

NARE

Native American  
Rights Fund  
Annual Report 2009



# NARF – Annual Report 2009

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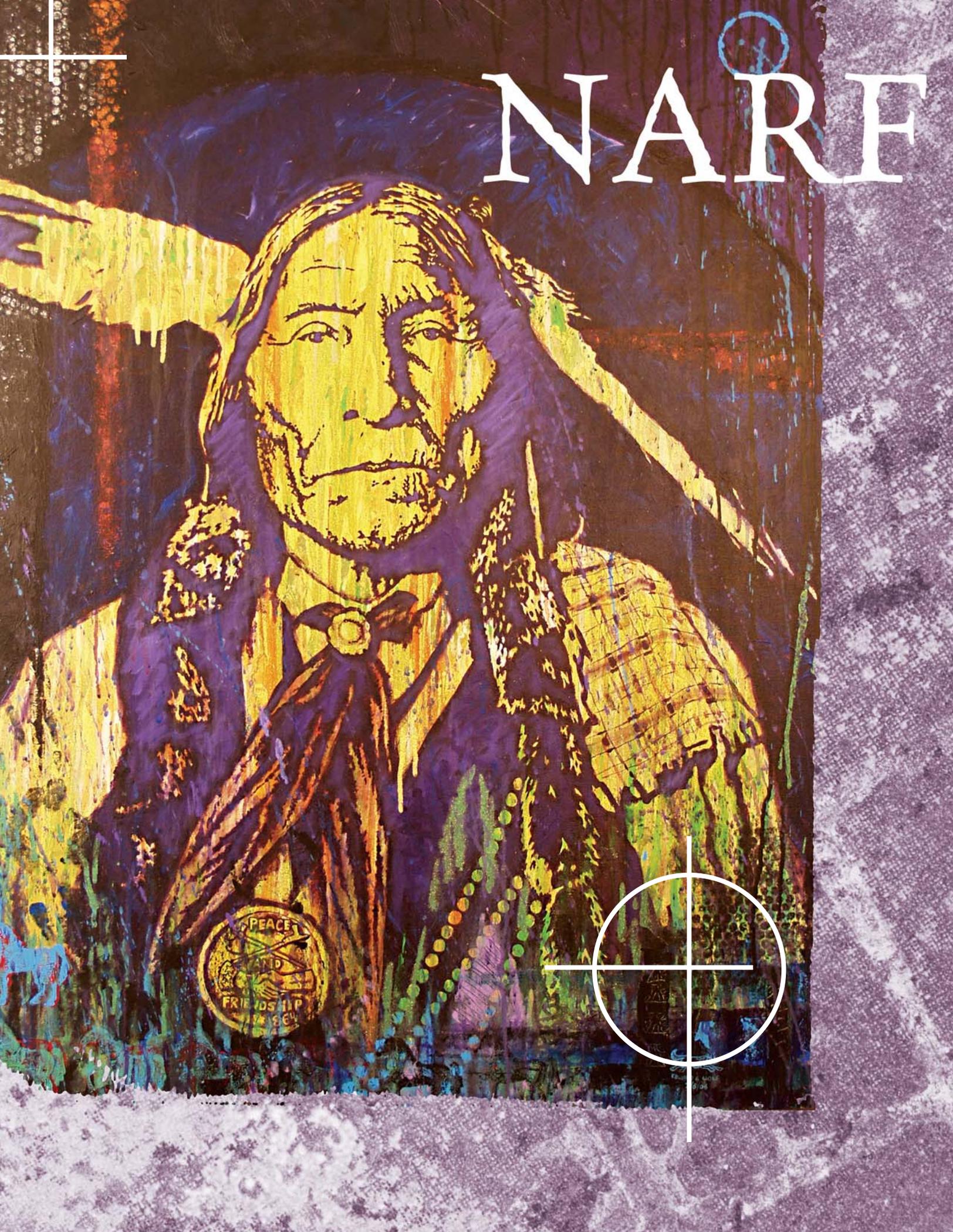
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COVER ART... and artwork throughout this Annual Report is by painter/sculptor, Eddie Running Wolf who has been a full supporter of NARF’s mission for many years. The creative focus is on the history, leadership and spirituality of the “way of life” of our ancestors’ past.

**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.



# NARE



# Introduction

*“What we are told as children is that people when they walk on the land leave their breath wherever they go. So whenever we walk, that particular spot on the earth never forgets us, and when we go back to these places, we know that the people who have lived there are in some way still there, and we can actually partake of their breath and their spirit.”* — Rina Swentzell, Santa Clara Pueblo

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

At its inception in 1970, NARF believed that the best hope for Indian survival and development rests with the maintenance of the tribe as an institution. The inherent sovereign powers of a tribe to hold land, to govern tribal members and to command the respect of other units of government are essential to an Indian nation concept. Throughout the past 39 years, NARF has held fast to this hope and through its work has insured that this concept has become a reality.

Every year NARF receives far more requests for assistance than it can afford to take on. Our ability to take on most of our cases continues to be dependent

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

NARF's existence would not be possible without those contributions of the thousands of individuals who have offered their knowledge, courage, and vision

to help guide NARF on its quest. Of equal importance, NARF's financial contributors have graciously provided the resources to give our efforts life. Contributors such as the Ford Foundation have been with NARF since its inception. The Open Society Institute, the Bay and Paul Foundations and the Unger Foundation have also made 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. 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

# Executive Director's Report

2009 marked the 39th year that the Native American Rights Fund has been providing legal advice and assistance to Native Americans across the country on the most important legal issues confronting them. Once again, our legal work resulted in several significant victories and accomplishments of benefit to Native American people nationally.

After thirty-one years of assistance from the Native American Rights Fund, the Shinnecock Indian Nation of New York received a proposed finding in favor of federal acknowledgment as an Indian tribe from the United States Department of the Interior. As a result of this finding, federal recognition of the Shinnecock Indian Nation as a tribe is scheduled to be formally and finally acknowledged by mid-summer 2010.

An Alaska Native student was allowed to wear her eagle feathers at her school's graduation ceremony to honor her spiritual beliefs as the result of a successful negotiation last June by the Native American Rights Fund in collaboration with the California Indian Legal Services and the American Civil Liberties Union of Northern California with the Sacramento City Unified School District. The school had previously denied her request to wear her eagle feathers by citing their mandatory graduation dress code policy which was intended to prevent the display of gang symbols and disruptions to the ceremony.

Additional language assistance for Yup'ik speakers at municipal elections in Bethel, Alaska as required by the federal Voting Rights Act will be provided as a result of a settlement in *Nick, et al. v. Bethel, et al.*, a lawsuit brought by the Native American Rights Fund and the American Civil Liberties Union on behalf of two local Alaska Natives against the city of Bethel in 2007. Yup'ik is the primary language of a majority of citizens in the Bethel region. Under the settlement agreement, the city of Bethel will provide trained poll workers who are bilingual in English and Yup'ik, sample ballots in written Yup'ik, a written Yup'ik glossary of election terms, advance notice of translator services, and election announcements on the radio. Since the State of Alaska refused to settle, NARF and the ACLU continue to litigate against the State so that all Yup'ik speaking voters in the state can be fully included in the political process.

The U.S. Court of Appeals for the Ninth Circuit held in *State of Alaska v. Kaltag* that the State of Alaska must recognize and give full faith and credit to a Kaltag tribal court's adoption judgment under the federal Indian Child Welfare Act. The Native American Rights Fund had filed this case in 2006 on the behalf of the Kaltag Tribe and two Kaltag tribal members involved in the adoption because the State of Alaska had asserted that the Kaltag Tribe lacked jurisdiction

over children's proceedings. The Court of Appeals held that the Tribe has inherent jurisdiction to adjudicate adoptions of its own tribal members.

In another Indian Child Welfare Act case, *In re E.L.*, the Nebraska Supreme Court affirmed the absolute and unconditional right of a representative of an Indian tribe to intervene in a child custody proceeding involving children who are members of that tribe. The decision reversed a Nebraska county court order that had not allowed the Ponca Tribe of Nebraska's designated representative to intervene in the case because that representative was not a licensed Nebraska attorney. The Native American Rights Fund filed an amicus curiae brief in the case on behalf of six tribes and two Native organizations.

The Native American Rights Fund, representing the National Indian Child Welfare Association, provided testimony for the Wisconsin Legislature which passed a bill enacting a state Indian Child Welfare Act into law. The new law articulates a cooperative and collaborative approach between the sovereign Indian nations located in Wisconsin and the State of Wisconsin and demonstrates the State's intent to clearly recognize and reinforce tribal sovereignty as an essential means of achieving the objective of the Indian Child Welfare Act to keep Indian children with Indian families.

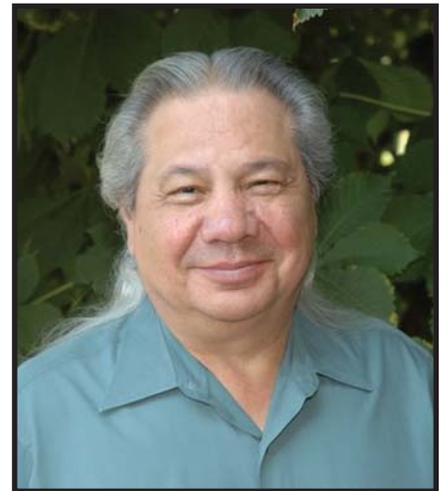
Although it is no longer involved in historic *Cobell v. Salazar* individual Indian trust funds mismanagement case against the federal government because of its recent representation of 42 tribes with tribal trust mismanagement claims, the Native American Rights Fund is very pleased that a settlement agreement has been reached between the *Cobell* plaintiffs and the Obama administration. Under the terms of the settlement agreement, the federal government will create a \$1.4 billion Accounting/Trust Fund and a \$2 billion Trust Land Consolidation Fund. The settlement agreement must be approved by Congress and by the federal district court. NARF was co-counsel in the case when it was filed in 1996 and will be eligible for any attorneys fees awarded by the federal district court.

