

# Native American Rights Fund

ANNUAL REPORT 2020





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### The Native American Rights Fund Statement on Environmental Sustainability

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

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**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, DC.

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**Cover and Art: Cara Romero** (b. 1977, Inglewood, CA) is a contemporary fine art photographer. An enrolled citizen of the Chemehuevi Indian Tribe, Romero was raised between contrasting settings: the rural Chemehuevi reservation in Mojave Desert, CA and the urban sprawl of Houston, TX. Romero's identity informs her photography, a blend of fine art and editorial photography, shaped by years of study and a visceral approach to representing Indigenous and non-Indigenous cultural memory, collective history, and lived experiences from a Native American female perspective.

As an undergraduate at the University of Houston, Romero pursued a degree in cultural anthropology. Disillusioned, however, by academic and media portrayals of Native Americans as bygone, Romero realized that making photographs could do more than anthropology did in words, a realization that led to a shift in medium. Since 1998, Romero's expansive oeuvre has been informed by formal training in film, digital, fine art and commercial photography. By staging theatrical compositions infused with dramatic color, Romero takes on the role of storyteller, using contemporary photography techniques to depict the modernity of Native peoples, illuminating Indigenous worldviews and aspects supernaturalism in everyday life.

Maintaining a studio in Santa Fe, NM, Romero regularly participates in Native American art fairs and panel discussions, and was featured in PBS' Craft in America (2019). Her award-winning work is included in many public and private collections internationally. Married with three children, she travels between Santa Fe and the Chemehuevi Valley Indian Reservation, where she maintains close ties to her tribal community and ancestral homelands.



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**Boulder Office (main)**  
1506 Broadway  
Boulder, CO 80302-6296  
303-447-8760  
[www.narf.org](http://www.narf.org)

**Anchorage Office**  
745 West 4th Avenue, Suite 502  
Anchorage, Alaska 99501-1736  
907-276-0680

**Washington D.C. Office**  
1514 P Street, NW  
(Rear) Suite D  
Washington, DC 20005-1910  
202-785-4166

# Executive Director's Report

In 2020, the Native American Rights Fund commemorated 50 years of providing legal advice and representation to Indian tribes, organizations and individuals on the most important federal Indian law issues across the country. We have won many significant legal victories for Native Americans since 1970 through our non-profit legal advocacy and we continued to win more important cases for Native Americans in 2020.

*The United States Supreme Court in McGirt v. Oklahoma* decided that the Muscogee (Creek) Nation's original boundaries had never been disestablished by Congress, so tribal jurisdiction continued to exist within those original reservation boundaries. We filed an amicus curiae brief in the case with co-counsel on behalf of the National Congress of American Indians.

The proposed Keystone XL oil pipeline to run from Canada to the Gulf Coast would cross or come very close to the boundaries of many Indian reservation lands and tribal land holdings. We are representing the Rosebud Sioux Tribe of South Dakota and the Fort Belknap Indian Community of Montana in litigation to stop the pipeline based on Indian treaty, constitutional, trespass and tribal jurisdiction claims. In January 2021, the incoming Biden Administration revoked the prior pipeline permit issued illegally by President Trump for the Keystone XL pipeline.

We have been representing the Kickapoo Tribe of Kansas for many years in its water rights claims in the Delaware River to secure enough water on the reservation to provide basic municipal services to the community. Finally, late in 2020, the Kickapoo tribe water project study to build a reservoir project to improve the water supply was approved by Congress.

*In Alaska Department of Fish and Game v. Federal Subsistence Board*, we intervened representing the Organized Village of Kake in a case where the State of Alaska seeks to stop Kake from exercising its subsistence hunting rights under federal law as authorized by the Federal Subsistence Board. The Alaska federal district court upheld the Board's authorization of Kake's emergency hunt.

We have been assisting the Bering Sea Elders Group, an alliance of 39 Yup'ik and Inupiaq Alaska Native Villages, seeking to protect the sensitive ecosystem of the Bering Sea that they depend on for their subsistence hunting and fishing lifestyle. In years past, President Obama by Executive Order created the Northern Bering Sea Resilience Area to protect the area but President Trump revoked it. In January 2021, President Biden reinstated the Executive Order restoring the Northern Bering Sea Resilience Area.

We have been representing the United Tribes of Bristol Bay, a consortium of Alaska Tribes in the Bristol Bay region formed

to address the proposed Pebble Mine which threatens salmon-rearing streams that the Tribes depend on for subsistence fishing. Litigation has been underway involving the Clean Water Act permit necessary for the Pebble Mine to move forward. Finally, in 2020, the Army Corps of Engineers denied the permit and the Tribes continue to work to secure permanent protection for the Bristol Bay watershed.



**John E. Echohawk**  
Executive Director

In *Solonex, v. Jewell*, we represented the Blackfeet Nation of Montana as amicus curiae where an energy company challenged the authority of the United States to cancel its oil and gas lease in areas that would threaten the Tribe's sacred sites. The Court of Appeals for the District of Columbia Circuit Court upheld the authority of the United States to cancel the lease and the way it exercised that authority.

In *Standing Rock Sioux Tribe v. Army Corps of Engineers*, the Federal District Court for the District of Columbia ruled that the Corps must prepare a new Environmental Impact Statement to determine whether they can grant an easement to allow the Dakota Access Pipeline to cross under Lake Oahe near the Tribe's reservation. We filed an amicus curiae brief in the case on behalf of 14 tribes and eight tribal organizations supporting the Tribe.

Representing the Native Village of Tyonek, the Blue Lake Rancheria and the National Association of Tribal Historic Preservation Officers, we have been opposing new regulations proposed by the National Park Service implementing the National Register of Historic Places that would prevent traditional cultural properties, cultural landscapes and places of traditional religious and cultural significance to tribes and Native Hawaiian organizations from being listed. The new Biden Administration has stopped the National Park Service from moving forward with those new regulations.

*Brakebill v. Jaeger* and *Spirit Lake Tribe v. Jaeger* are two companion cases where we represented individual Indians and tribes challenging North Dakota voter ID laws as unconstitutional and in violation of the Voting Rights Act. We were able to settle both cases favorably and saw a large turnout of Native voters in the 2020 elections.

Along with co-counsel we represented several Native American organizations and tribes in *Western Native Voice v.*

*Stapleton*, a case challenging a Montana state law that prevents ballot collection, which is when someone mails another person's ballot for them. This law was meant to stop nonprofit organizations who collected ballots thereby increasing voter turnout. A Montana state court ruled the law was unconstitutional in September 2020 and ballot collection is now allowed in Montana.

*Arctic Village v. Meyer* was a case we filed to enjoin an Alaska law requiring a witness signature on each ballot. 25% of Alaska's residents including many elders in Native villages live alone and did not want to risk their health and lives just to secure a witness signature on their absentee ballot. The Alaska Supreme Court enjoined the witness signature requirement.

