

**Native American
Rights Fund**
Annual Report 2010



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On the cover: Artist Eddie Running Wolf’s portrayal of 40 years of NARF employees and defending the rights of indigenous peoples.

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.



INTRODUCTION

Looking back at the past forty years of the Native American Rights Fund's (NARF) existence, it is almost impossible to comprehensively document the impact that NARF has had in Indian country. Before NARF's existence, there were not many attorneys working for Indians. Most of them were handling contingency-fee cases since few tribes could afford tribal counsel. "Indian law" was neither developed, nor defined, let alone being taught in law schools.

Today, the delivery of responsible, comprehensive legal representation to Indian tribes, organizations and individuals has been institutionalized as an integral part of America's justice system. Private practitioners, tribal attorneys, legal services offices and other non-profit organizations like NARF together are providing representation to Indians, using our country's justice and legislative systems to assure that Indian rights are upheld.

Native advocates were almost invincible during the 1970's and into the 1980's, especially in the U.S. Supreme Court. Beginning in the mid-1980's, Supreme Court decisions started shifting against tribal interests. This negative shift continues today as the majority of the Supreme Court seems intent on limiting tribal sovereignty.

After the modern day tribal sovereignty movement, the field of Indian law is no longer considered an esoteric subject about ancient history. Due in part to NARF's existence – its

"One can only imagine what it might be like if NARF had been created 10 or 20 years earlier." — Tribal Leader at NARF's 40th Anniversary Indian Law Forum

tremendous successes in the courts as well as continued representation over the years in thousands of cases – the rights of America's Indians are now judiciously and routinely being advocated before the courts, administrative hearings, state legislatures and Congress. Officials and bureaucrats who either chose to ignore or had no information on the specific rights of America's Indians in the past are today held accountable for decisions relating to Native Americans, partly because of the rights defined and upheld in NARF's courtroom and legislative victories.

The initial goal for NARF's Indian law practitioners was to represent Native Americans in cases of major significance to a great number of Indian people. For the first time, Indian people were assured that a sustained, highly-trained Indian advocacy group was available to them to clarify treaty and constitutional rights guaranteed them – regardless of their ability to pay. NARF was directly involved as either counsel or co-counsel in practically all of the early precedent-setting cases of the 1970's.

The Native American Rights Fund has been at the forefront on advocating

many of the major acts and reviews potentially affecting all Native Americans including the American Indian Religious Freedom Act, the Indian Child Welfare Act, the American Indian Policy Review Commission, the Native American Graves Protection and Repatriation Act, the Voting Rights Act, the Indian Self-Determination Act, the Maine Indian Land Claims Settlement Act, the Religious Freedom Restoration Act and many others. NARF has also been instrumental in assisting vital new Indian organizations including the American Indian Higher Education Consortium, the Tribal Education Departments National Assembly, the Council on Energy Resource Tribes, the National Tribal Environmental Council and the Native Hawaiian Legal Corporation.

As an Indian-controlled organization, NARF's leadership has provided as many opportunities as possible to develop young Indian law graduates and students in the area of Indian law. An average of eight law interns and/or clerks are employed annually by NARF, most of them being Native American.

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

John Echohawk NARF Executive Director

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 long term funding commitments. Finally, the positive effects of NARF's work are reflected in the financial contributions by a growing number of tribal governments like the Yocha Dehe Wintun Nation, the Seminole Tribe of Florida, the Chickasaw Nation,

the San Manuel Band of Mission Indians, the Muckleshoot Tribe, the Mississippi Band of Choctaw Indians and the Poarch Band of Creek Indians. 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

NARF's 40th Anniversary Pow Wow.



EXECUTIVE DIRECTOR'S REPORT

It is hard to believe, but 2010 marked the 40th anniversary of the Native American Rights Fund. I helped to start the organization in 1970 and I remember hoping that we could use Indian legal advocacy to improve the lives of Native Americans. Forty years later, I see clearly how our legal work on behalf of Native Americans across the country has created much better social and economic conditions for our Indian people. In 2010, we continued our legal advice and representation to Native tribes, organizations and individuals in cases of major significance and once again realized several important achievements.

After a 32 year saga, the Shinnecock Indian Nation in New York was officially recognized as an Indian tribe by the U.S. Department of the Interior. The Native American Rights Fund had filed a petition for federal recognition for the Shinnecock Indian Nation in 1978 and worked throughout the years for a favorable determination on the petition. The Shinnecock Nation became the 565th federally recognized Indian nation in the United States.

In a lawsuit over enforcement of the federal Voting Rights Act, *Nick v. Bethel and State of Alaska*, a settlement was reached with the State of Alaska. The city of Bethel, Alaska had agreed to a settlement of the case in 2009. The comprehensive settlement agreement includes translation and interpretation assistance for all Alaska Natives speaking the Yup'ik language throughout the entire voter

registration and voting process. The Federal District Court in Alaska has retained jurisdiction to oversee the State of Alaska's compliance with the settlement agreement. The Native American Rights Fund had filed the case in 2007 on behalf of several Yup'ik speaking voters.

The United States Supreme Court declined to hear the State of Alaska's appeal in *Hogan v. Kaltag Tribal Council*, thus letting stand a decision of the Ninth Circuit of Appeals holding that tribal courts in Alaska have authority to initiate and fully adjudicate Native children's cases. The Native American Rights Fund became involved in 2006 when the State of Alaska refused to recognize an adoption order of the Kaltag Tribal Court involving a Kaltag child. This case reaffirms the rule that when tribal courts adjudicate domestic matters of their own member children, their decisions are entitled to full faith and credit in state courts.

At a meeting with tribal leaders in December 2010, President Obama made the historic announcement that the United States has reversed its previous negative vote and now endorses the United Nations Declaration on the Rights of Indigenous Peoples. The United States is the last of four countries who voted against the Declaration in the United Nations in 2007 to change its position. Indigenous peoples world-wide have worked on the Declaration since the late 1970s. The Native American Rights Fund has worked on the Declaration with its



John E. Echohawk

client, the National Congress of American Indians, since 1999.

Also in December 2010, President Obama signed into law the \$3.4 billion settlement in the *Cobell v. Salazar* litigation involving the federal government's mismanagement of over 300,000 individual Indian money trust accounts. The \$3.4 billion settlement will be paid out to settle the class action lawsuit if the federal district court in Washington, D.C. approves the settlement following proceedings which are underway. The Native American Rights Fund was involved in the case with private co-counsel from 1996 when it was filed until 2006 when we filed a similar lawsuit over federal mismanagement of tribal trust accounts for 42 tribes in *Nez Perce Tribe v. Salazar*. The Native American Rights Fund is pleased to have played a very significant role in resolving the long-standing federal trust responsibility issues raised in the *Cobell* case.

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With the support of an anonymous donor, the Native American Rights Fund has started a new project to promote and support Native people in restoring sustainable peacemaking practices. This project provides an opportunity to support traditional peacemaking and community building practices as an extension of Indian law and sovereign rights. Peacemaking is a community-directed process to develop consensus on a conflict resolution plan that addresses the concerns of all interested parties.

Our National Indian Law Library (NILL) has undergone a new push to increase the tribal law content available at NILL and online through its Tribal Law Gateway. NILL's Access to Tribal Law Project (ATLP) currently

has over 230 tribes participating by providing tribal codes, constitutions and other tribal legal materials for NILL's collection. In an effort to foster increased communications with tribes, NILL conducted surveys on the importance of having access to tribal law materials. NILL also created the ATLP Support Committee composed of leaders in Indian law from across the nation to oversee the Project.

Our 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 since 1972. In 2010, the ILSC and Indian legal services programs secured a line item appropriation of \$2.35 million from Congress for supplemental funding to Indian legal

services programs for their representation of Indian people and tribes which fall below federal poverty guidelines. The ILSC is administering with the National Association of Indian Legal Services (NAILS) the funding for the civil and criminal work undertaken by the 25 NAILS member programs.

The Native American Rights Fund thanks everyone who provided grants and contributions to us in our 40th anniversary year. Without your monetary support, our critical legal work on behalf of Native Americans across the country would not have been possible. We very much appreciate your financial assistance and hope that it will continue for our Indian legal advocacy efforts in the future.

John E. Echohawk
Executive Director

NARF's 40th Anniversary Pow Wow.



CHAIRMAN'S MESSAGE

As my time on the Native American Rights Fund Board of Directors is soon coming to an end, it was my honor to stand with NARF at their 40th Anniversary Celebration held at the Chickasaw Nation in Oklahoma in October 2010. Serving six years on the Board has given me the opportunity to witness first hand the passion that NARF displays for our people and the issues that confront them. I know now that Indian country has an institution in NARF that is looking out for our peoples' interests and doing so without politicizing its own role.

As you look back at the 40 year history of NARF, it is just amazing the impact that they have had in protecting tribal sovereignty, insuring that our ways of life and our spiritual connection to our Mother Earth is never again broken and that the federal government lives up to their promises and their treaty obligations. NARF's legal and legislative victories will continue to guide us and we will forever be grateful for their commitment to our people.

There remains much work to be done for Indian rights and NARF will continue its fight on our behalf. And as in the first 40 years, NARF intends to continue to play a major role in righting wrong and in representing our people with the highest standard possible.

As Chairman of NARF's Board of Directors, I am fully aware that the progress that NARF has achieved

would not be possible if it weren't for the many contributors that make NARF possible. To those few tribes that generously contribute to NARF, those foundations that continue to have faith in NARF's mission and to those thousands of individuals who continue to believe in NARF – we thank you. To those who have yet to contribute to NARF – we encourage you to join us in insuring that NARF will be here for another 40 years.

With Sincere Thanks,
Delia Carlyle, Board Chairman



Delia Carlyle

*“NARF’s legal and legislative victories
will continue to guide us...”*



NARF's 40th Anniversary Pow Wow.

