voted, but agreed they would not oppose the process moving forward. The eleventh meeting of Negotiations in the Quest for Points of Consensus was held in Washington, D.C. in April 2008 and a follow up session was held in December 2008 in Washington. NARF has continued to be involved in these important international developments. ❁

The Accountability of Governments

Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the many laws and regulations applicable to Indian peoples and the trust duties to which those give rise. Because such laws impact virtually every aspect of tribal life, NARF maintains its involvement in the legal matters pertaining to government accountability to Native Americans.

The *Cobell v. Kempthorne* case was filed in 1996 in the U.S. District Court for the District of Columbia by NARF and private co-counsel. It is brought on behalf of approximately 500,000 past and present individual Indian trust beneficiaries. The individual Indian money account holders (plaintiffs) seek a full accounting of their trust assets for the entire period that such assets have been held in trust – since 1887. Trustees, without exception, have a duty to provide accurate and complete statement of accounts to each beneficiary at regular intervals and a complete and

accurate accounting upon demand. Yet, the United States government as trustee has never provided an accounting to individual Indian trust beneficiaries. It has never provided beneficiaries accurate and complete statement of accounts. In addition, the *Cobell* plaintiffs seek that their account balances be corrected, restated and, where appropriate, distributed to the correct beneficiary in the correct amount. Finally, the *Cobell* plaintiffs seek reform of the trust management and accounting system.

The *Cobell* plaintiffs have prevailed on many of the merits of their claims throughout this litigation. In January 2008, the court found that it was impossible for the government to perform the requisite accounting due to a lack of records and subsequently ordered a trial be held to determine an alternative remedy to an accounting for the plaintiffs. In the trial held this summer, plaintiffs requested the court to order the government to restore \$47 billion to the accounts of which \$3 billion were funds collected but never put into the accounts and \$44 billion



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of which was the benefit that the government received by withholding these funds, using them to finance the national debt and not having to borrow and pay interest on the borrowed funds over a long period of time. In August 2008, the court held that the plaintiffs were only entitled to \$455,600,000 which the court determined the government had collected but not put into the accounts. The court rejected any recovery for any benefit the government received by withholding payment of the \$455,600,000. The plaintiffs have appealed this decision. NARF has not been active in the case pending conflicts of interest checks with its tribal clients following its filing of the *Nez Perce v. Kempthorne* tribal trust funds class action case in 2006.

In a separate U.S. Court of Federal Claims action, NARF represents the Turtle Mountain Band of Chippewa in North Dakota, the Chippewa-Cree of the Rocky Boys Reservation in Montana, the Little Shell Tribe of Chippewa in Montana, and the White Earth Band of Minnesota Chippewa Indians against the United States for damages for misaccounting, misinvestment, and mismanagement of the Pembina Judgment Fund, a \$50 million trust fund that the tribes were awarded beginning in 1964. In 2006, the Court rejected four major arguments by the United States to get the case dismissed or substantially limited, and ruled that the case can go forward to determine whether the United States breached its trust responsibilities.

In 2007, the Court, with the agreement of the parties, ordered the first two temporal phases (1964 - September 1992) of the transactional claims and investment claims to be resolved through alternative dispute resolution (ADR) proceedings before a Settlement Judge of the Court. In 2008, the third temporal phase (October 1992 - December 1995) was also assigned to ADR proceedings. Formal discovery is being conducted on the fourth temporal phase (January 1996 - Present) of the Tribes' claims.

NARF represents twelve named plaintiffs – the Nez Perce Tribe; the Mescalero Apache Tribe; the Tule River Indian Tribe; the Hualapai Tribe; the Yakama Nation; the Klamath Tribes; the Yurok Tribe; the Cheyenne-Arapaho Tribe; the Pawnee Nation of Oklahoma; the Sac and Fox Nation; the Santee Sioux Tribe of Nebraska; and, the Tlingit and Haida Indian Tribes of Alaska – in an action filed in 2006 in the U.S. District Court for the District of Columbia. The action seeks full and complete accountings of tribal (as opposed to individual) trust funds, which never have been provided by the federal government which is the trustee for the funds.