We created the Native American Voting Rights Coalition several years ago to organize everyone working on voting in Indian country. One of our major projects was to hold a series of nine field hearings across Indian country on voting rights issues. In 2020, we published a report on the hearing entitled "Obstacles at Every Turn."

Thank you to all of our funders for your support. All of these important accomplishments in 2020 would not have been possible without your support. In 2021 we hope that your financial support will continue so that we can secure even more Native American legal victories.

John E. Echohawk  
Executive Director



# Board Chair's Message

Osiyo,

Last May, I began my tenure as Chair of the Native American Rights Fund's Board of Directors. The transition happened during what was proving to be a remarkable time at NARF. For one thing, it was NARF's fifty-year anniversary. There had been big plans to celebrate NARF's history of wins on behalf of Indian Country. The fifty-year anniversary was going to be an opportunity to gather and celebrate the decades of work and commitment that powered those wins. Then, COVID-19 struck.

Far beyond cancelling a much-anticipated celebration, the pandemic changed everything. NARF staff scrambled to move all of their efforts and advocacy online. Courtrooms suddenly became virtual. Remote rural Native communities suddenly became even further distanced and isolated. And, as is often the case when disaster strikes, existing inequalities were exposed and amplified. Those most in-need before the pandemic, found themselves in dire circumstances during quarantine. Indian Country found itself facing challenges across the board including devastating and disparate losses specific to Native communities that were losing first-language speakers, culture keepers, mothers, fathers, and grandparents.

But, as we so often have done in the past, Indian Country and NARF rose to the challenges. In communities across the nation, Native peoples stood together and stood strong against the pandemic. Tribal governments fought to protect and provide for their citizens. Like we have been for the last fifty years, NARF was there to support and serve Indian Country every step of the way.

As I write this, vaccinations are ramping up across the country, and the rate of COVID infections are dropping every day. As a nation, we look forward to this long winter being over. Even as circumstances change, NARF staff continue without rest; every

day they use their legal expertise to fight for Native peoples.

Because even as NARF celebrates its past and all those who came before, the staff and board are committed to the future. We are committed to protecting Native American rights, resources, and lifeways. Right now, the staff and board are actively working to create and implement strategic plans that will ensure NARF will be here for Indian Country for another 50 years.

We could not do what we do without your support. Throughout this last year, NARF supporters have been steadfast and enduring. Incredibly, many of you have even stepped up your support during this time of adversity. Even as each of us has dealt with the personal challenges, losses, and hardships inflicted by COVID-19, we have stood together and proven our resilience. We thank you for that, and we look forward to working together in the upcoming years to hold governments accountable. Our nation will be better for it.

And, finally, I am happy to tell you that there are new plans to celebrate the first fifty years of NARF. Mark your calendars for April 2022, and I hope to see you there!

Wado,

Lacey A. Horn  
Chair, NARF Board of Directors



**Lacey A. Horn**  
Chair, NARF Board of  
Directors



# Board of Directors

The Native American Rights Fund has a governing board composed of Native American leaders from across the country. Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as tribal affiliation, to ensure comprehensive geographical representation. The vision of the Board members is essential to NARF's effectiveness in representing its Native American clients.

## NARF's Board of Directors:

**Lacey Horn**, Chair (Cherokee Nation); **Kenneth Kahn**, Vice-Chair (Santa Ynez Band of Chumash Indians); **Derek Valdo**, Treasurer (Pueblo of Acoma); **Anita Mitchell** (Muckleshoot Indian Tribe); **Rhonda Pitka** (Athabascan/Inupiaq); **Robert Miguel** (Ak-Chin Indian Community); **Rebecca Miles** (Nez Perce Tribe); **Gayla Hoseth** (Curyung Tribal Council); **Stephanie Bryan** (Poarch Band of Creek Indians); **Rebecca Crooks-Stratton** (Sisseton-Wahpeton Sioux)

Not pictured: **Michael Colbert Smith** (Chickasaw Nation); **Camille Kalama** (Native Hawai`ian); **Jamie Azure** (Turtle Mountain Band of Chippewa)



# National Support Committee

The National Support Committee assists NARF with fundraising and public relations efforts. Some members are prominent in the fields of business, entertainment, and the arts. Others are known advocates for the rights of the underserved. All are committed to upholding the rights of Native Americans.

Randy Bardwell, Pechanga Band of Luiseño Mission Indians  
Deborah Bardwell  
Jaime Barrientoz, Grande Traverse Band of Ottawa and Chippewa Indians  
John Bevan  
Wallace Coffey, Comanche  
Ada Deer, Menominee  
Harvey A. Dennenberg  
Lucille A. Echohawk, Pawnee  
Jane Fonda  
Eric Ginsburg

Jeff Ginsburg  
Rodney Grant, Omaha  
Dr. Marion McCollom Hampton  
Chris E. McNeil, Jr., Tlingit-Nisga'a  
Billy Mills, Oglala Lakota  
Amado Peña, Jr., Yaqui/Chicano  
Wayne Ross  
Nancy Starling-Ross  
Mark Rudick  
Pam Rudick  
Michael G. Sawaya  
Ernie Stevens, Jr., Wisconsin Oneida

Andrew Teller, Isleta Pueblo  
Verna Teller, Isleta Pueblo  
Richard Trudell, Santee Sioux  
Rebecca Tsosie, Pascua 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

# Introduction

The Native American Rights Fund holds governments accountable. We fight to protect Native American rights, resources, and lifeways through litigation, legal advocacy, and expertise.

NARF's first Board of Directors developed five priorities that still lead us today. In this annual report, you will find NARF's recent work within each of these priority areas.

- **Preserve tribal existence**
- **Protect tribal natural resources**
- **Promote Native American human rights**
- **Hold governments accountable to Native Americans**
- **Develop Indian law and educate the public about Indian rights, laws, and issues**



## Preserve Tribal Existence

The US Constitution recognizes Indian tribes as independent governmental entities. Tribal governments possess the power to regulate the internal affairs of their members and activities within their reservations. In treaties, 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. Under the priority to *preserve tribal existence*, NARF supports tribes' rights to live according to traditions, enforce treaty rights, ensure independence on reservations, and protect their right to self-govern (sovereignty).

### TRIBAL SOVEREIGNTY AND JURISDICTION

#### *Tribal Sovereignty Protection Initiative*

NARF partners with the National Congress of American Indians (NCAI) on the Tribal Sovereignty Protection Initiative to monitor legislation, judicial appointments, and cases related to tribal interests.