BOARD OF DIRECTORS



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 40th Anniversary Pow Wow.

NARF's Board of Directors: Delia Carlyle, Board Chairman (*Ak Chin Indian Community*); Kunani Nihipali, Board Vice-Chairman (*Native Hawaiian*); Gerald Danforth, Board Treasurer (*Wisconsin Oneida*); Ron His Horse Is Thunder, Board Executive Committee (*Standing Rock Sioux Tribe*); Richard Luarkie, Board Executive Committee (*Pueblo of Laguna*); Virginia Cross (*Muckleshoot Indian Tribe*); Miko Beasley Denson (*Mississippi Band of Choctaw Indians*); Mark Macarro (*Pechanga Band of Luiseño Indians*); Marshall McKay (*Yocha Dehe Wintun Nation*); Buford L. Rolin (*Poarch Band of Creek Indians*); Natasha V. Singh (*Native Village of Stevens*); Barbara Smith (*Chickasaw Nation*).

*...the vision of its members is essential to
NARF's effectiveness in representing its
Native American clients.*

NATIONAL SUPPORT COMMITTEE

The National Support Committee 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.

Randell and Deborah Bardwell,
Pechanga Band of Luiseno Indians
Katrina McCormick Barnes
Jaime Barrientoz, Grand Traverse
Band of Ottawa and Chippewa
Indians
John S. Bevan
Wallace E. Coffey, Comanche
Ada E. Deer, Menominee
Harvey A. Dennenberg
Lucille A. Echohawk, Pawnee
Jane Fonda
James Garner
Eric Ginsburg
Jeff Ginsburg

Rodney Grant, Omaha
Chris 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 Oneida
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

*Rick Williams, former NARF employee at
the Swift Bird Corrections Project in 1977.*





THE PRESERVATION OF TRIBAL EXISTENCE

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.

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

"...Along the way, Chief Justice Marshall cements the notion of the doctrine of discovery – a notion peppered with racist attitudes and a clear declaration of the racial superiority of the discoverers over the discovered and having the effect of invalidating aboriginal title to the discovered lands."

— Walter Echo-Hawk, NARF attorney, retired

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 actually are accepted for review. When cases are accepted, the Project helps to ensure that the attorneys representing the Indian interests have all the support they need and to coordinate the filing of a 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.

NARF launched the Tribal Supreme Court Project in conjunction with NCAI in 2001. 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,

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Former NARF attorney and noted author Charles Wilkinson.

also assists the Project. Their 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 nation-wide 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.

The Tribal Supreme Court Project monitored each petition at the time it was filed and provided resources in the preparation of the briefs where appropriate. For example, the Project assisted in the development of the amicus strategy and briefs in support of the petitions in *Harjo v. Pro-Football, Inc.* (doctrine of laches precludes consideration of a petition seeking cancellation of the “Redskins” trademarks owned by Pro-Football, even though the Trademark Trial and Appeals Board’s found that the trademarks disparaged Native Americans) and *Benally v. United States*



NARF attorney Yvonne Knight, retired.

(allegations of juror racial bias based on jury foreman’s statement that “[w]hen Indians get alcohol, they get drunk,” and ‘when they get drunk, they get violent’”). Unfortunately, the Court denied review in both cases. The Project also worked closely with attorneys representing tribal interests which prevailed in the lower courts to prepare response briefs to successfully oppose review. These cases included: *Elliot v. White Mountain Apache Tribe* (non-Indian defendant must exhaust her tribal court remedies before the federal court will entertain her challenge to tribal court jurisdiction); and *Rosenberg v. Hualapai* (sovereign immunity bars lawsuit in state court against a tribally-owned whitewater rafting business).

Unlike the previous term when

eight petitions involved questions relating to provisions of the Indian Gaming Regulatory Act (IGRA) and/or questions arising under state-tribal gaming compacts, only one petition this past term, *North County Community Alliance v. Salazar*, involved a question arising under IGRA. No one subject matter area dominated the field of twenty-six petitions filed this past term: five involved questions of state or federal criminal jurisdiction over Indians; four involved issues related to the federal trust relationship; and three involved questions of state or federal taxes on Indians. The remainder of the petitions was a mix of questions regarding tribal civil jurisdiction over non-Indians (2), the status of Indian lands (2), various tribal membership

disputes (3), Indians and trademark issues (2); tribal sovereign immunity (1), water rights (1), civil rights (1) and class actions (1).

In addition to its work before the U.S. Supreme Court, the Project continues to monitor Indian law cases pending before the lower federal courts and in the state courts. In certain cases, the Project may become involved in the lower court litigation—coordinating resources, developing litigation strategy and/or filing briefs in support of tribal interests. This past term, the Project assisted in the preparation of amicus briefs in a number of cases, including: *Patchak v. Salazar* (pending before the D.C. Circuit challenging trust land acquisition based on *Carcieri* and the status of the Tribe in 1934); *Water Wheel Camp v. LaRance* (pending before the Ninth Circuit on questions involving the scope of tribal court jurisdiction over non-Indian lessees); *Osage Nation v. Irby* (request for en banc review by Tenth Circuit on question of disestablishment of Osage Reservation denied); and *Colorado v. Cash Advance* (pending before the Colorado Supreme Court on the question of the sovereign immunity of tribal enterprises doing business outside the reservation). The Project has renewed its efforts to monitor a substantial number of Indian law cases pending in the lower courts, updating the cases by subject matter area, including: Post-*Carcieri* Litigation; Criminal Jurisdiction (Federal and State); Civil Jurisdiction (Tribal and State); Diminishment/Disestablishment; Indian/Tribal Status; Sovereign Immunity; Taxation; Treaty

Rights; Religious Freedoms; and Trust Relationship. Hopefully, these efforts will help us identify trends or currents within distinct areas of Indian law that can be effectively addressed prior to reaching the Supreme Court.

Water Wheel Camp Recreation Area v. La Rance is a case involving tribal court jurisdiction over a non-Indian company that leases land within a Tribe's reservation. In May 2010, NARF co-counseled, along with private counsel, an amicus curiae brief in the U.S. Court of Appeals for the Ninth Circuit on behalf of the National American Indian Court Judges Association. In an unusual decision, the federal district court upheld tribal court jurisdiction over the non-Indian company, but not the non-Indian individual that presides over the company. The case also involves issues regarding the federal court's consideration of evidence that was not presented to the tribal courts, under the exhaustion of tribal remedies doctrine. The Court of Appeals heard oral argument in the appeals in this case for February 2011.

The Judicial Selection Project prioritized the development of a process to identify, evaluate and promote qualified Native attorneys, tribal judges and state court judges for nomination to the federal bench. Currently, there are no active judges on the federal bench who are Native American. There are 866 federal judgeships—nine on the Supreme Court, 179 on the Courts of Appeals and 678 for the district courts. And there are zero American Indian, Alaska Native and Native Hawaiian federal judges. A primary objective of

the Project is to ensure that qualified Native candidates are considered and nominated to fill current vacancies on the federal bench.

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.

On October 1, 2010, the U. S. Interior Board of Indian Appeals dismissed two requests for reconsideration of the U.S. Department of the Interior's Final Determination for Federal Acknowledgment of the Shinnecock Indian Nation in New York, because the requesters failed to demonstrate that they were interested parties under the federal acknowledgment regulations. With the ruling, the Final Determination was immediately effective, thereby rendering the Shinnecock Nation the 565th federally recognized Indian nation in the United States. The decision ends a 32-year saga initiated by the Nation and NARF when NARF filed the Nation's initial petition and litigation request in 1978 with the U. S. Department of the Interior.

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Past NARF Board of Directors 1970's.

After twenty-two years of preparing the necessary historical, legal and anthropological documentation to support its petition for federal acknowledgment, the Pamunkey Tribe of Virginia filed its petition with the Office of Federal Acknowledgement. The Native American Rights Fund has represented the Pamunkey Tribe in this effort since 1988. The Pamunkey Tribe represents an Indian community who has survived intact as an identifiable Indian tribe, but who is not federally recognized. The Tribe has had to submit evidence that they have continued to exist as an Indian tribe from the time of significant white contact to the present day, and have continued to govern themselves and their members throughout this time. The Pamunkey Tribe's reservation is

located on the Pamunkey River, adjacent to King William County, Virginia. A Virginia Historic Landmark, it contains approximately 1,200 acres of land, 500 acres of which are wetlands. Pamunkey tribal members reside on the reservation and live in nearby Richmond, Newport News, other parts of Virginia and other states from coast to coast.

In October 2009, the Acting Assistant Secretary for Indian Affairs issued a Final Determination against recognition of the Little Shell Tribe of Chippewa Indians of Montana, overruling the decision in the Preliminary Determination. The stated rationale for the decision was the unwillingness to go along with the "departures from precedent" which the previous Assistant Secretary found to be justi-

fied by historical circumstances. In February 2010, the Tribe filed a Request for Reconsideration with the Interior Board of Indian Appeals (IBIA). As it is unclear how long the IBIA will take to rule, the Tribe will continue its legislative efforts in Congress.

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 governments as the primary regulators and enforcers of the 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.

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 peoples 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. In 2006, during the Alaska Forum on the Environment, Alaska Native participants described increased forest fires, more dangerous hunting, fishing and traveling conditions, visible changes in animals and plants, infrastructure damage from melting permafrost and coastal erosion, fiercer winter storms, and pervasive unpredictability. Virtually every aspect of traditional Alaska Native life is impacted. As noted in the Arctic Climate Impact Assessment of 2004, 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. Efforts are continuing to convene Congressional hearings on climate change impacts on indigenous peoples.

In *Native Village of Kivalina v. Exxon Mobil*, NARF represents the Native Village of Kivalina, which is a

federally recognized Indian Tribe, and the City of Kivalina, which is an Alaskan municipality, in a suit filed 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.