The Native American Rights Fund is in the start-up phase of a new project called the “Many Paths to Peace Project.” Made possible by a long-term anonymous grant, the mission of the 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 National Indian Law Library, a project of the Native American Rights Fund, partnered with Thomson/West on an alliance to increase access to tribal law – specifically tribal codes, constitutions and intergovernmental agreements. This alliance includes working to make annotated tribal codes and constitutions available through the Westlaw fee-based databases as well as available for free through the National Indian Law Library website. This significant development in making tribal law accessible will help to enhance knowledge of tribes as sovereign nations and distinct political entities.

In closing, I want to thank all of our contributors and supporters who have made all of this wonderful legal work on behalf of Native Americans possible. As we prepare to celebrate our 40th anniversary in 2010, I urge all of you to sustain and increase your contributions and support if possible so that the Native American Rights Fund can continue to provide access to justice for Native Americans across the country.



**John E. Echohawk**  
Executive Director

# Chairman's Message

I bring you greetings from the Ak Chin Indian Community.

The year 2009 has brought hope to Indian country that major issues that our communities face day-in and day-out will finally be addressed. President Obama and Interior Secretary Salazar have made important strides in addressing these critical issues. As part of the Tribal Nations Conference held in November, President Obama signed a memorandum on tribal consultation directing all federal agencies to submit a detailed tribal consultation plan in 90 days with a progress report due in 270 days. It is imperative that our tribal nations' free, prior and informed consent is respected and that our people's participation in decision-making processes that affect our well-being is guaranteed.

In December 2009, after over a decade in the courts, Interior Secretary Salazar and the Obama Administration announced a settlement agreement in the *Cobell v. Salazar* class action lawsuit over federal mismanagement of individual Indian trust fund accounts. It's now up to Congress and the federal district court to act on the settlement. NARF first filed this case in 1996, but is no longer involved because our resources were needed on the tribal trust funds case. Once the settlement is finalized, the Board has high hopes that the tribal trust funds case, which NARF filed in 2006 on behalf of forty-two tribes, will

also soon be settled.

Particularly bothersome for tribes has been the five Justice majority of the U.S. Supreme Court. It has become apparent that these Justices lack an understanding of the fundamental principles underlying federal Indian law and are unfamiliar with the practical challenges facing tribal governments. By way of its seemingly anti-tribal sovereignty decisions, the Supreme Court has repeatedly taken favorable decisions by the lower courts and reversed them making bad situations worse for Indian country. As these battles wage on, the importance of NARF's involvement in the Tribal Supreme Court Project continues to demand constant vigilance and coordination of the collective resources of Indian tribes, legal scholars and tribal attorneys.

Much of NARF's efforts goes into protecting the subsistence way of life that is essential for the physical and cultural survival of Alaska Natives. As the State of Alaska continues to be reluctant to recognize the importance of the subsistence way of life, we urge the Obama Administration to do what is necessary to insure the protection of subsistence hunting and fishing for Alaska Natives. We also urge the Administration and Congress to support funding for tribal water rights settlements for tribes in the lower 48.

Climate change issues are challenging our very way of life. Our

oral traditions have taught us to be observers, recorders of time. We have a history of adaptation to our environment and to the challenges posed by outside forces. Our way of knowing, as has been taught to us by our elders, tells us that everything possesses life and that is why we treat this Earth as our living Mother. We have thousands of years of knowledge to share with the scientific community and with the world. Indigenous medicine people have the spiritual technology to save the earth. NARF is working to insure that we have a seat at the table to secure a future for our grandchildren. We call upon Congress to pass climate change legislation that includes tribes and indigenous peoples as full partners.

Finally, we call upon President Obama to reverse the United States' position and support the United Nations Declaration on the Rights of Indigenous Peoples. The United States is only one of three countries in the world who do not support this Declaration. NARF has worked on this issue since 1999 and will continue to work to get our country to recognize and support these rights.

*With Sincere Thanks,*  
**Delia Carlyle**, Board Chairman



# The Board of Director's

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



## NARF's Board of Directors:

(Seated - left to right) **Ron His Horse Is Thunder** (Standing Rock Sioux Tribe); **Lydia Olympic** (Yupik/Aleut - Alaska); **Miko Beasley Denson** (Mississippi Band of Choctaw Indians); **Delia Carlyle**, Board Chairman (Ak Chin Indian Community - Arizona). (Standing - left to right) **Gerald Danforth** (Oneida - Wisconsin); **Kunani Nihipali**, Board Vice-Chairman (Native Hawaiian - Hawaii); **Richard Luarkie** (Pueblo of Laguna); **Barbara Smith** (Chickasaw Nation - Oklahoma); **Anthony Pico** (Viejas Band of Kumeyaay Indians - California).

(Not Pictured) **Fred Cantu, Jr.** (Saginaw Chippewa); **Woody Widmark**, Board Treasurer (Sitka Tribe - Alaska); **Billy Frank** (Nisqually Tribe - Washington); **Alfred Berryhill** (Muscogee (Creek) Nation - Oklahoma).

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.

Randy Bardwell, *Pechanga Band of Luiseno Indians*  
 Katrina McCormick Barnes  
 Jaime Barrientoz, *Grand Traverse Band of Ottawa and Chippewa Indians*  
 John Bevan  
 Wallace Coffey, *Comanche*  
 Ada Deer, *Menominee*  
 Harvey A. Dennenberg  
 Lucille A. Echohawk, *Pawnee*  
 Jane Fonda  
 James Garner  
 Eric Ginsburg  
 Jeff Ginsburg  
 Rodney Grant, *Omaha*  
 Chris E. McNeil, Jr., *Tlingit-Nisga'a*  
 Billy Mills, *Oglala Lakota*  
 Amado Peña, Jr., *Yaqui/Chicano*

Nancy Starling Ross  
 Wayne Ross  
 Marc Rudick  
 Pam Rudick  
 Ernie Stevens, Jr., *Wisconsin 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*



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# The Preservation of Tribal Existence

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*“With the dawn we face sunrise. We face it with all our humility. We are mere beings. All we can do is extend our hands toward the first light. In our hands we capture the first light. We take it and cleanse ourselves. We touch our eyes with it. We touch our faces with it. We touch our hair with it. We touch our limbs. We rub our hands together, we want to keep this light with us. We are complete with this light. This is the way we begin and end things.”*  
— Ofelia Zepeda, Tohono O’odham.

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

Specifically, NARF’s legal representation centers on sovereignty and jurisdiction issues, federal recognition and restoration of tribal status, and economic development. Thus, the focus of NARF’s work involves issues relating to the preservation and enforcement of the status of tribes as sovereign governments. Tribal governments possess the power to regulate the internal affairs of their members as well as other activities within their reservations. Jurisdictional conflicts often arise with states, the federal government, and others over tribal sovereignty.

## TRIBAL SOVEREIGNTY

The focus of NARF’s work under this priority is the protection of the status of tribes as

sovereign, self-governing entities. The United States Constitution recognizes that Indian tribes are independent governmental entities with inherent authority over their members and territory. In treaties with the United States, Indian tribes ceded millions of acres of land in exchange for the guarantee that the federal government would protect the tribes’ right to self-government. From the early 1800s on, the Supreme Court has repeatedly affirmed the fundamental principle that tribes retain inherent sovereignty over their members and their territory. However, beginning with the decision in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) and with increasing frequency in recent years, the Supreme Court has steadily chipped away at this fundamental principle, both by restricting tribal jurisdiction and by extending state jurisdiction. These decisions by the Supreme Court have made this priority more relevant than ever, and have led to a Tribal Sovereignty Protection Initiative in partnership with the National

Congress of American Indians (NCAI) and Tribes nationwide to restore the traditional principles of inherent tribal sovereignty where those have been undermined and to safeguard the core of sovereignty that remains.

This initiative consists of three components. The first component is the Tribal Supreme Court Project, the focus of which is to monitor cases potentially headed to the Supreme Court and those which actually are accepted for review. When cases are accepted, the Project helps 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, also assists the Project. The Board's role is to provide necessary political and tribal perspective to the legal and academic expertise. The Project has also established a Working Group – a group of more than 200 noted attorneys and academics from around the nation who participate in the Project as their interest, time and resources allow.

To achieve the goals of the Project, NARF monitors cases which appear to be headed for the Supreme Court, and organizes, coordinates and contributes to a 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 U.S. Supreme Court's 2009 summer recess provided NARF an opportunity to review the work of the Tribal Supreme Court Project during this past term and since the beginning of the Roberts Court era in 2005. During the October 2008 Term, the Court

issued three Indian law decisions – ruling against Native interests in all three cases. The Tribal Supreme Court Project coordinated resources and developed strategy in each case at the merits stage, with the NCAI appearing as an amicus party in all three cases and NARF preparing amicus briefs in two of the three cases. It is significant that in all three cases – *United States v. Navajo Nation*, *State of Hawaii v. Office of Hawaiian Affairs* and *Carcieri v. Salazar* – the Native interests had been upheld by the lower courts of appeal with no conflict between the lower courts on the legal issues presented in each case. This development is a continuation of a disturbing trend in Indian law cases granted review since Chief Justice Roberts joined the Court (tribal interests have lost in two other cases – *Plains Commerce Bank v. Long Family Land & Cattle Co.* and *Wagnon v. Prairie Band Potawatomi Nation* – under similar circumstances).

The U.S. Supreme Court began the October 2009 Term with its newest Associate Justice, Justice Sonia Sotomayor, now sitting on the Court, and speculation that Justice Stevens may retire at the end of the term. The implications



NARF Board members Beasley Denson and Gerald Danforth

for Indian country as a result of these changes are still unfolding, but at present, Indian country is 0 for 5 before the Roberts' Court.

The Tribal Supreme Court Project dedicated substantial resources in the wake of the Court's disastrous decision in *Carcieri v. Salazar*. In *Carcieri*, the Court held that the authority of the Secretary of the Interior to take land in trust for Indian tribes under the provisions of the Indian Reorganization Act ("IRA") is limited to tribes that were "under Federal jurisdiction" in June 1934, the date the IRA was enacted. NARF and NCAI coordinated tribal efforts to pursue a legislative "fix" to reverse the Court's damage to Congress' overall policy of Indian self-determination and economic self-sufficiency.