The action also seeks a court order declaring that the Arthur Andersen reports prepared under a government contract and provided to tribes in the 1990s are not full and complete trust fund accountings. The action was filed as a class action to protect the rights of all tribes that do not file their own actions and that choose to remain in

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The Accountability of Governments

the class. Plaintiffs moved for class certification in June 2008 and the government opposed the motion. In July 2008 the Court indicated that, in recognition of the sovereignty of tribes, it was not inclined to grant class certification. The Court, however, suggested that joinder might be a more appropriate procedural means of addressing the addition of other tribes that want to join the action. In August 2008 Plaintiffs moved for leave to send notice to members of the putative class of an oppor-



tunity for tribes that choose to do so to join the action. The government agreed that notice was appropriate but not that tribes should have a reasonable opportunity to join. In October 2008 the Court granted the Plaintiffs motion, approved the proposed notice jointly submitted by the parties, and allowed 45 days for tribes to join the action. NARF sent out the Court-approved notice to 247 tribes in October 2008.

In December 2008, thirty American Indian/Alaska Native tribes joined the *Nez Perce Tribe v. Kempthorne* action under NARF's representation seeking accountings of their tribal trust funds from the federal government. One other tribe joined represented by its own attorneys, bringing the total number of tribes in this action to 43. The Court officially denied class certification on December 1, 2008.

The government, however, continues to insist that the court does not have jurisdiction over these cases or in the alternative, if the court does have jurisdiction, the court's role in the cases is limited to review of the agency record. In June 2008, the government moved to dismiss this action and the actions of seven other tribes. All of the Tribes opposed dismissal. The dismissal motion remains pending before the Court.

In addition, in April 2008, the Plaintiffs in this action, along with 22 other tribes in other separate actions, moved the Court for a Trust Records Preservation Order. The Trust Records Preservation Order would have required the government to report lost or damaged trust records to the Court. At the conclusion of the oral argument in July 2008, the Court denied the Trust Records Preservation Order Motion on the grounds that in his view it was unnecessary to have judicial oversight of this matter at this time. The Tribes did not appeal this adverse decision. ❁

Native American Rights Fund



The Development of Indian Law

The systematic development of Indian law is essential for the continued protection of Indian rights. This process involves distributing Indian law materials to and communicating with those groups and individuals working on behalf of Indian people. NARF has two ongoing projects which are aimed at achieving this goal, the National Indian Law Library and the Indian Law Support Center.

The National Indian Law Library

The National Indian Law Library (NILL) is a national public law library devoted to Indian law which serves both NARF and the public. Since it was started as a NARF project in 1972, NILL has collected nearly 9,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States;

legal pleadings from major Indian cases; and law review articles on Indian law topics. In addition to making its catalog and extensive collection available to the public, NILL provides reference and research assistance relating to Indian law and tribal law.

NILL has completed two significant projects recently. First, NILL worked with various departments on the recent case involving a Native American student in North Carolina who wanted to wear feathers on his robe during graduation to honor his family, despite opposition from the student's school board. The Library provided research about the prevalence of graduates at high schools and colleges being allowed to wear attire that includes religious/cultural articles. This research helped NARF and the ACLU resolve this issue. (This is just one example of the type of work NILL performs for NARF and the public on a regular basis.)



Native American Rights Fund

In addition, in June of 2008 NILL launched its new research request software through its web site. The public can ask questions via the RefTracker service. This service allows NILL to more efficiently manage the approximately 140 research and information requests it receives each month. The new name for this interaction is askNILL. This service allows NILL staff to share, answer, and save questions and answers. Saved answers can be searched and retrieved by NILL staff to help answer new questions with similar focuses. The software also allows the staff to collect data to compile statistics regarding service trends which will influence collection development and help with grant writing.