In October 2009, the Court granted the Defendant's motion to dismiss on the basis that Kivalina's federal claim for nuisance is barred by the political question doctrine and for lack of standing under Article III of the Constitution. Although this was a set-back, it was not a surprise. The case will now go up on appeal to the U.S. Court of Appeals for the Ninth Circuit where the appellate court may be more persuaded by the reasoning of the U.S. Court of Appeals for the Second Circuit in the recent decision *Connecticut v. American Electric Power Company*. That ruling held that plaintiffs, including states and private entities, may bring suits. In short, the court held that: (1) the plaintiffs' claims do not present political questions that the courts cannot / should not address; (2) the plaintiffs have

standing to bring their claims; (3) the complaint states claims under the federal common law of nuisance; and (4) the plaintiffs' claims are not displaced by any federal legislation. These are the very issues that are at issue in *Kivalina* and which the appellate court will now have opportunity to review. Opening brief was filed in March 2010 in the Ninth Circuit. Reply Briefs were filed in September 2010. Oral argument has not yet been set.

As climate change is one of the most challenging issues facing the world today, its effects on indigenous peoples throughout the world are acute and will only get worse. As reported above, effects are especially pronounced in Alaska where 184 villages are threatened with removal. NARE, in addition to working with Alaska Native villages on this issue, is working with the National Tribal Environmental Council (NTEC) on climate change issues and in particular on ensuring that climate change legislation and action at the international level, incorporate Indigenous Peoples as sovereign partners in addressing this issue and provides them the needed resources for adaptation and mitigation. NTEC, NARE, NCAI and the National Wildlife Federation worked together and created a set of tribal principles which should govern treatment of tribes in any legislation or treaty.

In June 2009, the American Clean Energy and Security Act was passed by the House of Representatives. The bill is the first climate bill passed by either the full House or Senate. The House bill provides for reduced Green House

Gas (GHG) emissions, renewable energy standards, energy efficiency standards, investment in carbon capture and sequestration, clean vehicles, clean energy, resources for states and Tribes to engage in adaptation and help for low income consumers. There were a good number of tribal provisions in the bill which treat them as sovereign partners in the effort to address this crucial issue. However, Tribes were left out of key provisions as well and funding of set-asides for Tribes is inadequate. Congressional focus shifted to the Senate which came out with a draft bill in September 2009.

NARE along with NTEC and the National Wildlife Federation (NWF) and approximately 20 tribal leaders participated in meetings in March 2010, in which visits were made to key Congressional staffers reminding them of the need for comprehensive climate change legislation and for inclusion of strong tribal provisions. NARE, along with NTEC, NWF also signed onto "The New Energy Future In Indian Country: Confronting Climate Change, Creating Jobs and Conserving Nature," a report on clean energy potential in Indian Country and the need to create a level playing field for Tribes to compete in this arena. Unfortunately, nothing moved forward because Congress was tied up with Health Care reform and other matters.

194 countries of the world, many environmental and other organizations, as well as representatives of indigenous peoples met for the UN Framework Convention on Climate Change (UNFCCC) process in Cancun,

Mexico in Conference of the Parties 16 (COP 16). NARE attended this meeting as did its client, NTEC. This process is an effort by the nations of the world to address the crucial issue of climate change by reaching agreement on a broad range of issues related to climate change. Indigenous peoples around the world are among those most affected by climate change, even though their own carbon footprint is very small. Indigenous peoples have struggled mightily to get their interests protected in the international arena. The Cancun process culminated in an agreement on Long-term Cooperative Action that was crucial to the continuation of the process. This agreement reflects some modest and important progress on indigenous issues.

The agreement contains increased mentions of indigenous peoples and of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Indigenous status is referred to in the preamble and indigenous peoples' effective participation is mentioned in the Shared Vision section which is important because it applies to the whole document. In addition, there is a new mention of the UNDRIP in the section titled "Economic and social consequences of response measures" which takes "note of relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples".

There are safeguards calling for "The full and effective participation" of indigenous peoples in REDD+ activities (Reduction of Emissions from Deforestation and Forest

Degradation). Paragraph 72 under REDD+ provides for “the full and effective participation of relevant stakeholders, inter alia, indigenous peoples and local communities” in the development of national action plans. Likewise, there is a provision that REDD+ plans should include “(d) A system for providing information on how the safeguards referred to in annex I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70, while respecting sovereignty.” There are also a few scattered references to taking into account traditional knowledge and traditional indigenous knowledge.

Additionally, there are positive provisions of direct importance to the indigenous peoples though not directed to them specifically. Paragraph 8 of the Shared Vision section “emphasizes that Parties should, in all climate change-related actions, fully respect human rights.” Also in annex I that refers to safeguards is Paragraph 2. (e), which provides that “Actions are consistent with the conservation of natural forests and biological diversity, ensuring that actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.” These provisions are fully supported by the Indigenous Caucus.

All of these provisions are very positive steps for indigenous rights, but much remains to be done. First



NARF Board of Directors 1995

of all, the UNFCCC process does not itself allow for the full and effective participation of indigenous peoples. The references to the UNDRIP merely “take note” of the Declaration – this language must be strengthened. The safeguard provisions provide that they “should be promoted and supported” Given the threats that REDD+ presents to indigenous peoples, that language needs to be mandatory. The safeguard provisions do not provide for “free, prior and informed consent” as requested by indigenous peoples and as contained in the UNDRIP. There is no prohibition against offsetting REDD+ credits, or the outlawing of market mechanisms, indeed such mechanisms are encouraged contrary to indigenous wishes. The references

to incorporating and protecting traditional indigenous knowledge are wholly inadequate. In addition, indigenous peoples lack specific mention in numerous paragraphs which encourage the participation of relevant stakeholders. Overall, the process still does not recognize nearly enough the difference between indigenous peoples and civil society.



THE PROTECTION OF TRIBAL NATURAL RESOURCES

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*.

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

*"All we ever wanted was to catch fish."
(Katie John when told that her name was
now familiar to the power brokers in
Washington, D.C.)*

been extinguished. Negotiators for the U.S. and Tribe reached an agreement on the amount of damages for the loss of land – \$270.6 million – and the Court recommended the agreement to Congress in 2002. NARF is working with the Tribe to have a bill introduced in Congress to settle the Tribe's claims, accompanied by the Court's favorable recommendation.

NARF has been retained by the Eastern Shoshone Tribe of the Wind River Indian Reservation to analyze the legal implications of the Surplus Land Act of March 3, 1905 as it may have affected the boundaries of that Reservation. NARF is working with the Tribe's Attorney General and the Shoshone Business Council on a variety of fronts to secure the vindication of the boundary. The Shoshone Tribes and Arapaho Tribes, through their respective attorneys, are also cooperating in an application to the United States Environmental Protection Agency (US-EPA) for delegation of "treatment in the same manner as a state" (TAS) in the administration of certain Clean Air Act programs. The determination supporting delegation to the Tribes from US-EPA will require that US-EPA determine the location of

the boundary of the Reservation. The TAS Application has been published by US-EPA and they have received comments. The Tribes filed their Response to the comments in March 2010. US-EPA also requested a written opinion from the Department of the Interior Solicitor on the boundary of the Wind River reservation. The Solicitor's views on the boundary have not yet been issued.

NARF is representing the Hualapai Indian Tribe of Arizona in preparing and submitting applications for the transfer of lands owned by the Tribe in fee into trust status. 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. In addition to 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, NARF is preparing an additional four applications related to lands the Tribe is seeking to have taken into trust. The application for the transfer of the lands at Cholla Canyon Ranch was filed in November 2009. The Bureau

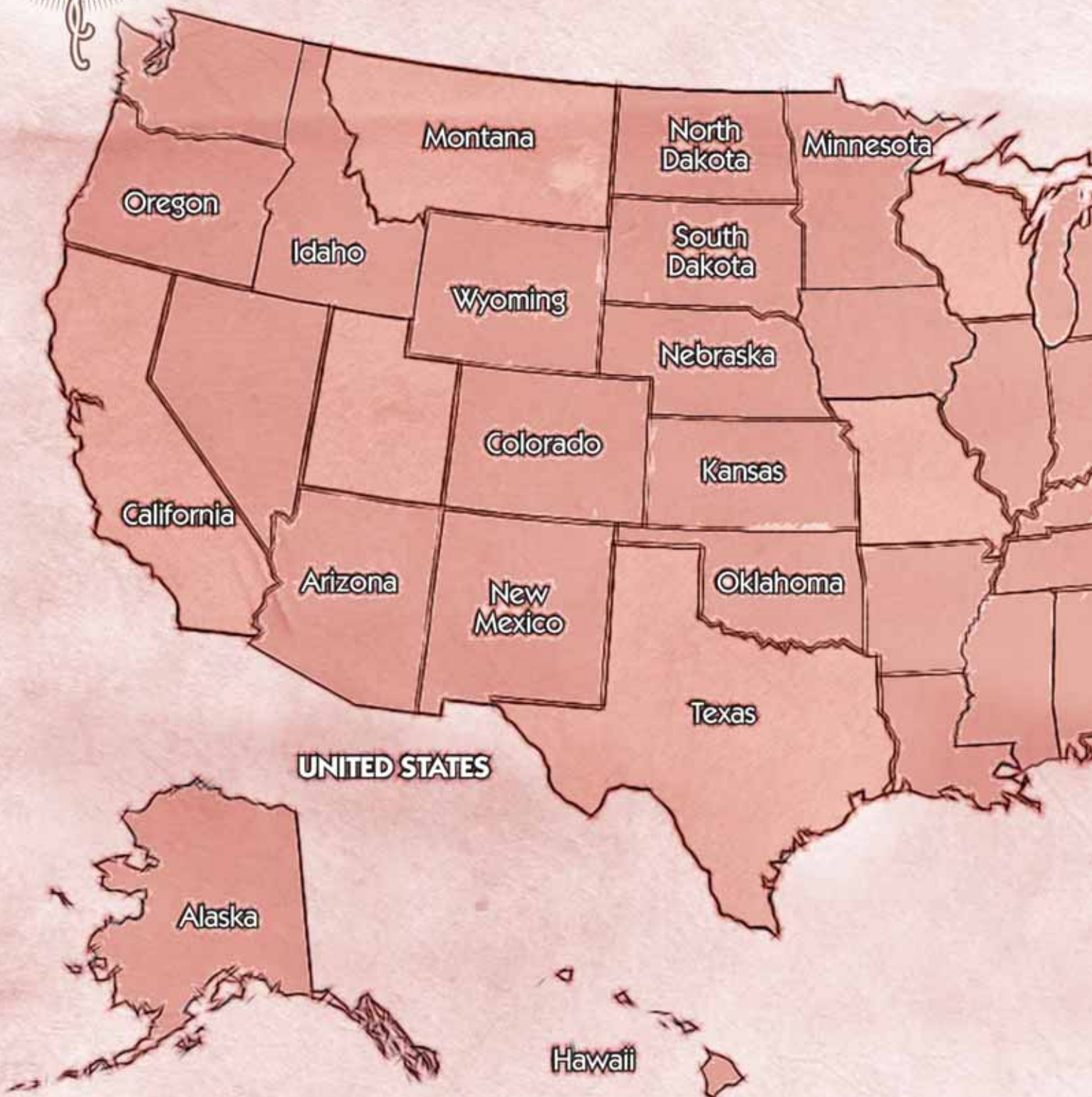
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Vine Deloria, Jr., former NARF Board member and noted author.