In December 2009, the Senate Indian Affairs Committee unanimously reported the "Carcieri fix" legislation, S. 1703, to amend the Indian Reorganization Act of June 18, 1934, to reaffirm the authority

of the Secretary of the Interior to take land into trust for Indian tribes. The bill ratifies the prior trust acquisitions of the Secretary, who for the past 75 years has exercised his authority to place lands into trust, as intended by the Indian Reorganization Act. It also reaffirms the Secretary of Interior's continuing authority to accept lands into trust for Indian tribes, regardless of when the tribe was federally recognized. An amendment was accepted that requires Interior to come up with a list of federally recognized tribes covered by the new legislation as well as an inventory of land taken into trust since 1934 affected by the legislation. Another amendment was accepted to clarify that Department of the Interior regulations are not affected by the legislation. The effective date of the legislation would be the date that it is signed into law by the President, with no delay to wait for an inventory as originally proposed.

The Judicial Selection Project is about research and education: to educate the federal judiciary about tribal issues; to educate tribal leaders about the federal judiciary and the judicial nominations process; and to reach out to elected officials and the public at large about the need for judges in the federal courts who understand the unique legal status of Indian tribes. The research objective of the Project evaluates the records of judicial nominees on their

knowledge of Indian issues. The analysis and conclusions are shared with tribal leaders and federal decision-makers in relation to their decision whether to support or oppose a particular nomination. The Project works with the U.S. Senate Judiciary Committee to ensure that all nominees are asked about their experience with Indian tribes and their understanding of federal Indian law during confirmation proceedings.

The Project has now 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 will be to ensure that qualified Native candidates are considered and nominated to fill current vacancies on the federal bench.

In addition to the Tribal Sovereignty Protection Initiative, other work within this overall priority is related to the federal recognition of tribal status and the concomitant establishment of a government-to-government relationship with tribes, and the environmental law and policy initiative.

## FEDERAL RECOGNITION OF TRIBAL STATUS

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

In December 2009, the Department of the Interior announced a proposed finding in favor of federal acknowledgment of the Shinnecock Indian Nation of New York. As a result of this finding, federal recognition of the Nation is on course to be formally and finally acknowledged by mid-summer 2010. The Nation and NARF first started their acknowledgment efforts thirty-one years ago.

The Office of Federal Acknowledgment [OFA] released its final determination declining to acknowledge the Little Shell Tribe of Chippewa Indians of Montana in November 2009. OFA found that 89% of the tribal members descend from the historical Pembina Band of Chippewa Indians, but they determined that there was insufficient evidence of identification by outsiders, community, and political authority. This determination comes after a thirty-one year administrative

process that cost millions of dollars and enormous effort on the part of Little Shell members. The final determination reversed OFA's own previous proposed finding in favor of recognition, despite the fact that there were no significant negative comments received during the comment period. The Tribe will now look to Congress for recognition and will also consider an appeal to the Interior Board of Indian Appeals.

NARF has been working with the Pamunkey Tribe in Virginia to prepare the necessary historical, legal and anthropological documentation to support a petition for federal acknowledgment. The petition is nearing completion and is expected to be filed in early 2010 with OFA. NARF has also continued representation of the Mashpee Wampanoag Tribe who received federal recognition in 2007. Since that time, NARF has devoted its time to matters related to tribal governance and international repatriation.

### **ENVIRONMENTAL LAW AND POLICY INITIATIVE**

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

In October 2009, the United States District Court for the Northern District of California dismissed a lawsuit by the Native Village of Kivalina in Alaska (*Native Village of Kivalina v. Exxon Mobil, et al*) against twenty-four oil, energy and utility companies. The Village sought damages under a federal common law claim of nuisance, based on the companies contribution to the excessive emission of carbon dioxide and other greenhouse gases which the Village claims is causing global warming. The District Court concluded that the Village's federal claim for nuisance is barred by the political question doctrine and for lack of standing under Article III of the United States Constitution. This case will now be appealed to the Ninth Circuit Court of Appeals. The Fifth Circuit and the Second Circuit (a total of six judges) have decisions on the same issues which disagree with the District Court ruling.

NARF and The Center on Race, Poverty & the Environment – plus six law firms – had filed the lawsuit on behalf of the tiny and impoverished Alaskan village of Inupiat Eskimos located in the Arctic Circle against industrial corporations that emit large quantities of greenhouse gases. The Native Village of Kivalina faces imminent destruction from global

warming due to the melting of sea ice that formerly protected the Village from coastal storms during the fall and winter. The diminished sea ice, due to global warming, has caused a massive erosion problem that threatens the Village's existence and urgently requires the Village be relocated. It has been estimated that the cost to move the Village could range up to \$400 million.

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. The effects are especially pronounced in Alaska where 184 villages are threatened with removal. NARF, 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, NARF, 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, H.R. 2454, the American Clean Energy and

Security Act, was passed. The bill is the first climate bill passed by either the full House or Senate. The House bill provides for reduced greenhouse gas 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 are 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 are left out of some key provisions and funding of set-asides for tribes is inadequate. Congressional focus now shifts to the Senate which came out with a draft bill in September 2009. NARF has been working with Tribes and tribal organizations to strengthen the bill in the Senate.

NTEC and NARF attended a global summit on climate change in Alaska in April 2009 which resulted in the Anchorage Declaration of August 24, 2009, which was taken to the United Nations Climate Change Conference in Copenhagen in December of 2009. The purpose of that meeting was to work toward a post Kyoto agreement. The Kyoto Agreement expires in 2012.

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.

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# The Protection of Tribal Natural Resources

*“What you call natural resources, we call our relatives.”*

- Oren Lyons, Seneca Nation

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 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.

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.

NARF continues to do legal work for the Hualapai Indian Tribe of Arizona. The Tribe is located on the south rim of the Grand Canyon in Arizona and claims a boundary that runs to the center of the Colorado River. The Tribe asked that NARF

provide an interpretation of key provisions of their Constitution concerning the management and development of the Tribe’s natural resources. In addition, the Tribe owns the Cholla Canyon Ranch near Wikiup, Arizona. The Ranch was gifted to the Tribe by its owners and is presently being operated as a palm tree plantation. NARF is 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. The application for the transfer of these lands has been completed and is ready to file.

In *Chalkitsik, et al v. United States*, the Tribe brought suit seeking judicial review of 25 C.F.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 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



*NARF Development Director Carly Hare*

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 2009 appropriations for the Tribe and are working now on the 2010 appropriations.

The Klamath Tribes of Oregon hold reserved Indian 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. Their reserved water rights for these purposes are currently being quantified in a state-wide water adjudication in Oregon. NARF represents the Klamath Tribes in asserting and defending their treaty-based water rights in the adjudication, and in prosecuting contests against many junior water rights claims filed by non-Indian water users. NARF's work

in the contests against junior water rights was concluded and NARF withdrew from most of those proceedings.

In 2006, the Administrative Law Judge (ALJ) entered a ruling on the merits upholding the Tribes' position that the United States, not private water users or irrigation districts, owns the water rights for the enormous Klamath Irrigation Project. Accordingly, the ALJ denied the claims of the water users and irrigation districts. The holding ensures that the Klamath Project will continue to be operated pursuant to the United States' Endangered Species Act and tribal trust obligations.

Exceptions to this order were briefed in the summer 2007, with NARF filing three briefs and related papers on behalf of the Tribes. Later that year, NARF filed an *amicus curiae* brief in *Klamath Irrigation District, et al. v. United States*, which raises the same issues, in order to protect the favorable judgment. On appeal, the U.S. Court of Appeals for the Federal Circuit determined that because the merits of the issues are based on Oregon property law and there is no controlling precedent for this matter, the Oregon Supreme Court was better suited to hear the case. Accordingly, the Court of Appeals certified three questions for the Oregon Supreme Court's consideration, which the Court granted

in January 2009. Following briefing the Oregon Supreme Court held oral argument in May 2009 with the Tribes' participating as *amicus curiae*. A decision is pending for *Klamath Irrigation District, et al. v. United States*.

In eight other separate cases in the state adjudication, in 2005 and 2006, the parties filed sixty-four briefs on various legal issues defining the nature of the tribal water right claims and various defenses against those water rights. The ALJ entered Orders in all eight cases in 2006 that upheld the Tribes' legal position in a sweeping set of victories. The ALJ held that the Tribes are entitled to a sufficient amount of water for a healthy habitat and productive fishery. The eight cases were in the final discovery stages in 2008, when parties received several extensions to pursue settlement negotiations. These negotiations are ongoing at this time, however, the parties completed discovery and will file written direct testimony. Cross-examination hearings are scheduled for May 2010.

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. In July 2009, HR 1945 was passed by the House. A very successful hearing was held before a Senate committee in July and the Tribe is now awaiting the bill's passage by the full Senate. Once the bill is signed, NARF will begin work on Congressional appropriations to fund the feasibility study.

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 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 running 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. Settlement negotiations extended throughout 2009. The Tribe and the U.S. are also discussing funding to quantify the Tribe's water rights.

### PROTECTION OF HUNTING AND FISHING RIGHTS IN ALASKA

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

In *Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham v. Evans*, 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 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



NARF staff Debbie Thomas, Carly Hare, Rose Cuny and John Echohawk

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 on the appeal is set to begin in 2010.