##### *~ Tribal Supreme Court Project (<https://sct.narf.org/>)*

A major component of the Initiative, through the Tribal Supreme Court Project NARF and NCAI staff monitor cases at or headed to the US Supreme Court. The Project is based on the idea that a strong and coordinated approach can reduce, and even reverse, the erosion of tribal sovereignty by Justices who appear to lack an understanding of federal Indian law and are unfamiliar with the practical challenges facing tribal governments.

In a great win for tribes, on July 9, 2020, the Court issued its opinion in *McGirt v. Oklahoma* (18-9526) and ruled in favor of Jimmy McGirt, a citizen of the Seminole Nation. NARF and co-counsel filed an amicus curiae brief in this case on behalf of

the National Congress of American Indians. The issue in this case was whether Muscogee (Creek) Nation's reservation was disestablished, and the Court held that it was not. You can learn more about the case in our Summer 2020 Legal Review, available at <https://www.narf.org/news/legal-review/>.

On October 5, the Supreme Court began its October Term 2020. The Court has decided one Indian law case in this term, *Wilson v. Oklahoma* (19-8126). The petitioner is an Indian, convicted in Oklahoma state court, who asserted that the crime occurred in "Indian Country," and therefore the state court was without authority to convict him of the offense. The Supreme Court summarily granted the petition, vacated the lower court's decision, and remanded for further consideration in light of *McGirt v. Oklahoma*.

The Court granted review in *United States v. Cooley* (19-1414) in which the lower court held that seizure and search of a non-Indian and his vehicle by a tribal police officer violated the Indian Civil Rights Act and that evidence obtained was subject to the exclusionary rule.

At this writing, *Alaska Native Vill. Corp. Assoc. v. Confederated Tribes of the Chehalis Reservation* (20-544) and *Mnuchin v. Confederated Tribes of the Chehalis Reservation* (20-543) also were granted review. Both of these cases concern the definition of "Indian tribe" for purposes of the CARES Act and have been consolidated for oral argument.

##### *~ Judicial Selection Project*

Another important component of the Tribal Sovereignty Protection Initiative is the Judicial Selection Project. The Project's focus is research and education: to educate the federal

judiciary about tribal issues, to educate tribal leaders about the federal judiciary, and to reach out to elected officials and the public at large about the need for federal judges who understand the unique legal status of Indian tribes.

By late 2020, the Senate had confirmed 200 Article III judges nominated by President Trump. The rate of judicial confirmations in this administration is outpacing the previous three presidents. As it does in all administrations, the Judicial Selection Project has monitored these nominations and produced research memoranda on all three of President Trump's US Supreme Court nominees and, as warranted, on lower court-judicial nominees.

#### ***Big Horn Electric Cooperative v. Alden Big Man, et al.***

In 2012, Alden Big Man, an elderly member of the Apsaalooke (Crow) Tribe sued the Big Horn Electric Cooperative in the Crow Civil Court pursuant to an Apsaalooke tribal statute limiting heat and electricity service disconnections during winter months for homes where elderly and disabled individuals reside. In 2013, the tribal court dismissed the case, holding that it lacked jurisdiction over the case against a non-member utility company. Mr. Big Man appealed the ruling to the Apsaalooke Appeals Court. In April 2017, the Apsaalooke Appeals Court held that the trial court did have jurisdiction and remanded the case to the Crow Civil Court. Big Horn Electric then filed a complaint in federal district court, asking the court to find that tribal court remedies had been exhausted and that the tribal court lacked jurisdiction over the suit. NARF, representing the Apsaalooke Appeals Court judges and Crow Tribal Health Board members, filed motions to dismiss. Those motions were denied, and the court found that exhaustion had occurred. Motions for summary judgment on the issue of tribal jurisdiction were filed in November 2019. In June, the Magistrate heard oral argument. In July, the Magistrate concluded that the Crow Tribe has legislative jurisdiction over Big Horn on the tribal trust land where Big Man resides and the Crow Tribal Court has jurisdiction to hear Big Man's claims. We now wait for the court to determine whether to accept the Magistrate's recommendations.

#### ***Oneida v. Village of Hobart - Amicus Support***

The 7th Circuit Court of Appeals case, *Oneida v. Village of Hobart* arises from the Village of Hobart, Wisconsin, imposing fines on tribal officials for failure to obtain Village permits for a festival that took place on tribal property. The Tribe sued the Village in federal district court, seeking injunction and a declaration that the Village could not enforce its regulations against the tribe within its reservation. In response, the Village alleged that allotment disestablished or diminished the reservation. The federal district court held that the Oneida Reservation was diminished either by the vesting of fee title of allotments to Indians, or the subsequent conveyance of those allotments to non-Indians. This is a drastic departure from established law, which has held that ownership status of land parcels has no bearing on reservation boundaries. Moreover, the district court relied on a broad (and incorrect) understanding that Congress intended that General Allotment Act would diminish reservations—a conclusion at odds with a long line of US Supreme Court cases. NARF submitted an amicus brief on behalf of the National Congress of American Indians and the Indian Land Tenure Foundation. Oral argument was held April 2020. In July, the court ruled in favor of the Oneida Nation.

#### **FEDERAL RECOGNITION OF TRIBAL STATUS**

NARF represents Indian communities who have survived intact as identifiable Indian tribes but are not federally recognized. Tribal existence does not depend on federal recognition, but recognition is necessary for a government-to-government relationship.





# Protect Tribal Natural Resources

During colonization, tribes' lands diminished to a mere 2.3 percent of their original size. An adequate land base and control over natural resources are necessary for economic self-sufficiency and self-determination. They are vital to tribal existence. Thus, much of NARF's work is to *protect tribal natural resources*.

## INDIAN LANDS

### *Keystone XL Pipeline*

The TransCanada (TC Energy) Keystone XL Pipeline is a massive oil pipeline intended to link the oil producers in Canada with the refineries and export terminals on the Gulf Coast. It would cross, or comes very close to, the boundaries of many reservations and tribal land holdings, including the Oceti Sakowin (Great Sioux Nation) lands from before the Fort Laramie Treaty of 1868. Moreover, the proposed route crosses sacred Sioux land, cultural sites, and burials. However, no consultation occurred between the federal government and the tribes affected. For these and other reasons, President Obama rejected the permit required for the Canada-US boundary crossing in 2015.

In March 2018, the Trump administration reversed course and granted a Presidential permit. In response, NARF filed a complaint on behalf of the Rosebud Sioux Tribe and the Fort Belknap Indian Community in August 2018. The President issued a second permit to circumvent injunctions preventing construction. As a result, the Tribes amended their complaint to reflect new claims.

The government and TC Energy filed motions to dismiss and a hearing was held in September 2019. In December 2019, the court denied the government's and TC Energy's motions to dismiss. All of the Tribes' claims relating to the new permit were allowed to proceed, including the treaty claims, constitutional claims, trespass claims against TC Energy, and claims that TC Energy and the Keystone XL Pipeline are subject to tribal regulatory jurisdiction. The order allowing the case to continue was a major victory.