Indian Law Support Center

Since 1972, NARF's Indian Law Support Center (ILSC) has served as a national support center on Indian law and policy for the national Indian legal services community and the 32 basic field programs serving Native American clients. ILSC continues to send out regular correspondence to Indian Legal Services (ILS) programs, handling requests for assistance, and working with Indian legal services programs to secure a more stable funding base from the Congress. The U.S. Department of Justice awarded a grant of \$1,987,000 to NARF in 2004. Most of the grant funds have been contracted out to the Indian legal services programs with a small portion used to cover NARF administrative costs. We continue to be actively involved with local ILS programs in the administration of the grant and in developing training events to meet local program needs. Funding in the amount of \$1,726,626 for calendar year 2006 was appropriated by Congress for the project. Funding via 2007 and 2008 Congressional Appropriations was unsuccessful, and funding within the FY 2009 budget does not appear feasible. We continue to work with ILS on a strategy for FY 2010 funding.

Other Activities

In addition to its major projects, NARF continued its participation in numerous conferences and meetings of Indian and non-Indian organizations in order to share its knowledge and expertise in Indian law. During the past fiscal year, NARF attorneys and staff served in formal or informal speaking and leadership capacities at numerous Indian and Indian-related conferences and meetings such as the National Congress of American Indians Executive Council, Midyear and Annual Conventions, and the Federal Bar Association's Indian Law Conference. NARF remains firmly committed to continuing its effort to share the legal expertise which it possesses with these groups and individuals working in support of Indian rights and to foster the recognition of Indian rights in mainstream society. 🌟

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NARF 2008 Financial Report

Based on our *audited* financial statements for the fiscal year ending September 30, 2008, the Native American Rights Fund reports total unrestricted revenues of \$5,809,930 against total expenditures of \$7,159,550. Total net assets at the end of the year came to \$7,207,196. Due to presentation requirements of the audited financial statements in terms of recognizing the *timing* of certain revenues, they do not reflect the fact that, based on NARF's internal reporting, expenses, losses and other cash outlays exceeded revenue by \$1,314,404, resulting in

a decrease to NARF's reserve fund. The decrease in Public Contributions is due to a bequest that we received for almost \$2,000,000 in fiscal year 2007. Tribal contributions continued to increase due to fund raising efforts in this area. Legal Fees increased due to escalated activity in our major cases. Along with the overall investment markets, our investments took a huge hit in fiscal year 2008.

Revenue and Expense comparisons between fiscal year 2007 and fiscal year 2008 are shown below.

UNRESTRICTED SUPPORT AND REVENUE COMPARISON				
	2007		2008	
	dollars	percents	dollars	percents
Public Contributions	\$ 3,723,064	50.5%	\$ 2,288,390	39.4%
Tribal Contributions	1,059,100	14.4%	1,398,950	24.1%
Federal Awards	85,150	1.2%	158,447	2.7%
Foundation Grants	530,652	7.2%	643,982	11.1%
Legal Fees	1,331,288	18.0%	2,059,580	35.4%
Return on Investments	615,566	8.3%	(790,470)	(13.6)%
Other	32,901	0.4%	51,051	0.9%
TOTALS	\$ 7,377,721	100%	\$ 5,809,930	100%

EXPENSE COMPARISON				
	2007		2008	
	dollars	percents	dollars	percents
Litigation and Client Services	\$ 4,049,683	61.9%	\$ 4,656,499	65.0%
National Indian Law Library	271,543	4.2%	297,599	4.2%
Total Program Services	4,321,226	66.1%	4,954,098	69.2%
Management and General	791,330	12.1%	781,522	10.9%
Fund Raising	1,422,633	21.8%	1,423,930	19.9%
Total Support Services	2,213,963	33.9%	2,205,452	30.8%
TOTALS	\$ 6,535,189	100%	\$ 7,159,550	100%

Note: This summary of financial information has been extracted from NARF's audited financial statements which received an unqualified opinion by the accounting firm of JDS Professional Group. Complete audited financials are available, upon request, through our Boulder office or at www.narf.org.