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. In 2007, the district court entered an Order upholding the

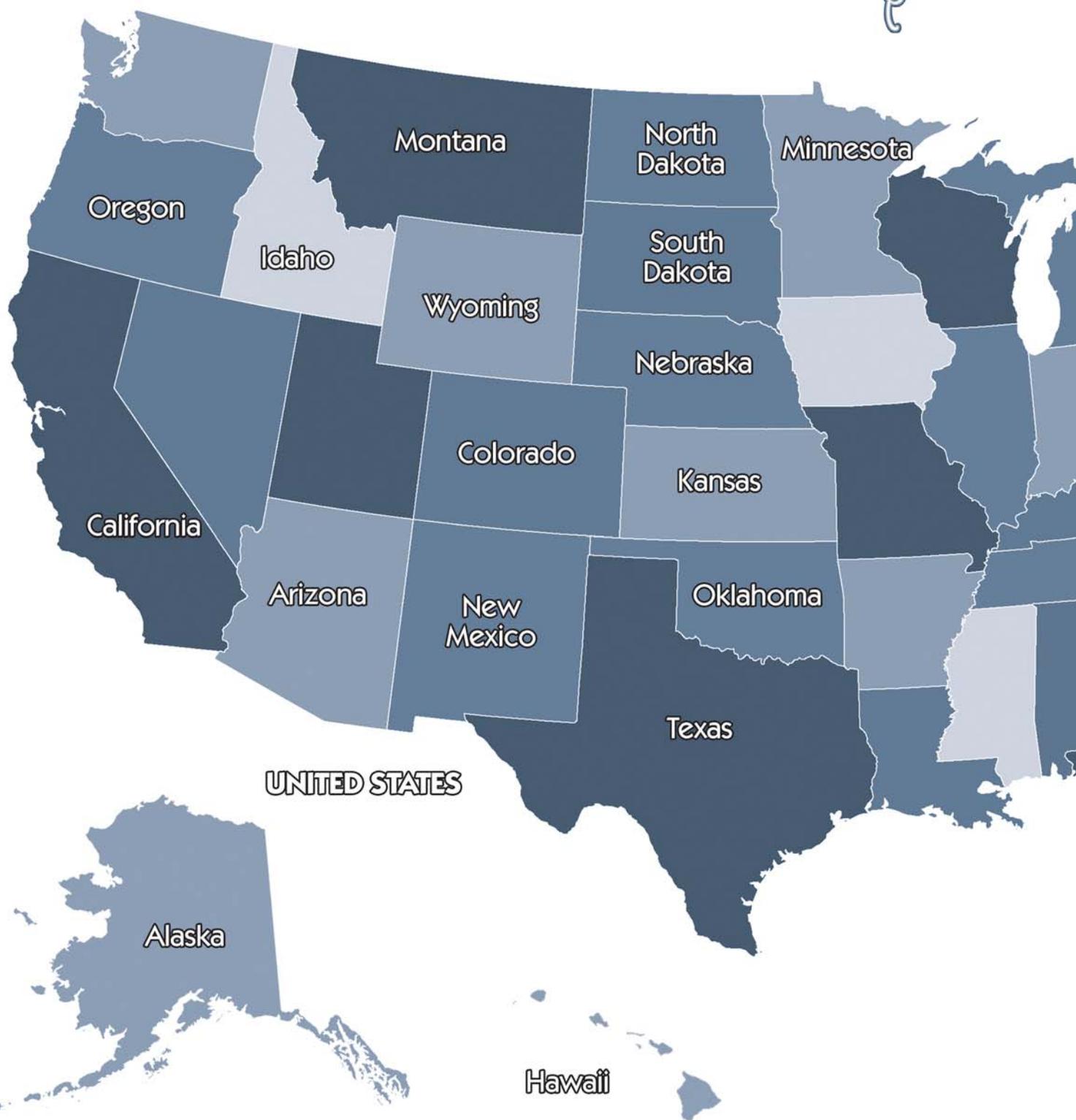


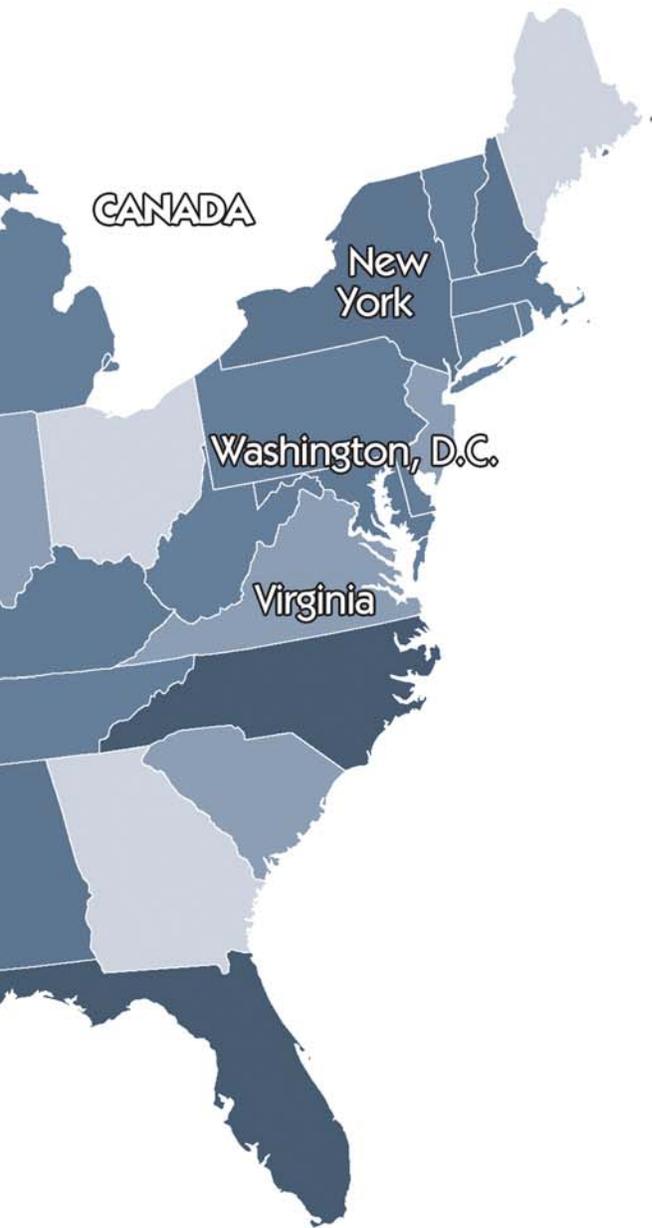
*John Echohawk bids farewell to NARF attorney Mark Tilden*

agency's rule-making process identifying navigable waters in Alaska that fall within federal jurisdiction for purposes of Title VIII's subsistence priority.

In 2005, NARF filed a law suit on behalf of Katie John (*Katie John v. Norton*) in the District of Alaska challenging the U.S. Department of the Interior's final rule implementing the prior Katie John mandate as being too restrictive in its scope. Katie John's complaint alleges that the Department 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 federal law. The State of Alaska intervened and challenged the

regulations as illegally extending federal jurisdiction to state waters. In September 2009 the District 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 fulfill the purposes of the reserve. The case will be appealed to the Ninth Circuit Court of Appeals.





## ALASKA

### NARF ANCHORAGE OFFICE

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

## ARIZONA

- Hualapai Tribe – Boundary Issue

## CALIFORNIA

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

## COLORADO

### NARF HEADQUARTERS BOULDER, COLORADO

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

## IDAHO

- Nez Perce Tribe – Water Rights, Tribal Trust Funds

## KANSAS

- Kickapoo Tribe – Water Rights

## MINNESOTA

- White Earth Band of Chippewa Indians – Tribal Trust Fund

## MONTANA

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

## NEBRASKA

- Santee Sioux Tribe – Tribal Trust Fund

## NEW MEXICO

- Mescalero Apache Tribe – Tribal Trust Fund

## NEW YORK

- Shinnecock Indian Nation – Recognition

## NORTH DAKOTA

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

## OKLAHOMA

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

## OREGON

- Klamath Tribes – Water Rights & Tribal Trust Fund

## SOUTH DAKOTA

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

## TEXAS

- Alabama-Coushatta Tribe – Land Claim

## VIRGINIA

- Pamunkey Tribe – Recognition

## WASHINGTON

- Yakama Nation – Tribal Trust Funds

## WASHINGTON, D.C.

### NARF WASHINGTON, D.C. OFFICE

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

## WYOMING

- Eastern Shoshone Tribe – Land Issue

## CANADA

- Northern Lakes Pottawatomi Nation – Land Claim

## INTERNATIONAL

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

# The Promotion of Human Rights

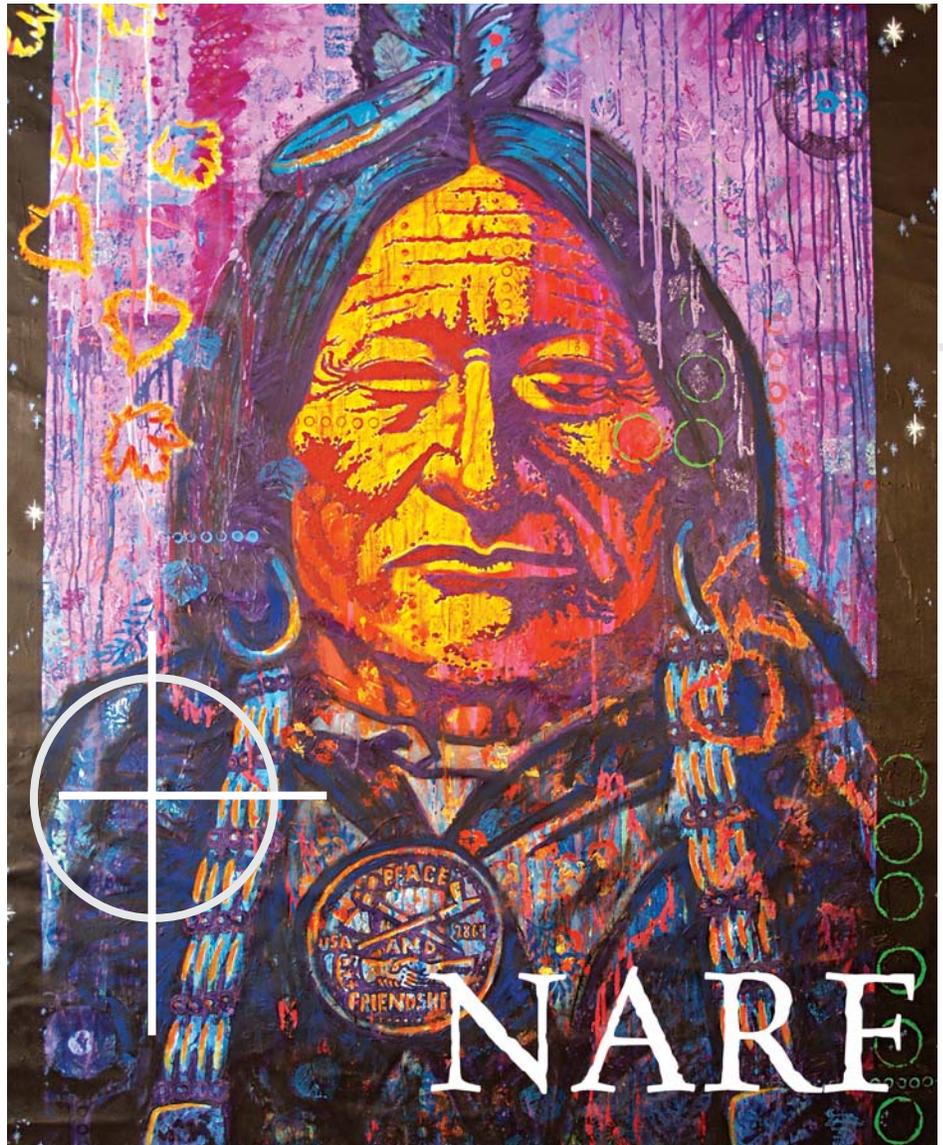
*“Once social change begins, it cannot be reversed. You cannot un-educate the person who has learned how to read. You cannot humiliate the person who has pride. And you cannot oppress the people who are not afraid anymore.” — Cesar Chavez*