Major Activities 2010

NARF Case Studies



Native American Rights Fund



ALASKA

NARF ANCHORAGE OFFICE

Akiachak Native Community
– Land into Trust

Native Village of Atka
– Tribal Trust Funds

Aleut Community of St. Paul Island
– Tribal Trust Funds

Chilkoot Indian Association
– Land into Trust

Chalkyitsik – Land into Trust

Chistochina Tribe – Subsistence

Churyung v. Alaska
– Indian Child Welfare

Native Villages of Eyak, Tatitlek,
Chenega, Nanwalek, and Port Graham
– Subsistence & Aboriginal Title

Ivanof Bay Village
– Sovereign Immunity

Kaltag Tribe – Indian Child Welfare

Native Village of Kasigluk
– Voting Rights Act Suit

Katie John v. Norton – Subsistence

Kenaitze Indian Tribe
– Tribal Trust Funds

Native Village of Kivalina
– Global Warming Project

Native Village of Kwigillingok
– Voting Rights Act Case

Gwich'in Steering Committee
– Environmental/Subsistence

Native Village of Nulato
– Indian Child Welfare

Ninilchick Tribe – Subsistence

Noocksack Indian Tribe
– Tribal Trust Funds

Qawalangin Tribe
– Tribal Trust Funds

Tanana – Tribal Sovereignty

Tlingit and Haida Indian Tribes
– Tribal Trust Funds

Native Village of Tuluksak – Trust
Lands & Voting Rights Act Case

Native Village of Tuntutuliak
– Voting Rights Case

Native Village of Venetie
– Subsistence

Voting Rights Act Suit

ARIZONA

Hualapai Tribe – Boundary Issue
and Tribal Trust Funds

Kaibab Paiute Tribe
– Tribal Trust Funds

CALIFORNIA

Cachil Dehe Band of Wintun
Indians of Colusa Rancheria
– Tribal Trust Funds

Rincon Luiseno Band of Indians
– Tribal Trust Funds

San Luis Rey Indian Water Authority
– Tribal Trust Funds

Tule River Tribe
– Water, Tribal Trust Funds

Yurok Tribe – Tribal Trust Funds

COLORADO

NARF HEADQUARTERS

BOULDER, COLORADO

Indian Child Welfare Act Site

Tribal Education Departments

National Assembly Headquarters

Ute Mountain Ute Tribe
– Tribal Trust Funds

Valmont Butte – Sacred Site Issue

IDAHO

Nez Perce Tribe
– Water Rights, Tribal Trust Funds

KANSAS

Kickapoo Tribe – Water Rights and
Tribal Trust Funds

MINNESOTA

Bois Forte Band of Chippewa
– Tribal Trust Funds

Leech Lake Band of Ojibwe
– Tribal Trust Funds

Minnesota Chippewa Tribe
– Tribal Trust Funds

Prairie Island Indian Community
– Tribal Trust Funds

White Earth Band of Chippewa
Indians – Tribal Trust Funds

MICHIGAN

Grand Traverse Band of Ottawa and
Chippewa Indians – Tribal Trust
Funds

Sault Ste. Marie Tribe of Chippewa
– Tribal Trust Funds

MONTANA

Chippewa-Cree Tribe of the Rocky
Boys Reservation
– Tribal Trust Funds

Confederated Salish and Kootenai
Tribes – Tribal Trust Funds

Little Shell Tribe
– Recognition & Tribal Trust Funds

NEBRASKA

Santee Sioux Tribe
– Tribal Trust Fund

NEW MEXICO

Mescalero Apache Tribe
– Tribal Trust Fund

Pueblo of Zia – Tribal Trust Funds

NEVADA

Summit Lake Paiute Tribe
– Tribal Trust Funds

NEW YORK

Shinnecock Indian Nation
– Tribal Recognition

NORTH DAKOTA

Fort Berthold Reservation
– Water Rights

Spirit Lake Dakota Nation
– Tribal Trust Funds

Turtle Mountain Reservation
– Tribal Trust Funds

OKLAHOMA

Cheyenne-Arapaho Tribes
– Tribal Trust Funds

Pawnee Nation – Education, NAG-
PRA & Tribal Trust Funds

Sac & Fox Nations
– Tribal Trust Funds

OREGON

Klamath Tribes
– Water Rights & Tribal Trust Funds

Confederated Tribes of Siletz Indians
– Tribal Trust Funds

SOUTH DAKOTA

Lower Brule Sioux Tribe
– Trust Lands

Oglala Sioux Tribe – Environmental

TEXAS

Alabama-Coushatta Tribe
– Land Claim

VIRGINIA

Pamunkey Tribe
– Tribal Recognition

WASHINGTON

Samish Indian Nation
– Tribal Trust Funds

Shoalwater Bay Tribe
– Tribal Trust Funds

Skokomish Tribe
– Tribal Trust Funds

Spokane Tribe – Tribal Trust Funds

Tulalip Tribes – Tribal Trust Funds

Yakama Nation – Tribal Trust Funds

WASHINGTON, D.C.

NARF WASHINGTON, D.C. OFFICE

Tribal Supreme Court Project

Harjo et al v. Washington Redskins
Football – Human Rights

WISCONSIN

Bad River Band of Lake Superior
Chippewa Indians
– Tribal Trust Funds

Lac Courte Oreilles Band of Ojibwe
– Tribal Trust Funds

Lac Du Flambeau Band of Lake
Superior Chippewa
– Tribal Trust Funds

WYOMING

Eastern Shoshone Tribe
– Land Issue

CANADA

Northern Lakes Pottawatomi Nation
– Land Claim

INTERNATIONAL

Declaration on the Rights of
Indigenous Peoples/Climate Change
Issues – United Nations &
Organization of American States

of Indian Affairs acknowledged receipt of the Application in March 2010 and forwarded official notification of the Application to the State of Arizona and Mohave County, requesting comments and specific information concerning the potential impact of the transfer. A Preliminary Title Opinion on the land has been requested from the U.S. Department of the Interior's Regional Solicitor. NARF provided briefings for the Hualapai Tribal Council in April and September 2010 concerning the status of the Application and the remaining steps to be completed to secure the transfer of the lands. In addition, NARF is preparing applications for the transfer to trust status for an additional eight parcels of land owned in fee by the Tribe.

In *Chalkitsik, et al v. United States*, the Tribe brought suit seeking judicial review of 25 C.E.R. Part 151 as it pertains to federally recognized tribes in Alaska. This regulation governs the procedures used by Indian tribes and individuals when requesting the Secretary of the Interior to acquire title to land in trust on their behalf. The regulation bars the acquisition of land in trust in Alaska other than for the Metlakatla Indian Community or its members. The case has been fully briefed and is waiting for decision.

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 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



Wallace Black Elk, spiritual advisor for the Swift Bird Corrections Project in 1977.

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 of the water rights claims settlement in the State of Idaho's SRBA. 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. NARF continued to work with the Tribe to secure final approval of the settlement by the SRBA water court and on the federal appropriations process. NARF and the Tribe were successful in securing FY 2011 appropriations for the Tribe and are working now on the 2012 appropriations.

NARF represents the Klamath Tribes of Oregon in asserting and defending their treaty-based water rights in the Klamath River Basin to support their treaty hunting, fishing and gathering rights with a time immemorial priority date, as well as water rights needed to satisfy the agricultural purposes of the Klamath Reservation. In May 2010, the Tribes appeared before an Administrative Law Judge for a three week cross-examination hearing held in Salem, Oregon. The hearing pertained to the four instream flow cases, which includes the Williamson River, Sycan River, Sprague River, and Wood River. For the two cases that cover the Klamath Marsh and selected seeps and springs, no parties elected to cross-examine either parties witnesses. Post-hearing briefing is underway for these cases and scheduled for completion in May 2011, with opening briefs filed in October and December 2010. The parties in the marsh and seeps and springs cases will also proceed with post-hearing briefing scheduled for completion in July 2011. Meanwhile, in the remaining two cases that cover the main stem of the Klamath River and the Upper Klamath Lake, the parties are finalizing written

direct testimony and thereafter, rebuttal testimony for submission in October 2010 and February 2011, respectively. A cross-examination hearing is scheduled for April 2011 in Salem, Oregon. Upon the submission of all post-hearing briefs of all eight Tribal cases, the Oregon Office of Administrative Hearings will issue a proposed order no later than December 2011 for six of the cases and April 2012 for the remaining two cases.