Native American Rights Fund

NARF Acknowledgment of Contributions: Fiscal Year 2008

We thank each and every one of our supporters for their commitment to the goals of NARF. NARF's success could not have been achieved without the generosity of our many donors throughout the nation. We gratefully acknowledge these gifts received for fiscal year 2008 (October 1, 2007 through September 30, 2008).

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Special Events

NARF gratefully honors our many friends and partners who sponsored and supported our special events in 2008. Thank you for your support and for caring so deeply about Indian rights, laws and issues. NARF would like to give special acknowledgment and thanks to our major event sponsors in the last fiscal year:

Boulder Modern Day Warriors Art Show, November 2007 –

Turquoise Sponsors: The Native American Bank, The Inez C. Moss Family of Pechanga Band of Luiseño Mission Indians, Aine Ungar, Belgarde Enterprises & John Bevan.

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Flagstone Sponsors: Elk Valley Rancheria, First Nations Development Institute, Peter K. Manning & Jeanne Morrel-Franklin, The Boulder Weekly & James Travel Points.

Donating Artists: NARF wishes to extend our heartfelt thanks to this year's featured artists who have a great service to Native rights through their generosity and artistic

talents. The 30 young artists, representing 34 tribes from across the United States were selected from NARF's National Art Competition held this Fall for Native artists ages 15-35 years. A total of 103 works of visual art were reviewed by a national jury comprised of artists and non-profit, business, media, publishing and marketing professionals who chose a total of 50 works of art to be exhibited this evening. 2007 NARF Modern Day Warrior young Native American artists selected to exhibit are: Votan (Maya/Nahua); Daniel McCoy (Muscogee/Potawatomi); Cara McDonald (Chemehuevi); Natasha Wagner (Chickasaw); Bunky Echo-Hawk (Pawnee/Yakama); Arion Poitra (Turtle Mountain Band of Chippewa); David Bernie (Yankton Sioux); Julius Badoni (Navajo); Hilary Glass (Cherokee/Yakama); Alyssa Macy (Wasco/Navajo/Hopi); Vonnie Alberts (Three Affiliated Tribes, Fort Berthold Indian Reservation); Sacheen Smith (Navajo); Lavina Bowers (Yurok); Manuel Monguia (Cahuilla Band of Indians); Jay McCray (Navajo); Dylan Adam Torkelson Miner (Woodland Métis); Andrew Morrison (Haida/ Apache); Nadya Kwandibens (Anishinabe); Valarie Norris (Red Lake Nation); Chris Pappan (Kaw Nation); Sharyl Pahe (Diné/San Carlos Apache); Courtney Parchcorn (Chickasaw/Kiowa/Cherokee/Creek); Erin Genia (Sisseton-Wahpeton Oyate); Dante McCoy (Cherokee); Venaya Yazzie (Diné); Ryan Red Corn (Osage); Monty Singer (Navajo); Jasmine Vigil (Jicarilla Apache/Jemez Pueblo); and Chris Turley (Osage). *NARF would like to acknowledge and thank our 2007 Modern Day Warriors National Art Jury comprised of the following individuals:* Russ Tall Chief (Native Peoples Magazine), J.D. Colbert (President, Native American Bank), Jodi Rave (Journalist, Lee Enterprises & The Missoulian), Randy Bardwell (Red Lodge Industries), Carly Hare (Community Foundation), Marlene & Daniel EchoHawk (Indian Health Service), Jack Lenzo (Fulcrum

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NARF Acknowledgment of Contributions: Fiscal Year 2008

Publishing), Mark Tilden (Attorney, NARF) and Robert Martinez (Artist).