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 have

been conducting raids, 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.

In June 2009 the working group met with the FWS and the Department of Justice (DOJ) 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.

At its 2009 Mid-Year Session in June 2009, the National Congress of American Indians (NCAI) adopted a resolution supporting

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

NARF and NCAI will continue 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.

In June 2009, NARF collaborated with the California Indian Legal Services and the American Civil Liberties Union of Northern California in a successful negotiation with the Sacramento City Unified School District to allow an Alaska Native student to wear her eagle feathers at the school’s graduation ceremony to honor her spiritual beliefs. The school had previously denied her request to wear her eagle feathers by citing their mandatory graduation dress code policy which was intended

to prevent the display of gang symbols and disruptions to the ceremony.

Legal work continues on a number of Native American Graves Protection and Repatriation (NAGPRA) implementation issues. In 2009, 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.

## **CIVIL AND CULTURAL RIGHTS**

Measures providing additional language assistance for Yup'ik speakers at municipal elections in Bethel, Alaska were agreed upon as part of a settlement among the city of Bethel, NARF, the American Civil Liberties Union (ACLU) and two local Alaska Natives. Yup'ik is the primary language of a majority of citizens in the Bethel region. The settlement agreement follows a lawsuit

filed against the city by NARF and the ACLU on behalf of the two local Alaska Natives. The lawsuit *Nick, et al. v. Bethel, et al.*, remains pending in the federal district court for the District of Alaska against the State of Alaska. The lawsuit was brought on behalf of the same Alaska Natives who agreed to the current settlement as well as two other Alaska Natives and four tribal governments.

Under the settlement agreement, the city of Bethel will provide enhanced language assistance to Yup'ik voters, including trained poll workers who are bilingual in English and Yup'ik; sample ballots for election measures in written Yup'ik; a written Yup'ik glossary of election terms; advance notice of translator services; election announcements on the radio; and pre- and post-election reports to the Federal District Court for Alaska tracking the city's efforts.

However, since the State of Alaska refuses to reach an amicable solution, the ACLU and NARF continue to litigate against the State of Alaska so that all Yup'ik speaking voters in the state can be fully included in the political process. Alaska is one of just five states covered in its entirety by the language assistance provisions of the Voting Rights Act. Those provisions, sections 4(f)(4) and 203, apply to areas that meet certain threshold requirements for numbers of citizens with limited

English proficiency. Section 208 has nationwide applicability and gives "any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write" a right to receive "assistance by a person of the voter's choice." The temporary provisions of the Voting Rights Act, including sections 4(f)(4) and 203, were reauthorized by Congress in 2006 for an additional 25 years.

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.

NARF filed and won a federal lawsuit affirming the Indian Child Welfare Act's full faith and credit clause to tribal adoptions. In *Kaltag v. State of Alaska*, the Kaltag Tribe entered an Order of adoption in tribal court and requested that a new birth certificate be issued from the Alaska Bureau of Vital Statistics. The State refused to issue a new birth certificate on the alleged basis that the Tribe lacked jurisdiction over children's proceedings unless it had first petitioned for reassumption of jurisdiction under ICWA. This argument assumes that a Tribe does not have inherent jurisdiction to adjudicate adoptions of its own tribal members. The Tribe and the parents (two

individual Kaltag tribal members) brought suit in the United States District Court for the District of Alaska against the State of Alaska Department of Health and Social Services and the Alaska Bureau of Vital Statistics for denying full faith and credit to a tribal adoption decree in violation of the ICWA. Cross motions for summary judgment were filed in 2007 and the court ruled in favor of the Tribe on all claims, holding that the tribal court decision was entitled to full faith and credit under the ICWA. The State moved to stay the judgment but lost that motion as well, forcing the State to immediately issue a birth certificate to the child.

The State appealed to the U.S. Court of Appeals for the Ninth Circuit. In August 2009, a three judge panel of the Ninth Circuit affirmed the District Court's decision that full faith and credit be given to the Kaltag tribal court's adoption judgment. The panel ruled that the District Court correctly found that neither the ICWA nor Public Law 280 prevented the Kaltag tribal court from exercising jurisdiction and that reservation status is not a requirement of jurisdiction because "[a] Tribe's authority over its reservation or Indian country is incidental to its authority over its members."

In September 2009, the State of Alaska filed a petition for panel rehearing and, in the alternative,

for rehearing en banc. In October 2009, the panel unanimously voted to deny the State's petition for rehearing. The full court of the Ninth Circuit was advised of the petition for court rehearing *en banc*, but no judge of the court requested an en banc rehearing.

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 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 held in December 2009.

In a unanimous decision in the case of *In re E.L.*, the Nebraska Supreme Court reversed and remanded a decision by a Nebraska county court which had refused to allow the Ponca Tribe of Nebraska to intervene in a child custody case involving two children that are members of the Tribe. The Nebraska Supreme Court affirmed the absolute and unconditional right of an Indian tribe to intervene in a child custody proceeding under the ICWA. The Ponca Tribe's ICWA Specialist had filed a *Motion to Intervene* pursuant to the ICWA. The Nebraska county court entered an order denying the filing of the Tribe's motion to intervene on the grounds that its ICWA Specialist, the Tribe's designated representative, was not an attorney admitted to practice law pursuant to Nebraska Revised Statutes. As a result, the Ponca Tribe was required to hire an attorney licensed to practice law in the courts of the State of Nebraska. The Ponca Tribe had then filed an appeal of this decision with the Supreme Court of Nebraska.

NARF had been retained as legal counsel to represent *amici curiae* in the filing of a joint amicus brief in the Supreme Court of Nebraska. NARF represented the

following organizations and tribes: the National Indian Child Welfare Association in Portland, Oregon; the Indian Center, Inc. in Lincoln, Nebraska; the Santee Sioux Tribe of Nebraska; the Oglala Sioux Tribe of South Dakota; the Osage Nation of Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Spirit Lake Tribe of North Dakota; and the Rosebud Sioux Tribe of South Dakota. In March 2009, the amicus brief was filed with the Supreme Court of Nebraska. The amicus brief maintained that the Ponca Tribe has an absolute and unconditional federal right to intervene in the proceeding according the clear language of the ICWA and that the requirement that the Tribe be represented by a licensed attorney is preempted by the ICWA. Additionally, requiring a tribe to be represented by an attorney to intervene and participate in a state ICWA case would have a significant, detrimental effect on all tribes, including the infringement on tribal sovereignty.

The amicus brief respectfully requested that the Court reverse the county court's decision and order the county court to grant the Tribe's *Motion to Intervene* and allow the Tribe's ICWA Specialist to fully participate as the designated representative of the Ponca Tribe of Nebraska. The Nebraska Supreme Court agreed

with the Ponca Tribe and allowed the Tribe the right to intervene through its ICWA specialist, the Tribe's designated representative.

In September 2009, NARF represented the National Indian Child Welfare Association (NICWA) and provided testimony for the Wisconsin Legislature on a bill which would enact a state Indian Child Welfare Act into law. The bill articulates a cooperative and collaborative approach between the sovereign Indian nations located in Wisconsin and the State, demonstrating the State of Wisconsin's intent to clearly recognize and reinforce tribal sovereignty as an essential means of achieving ICWA's objectives, which are echoed in the bill, and also to provide an even greater possibility for improving services and outcomes for Indian children in the State. In October 2009, both the Senate and Assembly of the State of Wisconsin Legislature approved and passed the bills. The legislation will help make certain that the State complies with the requirements of the ICWA.

Also in the area of cultural rights, NARF had filed an *amicus* brief in the case of *Harjo et al v. Washington Redskin Football* in the U.S. Court of Appeals for the District of Columbia on behalf of the National Congress of American Indians, National Indian Educational Association, National Indian Youth Council,

and the Tulsa Indian Coalition Against Racism in Sports in support of the Indian appellants. The brief argued that the federal trademark for the football team should be cancelled because the use of the "Redskin" mark is racially disparaging in violation of federal trademark law.

In a disappointing outcome, in November 2009, the U.S. Supreme Court denied review in *Harjo v. Pro-Football, Inc.* The D.C. Circuit's May 2009 decision in that case held that the doctrine of laches (*i.e.* long delay in bringing lawsuit) precluded 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. The Tribal Supreme Court Project coordinated four amicus briefs in support of review: (1) the NCAI-Tribal Amicus Brief which summarizes the efforts of the Native American community over the past forty years to retire all Indian names and mascots; (2) the Social Justice/Religious Organizations Amicus Brief which focuses on the social justice and public interests present in the case; (3) the Trademark Law Professors' Brief which supports and enhances the trademark law arguments put forward by petitioners; and (4) the Psychologists' Amicus Brief which provides an overview of the

empirical research of the harm caused by racial stereotyping. Attention will now focus on the *Blackhorse v. Pro-Football, Inc.* litigation which was brought in 2006 by young Native Americans in an effort to avoid the laches defense, and then stayed pending the outcome in the Harjo case.