After almost 30 years of advocacy work, the Tule River Indian Tribe has successfully settled its water rights claims. 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 settlement agreement and authorize appropriations to develop the water rights through the creation of water infrastructure and reservoirs on the Tule Reservation. In 2007, a bill was introduced on behalf of the Tribe to authorize a feasibility study to evaluate the appropriate location of a reservoir on their reservation to store the Tribe's water. The bill was passed by the full House of Representatives late in the 2008 session, but was not passed by the Senate. A new bill was then introduced in the House and in the Senate in 2009. Unfortunately, the bill was held up and not enacted by the 111th Congress and so NARF's and the Tribe's work begins anew with the incoming Congress.



Don Wharton, NARF senior staff attorney.

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 same 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

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Kim Gottschalk, NARF senior staff attorney.

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 a reliable, safe run-

ning water and the Fire Department cannot provide adequate fire protection due to the water shortage.

The United States, the State and the local watershed district have all conceded 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. The Tribe and the U.S. are also discussing funding to quantify the Tribe's water rights. NARF continued active negotiations with the State and the local water interests on an agreed quantity of water for the Tribe. NARF is also in the approval processes for the land condemnation agreement with the local watershed district.

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 and with the training of Department personnel on enforcement of the Ordinance. NARF conducted a training for Department personnel on the enforcement of the Pipeline Security Ordinance in June 2009 and provided revised and updated forms and standards for administration of the Ordinance. NARF continues to work with the Tribe on the implementation of this important Ordinance for the protection of the Tribe's drinking water.

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 *Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham v. Gutierrez, Secretary of Commerce*, five Chugach villages sued the Secretary of Commerce to establish aboriginal rights to their traditional-use areas on the Outer Continental Shelf of Alaska, in Cook Inlet and the Gulf of Alaska. A decision was rendered by the federal district court in 2002, against the Chugach. NARF brought an appeal to the Ninth



NARF's 40th Anniversary Pow Wow.

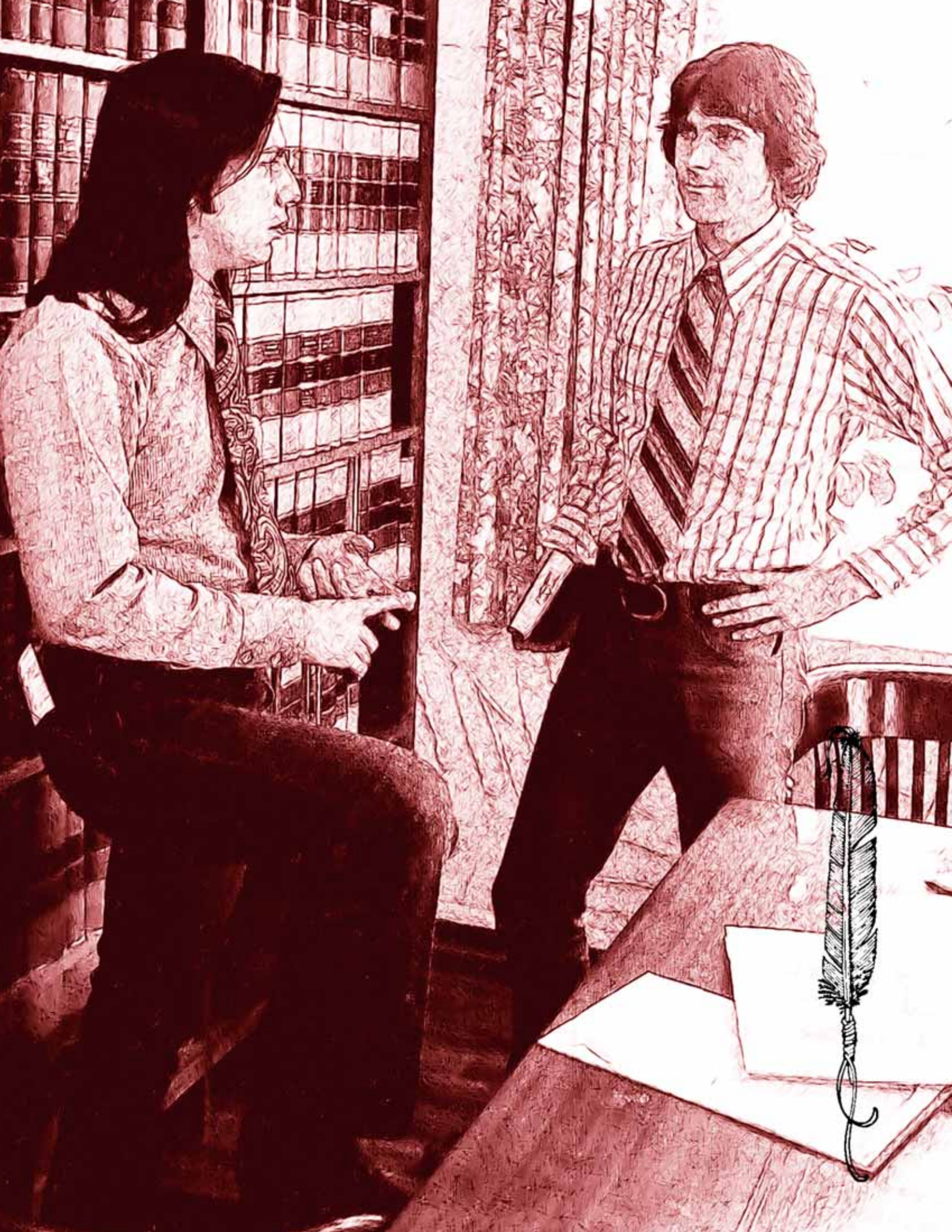
Circuit and in 2004, the Ninth Circuit issued an order for a hearing *en banc* to take place. The Ninth Circuit *en banc* panel vacated the decision of the district court and remanded for determination of whether the tribes can establish aboriginal rights to the areas. Trial on whether these Tribes hold aboriginal rights to hunt and fish in federal waters was held in 2008. In August 2009, the federal court held that although the five Chugach tribes had established that they had a “territory” and had proven they had used the waters in question, the Tribes could not hold aboriginal rights *as a matter of law*. The Chugach have appealed to the Ninth Circuit *en banc* panel which has retained jurisdiction over this case and briefing was completed in April 2010. Plaintiffs are now waiting for oral argument to be scheduled by the *en banc* panel.

In *State of Alaska v. Norton*, the

State of Alaska filed a lawsuit in the District of Columbia challenging the U.S. Department of the Interior’s final rule implementing the mandate in the prior subsistence case, *John v. United States*. That prior NARF case established that the United States must protect subsistence uses of fisheries in navigable waters where the United States possesses a reserved water right. The State challenges the Department’s implementation of the mandate by arguing that the reserved waters doctrine requires a quantification of waters necessary to fulfill specific purposes. Katie John, the plaintiff in *John v. United States*, 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 judge entered an Order in 2005 transferring the case to the District of Alaska. The

case was then consolidated with *John v. Norton*, the case discussed below. The issues in the two cases were bifurcated for briefing with the State’s claims addressed first. 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 the subsistence priority contained in the Alaska National Interest Lands Conservation Act (ANILCA).

In 2005, Katie John, represented by NARF, filed a lawsuit in the U.S. District Court for 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 Federal agencies 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 ANILCA. The State of Alaska intervened and challenged the regulations as illegally extending federal jurisdiction to state waters. In September 2009, the Court entered an order upholding the agency’s final rule as reasonable. While rejecting Katie John’s claim that the agency had a duty to identify all of its federally reserved water rights in upstream and downstream waters, the court stated that the agency could do so at some future time if necessary to full the purposes of the reserve. The case was appealed to the U.S. Court of Appeals for the Ninth Circuit. NARF filed the reply brief in October 2010.



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. 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. NARF also works with Tribes to 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.

The Native American Rights Fund established a working group of Indian organizations and tribal leaders to address government intervention in the lives of Native people who work with or use eagle feathers in traditional ways. Since time-immemorial, the eagle and other raptor birds have been an integral part and intrinsic to the traditions, culture and religion of many tribes, pre-dating U.S. colonization. The U.S. Fish and Wildlife (FWS) and other federal law enforcement agencies had been conducting raids,

NARF Executive Director John Echohawk and former NARF attorney David Getches, 1970's.

“The aspirations it affirms – including the respect for the institutions and rich cultures of Native peoples – are one we must always seek to fulfill...”

But I want to be clear, what matters far more than words – what matters far more than any resolution or declaration – are actions to match those words... That's the standard I expect my administration to be held to.”

— President Barack Obama – on the U.N. Declaration on the Rights of Indigenous Peoples

confiscations and interrogations on many Indian reservations and Pow-wow events, in at least 14 states of the western United States under what purportedly is referred to as an “Eagle Feather Sting Operation.”

The immediate purpose of these investigations by the FWS was to address the illicit sale of eagles and eagle parts and the poaching of eagles. However, the impact of these investigations has awakened fear that the U.S. government is once again encroaching upon tribal culture and religious practices, to the point where the tribal culture and religion may be forced underground once again.

The working group met with the FWS and the Department of Justice (DOJ) in 2009 to express tribal concerns about raids that were conducted by the FWS, FBI and other law enforcement officials who seized feathers and demanded documentation. Under federal law, only Native people can possess eagle feathers through gifts or inheritance, or from a

government-run repository near Denver which issues permits specifically for individual birds or parts, generally after lengthy waits.