In January 2020, TC Energy filed a notice with the court that it would begin "pre-construction" activities in February. Given construction and the rise of the pandemic, the Tribes were forced to move for a preliminary injunction and temporary restraining order. The court did not rule on those motions before an April hearing; however, the court did issue an injunction in another case that prevented TC Energy from crossing any rivers. In October, the judge ruled against the Tribes on many claims finding that the permit only applied to the border crossing, but he requested supplemental briefing and noted that the tribes could file a new suit against the

Bureau of Land Management. On November 17, the Tribes, represented by NARF, filed a federal lawsuit against the United States Department of Interior and the Bureau of Land Management over their issuing of the KXL permit across federal lands. The lawsuit was filed because the United States failed to honor the treaties and take a hard look at the impact the pipeline will have on tribal communities. In January 2021, the incoming administration revoked the illegally issued presidential permit for the KXL pipeline.

### *Shoalwater Bay Indian Tribe*

NARF is assisting the Shoalwater Bay Indian Tribe with a litigation request to the United States. The Tribe occupies a small, coastal reservation southwest of Seattle, WA. A state highway crosses through the reservation, and its surface water drainage inundates a portion of the reservation. On behalf of the Tribe, NARF submitted a litigation request requesting that the United States, as the Tribe's trustee, sue the Washington Department of Transportation.

### *Hualapai Tribe Fee to Trust Applications*

NARF represents the Hualapai Indian Tribe of Arizona in preparing and submitting applications for the transfer into trust status of eight parcels of land owned in fee by the Tribe. Three of the parcels have been accepted into trust. Decisions on the other five parcels have been significantly delayed. In April 2017, the Acting Assistant Secretary of Indian Affairs withdrew authority from BIA Regional Directors to approve off-reservation, fee-to-trust applications and placed that authority with the Assistant Secretary of Indian Affairs. The remaining applications continue and are in varying stages of completion. Progress has been slowed by the COVID-19 pandemic.

### *Akiachak Native Community, et al. v. Department of Interior, et al.*

In 2006, the Akiachak Native Community, the Chilkoot Indian Association, the Chalkyitsik Village Council, and the Tuluksak Native Community IRA, represented by NARF, sought judicial review of 25 CFR Part 151. This federal regulation governs the procedures used by Indian tribes and individuals requesting the Secretary of the Interior to acquire title to land in trust on their behalf. At the time, the regulation barred putting Alaskan land in trust other than for the Metlakatla Indian Community.

In March 2013, the court granted Plaintiffs complete relief on all of their claims—a major victory for Alaska tribes. In December 2014, DOI published its final rule rescinding the "Alaska Exception."

## PROTECT TRIBAL NATURAL RESOURCES

DOI completed one Alaskan trust land acquisition in 2017. However, in 2018, the Trump Administration officially withdrew the Solicitor's opinion supporting land-into-trust for Alaska tribes and announced the Department would review whether to reinstate the "Alaska Exception." NARF represented clients at tribal consultations, making clear Alaska tribes will tolerate nothing more than full reinstatement of the Alaskan trust lands program. On January 19, 2021, the Department decided that lands cannot be taken in trust for Alaska tribes.

### WATER RIGHTS

Under federal law, Indian tribes are entitled to sufficient water for present and future needs. These water rights are superior to all water rights created after the tribes' priority dates, at least as early as the establishment of their reservations. In most cases, this gives tribes senior water rights in the water-short West. Unfortunately, many tribes have not used their reserved water rights and the rights are unquantified. The need is to define and quantify the amount of water to which each tribe is entitled.

#### *Agua Caliente Band of Cahuilla Indians*

NARF, with co-counsel, represents the Agua Caliente Band of Cahuilla Indians in a lawsuit filed in 2013 in the US District Court for the Central District of California. The Agua Caliente asked the court to declare their water rights senior in the Coachella Valley, quantify those rights, and prevent Coachella Valley Water District and Desert Water Agency from further impairing the quantity and quality of aquifer water. In March 2015, the court ruled largely in the Tribe's favor, holding that the Tribe has a reserved right to water and that groundwater is a water source available to fulfill that right. Upon appeal, the decision was upheld.

With "phase one" done, the parties addressed "phase two" legal issues. Phase two dealt with the method for quantifying the Tribe's water share, the right to water of a certain quality, and whether the Tribe owns the groundwater storage space under its reservation. In April 2019, the court dismissed the claims holding that, since the Tribe could not show that it presently had a shortage of water, it was not sufficiently injured to prove standing. This decision was made despite unrefuted evidence that the aquifer depth underlying the reservation had lowered substantially and the water had been degraded by the water districts' activities.

In July 2020, the Tribe filed an amended complaint, adding allegations relating to the Tribe's injuries and the Tribe's pumping of groundwater, and to more accurately frame the issue of the ownership of the pore space under the reserv-

ation. In the meantime, the parties entered into mediation and the case has been stayed until April 2021.

#### *Palouse River Basin Adjudication*

##### *- Nez Perce Tribe Water Rights*

NARF represents the Nez Perce Tribe in its water rights claims in the Palouse River Basin Adjudication. In October 2016, the Idaho Water Court issued a commencement order, and an initial hearing was held in January 2017. The Tribe is working with the United States to examine the nature and scope of the Tribe's water rights claims. In late 2019, the US and the Tribe filed claims for instream flows in 24 reaches of the Palouse River and its tributaries, for nearly 200 springs claims on private and federal lands, and for water for consumptive uses on two allotments in the Palouse watershed. The next step will be for the Idaho Department of Water Resources to prepare a Director's Report on all water claims filed in the Palouse Basin.

#### *Klamath Basin Water Rights*

Represented by NARF, the Klamath Tribes' water rights were recognized in 1983 in *United States v. Adair*, but the courts left quantification of the water rights to Oregon's Klamath Basin Adjudication (KBA). After finishing the KBA's 38-year administrative phase, the Tribes were able to enforce their water rights for the first time in 2013. The Klamath County Circuit Court is now reviewing the Oregon Water Resources Department's (OWRD's) Findings of Fact and Order of Determination (FFOD) issued in the KBA.

In 2017 and 2018, the Klamath County Circuit Court resolved jurisdictional and other legal issues as well as general procedural issues. Importantly, the court issued rulings limiting discovery and the introduction of new evidence, preventing a complete do-over of the administrative proceedings. However, the court ruled that a *de novo* standard of review would apply, in which the court will "look anew" at the determinations of OWRD in the FFOD and may give deference to OWRD's determinations.