Thanks to All Our Additional Sponsors, Contributors & Supporters of the NARF

Modern Day Warriors Art Show: All of the young Native artists who participated in the NARF Modern Day Warriors national art competition; Angie Vossler & The St. Julien Hotel; The National Congress of American Indians (NCAI) and its Local Planning Committee; Mustard's Last Stand; McGuckins; BJ Bastle; Richard Kim; Judith Horton; Anne E. Demuth; Audrey Lightemple, Sara Jane McInnes; Catherine Knight; Michael Byrne; Donna Mayo; Eleanor Crow; Michael Berg, Big F Restaurant; R. Morehaus; Eight Northern Pueblos Council; Pedestrian Shop; Island Burgers; Rio Grande Mexican Restaurant; Red Hand Media; Santiago & Santa Fe Arts; Transit Marketing; Carly and Dawna Hare; Pat Ragona and High Country Harley Davidson; Alyssa Macy; Chris Bailey & Dynamic Events; Adam Feldbrugge at Rebirth Design; Mark Huebner at Rage Unlimited; Bunky Echo-Hawk; Quese Imc Frejo; Pat Cantley; Teresa Halsey at KGNU; Tara Gatewood at Native America Calling; Jenni Monet; Crista Echo-Hawk; Meghan Meisters; Daylight A/V Productions; Ray & Carmen Ramirez; Don Ragona; Rose Cuny; Rita; Kayla; Kim Cameron & The Rocky Mountain Indian Chamber; David Bernie; Mireille Martinez; Jennifer Redbone and to all our NARF staff, family and supporters.

Honoring Our Leaders & Building Partnerships for the Future of Indian Country Dinner, Santa Fe, NM – Eagle

Opportunity & Milberg LLP. Thanks to our Master of Ceremonies, Conroy Chino and our Keynote Speaker Richard Bowers, President of Seminole Tribe of Florida, Inc.

7th Annual Visions for the Future Benefit Art Auction, Santa Fe, NM –

Turquoise Sponsor: Cow Creek Band of Umpqua Tribe of Indians;

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Featured Artist Brent Greenwood, Kimberly MacLoud, Micki Free & the Seminole Hard Rock Hotel & Casino, Na Na Ping, Rance Hood, Eric Ginsburg, Michael Horse, Billy Soza Warsoldier, Eddie Running Wolf, Bunky Echo-Hawk, David Bernie, Terence Guardipee, Hans Rose, Ryan Red Corn, Leonard Benari, Shirley Miolla, Julian Spalding, Chris Pappan, Amado Pena, Kathleen Senzell, Kim Knifechief, Lillian Feldpunsch, Luz- Maria Lopez, Jean Bowerman, Brett Lee Shelton, Thayne Hake, Jesse Hummingbird, Sonny Howell III, Glenda Loretto, Janice Black Elk & Daniel Jim, Michael Roanhorse, J.D. Rhynes, Glenn Booker, Cara McDonald, Votan, Niki Lee, Alyssa Macy, Consuelo Lucero, Diana Lucero, Andrea Hill, Joy Orcutt, Sybil Amber, Joanelle Romero, Andrew Rodriguez, John Gonzales, Fernando Benally, Liz Nicholas, Natasha Wagner, Monty Singer, Rollie Grandbois, Joy Harjo, Andrew Rodriguez, Venaya Yazzie, Rita Iringan, Stephanie Sorbell, Jeana Francis, Eli Secody, Ipo Nihipali & Dina Gilio.

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Thank you to the thousands of federal, state, municipal and private sector employees throughout the country who through their payroll deduction plans contributed \$89,144 in fiscal year 2008.

Show Your Support in NARF's programs –

NARF receives contributions from foundations, corporations, religious organizations, tribes and Native organizations, bequests and trusts, benefactors, private donations, and in-kind contributions. Below are descriptions of NARF's donor programs and additional ways you can get involved.