As a result of this meeting, FWS and DOJ pledged to take action regarding their lack of effective outreach and education to tribes on policies regarding the possession, use, gifting and crafting of eagle feathers and other endangered birds. FWS proposed the development of a Tribal Advisory Group to work out long term solutions to the issues that tribes raised.

The National Congress of American Indians (NCAI) adopted a resolution supporting the establishment of a Tribal Advisory Group to the U.S. Fish and Wildlife Service in order to provide consultation on the policies, regulations, and procedures for the acquisition, possession, gifting, crafting and use of eagles and other migratory birds by tribal members. It was also resolved that NARF shall serve as a central clearinghouse for the cases

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Former NARF employees Mary Hanewall, Marilyn Pourier and Mary Lu Prosser, 1980's.

appertaining to the “Eagle Feather Sting Operation” being conducted by the U.S. Fish & Wildlife and other federal law enforcement agencies.

NARF and NCAI have continued meetings with U.S. Fish and Wildlife and other federal law enforcement agencies to discuss and seek solutions as to the effects and impacts of eagle feather confiscations and to discuss the drafting of an all inclusive bill to “fix” the gap between current law and administrative policies, regulations and procedures.

Legal work continues on a number of Native American Graves Protection and Repatriation (NAGPRA) implementation issues. NARF continued a decade long effort as a member of the Colorado Commission of Indian Affairs

to work out agreements and protocols with the Colorado State Historical Society for the repatriation and reburial of hundreds of Native American human remains, both culturally affiliated and unaffiliated. Part of the work also involved the development of a protocol for the future identification and disposition of Native American remains disturbed on state or private lands, which specifies a process for consultation with interested tribes and for the reburial on site of those remains whenever possible.

NARF has also continued its representation of the Native American Church of North America in addressing issues concerning the sacramental use of peyote in their ceremonies.

Civil and Cultural Rights

NARF filed a lawsuit, *Nick v. Bethel and State of Alaska*, in federal court alleging that Alaska (through its agents the Lieutenant Governor and the Division of Elections, among others) had violated the Voting Rights Act (VRA) by failing to provide language assistance to the thousands of Yup'ik speaking voters in the Bethel Census Area. The first claim was under Section 203 of the VRA, 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 alleged, there is little to no oral language assistance provided and absolutely no written assistance provided to the Yup'ik voter. The second claim was 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 June 2007 and in July 2008 the District Court issued a Preliminary Injunction ordering the State to provide comprehensive language assistance in time for the 2008 August primary and November general elections. This relief included providing written ballots in the Yup'ik language, publicizing all election notices and information in Yup'ik, and 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.

The Plaintiffs settled with the City of Bethel in 2009 and settled with the State in January 2010. The comprehensive agreement includes translation and interpretation assistance for all Yup'ik speaking voters throughout the registration and voting process. The court has retained jurisdiction to oversee the State's compliance with the settlement agreement. NARF monitored the State's compliance with the settlement agreement for the 2010 election cycle.

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 entirely fit into the culture in which they are raised and yearn throughout their life 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 by Congress 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.

The United States Supreme Court declined to hear the State of Alaska's appeal in the case of *Hogan v. Kaltag Tribal Council*, thus effectively ending the case and clearly reinforcing the rule that tribal courts have authority to initiate and fully adjudicate children's cases. The Kaltag Tribal Council had taken emergency custody of one of its member children due to allegations of abuse and neglect and, after conducting hearings and finding a suitable home, it terminated the rights of the birth parents and issued an order of adoption to the adoptive parents. Kaltag then notified the State of Alaska Bureau of Vital Statistics about the adoption and requested a new birth certificate reflecting the names of the adoptive parents and the new last name of the child. The State refused, claiming that it did not owe full faith and credit to the decision of the Kaltag Tribal Court because Kaltag did not have jurisdiction to initiate the case at all.

In the fall of 2006, NARF filed a

lawsuit on behalf of the Kaltag Tribal Council and the adoptive parents to enforce the full faith and credit provision of IWCA. In February 2008, the United States District Court rejected the State's claims, holding that Tribes have jurisdiction to adjudicate adoptions and child-in-need-of-aid (CINA) type cases over their member children and that the Tribal Court's decisions are entitled to full faith and credit by the State. In a detailed and thoughtful opinion, the Court reaffirmed what the United States Supreme Court stated in the *Holyfield* case that the IWCA created "concurrent but presumptively tribal jurisdiction in the case of children not living on a reservation." The Court also noted that denying tribal jurisdiction in CINA-type cases would leave Tribes "powerless to help children in their own villages at the most critical time." The Court's decision was then summarily affirmed by the Ninth Circuit Court of Appeals. This case reaffirms the rule that when Tribes adjudicate domestic matters of their own member children, whether it is a simple voluntary adoption or a CINA-type case, their decisions are entitled to full faith and credit.

In another Alaska ICWA case, the Villages of Tanana, Nulato, Akiak, Kalskag, Lower Kalskag and Kenaitze along with two individuals filed a complaint against the State of Alaska, Attorney General 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

continued on the following page

Alaska Native children and that tribes in Alaska do not have concurrent jurisdiction to hear children's cases unless (1) the child's tribe has successfully petitioned the Department of Interior to reassume exclusive or concurrent jurisdiction under the ICWA, or (2) a state superior court has transferred jurisdiction of the child's case to a tribal court in accordance with law. The Plaintiffs' seek a declaration that Tribes have inherent jurisdiction to initiate children's proceedings without first filing a petition to reassume jurisdiction under ICWA. In 2007 Alaska state district court issued an opinion in the Tribes' favor rejecting all of the State's arguments. After extensive briefing on the form of relief, judgment was entered. The case is now on appeal before the Alaska Supreme Court. Oral argument was heard in December 2009, and a decision is pending.

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 (NCAI) entered into an attorney-client relationship several years ago for the purpose of working in the international arena to protect indigenous rights.

In 2007, the United Nations General Assembly overwhelmingly adopted the Declaration on the Rights of Indigenous Peoples. The Declaration recognizes that Indigenous peoples have important collective human rights



NARF staff: Joanne Soklin, Legal Assistant; Eric Anderson, Legal Assistant; Jeff Schmidt, Paralegal; Chrissy Johnson, Paralegal.

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.

In December 2010, President Obama made the historic announcement that the United States has reversed its previous negative vote and now endorses the United Nations Declaration on the Rights of Indigenous Peoples. In announcing the change in position, President Obama stated...“And as you know, in April, we announced that we were reviewing our position on the U.N. Declaration on the Rights of Indigenous Peoples. And today I can announce that the United States is lending its support to this declaration.

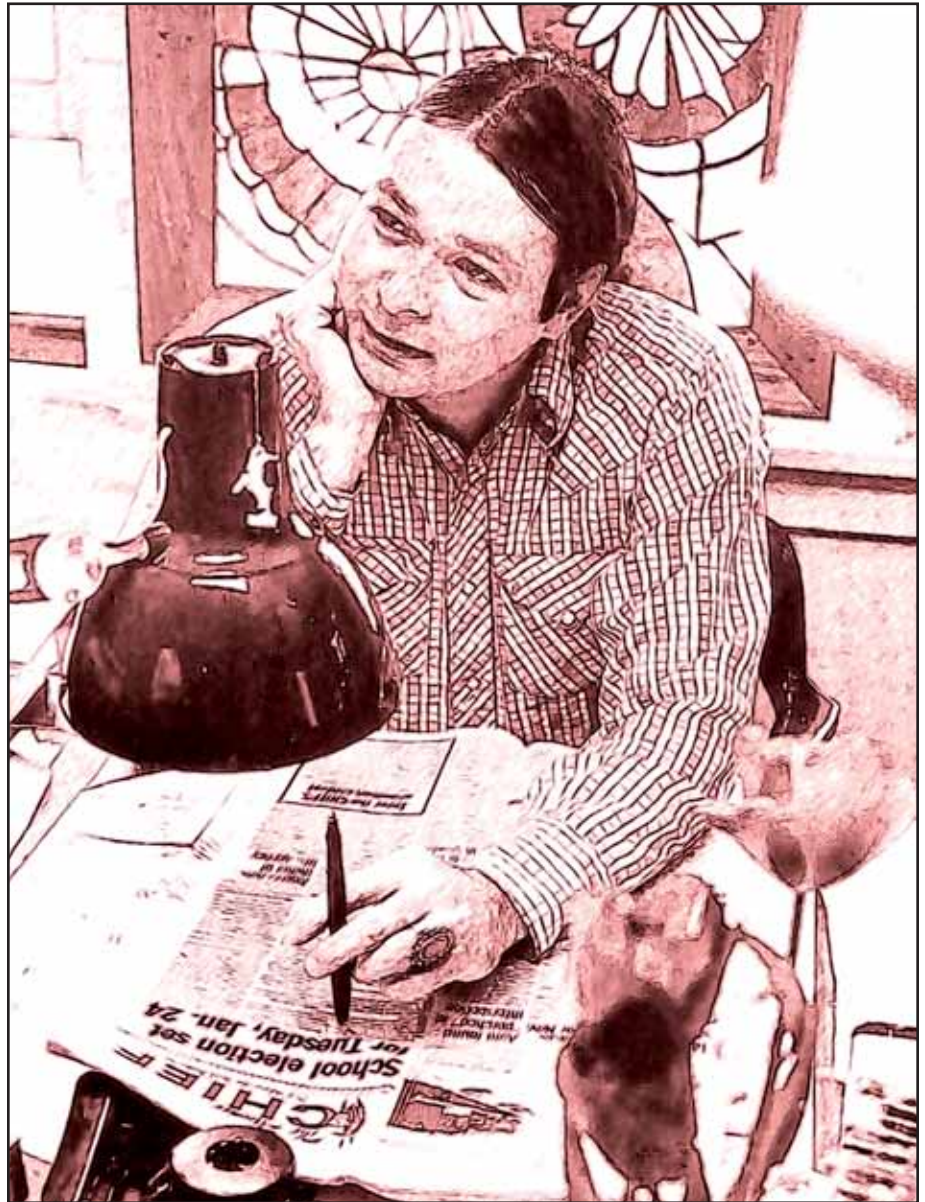
The aspirations it affirms – including the respect for the institutions and rich cultures of Native peoples – are one we must always seek to fulfill... But I want to be clear, what matters far more than words – what matters far more than any resolution or declaration – are actions to match those words... That's the standard I expect my administration to be held to.”