Now the KBA is in Phase 3, which addresses the substantive exceptions filed to the individual water right claim determinations in the FFOD. Part 1 of Phase 3 addresses crosscutting legal issues applicable to multiple claims. Two of three claim groups were resolved in 2019. Opening motions for the third claim group (tribal claims) were filed in December 2019. Briefing and oral arguments occurred throughout 2020 and we await the judge's ruling.

KBA Phase 3 Part 2 began in December 2020. The Court will schedule motions to introduce non-record evidence in the Tribal Group C claims once it has issued its Phase 3 Part 1 rulings related to these claims.



#### *Tule River Tribe*

After almost 30 years of advocacy, the Tule River Indian Tribe, represented by NARF, successfully settled its water rights in November 2007. The settlement agreement secured a domestic, municipal, industrial, and commercial water supply for the Tribe. The Tribe now seeks federal legislation to ratify the agreement and authorize appropriations to develop the water rights through the creation of water infrastructure and reservoirs on the Tule River Reservation.

The Tribe's team assisted the federal team in developing an appraisal of several alternatives. The federal team promised to be done with the study by November 2015 so that the Tribe could proceed to negotiate an appropriate settlement to present to Congress. In December 2016 the federal team delivered its report to the Tribe. The Tribe and its team performed a detailed analysis and critique of the report and met with Interior Department officials in March 2018 to brief them and bring them up to speed on negotiation developments. In spring of 2019, the Interior Department committed to some funding, but not enough to construct a meaningfully sized water storage project on the reservation. Legislative efforts continued throughout 2020.

#### *Kickapoo Tribe in Kansas*

At times in recent decades, the water supply for the Kickapoo Reservation has violated the Safe Drinking Water Act of 1974. Consequently, the Kickapoo people fear they are unable to safely drink, bathe, or cook with tap water. There also is not enough water on the reservation to provide basic municipal services to the community—the Tribe is not able to provide local schools with reliable, safe running water, and the fire department cannot provide adequate protection. In June 2006, the Kickapoo Tribe in Kansas, represented by NARF, filed a federal court lawsuit to enforce express promises made to the Tribe to build a reservoir project, the most cost-effective way

to improve the water supply. Despite promises made to the Tribe, Nemaha Brown Watershed Joint Board #7, the Natural Resources Conservation Service of the US Department of Agriculture, and the State of Kansas continued to develop the region's water resources. The result was the near depletion of the Tribe's senior federal water rights. The federal government, the state, and the local watershed district all concede the existence of the Tribe's senior Indian reserved water rights; the real issue is the amount of water needed to satisfy the Tribe's rights and the source of that water.

In September 2016, the Tribe and the state executed a settlement agreement that includes a negotiated water right for the Tribe, as well as all of the details for the administration of the Tribe's right in the Delaware River watershed. The Tribe developed legislation in consultation with the Kansas congressional delegation to approve the negotiated water right. Over the years, several bills were introduced, but not enacted into law. Finally, late in 2020, the Kickapoo Tribe water project study was passed as part of the final omnibus appropriations act. The legislation kicks off a new study and re-evaluation of the Plum Creek Project that the Tribe has been pursuing for years.

#### *Pauma Band of Luiseno Indians*

The Pauma Band of Luiseno Indians is one of the five tribes party to the San Luis Rey Water Rights Settlement. The San Luis Rey tribes' water rights were initially addressed by a Congressionally-approved settlement act in 1988. However, for a wide variety of reasons, the settlement was unenforceable and did not address the needs of the tribes. In 2016, a bill amending the original settlement act was passed by Congress, and the San Luis Rey Water Rights Settlement is now in its implementation stage. NARF represents the Pauma Band in the implementation, which includes allocating water and funding as well as examining groundwater management strategies.

## PROTECT TRIBAL NATURAL RESOURCES



### HUNTING AND FISHING RIGHTS

Tribal rights to hunt and fish are grounded in tribal sovereignty and affirmed in many treaties and agreements. NARF has defended tribal hunting, fishing, and subsistence rights in a variety of cases, most recently focused in Alaska. There often are no roads or stores in rural Alaska, and so no other group of people in the United States continues to be as intimately connected to the land and water and as dependent upon its vast natural resources as Alaska's indigenous peoples.

#### *Alaska Department of Fish and Game v. Federal Subsistence Board*

In August, the State of Alaska filed a complaint in the Alaska federal district court challenging three decisions made by the Federal Subsistence Board (FSB) related to subsistence hunting in the state. (The FSB is the body responsible for setting all rules and regulations related to the taking of wild fish and game by qualified subsistence users within Alaska's federal lands.) Alaska alleged that the FSB acted outside of the authority granted to it by the Alaska National Interest Lands Conservation Act of 1980.

NARF filed a motion to intervene on behalf of the Organized Village of Kake to defend the FSB's authority to authorize

emergency hunts. In September, the court heard oral argument. In November, the Court issued its final order denying the State's motion to enjoin the Kake hunt. Specifically, the Court ruled that the FSB acted within its authority in accepting Kake's request for a hunt and setting the standards by which the hunt was carried out. The case will now go to the summary judgment phase, and the parties are set to confer on a briefing schedule in late January.

#### *Bering Sea Elders Group*

The Bering Sea Elders Group (BSEG) is an alliance of thirty-nine Yup'ik and Inupiaq villages that seeks to protect the sensitive ecosystem of the Bering Sea, as well as the subsistence lifestyle and the communities that depend on it. NARF has represented BSEG since 2010 and has designed a comprehensive plan to help their efforts to protect the area and become more engaged in its management.

In December 2016, NARF's work with BSEG resulted in President Barack Obama signing an historic Executive Order creating the Northern Bering Sea Climate Resilience Area. This was an incredible victory for our clients and the first of its kind for tribes anywhere in the United States. However, in April 2017, President Trump signed an executive order called "Implementing an America-First Offshore Energy Strategy." While the order was aimed at re-opening Arctic and Atlantic areas for offshore drilling, it also entirely revoked Executive Order 13754. BSEG responded immediately, determined to restore the important conservation, economic, and cultural provisions. BSEG Elders passed a resolution calling for the reinstatement of the Executive Order and its protections. We are proud to say that on his first day in office, President Biden signed an Executive Order that reinstated Executive Order 13754 and the Northern Bering Sea Climate Resilience Area. BSEG will now work on the implementation of the reinstated order.

#### *Pebble Mine*

Alaska's Bristol Bay region is home to the largest wild salmon runs in the world. It is also home to the Yup'ik, Dena'ina, and Alutiiq peoples who depend on sustainable salmon runs for their subsistence. In 2013, NARF helped create the United Tribes of Bristol Bay (UTBB), a consortium of tribes in the region formed to address mining proposals threatening salmon-rearing streams.