### INTERNATIONAL RECOGNITION OF INDIGENOUS RIGHTS

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

In 2007, the United Nations General Assembly overwhelmingly adopted the Declaration on the Rights of Indigenous Peoples. The vote was 143 in favor, 4 opposed, and 11 abstaining. The only votes in opposition were Canada, Australia, New Zealand, and the United States. Australia has now reversed its position and supports the Declaration. This historic vote comes after 30 years of worldwide indigenous efforts. NARF has represented the National Congress of American Indians (NCAI) in this matter since 1999.

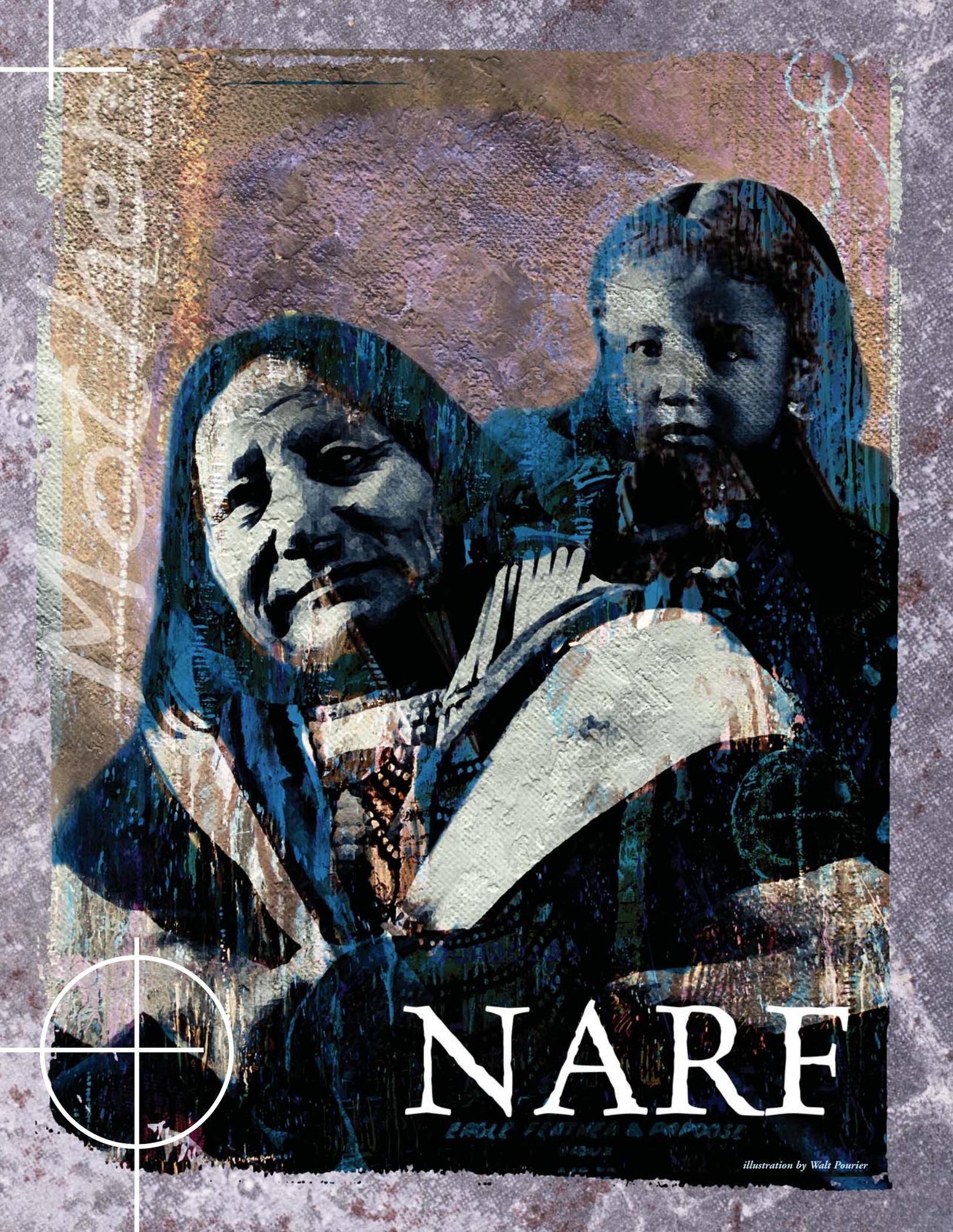
The Declaration recognizes that Indigenous peoples have impor-

tant collective human rights in a multitude of areas, including self-determination, spirituality, and lands, territories and natural resources. The Declaration sets out minimum standards for the treatment of Indigenous peoples and can serve as the basis for the development of customary international law. The special theme of the Permanent Forum on Indigenous Issues sessions has been climate change, a crucial issue for Indigenous peoples worldwide. Climate change continued to occupy a prominent place on the agenda of the U.N. with special emphasis on REDD - Reduction of Emissions Due to Deforestation. Much of the land on which these forests exist is Indigenous land.

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. In recognition of this, the OAS held a "reflection" session in Washington, D.C. in 2007 to discuss that import. It was agreed that the United Nations' Declaration would be used as the foundation for the OAS document, in that all the terms of the OAS document would be consistent with, or more favorable to, Indigenous rights than the United Nations document. The group further

agreed 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.

NARF represents the Pottawatomi Nation of Canada, a band of descendants from the Historic Pottawatomi Nation, which from 1795 to 1833 signed a series of treaties with the United States. While the American Pottawatomi bands recovered the payment of annuities in the Indian Claims Commission (ICC), the Canadian Pottawatomi members could not bring a claim in the ICC. In 1993, NARF brought suit on behalf of the Canadian Pottawatomi in the Court of Federal Claims, and the parties reached an agreement in principle which was approved by the Court in 2000 and recommended to Congress in 2001. Attempts to pass Congressional legislation approving the settlement agreement has stalled since 2002. In January 2009, Senator Daniel Inouye once again re-introduced a settlement bill, which has been referred to the Senate Judiciary Committee.



# NARE

*illustration by Walt Pourier*

# The Accountability of Governments

*“Like the miner’s canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith...”*

— Felix Cohen

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 500,000 past and present individual Indian trust beneficiaries. The individual Indian money account holders (plaintiffs) seek a full accounting of their trust assets for the entire period that such assets have been held in trust – since 1887. Trustees, without exception, have a duty to provide accurate and complete statement of

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

A settlement agreement was announced in December 2009 between Elouise Cobell, lead plaintiff in the *Cobell v. Salazar* class action lawsuit over federal mismanagement of individual Indian trust fund accounts, and the Obama Administration. Under the terms of the settlement, the federal government will create a \$1.4 billion Accounting/Trust Fund and a \$2 billion Trust Land Consolidation Fund. The settlement also creates an Indian Education Scholarship fund of up to \$60 million to improve access to higher education for Indians.



NARF attorney Amy Bowers

The settlement agreement must be approved by Congress and a federal district court. NARF is no longer involved in the *Cobell* case because of its involvement in the tribal trust fund mismanagement cases discussed below.

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



*Alaska voting rights case clients: back row: Joe Alexie (Tuluksak Tribal Council), Jason Brandeis (Alaska ACLU), Peter Andrew (Tuluksak Tribal Council), Michael Martin (Kasigluk Traditional Council), Jim Tucker (attorney), Nick David (Tuntutuliak Tribal Council) front row: Jim Davis (attorney), Leo Beaver (Kasigluk Traditional Council), Robert Enoch (Tuntutuliak Tribal Council), Natalie Landreth (NARF Attorney) and Elsie Nichols (Kasigluk Traditional Council)*

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; Nooksack 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 Dakotah Nation; Spokane Tribe; Summit Lake Paiute Tribe; Tulalip Tribes; and, Ute Mountain Ute Tribe, in an action in the federal district

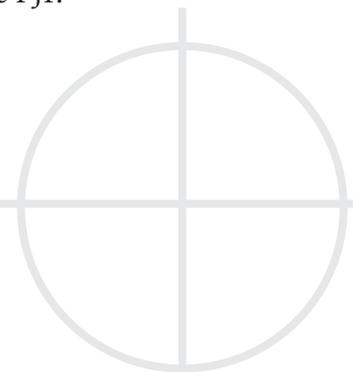
court for the District of Columbia seeking full and complete accountings of their trust funds. Such accountings never have been provided by the federal government which is the trustee for the funds.

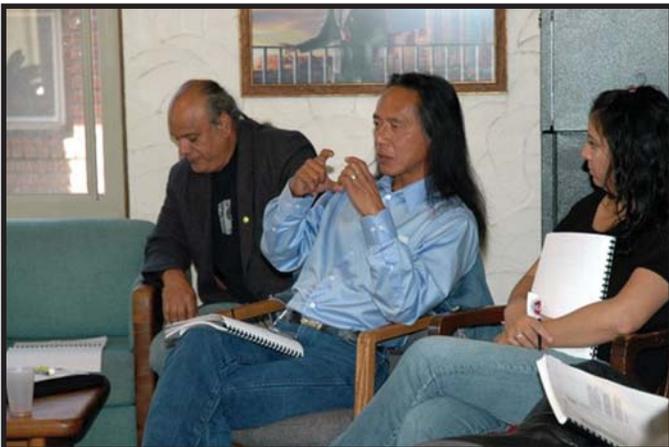
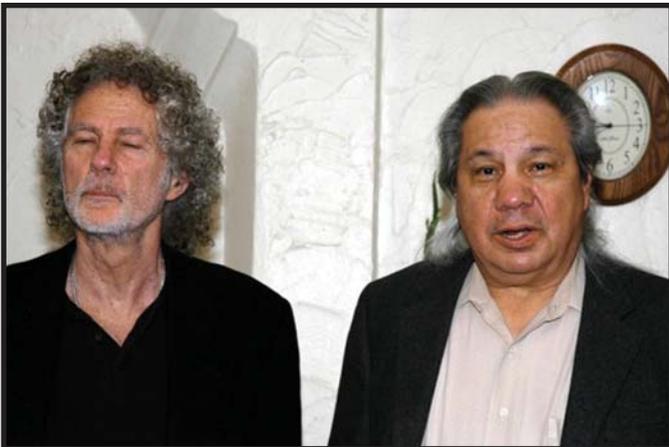
Pending before the Court is the government's motion to dismiss the action for lack of jurisdiction, which the Tribes have opposed. During the Presidential campaign, candidate Barack Obama "committed to resolving equitably" all Indian trust fund mismanagement litigation against the federal government if he was elected President. NARF is now hopeful that the Obama Administration can soon focus its efforts on settlements for the tribal claims once

the *Cobell* settlement is finalized. There are also about 100 other tribal cases asserting claims stemming from federal mismanagement of tribal trust fund accounts. By the government's own figures, tribal trust accounts hold five times as much money as the individual Indian trust accounts involved in the *Cobell* case.