The United States is the last of four countries who voted against the Declaration in September 2007 to reverse its vote and to join the international chorus of voices recognizing the fundamental rights of indigenous peoples. Australia, Canada and New Zealand had previously reversed their opposition to the Declaration. Indigenous peoples world-wide have worked on the Declaration since the late 1970s. NARF has worked on the Declaration with its client NCAI since

1999. The Declaration affirms the collective human rights of Indigenous peoples across a broad range of areas including self-determination, spirituality, land rights and rights to intellectual property.

The adoption of the U.N. Declaration on the Rights of Indigenous Peoples will have an impact on the Organization of American States (OAS) process. NARF also represents NCAI in this process. 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 that 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. Modest progress has been made at the negotiation sessions, however, it has been disappointing that the United States is not actually participating.

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



Bryce Wildcat, former NARF employee.

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. Attempts to pass

Congressional legislation approving the settlement agreement has stalled since 2002. NARF continues to work with Senator Daniel Inouye to once again re-introduce a settlement bill in the 112th Congress.

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 *accountability of governments* to Native Americans.

The *Cobell v. Salazar* case was filed in 1996 in the U.S. District Court for the District of Columbia by NARF and private co-counsel, on behalf of approximately 300,000 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

“We have a whole country that we feel a responsibility for and whatever those legal needs are, we’re going to be there because oftentimes if we’re not there, nobody’s going to be there. So that’s our job, that’s what we do and it keeps me going.”

— John Echohawk, NARF Executive Director

the trust management and accounting system.

In December 2010, President Obama signed into law a settlement of \$1.5 billion to be paid to the 300,000 individual Indian money account holders with another \$1.9 billion made available to pay individual Indians who want to sell their small fractionated interests in their trust lands to the federal government to be turned over to their Tribes. The total \$3.4 billion in settlement funds will be paid out if the federal district court approves the settlement. The federal district court is beginning its proceedings to determine whether it will approve the settlement.

NARF is no longer involved in the *Cobell* case because of its involvement in the tribal trust fund mismanagement case. With the *Cobell* case fully staffed by private co-counsel and many tribes requesting legal representation to initiate litigation in 2006 over federal mismanagement of tribal trust accounts, NARF filed *Nez Perce Tribe v. Salazar*.

NARF represents forty-two 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; the Tlingit and Haida Indian Tribes of Alaska; Aleut Community of St. Paul Island; Bad River Band of Lake Superior Chippewa Indians; Bois Forte Band of Chippewa; Cachil Dehe Band of Wintun Indians of Colusa Rancheria; Confederated Salish & Kootenai Tribes; Confederated Tribes of Siletz Indians; Grand Traverse Band of Ottawa and Chippewa Indians; Kaibab Paiute Tribe; Kenaitze Indian Tribe; Kickapoo Tribe in Kansas; Lac Courte Oreilles Band of Ojibwe; Lac Du Flambeau Band of Lake Superior Chippewa; Leech Lake Band of Ojibwe; Minnesota Chippewa Tribe; Native Village of Atka; Noocksack Indian Tribe; Prairie Island Indian Community; Pueblo of Zia; Qawalangin Tribe; Rincon Luiseno Band of Indians; Samish Indian Nation; San Luis Rey Indian Water Authority; Sault Ste. Marie Tribe of Chippewa; Shoalwater Bay Tribe; Skokomish Tribe; Spirit Lake Dakota Nation; Spokane Tribe; Summit Lake

Paiute Tribe; Tulalip Tribes; and the Ute Mountain Ute Tribe, in an action in the federal district court for the District of Columbia seeking full and complete accountings of their trust funds. Such accountings never have been provided by the federal government which is the trustee for the funds.

Pending before the Court is the government's motion to dismiss the action for lack of jurisdiction, which the Tribes have opposed. A ruling on that is expected at any time. In the meantime, NARF has been working with appointees of President Obama on his campaign promise to resolve equitably all Indian trust fund mismanagement litigation against the federal government by beginning settlement negotiations in this case and the other tribal trust fund mismanagement cases. Since April 2010, NARF attorneys, along with the attorneys for 34 other Tribes litigating trust accounting and mismanagement claims, have had several in-person settlement negotiations meetings hosted by the President's appointees in Washington, D.C.

In a separate U.S. Court of Federal Claims action, NARF represents the Turtle Mountain Chippewa, Chippewa Cree, White Earth Band of Minnesota Chippewa, and Little Shell Chippewa Tribes in this case against the federal government for misaccounting and mismanagement of their tribal trust fund, the Pembina Judgment Fund (PJF), since the inception of the fund in 1964. In 2006 the Tribes defeated the United States' motion to have the case dismissed.

Since 2007 the parties have been trying to resolve the Tribes' claims primarily through alternative dispute resolution proceedings before a Settlement Judge of the Court. In August 2009 the parties reached agreement at least for settlement negotiations on the population of "baseline" (non-investment) transactions in the PJF. They are now proceeding to analyze the government's investment management of the PJF. An in-person ADR settlement negotiations session was held in March 2010, at the U.S. Court of Federal Claims in Washington, D.C. This was the first negotiations session attended by representatives of the Pembina clients. The parties have been preparing for the next in-person negotiations session, which likely will be in April 2011.

NARF has started working with the Boarding School Healing Project of the Seventh Generation Fund, the American Indian Law Clinic at the University of Colorado Law School, and the Human Rights Project at the University of Wyoming School of Law to convene a symposium of 30-35 invited individuals active and/or expert in the issue of Indian Boarding Schools to craft a strategy to secure a meaningful apology and resources to support healing for individuals, communities and tribes as a result of the disastrous federal boarding school policy of the 19th and 20th Century. The purposes of this strategy include education of the public as well as Congress and the White House, and treatment for the ongoing effects of the historical trauma resulting from



Lionel Bordeaux, former NARF Board member, NARF's 40th Anniversary.

the deliberate policies of cultural genocide and abuse of individual students that have resulted in ongoing trauma to those individuals, their communities and tribes.

The Symposium will bring together those individuals that have been active in working on, researching, writing about and producing media about the boarding school experience in the areas of social/psychological, health, cultural, legislative, legal, educational, media and funding. The goal will be to produce an agreed upon strategy to coordinate and/or support the efforts of individuals and organizations to secure a meaningful apology and adequate resources to support locally oriented and controlled programs for healing individuals and communities from the effects of trauma caused by the federal boarding school policy. The Symposium will be held in the spring of 2011.

THE DEVELOPMENT OF INDIAN LAW

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. NARF has three ongoing projects which are aimed at achieving this goal: the Many Paths to Peace Project; the National Indian Law Library; and the Indian Law Support Center.

Many Paths to Peace Project

NARF is in the start up phase of a new project, tentatively called the “Many Paths to Peace Project.” Made possible by a long-term anonymous grant, the mission of the “Many Paths to Peace Project” is to promote and support Native people in restoring sustainable peacemaking practices. This project provides NARF with an opportunity to support traditional peacemaking and community building practices as an extension of Indian law and sovereign rights.

Peacemaking is a community-directed process to develop consensus on a conflict resolution plan that addresses the concerns of all interested parties. The peacemaking process uses traditional rituals such as the group circle, and traditional peacemaker such as from a traditional Clan, to involve the parties to a conflict,

“For 500 years, we have had 99 percent of what is written about Indians slanted with a Eurocentric bias. Now we are in the process of writing about ourselves and our truth may be disconcerting to those who have had only their truth to read about until now.”

— Reuben Snake

their supporters, and other elders and interested community members. Within the circle, people can speak from the heart in a shared search for understanding of the conflict, and together identify the steps necessary to assist in healing all affected parties and prevent future occurrences and conflicts. NARF began program roll out in 2010 with support of the Many Paths to Peace Advisory Committee, consisting of peacemaking experts and practitioners. NARF will focus its initial efforts on the creation of a clearinghouse, conducting needs assessment of peacemaker resources, and developing a sustainable business model for the program.

The National Indian Law Library

The National Indian Law Library (NILL) is the only law library in the United States devoted to Indian law. The library serves both NARF and members of 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; legal pleadings from major Indian cases; and often hard to find reports and historical legal information. 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 and its professional staff answers over 2,000 questions each year. In addition, the Library has created and maintains a huge web site that provides access to thousands of full-text sources to help the researcher.

The National Indian Law Library is currently undergoing a new push to increase the tribal law content available at NILL and online through its Tribal Law Gateway. NILL's Access to Tribal Law Project (ATLP) currently has over 230 tribes participating by providing tribal codes, constitutions and other tribal legal materials for NILL's collection. In an effort to foster increased communications between tribes and the library, NILL recently surveyed over ninety tribal judges, tribal leaders, law librarians, students, tribal members and other practitioners of Indian Law on the importance of

having access to tribal law materials. The last few months also saw the creation of the Access to Tribal Law Project Support Committee, composed of leaders in Indian law from across the nation. The Support Committee oversees the Project's goal of providing reliable access to current tribal law, assists in recruiting new tribes to join the ATLP and encourages participating tribes to provide updates.