The proposed Pebble Mine would sit on the headwaters of the largest salmon-producing river in Bristol Bay. In February 2014, EPA gave notice that it would initiate a Clean Water Act 404(c) process for the proposed mine. Section 404(c) authorizes EPA to prohibit or restrict the discharge of material in waters when such disposal would have an adverse impact on resources, including fisheries, wildlife, municipal water supplies, or recreational areas.

In September 2014, PLP filed a complaint against EPA. The court granted PLP's request for a preliminary injunction to halt the 404(c) process. As the case continued, the judge issued a broad order quashing PLP's subpoenas, finding that they pushed the limits of federal rules. PLP withdrew its remaining subpoenas, but began serving narrower subpoenas, which also were quashed. In the last days of 2016, the parties requested a stay in order to negotiate settlement.

In May 2017, the parties reached a settlement of the litigation. Settlement terms included: (1) dismissing all Pebble lawsuits against the EPA; (2) EPA withdrawing the proposed Section 404(c) determination; (3) EPA agreeing to not finalize any Section 404(c) action for four years or until the US Army Corps of Engineers issued its final environmental impact statement. PLP filed its federal permit application in December 2017, beginning the NEPA review. UTBB continued to work to protect Bristol Bay throughout the federal and state permitting process surrounding the Pebble Mine.

In June 2019, Gov. Dunleavy briefly met with President Trump on Air Force One; subsequently, he told reporters that he was convinced that the president was "doing everything he can to work with us on our mining concerns." One day after the meeting, according to CNN, the EPA held an internal meeting and informed staff that they were reversing course and removing protections for the Bristol Bay. In July 2019, the Trump Administration announced it would formally withdraw the proposed 404(c) determination from the Bristol Bay watershed.

The action was undertaken with no public input, no tribal consultation, and no prior notice to Bristol Bay's tribes. In response to this illegal act, local interests formed the Bristol Bay Defense Alliance, consisting of UTBB, Bristol Bay Native Association, Bristol Bay Regional Seafood Development Association, Bristol Bay Reserve Association and Bristol Bay Economic Development Corporation. Throughout 2020, the Alliance took legal action on behalf of the local people who rely on the Bristol Bay fishery and all it sustains.

In August 2020, the Army Corps took the unprecedented step of publishing a letter requiring the PLP to further develop its compensatory mitigation plan. Many of the defects identified

in Pebble's proposed plan were those identified in comments submitted by NARF and the Tribes. The Army Corps ultimately denied Pebble's permit application for its deficient compensatory mitigation plan—marking the first permit denial for an Alaska hard rock mine in modern memory. Moving forward, the Tribes will work to secure permanent protections for the Bristol Bay watershed.

#### *Ch'u'itnu Traditional Cultural Landscape*

NARF represented the Native Village of Tyonek (NVT) in response to a permit proposal by PacRim to mine coal from the Beluga coal fields in the Cook Inlet. NVT focused on the National Historic Protection Act (NHPA) to identify historic properties eligible for listing and protections. In March 2017, PacRim Coal announced its decision to suspend pursuit of permitting efforts on the Chuitna Coal Project. Regardless of the closed permitting process, NVT nominated the entire Ch'u'itnu watershed for inclusion on the National Register of Historic Places as a Traditional Cultural Landscape (TCL). The designation would recognize the profound importance the Ch'u'itnu watershed has played in shaping and sustaining NVT's peoples' culture, traditions, identity, and subsistence.

In April 2018, the Alaska Historical Commission voted 6-2 that the Ch'u'itnu Historic District, Traditional Cultural Property was eligible for listing on the National Register. The State Historic Preservation Officer rejected the recommendation, but sent the nomination to the Keeper of the National Register for final determination. In June 2018, the Keeper requested additional documentation. A revised nomination was returned to the Keeper in June 2019. In August 2019, the Keeper requested more documentation. NARF will continue to represent NVT through the nomination process and defend the Ch'u'itnu when it is listed.

#### *Arctic National Wildlife Refuge*

The Arctic National Wildlife Refuge's Coastal Plain is home to the calving grounds of the Porcupine Caribou Herd—one of the largest wild herds in the world—and of great cultural importance to the Gwich'in Tribes of Alaska, who refer to the area as Iizhik Gwats'an Gwandai Goodlit (the sacred place where life begins). Since 1980, when the Coastal Plain was first considered for development, the Gwich'in Tribes have worked tirelessly to protect the Refuge and the caribou. NARF represents the Native Village of Venetie Tribal Government, Venetie Village Council, and Artic Village Council, three federally recognized Gwich'in tribes, and advises them on their rights and strategic options surrounding proposed development of the Coastal Plain.

In 2017, Congress enacted tax reform legislation that contained a provision opening the Arctic National Wildlife Refuge's Coastal Plain to oil and gas development. The

## PROTECT TRIBAL NATURAL RESOURCES

Bureau of Land Management (BLM) began the environmental review process to open the Coastal Plain to oil and gas leasing.

In December 2018, the BLM published its draft environmental impact statement (EIS). Despite months of government-to-government meetings, the draft EIS was based on pre-existing data and research from other regions in Alaska that brushed aside the effects on subsistence and cultural resources. The final EIS, released in September 2019, identified the most development-intensive alternative as the preferred option.

The BLM's published the record of decision in August 2020. The decision authorized oil development in the entirety of the Coastal Plain, with few restrictions. On September 9, 2020, NARF filed a lawsuit in federal court challenging the final EIS as well as the record of decision. Unfortunately, the Trump Administration moved forward to authorize leases and exploration activities in the Arctic Refuge prior to the January 20 transition to a Biden Administration.

### *Bering Sea-Interior Tribal Commission*

The Bering Sea-Interior Tribal Commission (Tribal Commission) is a tribal consortium of twenty-seven Tribes working in unity to protect traditional ways of life by advocating for land use planning processes and sustainable natural resource management decisions that meaningfully reflect member Tribes' values. Currently, the Tribal Commission is participating in the resource management planning processes for the Bering Sea-Western Interior and Central Yukon planning areas. These vast areas of land encompass Tribal Commission member-tribes' traditional lands and contain vital resources, which sustain member Tribes' traditional subsistence-based ways of life. As BLM's land use planning processes move forward, NARF is providing legal and technical support to the Tribal Commission and member Tribes.

In December 2020, the BLM released the Bering Sea-Western Interior Proposed Resource Management Plan and Final Environmental Impact Statement. The Tribal Commission submitted a protest letter, raising the BLM's exclusion of tribes from the planning process and failure to adopt adequate protections for cultural and subsistence resources. The BLM's proposed plan emphasized extractive resource development at the expense of resources and uses important to area Tribes. We await BLM's response.

### *Bay Mills Indian Community Challenge to Enbridge's Line 5 Pipeline Tunneling Project*

NARF and Earthjustice have teamed up with the Bay Mills Indian Community to fight a proposed oil pipeline tunnel that threatens the Community's treaty rights, tribal fisheries, and the environment.