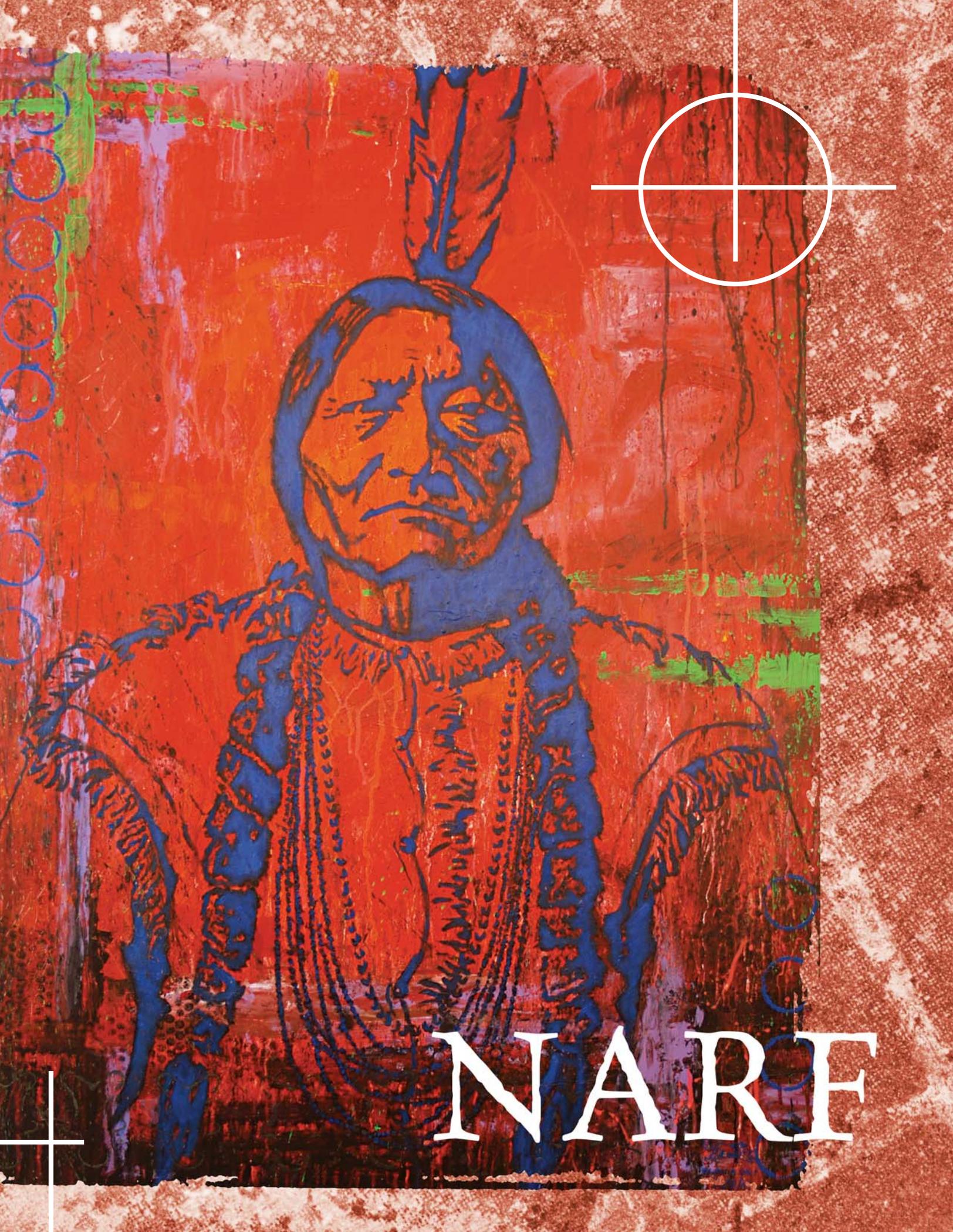
In a separate U.S. Court of Federal Claims action, NARF represents the Turtle Mountain Chippewa, Chippewa Cree, White Earth Band of Minnesota Chippewa, and Little Shell Chippewa Tribes in this case against the federal government for misaccounting and mismanagement of their tribal trust fund, the Pembina 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.





*(top left to right) NARF attorney Heather Kendall-Miller; NARF history presentation to Boulder community; NARF attorneys Amy Bowers and Dawn Baum; NARF consultant Stephanie Wilcox, Kellie Jewett, NARF staff Mireille Martinez; NARF Board members Kunani Nibipali, Ron His Horse Is Thunder and NARF staff Mireille Martinez; Former NARF attorney Roy Haber and John Echohawk*



NARE

# The Development of Indian Law

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*“Our stories were the libraries of our people. In each story, there was recorded some event of interest or importance. People enrich their minds who keep their history on the leaves of memory.”*

— Luther Standing Bear, Lakota

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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, 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 will begin program roll out in calendar year 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 Board member Ron His Horse Is Thunder*

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 close to 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.

In 2009, NARF/NILL partnered with Thomson/West on an alliance to increase access to tribal law – specifically tribal codes, constitutions and intergovernmental agreements. This alliance includes working to make annotated tribal codes and constitutions available through the Westlaw fee-based databases as well as available for free through the NILL web site. This significant development in making tribal law accessible will help to enhance knowledge of tribes as sovereign nations and distinct political entities.

NILL also launched a new U.S. Legislation Bulletin which tracks and provides current information on legislation being considered and enacted by 111th U.S. Congress impacting Native Americans. The bulletin includes: 1) topical listings of bills for the congressional term; 2) current bill status, summary and sponsors; 3) links to full-text copies of bills and enacted laws; 4) links to relevant news stories; 5) links to additional information about the legislation; and 6) links to Congressional reports and hearing information (both print and video when available).

### **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. NARF is now working with Indian Legal Services on a strategy for FY 2010 funding.

### **OTHER ACTIVITIES**

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

# NARF - Treasurer's Report

Based on our *audited* financial statements for the fiscal year ending September 30, 2009, the Native American Rights Fund reports total unrestricted revenues of \$7,458,048 against total expenditures of \$7,166,227. Total net assets at the end of the year came to \$4,976,789. Due to presentation requirements of the audited financial statements in terms of recognizing the timing of certain revenues, they do not reflect

the fact that, based on NARF's internal reporting, revenue exceeded losses and other cash outlays resulting in an increase of \$172,481 to NARF's reserve fund. When compared to fiscal year 2008, we have experienced decreases in public and tribal contributions primarily due to economic conditions. One of our federal awards was not renewed going into fiscal year 2009. The increase in foundation grants is due

to \$1.3 million released from endowment restrictions by the Ford Foundation. Legal fees revenue has increased due to escalated activity in our major cases. Investments have improved in fiscal year 2009, but we still incurred a slight loss.

Unrestricted Revenue and Expense comparisons between fiscal year 2009 and fiscal year 2008 are shown below.

<b>UNRESTRICTED SUPPORT AND REVENUE COMPARISON</b>				
	<b>2009</b>		<b>2008</b>	
	<b>dollars</b>	<b>percents</b>	<b>dollars</b>	<b>percents</b>
Public Contributions	\$ 1,812,793	24.3%	\$ 2,288,390	39.4%
Tribal Contributions	1,198,941	16.1%	1,398,950	24.1%
Federal Awards	10,000	0.1%	158,447	2.7%
Foundation Grants	1,972,172	26.4%	643,982	11.1%
Legal Fees	2,488,811	33.4%	2,059,580	35.4%
Return on Investments	(50,952)	(0.7)%	(790,470)	(13.6)%
Other	26,283	0.4%	51,051	0.9%
<b>TOTALS</b>	<b>\$ 7,458,048</b>	<b>100%</b>	<b>\$ 5,809,930</b>	<b>100%</b>

<b>EXPENSE COMPARISON</b>				
	<b>2009</b>		<b>2008</b>	
	<b>dollars</b>	<b>percents</b>	<b>dollars</b>	<b>percents</b>
Litigation and Client Services	\$ 4,770,000	66.6%	\$ 4,656,499	65.0%
National Indian Law Library	246,948	3.4%	297,599	4.2%
<b>Total Program Services</b>	<b>5,016,948</b>	<b>70.0%</b>	<b>4,954,098</b>	<b>69.2%</b>
Management and General	779,843	10.9%	781,522	10.9%
Fund Raising	1,369,436	19.1%	1,423,930	19.9%
<b>Total Support Services</b>	<b>2,149,279</b>	<b>30.0%</b>	<b>2,205,452</b>	<b>30.8%</b>
<b>TOTALS</b>	<b>\$ 7,166,227</b>	<b>100%</b>	<b>\$ 7,159,550</b>	<b>100%</b>

*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](http://www.narf.org).*

# NARF – Acknowledgment of Contributions: Fiscal Year 2009

*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 2009 (October 1, 2008 through September 30, 2009).*