Peta Uha Membership – Peta Uha in the

Lakota (Sioux) language means firekeeper. One that honors tribal members who made a solemn commitment to ensure that the sacred flame, source of light, heat and energy for his people, always be kept burning. Like the firekeepers of old, members of the Peta Uha Council can demonstrate constancy and

Native American Rights Fund

vigilance by helping to ensure that the critical work of the Native American Rights Fund continues to move ever forward. For benefits associated with each level of Peta Uha membership, please contact Donald Ragona, 303.447.8760 or e-mail him at petauha@narf.org.

Tsanáhwit Circle – Tsanáhwit is a Nez Perce word meaning equal justice. Tsanáhwit Circle members provide a regular source of income to NARF by pledging and making monthly contributions at any level of your choice. You may sign up to receive monthly pledge reminders in the mail or your credit card may be billed automatically.

Otu'han Gift Membership – Otu'han is the Lakota Sioux word translated as giveaway. Otu'han is a memorial and honoring gift program modeled after the tradition of the Indian giveaway in which items of value are gathered over a long period of time to be given away in honor of birthdays, marriages, anniversaries, and in memory of a departed loved one.

Circle of Life – NARF's Circle of Life are donors who provide a lasting legacy to the Native American Rights Fund by including NARF in estate planning or deferred gifts. The circle is an important symbol to Native Americans representing unity, strength and the eternal continuity of life. These lasting gifts help ensure the future of NARF and our Indian clients nationwide.

Endowments – NARF has two established endowments, the 21st Century Endowment and the Living Waters Endowment. The 21st Century Endowment is a permanent fund in which the principal is invested and interest income is used for NARF's programs. This endowment is designed to provide a permanent, steady income that can support the ever-increasing costs of providing legal representation to our tribal clients. The Living Waters Endowment directly funds the 21st Century Endowment. It allows donors to

honor friends and loved ones by making an endowment gift of \$10,000 or more. By designating a gift to either endowment, you can be sure that your contribution will continue to generate annual funds in perpetuity. Endowment supporters are recognized on a special wall plaque displayed at NARF. Supporters will also receive a memorial piece for their home and be acknowledged in NARF's annual report.

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 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.

Matching Gifts – Currently, more than 25 foundations and corporations nationwide make matching gifts to NARF on a regular basis. Employers match their employees' contributions sometimes doubling or even tripling their donation. Please check with your human resources office and request a matching gift form.

E-Action – Sign up for our e-action network by providing NARF with your email address. This is a great way to get periodic case updates, calls-to-action, special events information, invitations and other activities. Your e-mail address is confidential and we will not share it with any outside sources. For further information about any of the programs or services, please contact NARF's Development Department at 303-447-8760. *Thank you.*

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Page 2: Talan Gover

Page 3: Honoring our elders at NARF

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Page 10: NARF Board member Billy Frank

Page 11: NARF attorney Heather Kendall-Miller speaking at the United Nations

Page 13: NARF attorney Richard Guest making a presentation on the Tribal Supreme Court Project

Page 15: Meeting at NARF – former NARF attorney Patrice Kumesh center

Page 16: NARF Board member Anthony Pico

Page 19: NARF attorney Kim Gottschalk

Page 24: NARF attorney Melody McCoy

Page 25: Meeting at NARF

Page 27: NARF Board Chair Delia Carlyle

Page 29: NARF guests; NARF Board member Kunani Nihipali

Page 30: NARF Board member Ron His Horse Is Thunder

Page 31: Top left clockwise – NARF honoring of our elders; NARF staff members David Gover and Eric Anderson; NARF attorney David Gover and his wife Cita; NARF Board members Anthony Pico and Lydia Olympic; NARF summer law clerks; honoring elders at NARF.

Page 33: Native Hawaiian attorney Eddie Ayau and NARF attorney Walter Echo-Hawk

Justice HOPE

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