In August 2020, a judge granted Bay Mills Indian Community the right to intervene in an ongoing process pending before the Michigan Public Service Commission (MPSC). The decision allows Bay Mills to be a party to the Enbridge's permit application to build a tunnel beneath the Straits of Mackinac, and relocate a new segment of its Line 5 pipeline. The contested case process was extended in December and is now anticipated to continue into the fall of 2021.

### *Wyoming v. Herrera*

Clayvin Herrera, a member of the Crow Tribe of Indians, is charged with taking elk out of season, and the state courts in Wyoming to date have barred him from asserting his treaty rights in defense. In 2019, the US Supreme Court affirmed the continued existence of the Crow Tribe's right to hunt on unoccupied lands of the United States and remanded the case to the Wyoming courts; NARF represented the Crow Tribe as amicus curiae in that case. Now, Wyoming argues that Mr. Herrera is precluded from asserting his treaty rights because the US Court of Appeals for the Tenth Circuit, in *Crow Tribe of Indians v. Repsis*, made alternative holdings that (1) Wyoming's prosecution of Crow Tribe treaty hunters is warranted by conservation necessity, and (2) the Bighorn National Forest, where Mr. Herrera took the elk at issue, is no longer "unoccupied" land. The trial court sided with Wyoming, and the case is now on appeal. NARF again represents the Crow Tribe as amicus curiae, this time working with the Tribal Justice Clinic at the University of Arizona James E. Rogers College of Law and local counsel Kelly Rudd of Baldwin, Crocker & Rudd, P.C. in Lander, Wyo.

### *Crow Tribe of Indians v. Repsis*

This matter is related to *Herrera*, above, in which the State of Wyoming argues that the 1990s judgment in *Crow Tribe of Indians v. Repsis*, precludes the Tribe or its members from making certain arguments today. As a result of the US Supreme Court's 2019 decision in *Herrera v. Wyoming*, the Tribe seeks relief from the *Repsis* judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. If the court grants relief, then the *Repsis* judgment would have no further force or effect, and the State could no longer argue preclusion in the remanded *Herrera* case.

## ENVIRONMENTAL PROTECTION

### *NCAI Climate Change Matters*

The effects of climate change on indigenous peoples throughout the world are acute and will only get worse. NARF represents the National Congress of American Indians (NCAI) at the international level through the United Nations Framework Convention on Climate Change (UNFCCC). The goal is ensuring indigenous rights are protected in any



international agreement governing greenhouse gas emissions reductions.

In December 2015, the Paris Agreement was adopted under the UNFCCC. The International Indigenous Peoples Forum on Climate Change (indigenous caucus), in which NARF participates, did not achieve all that it sought, but it achieved significant references that can be built on going forward. The Agreement states that, when taking climate change action, indigenous peoples' rights must be acknowledged. Also, traditional, indigenous knowledge shall help guide the climate change science. It also recognizes the need to strengthen that knowledge and establishes a platform for sharing information and best practices.

Since the Paris Agreement, the indigenous caucus has made efforts to make the traditional knowledge platform a reality. In December 2018, a Facilitative Working Group (FWG) for the platform was established. The working group met in June

2019 with seven country representatives and seven indigenous representatives. For the first time, indigenous representatives (chosen by indigenous peoples) are participating on an equal basis with states within a United Nations body. At the June meeting, the working group prepared a two-year work plan that was approved at Conference of the Parties 25 (COP 25) in December 2019.

Because of the COVID-19 pandemic, COP 26 was moved to November 2021. Meetings of the FWG occurred virtually in October and December 2020. Updates were given on implementation of the work plan. An educational webinar on traditional knowledge was held on October 2020.



# Promote Human Rights

To promote Native American human rights, NARF focuses on equal protection and freedom from discrimination in areas such as voting, education, incarceration, and religion. NARF also helps develop laws that provide unique protections for Native collective rights, traditions, culture, and property such as sacred places, peyote, eagle feathers, burial remains, and funerary objects.

## RELIGIOUS FREEDOM AND SACRED PLACES

### *Bears Ears*

For years, the Bears Ears Inter Tribal Coalition, a consortium of five sovereign Indian nations (Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute Tribe, and Pueblo of Zuni) worked to protect the Bears Ears region, America's most significant unprotected cultural landscape. Located in Utah, the Bears Ears region contains at least 100,000 archaeological sites, some dated back to 12,000 BCE, and remains critical to many tribes today for spiritual as well as hunting and gathering purposes. In response to tribal efforts, in December 2016, President Obama designated the Bears Ears National Monument and established the Bears Ears Commission "to provide guidance and recommendations on the development and implementation of management plans and on management of the monument." The Commission included one elected officer each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe, and Pueblo of Zuni.

In April 2017, President Trump directed the Department of the Interior to review the Bears Ears National Monument to determine if it was created without "public outreach and proper coordination." The suggestion that the monument's designation lacked outreach and coordination is disingenuous. The Bears Ears National Monument was created after years of advocacy and many public meetings in the Bears Ears region and in Washington, DC. The effort to protect Bears Ears was very long, very public, and very robust.

Despite an outpouring of public support for Bears Ears, in December 2017, President Trump issued an Executive Order revoking and replacing the national monument. Representing the Hopi, Zuni, and Ute Mountain Ute Tribes, NARF sued the Administration for violations of the Antiquities Act, the Separation of Powers, the Property Clause and the Administrative Procedures Act. In October 2019, the court denied the government's motion to dismiss, but instructed the plaintiffs to file amended complaints. The court will allow the government to file new motions to dismiss after that. The Tribes filed their First Amended Complaint on November 7, 2019 followed by a Motion for Summary Judgment in January 2020. Briefing was completed in 2020; however, the incoming Biden administration requested a stay pending a 60-day monuments review.

### *Solonex v. Jewell*

NARF represented the Blackfeet Tribe as amicus curiae in the federal district court case, *Solonex v. Jewell*. Solonex LLC challenged the authority of the United States to cancel its oil and gas lease in areas that would threaten the Tribe's sacred sites. In September 2018, the judge entered summary judgement in favor of Solonex, concluding that the lease cancellation was "arbitrary and capricious" because more than 30 years of indecision by the agency constituted an unreasonable delay. The judge also concluded that Department of the Interior did not give Solonex appropriate notice that it was canceling the lease, which violated a duty to act in good faith. The plaintiffs appealed the decision and NARF filed an amicus brief on behalf of the Tribe. In 2020, the DC Circuit rejected the lower court's conclusions and found that the time to cancel the lease was reasonable and Solonex did not build up any reliance interests during that time.