## **Tribes and Native Organizations**

Chickasaw Nation  
Choctaw Nation of Oklahoma  
Chugachmiut, Inc.  
Cow Creek Band of Umpqua Tribe of Indians  
Drumbeats Indian Arts  
Elk Valley Rancheria  
Eyak Native Village  
Kaibab Band of Paiute Tribe  
Kenaitze Indian Tribe  
Mashantucket Pequot Tribal Nation  
Mississippi Band of Choctaw Indians  
Mohegan Indian Tribe  
Muckleshoot Indian Tribe  
Osage Nation  
Pawnee Nation of Oklahoma  
Native Village of Port Lions  
Sac and Fox Nation  
Saginaw Chippewa Indian Tribe of Michigan  
San Manuel Band of Mission Indians  
Seminole Tribe of Florida  
Seven Cedars Casino  
Confederated Tribes of Siletz Indians of Oregon  
St. Regis Band of Mohawk Tribe  
Sun'aq Tribe of Kodiak  
Sycuan Band of Kumeyaay Indians  
Tulalip Tribes  
Viejas Band of Kumeyaay Indians

## **Foundations, Corporations and Organizations**

Ford Foundation  
Open Society Institute  
Tzo'Nah Fund

Arches Foundation  
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Biedenharn Foundation  
Chicago Community Trust  
Community Foundation Boulder County  
Edward & Verna Gerbic Family Foundation  
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Evergreen Fund  
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Gorlitz Foundation, Ltd.  
Hamill Revocable Trust  
Hickrill Foundation  
Indian Land Tenure Foundation  
Inge Foundation  
Kirkland & Ellis Foundation  
Kogovsek & Associates  
LeFort – Martin Fund  
Lutheran Community Foundation  
Panaphil Foundation  
RMF Foundation  
Stanley Family Fund  
Stettenheim Foundation  
The Boston Foundation  
The Susan and Ford Schumann Foundation  
Ungar Foundation  
Vivendi Universal US Holding Co.  
Walton Avenue Foundation  
Whizin Foundation  
Winky Foundation

**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.

## **Living Waters Endowment**

Elwood H. Brotzman Memorial Fund  
Jerome Davis Living Waters Endowment Fund  
Kathleen and Ruth Dooley Family Fund  
Edward & Verna Gerbic Family Foundation  
Susan K. Griffiths Memorial Fund  
The Robert and Joy Hanson Leland Endowment  
Frank J. McCormick Family Fund  
Marvin W. Pourier, Sr. & Donna M. Deans Memorial Fund  
Mary Lou Mosca-Ragona Memorial Fund  
Ernest L. Schusky Endowment  
Helen & Sidney Ungar Memorial Endowment Fund

## **NARF Employee Endowment Giving** -

Jonathan Briggs, Rose Cuny, John Echohawk, Kim Gottschalk, David Gover, Richard Guest, Carly Hare, Heather Kendall-Miller, Melody McCoy, Steve Moore, Christine Pereira, Donald Ragona, Ray Ramirez, Don Wharton.

**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 the Development Department, 303.447.8760.

#### **Peta Uha Pipestone**

John Bevan  
Robert Friede

#### **Peta Uha Turquoise**

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#### **Peta Uha Granite**

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Bridget M.K. Stroud

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Claude & Noelle Poncelet  
Michael Reynolds  
Alfred Schwendtner  
Margaret Travis  
Jennifer Vanica  
David Winston

**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. For more information please contact the Development Department, 303.447.8760 or e-mail us at [circle@narf.org](mailto:circle@narf.org).

#### **Bequests and Trusts**

John Arnold  
Joyce Beaulieu  
Mary Helen Bickley  
Joan Saugrain Bredendieck  
Ainslie Alice Bricker Clark  
Lois Daunt  
Carolyn Ferriday  
Rico Genhart  
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Barbara Leighton  
Barton Moss  
Joel Schenkman  
Ann Schwartz  
John Vaupel  
Violet Young  
Dorean Wert

# NARF – Acknowledgment of Contributions: Fiscal Year 2009

**Circle of Life** – Catches Bear & Judy Adams, Rodney Addison, Gloria Adkinson, Maxwell Barnard, Barbara Beasley, Diane Ben Ari, Roy Benson, Sandra Berger, Bobby Bitner, Betty Blumenkamp, Charles Bowers, Dale Brand, William Brown, Gloria Burgess, Patricia Burnet, Thomas Campbell, Lawrence Candel, Arthur Carter, Robert Carter, Mary Casmus, Ed Chasteen, Paul Clifton, Charles Cole, Janet Congero, Judith Day, Harvey Dennenberg, Lyle Dethlefsen, Gary Dickerhoof, Starr Dormann, Patricia Duval, Noelle Edwards, Allison Emerson, Judy Fair-Spaulding, 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, Rennard Strickland, 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

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

Adobe Systems Inc.  
AIG Matching Grants Program  
Bank of America Foundation, Inc.  
Dell  
GE Foundation  
Giving Express Program from American Express  
Hanson Bridgett LLP  
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Microsoft Corporation  
Prudential  
The David & Lucile Packard Foundation  
Wachovia Foundation  
WellPoint Foundation, Associate Giving Campaign  
**Boulder-Denver Advisory Committee** – Lucille A. Echohawk, Thomas W. Fredericks, David Getches, Ava Hamilton, Jeanne Whiteing, Charles Wilkinson.

**Tsanáwhit Circle** – Tsanáwhit is a Nez Perce word meaning equal justice. Tsanáwhit Circle members provide a regular source of income to NARF by pledging and making monthly contributions at any level of your choice. We currently have over 300 Tsanáwhit Circle members. You may sign up to receive monthly pledge reminders in the mail or your credit card may be billed automatically.

**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 FY09 is \$932. Native Ways exists to build a brighter future for Native People by strengthening the circle of giving in Indian Country.

**Federated 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.

Thank you to the thousands of federal, state, municipal and private sector employees throughout the country who through their payroll deduction plans contributed \$96,511 in fiscal year 2009.

**Special Events** – In May 2009, two of our National Support Committee members, Nancy Starling Ross and her husband Wayne Ross, held their bi-annual wine tasting event and silent auction for NARF's benefit in Denver, Colorado. This event raised in \$4,720 for NARF.

**In-Kind Donations** – The Native American Rights Fund would like to thank all the individuals who have contributed in-kind gifts in 2009. Without your time and talents, NARF would not be able to accomplish the work we do. Thank you for these gifts.

**E-Action** – Sign up for our e-action network by providing NARF with your email address at [www.NARF.org](http://www.NARF.org). 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.

# Native American Rights Fund – Staff

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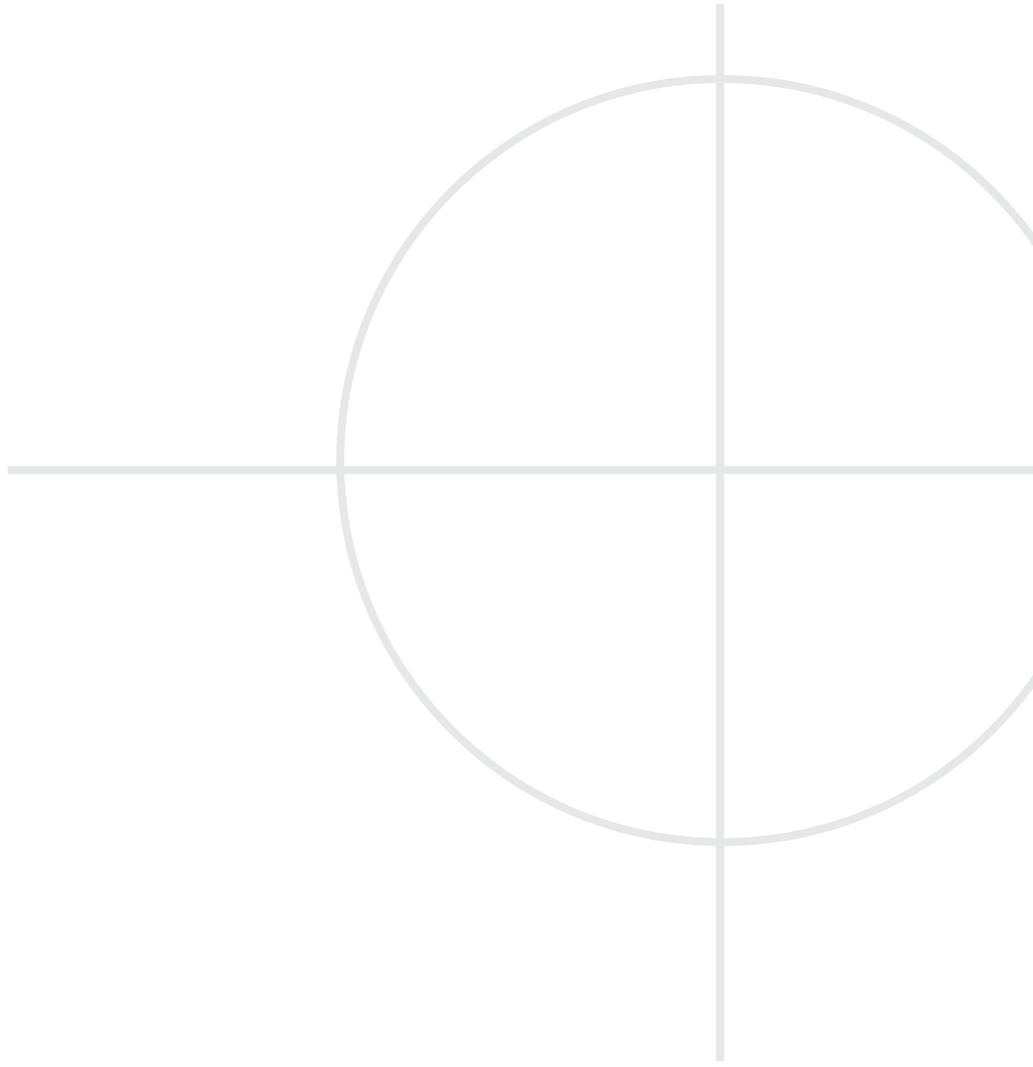


## Statement on Environmental Sustainability.

“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.”





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