NILL has recently debuted two new, helpful features on its website to assist researchers searching for tribal law materials: a sleeker, consolidated version of the library's Tribal Law Gateway (www.narf.org/nill/triballaw/index.htm) and the Access to Tribal Law Project Homepage (www.narf.org/nill/atlp.htm). The Gateway now hosts the code and constitution of each tribe in one, easy-to-use location and is updated frequently. The ATLP Homepage provides more information about tribal law access through NILL and guides tribes through the process of getting involved with the project, step-by-step. For any tribal leaders or tribal attorneys interested in learning more about Access to Tribal Law at NILL or ready to add your tribe's code and/or constitution to our growing collection, call James Bryant at (303) 447-8760 ext. 139 or email at jbryant@narf.org.

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. NARF continues to perform Indian Law Support Center duties by sending out regular mailouts to Indian Legal Services programs, handling requests for assistance, and working with Indian legal services programs to secure a more stable funding base from Congress.

In 2000 Congress enacted the Indian Tribal Justice and Legal Assistance Act which President Clinton signed into law. The Act authorizes the Department of Justice to provide supplemental funding to Indian legal services programs for their representation of Indian people and tribes which fall below federal poverty guidelines. Congress appropriated funding in 2003 and 2004 under the Act and NARF and Indian Legal Services (ILS) programs worked with the Department of Justice to devise an allocation methodology. Most of the grant funds were contracted out to the Indian legal services programs with a small portion used to cover NARF administrative costs. NARF continued 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 for calendar year 2006 was appropriated by Congress for the project. Funding via 2007, 2008 and 2009 Congressional appropriations was unsuccessful.

In 2010, NARF and ILS secured a line item appropriation of \$2.35 million from Congress and again

began dialogues with DOJ for getting the money to the ILS programs. NARF was eventually successful in securing the ILS funding. The ILSC has also been administering with the National Association of Indian Legal Services (NAILS) the civil and criminal work undertaken by the 25 NAILS member programs. NARF also continues to work on continued funding in 2011 and 2012.

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.

2010 FINANCIAL REPORT

Based on our audited financial statements for the fiscal year ending September 30, 2010, the Native American Rights Fund reports unrestricted revenues of \$6,052,167 against total expenditures of \$7,149,624. Total revenue and net assets at the end of the year came to \$7,470,788 and \$5,297,953, respectively. Due to presentation requirements of the audited financial statements in terms of recognizing the timing of certain revenues and expenses, they do not reflect the fact that, based on NARF's internal reporting,

expenses and other cash outlays exceeded revenue resulting in a decrease of \$1,014,049 to NARF's reserve fund. When compared to fiscal year 2009: the decrease in Public Contributions is primarily due to the continued economic conditions and decreases in bequests which can vary widely from one year to the next. The increase in Tribal Contributions is mostly attributed to the generous contribution from the Yocha Dehe Wintun Nation (a pledge of \$1,500,000 over a three year period,

with \$500,000 recorded as unrestricted in fiscal year 2010). The large decrease in Foundation Grants relates to the Ford Foundation's release of restrictions on the \$1.3 million endowment in fiscal year 2009. There was a decline in activity for fee paying clients in fiscal year 2010. NARF's Investments have improved in fiscal year 2010.

Unrestricted revenue and Expense comparisons between fiscal year 2010 and fiscal year 2009 are shown below.

UNRESTRICTED SUPPORT AND REVENUE COMPARISON

	2010		2009	
	dollars	percents	dollars	percents
Public Contributions	\$ 1,604,342	26.5%	\$ 1,812,793	24.3%
Tribal Contributions	1,321,750	21.8%	1,198,941	16.1%
Federal Awards	10,000	0.2%	10,000	0.1%
Foundation Grants	528,580	8.7%	1,972,172	26.4%
Legal Fees	2,192,905	36.3%	2,488,811	33.4%
Return on Investments	351,278	5.8%	(50,952)	(0.7)%
Other	43,312	0.7%	26,283	0.4%
TOTALS	\$ 6,052,167	100%	\$ 7,458,048	100%

EXPENSE COMPARISON

	2010		2009	
	dollars	percents	dollars	percents
Litigation and Client Services	\$4,889,392	68.4%	\$ 4,770,000	66.6%
National Indian Law Library	178,529	2.5%	246,948	3.4%
Total Program Services	5,067,921	70.9%	5,016,948	70.0%
Management and General	770,152	10.8%	779,843	10.9%
Fund Raising	1,311,551	18.3%	1,369,436	19.1%
Total Support Services	2,081,703	29.1%	2,149,279	30.0%
TOTALS	\$ 7,149,624	100%	\$ 7,166,227	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 BKD, LLP. Complete audited financials are available, upon request, through our Boulder office or at www.narf.org

NARF ACKNOWLEDGMENT OF CONTRIBUTIONS: FISCAL YEAR 2010

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. NARF receives contributions from foundations, corporations, religious organizations, tribes and Native organizations, bequests and trusts, benefactors, private donations, and in-kind contributions. We gratefully acknowledge these gifts received for fiscal year 2010 (October 1, 2009 through September 30, 2010).

Tribes and Native Organizations

Akiak Native Community
Americans For Indian Opportunity
Cow Creek Band of Umpqua Indians of Oregon
Curyung Tribal Council
Lummi Commercial Company
Mississippi Band of Choctaw Indians
Muckleshoot Indian Tribe
National Congress of American Indians
Native Hawaiian Legal Corporation
Native Village of Fort Yukon
Nez Perce Tribe
Nome Eskimo Community
Pokagon Band of Potawatomi Indians
Ponca Tribe of Oklahoma
Sac and Fox Nation
Saginaw Chippewa Indian Tribe of Michigan
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Janice Warner

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Noelle Edwards, Allison Emerson, Judy Fair-Spaulling, James Fee, Debra Frazier, Jan Freeman, Lyle Funderburk, Suzanne Gartz, Lawrence Geller, Deborah Ghoreyeb, Estela Goldsmith, Louise Gomer Bangel, Arline Goodrich, Bernard Gordon, Gene Grabau, Jean Gundlach, Merrill Hakim, Michael Hall, Margaret Hartnett, Theodora Haughton, Patricia Heidelberger, Karin Holser, Charles Holtzer, Alfred Hoose, Judith Horton, Veronica Ifill, Elizabeth Johnson, Vusama Kariba, Emily Kirk, Betty Kleczy, Margo Kochruth, Ellyne Krakower - Rice, Edward Kriege, James Langharst, Sharon Laughlin, Ingrid Leblanc, James Lehnerer, Frank Loveland, Richard Luers, Rima Lurie, Suzanne MacDonald, Patricia Marks-Greenfield, Marion McCollom Hampton, Joseph McNamara, Stanley Metzger, Peter & Betty Meyer, Gary Montgomery, Leila Moore, Jeanne Morrel-Franklin, Jeanne Moskal, Shirley Norton, Marc Pearce, Moses Peter, Randall Petersen, Denise Pfalzer, Rose Pilcarsky, Thelma Populus Gordon, B. Powell, Horace Raines, Robert & Mary Resnik, Maureen Ripley, Barbara Roberts, Andrea Robinsong, June Rosenthal, Keith Ross, William Rozier, Mary Sacher, B. Sampson, Peter Schmidt, LaRoy Seaver, Michael Seeley, Charlotte Selver, Katey Simetra, Charles Smith, Kirk Sperry, Carolyn Staby, Herbert Stewart, James & Patricia Straus, Michael & Carol Sullivan, Louis Tabois, Valeria Tenyak, Charlotte Thompson, M. Turek, John Tyler, Rene' Vivo', William Wade, Ted Weitz, Robert & Mary Wellman, Roger Welsch, Gary White, Karen Williams-Fast Horse, Marcel Wingate, David Yeoman, Wayne Zengel.

SHOW YOUR SUPPORT IN NARF'S PROGRAMS

NARF Employee Endowment Giving - Jonathan Briggs, Rose Cuny, Kim Gottschalk, David Gover, Richard Guest, Carly Hare, Heather Kendall-Miller, Melody McCoy, Steve Moore, Christine Pereira, Ray Ramirez, Don Wharton

Native Ways Federation - The Native Ways Federation (Native Ways) is unique in that it is the only workplace giving program in the United States to directly serve Native nonprofits that assist Native peoples and communities in Indian Country. Native Ways is comprised of seven national Native nonprofit organizations that serve Indian Country: the American Indian College Fund, the American Indian Science and Engineering Society, American Indian Youth Running Strong, the Association on American Indian Affairs, First Nations Development Institute, the National Indian Child Welfare Association, and the Native American Rights Fund. NARF's share of those campaign contributions in fiscal year 2010 is \$1,410. Native Ways exists to build a brighter future for Native People by strengthening the circle of giving in Indian Country.

Boulder-Denver Advisory Committee - Lucille A. Echohawk, Thomas W. Fredericks, David Getches, Ava Hamilton, Jeanne Whiteing, Charles Wilkinson.

Federated Workplace Campaigns

Thank you to the thousands of federal, state, municipal and private sector employees throughout the country who through their payroll deduction plans contributed \$90,408 in fiscal year 2010.

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 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 our Development Department, 303.447.8760.

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 20 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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The “Native American Rights Fund Statement on Environmental Sustainability.”

“It is clear that our natural world is undergoing severe, unsustainable and catastrophic climate change that adversely impacts the lives of people and ecosystems worldwide. Native Americans are especially vulnerable and are experiencing disproportionate negative impacts on their cultures, health and food systems. In response, the Native American Rights Fund (NARF) is committed to environmental sustainability through its mission, work and organizational values. Native Americans and other indigenous peoples have a long tradition of living sustainably with the natural world by understanding the importance of preserving natural resources and respecting the interdependence of all living things. NARF embraces this tradition through its work and by instituting sustainable office practices that reduce our negative impact on our climate and environment. NARF is engaged in environmental work and has established a Green Office Committee whose responsibility is to lead and coordinate staff participation in establishing and implementing policies and procedures to minimize waste, reduce energy consumption and pollution and create a healthful work environment.”



*Celebrating 40 years
of Standing Firm For Justice*

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