### *Standing Rock Sioux Tribe v. Army Corp of Engineers - Amicus Brief Strategy*

NARF and the National Congress of American Indians (NCAI) are assisting the Standing Rock Sioux Tribe and their attorneys to develop and coordinate an effective amicus brief strategy in their lawsuit against the US Army Corps of Engineers in relation to the Dakota Access Pipeline (DAPL). In December 2016, the Army Corps of Engineers issued a statement that it would not grant an easement to allow the Dakota Access Pipeline to cross under Lake Oahe. The Corps determined that further environmental review was warranted.

However, in January 2017, President Trump directed the Corps to take "any and all actions appropriate" to review and approve the easement, rescind or modify the December memo, and consider any prior determinations in the matter. In February, the Corps provided notice of its intention to grant an easement to Dakota Access, LLC, to construct a pipeline under Lake Oahe. Both Standing Rock Sioux Tribe and Cheyenne River Sioux Tribe filed amended complaints and motions for summary judgment. NARF, in conjunction with NCAI, coordinated an *amicus* brief strategy to support the Tribes.

In June 2017, the court issued a favorable ruling for the Tribes, finding that the Corps "did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline's effects are likely to be highly controversial." In April 2018, Dakota Access filed its oil spill response plan. Then, in August 2018, the Corps affirmed its decision to issue a permit for DAPL. The Corps concluded that the "... review on remand did not reveal 'significant new circumstance[s] or information relevant to environmental concerns.'"

## PROMOTE HUMAN RIGHTS

The Tribes filed motions for summary judgment in August 2019. NARF filed an amicus brief supporting the Tribes' motions for summary judgment on behalf of 14 tribes and eight tribal organizations. In March 2020, the court granted summary judgment in favor of the Tribes and remanded the matter to the Corps for preparation of an Environmental Impact Statement (EIS). Much as it had done when remanded to the Corps in June 2017, the Court ordered an additional briefing on whether the it should vacate the easement pending completion of the EIS. NARF filed an amicus brief supporting vacatur. In July 2020, the judge ordered that the pipeline be emptied of oil by August 5. Dakota Access filed a notice of appeal and the DC Circuit Court of Appeals issued an administrative stay of the shut-down until further notice. NARF submitted an amicus brief on the emergency motion to stay on behalf of NCAI, the Great Plains Tribal Chairmen's Association, and several other tribal organizations and tribes. NARF and NCAI continue to work with the Tribes' attorneys and coordinate amicus strategy as requested.

### *National Register of Historic Places Rulemaking*

In early 2019, the National Park Service (NPS) announced proposed rulemaking that would change the regulations that implement the National Register of Historic Places (NRHP). Among some minor housekeeping and administrative changes, the NPS proposed substantive changes that are targeted specifically at tribes and Native Hawaiian organizations. The changes are intended to prevent traditional cultural properties, cultural landscapes, and places of traditional religious and cultural significance from being listed on the NRHP and considered in the Section 106 review process. The proposed changes discredit the value of protecting these types of cultural resources and sideline tribes and Native Hawaiian organizations.

Initially, the NPS refused to consult with tribes (and Native Hawaiian organizations), but relented under significant pressure. The NPS held a single "consultation" meeting in Nevada in June 2019, and a single teleconference in July 2019. Along with over seventy tribes and Native organizations, NARF submitted extensive comments on the proposed rulemaking on behalf of the Native Village of Tyonek and attended the "consultations." Of the more than 3,000 comments the NPS received, only five were in support of the rulemaking.

In October 2020, the NPS submitted its final rule for review. NARF represents the Native Village of Tyonek, the Blue Lake Rancheria, and the National Association of Tribal Historic Preservation Officers (NATHPO) in the final rulemaking process. Meetings were scheduled for November and December 2020 and January 2021. Because the final rule was not published before inauguration, the Biden Administration

stopped the NPS from moving forward with the rulemaking, effectively killing the effort.

### *Native American Church of North America*

NARF has represented the Native American Church of North America (NACNA) and its member chapters for four decades. Most recently, NARF has worked to support access to and the use of peyote for NACNA. Importing from Mexico, where most naturally occurring peyote grows, is presently not legal. Artificial cultivation is difficult and extraordinarily expensive. The only domestic supply of peyote (in Texas) is becoming less sustainable due to growing Indian demand; exploitation and commercialization by non-Indian people; damage from land use practices including cattle ranching; and damage from incorrect harvesting practices and over-harvesting.

Therefore, the Peyote Research Project has focused on raising awareness in Texas of the need to protect the sacrament. NARF and NACNA representatives have held many meetings with landowners, peyoteros, and botanists to develop relationships. In 2017, NARF closed on the purchase of 605 acres of Texas land, made possible by a grant from the RiverStyx Foundation of California. A nonprofit organization was created to hold title to the land and put a peyote conservation project in place. Meetings on the land took place throughout 2018-2019 and most recently February 2020. Work coordinating with the local ranching community continues, and an adobe duplex and two bathhouses have been built on the land. Due to the pandemic, it is not possible to hold business or ceremonial activities on-site at this time. Work on the project continues remotely.

### *Graduation Eagle Feather and Regalia Project*

Every spring, NARF is contacted by Native American students from across the country who are being prohibited from wearing eagle feathers at graduation ceremonies. By and large, once schools come to understand the religious and cultural significance of eagle feathers, they make accommodations and exceptions for Native American students. Unfortunately, there are a handful of school districts that persist in restricting Native American religious liberty and speech. This insistence on uniformity puts Native American students in the position of having to choose between celebrating with their classmates or following their Native religious and cultural traditions. When appropriate and as resources permit, NARF may send a letter to the school explaining the religious significance of eagle feathers, and how both federal and state law protects their use. Additionally, we are exploring the viability of targeted legislative campaigns that could lead to a "fix" on a state-by-state basis.

On occasion, NARF pursues litigation on behalf of affected students. NARF is co-counseling with Rothstein Donatelli LLP



to bring suit against an Arizona school district for violating a Native student's religious freedom rights to wear an eagle feather at graduation in 2019. The case is *Waln v. Dysart School District*, et al. and pending in Arizona federal court.

## INDIAN EDUCATION

### *Tribal Education Departments National Assembly*

NARF founded the Tribal Education Departments National Assembly (TEDNA) more than fifteen years ago with funding from the US Department of Education to start a national membership organization for Tribal Education Departments (or Agencies). With NARF's assistance, TEDNA has become a leading Indian education organization that focuses on tribal governance over K-12 education provided by state, federal, and tribal schools. NARF continues to represent TEDNA on national legislative and administrative matters. Recently, NARF has reviewed tribal education codes to identify areas for increased tribal governance. NARF also provides training for TEDNA and its partners on various national, state, and tribal education legislation and other legal matters.

In October 2019, TEDNA was awarded a State-Tribal Education Partnership grant to assist five tribes in Virginia

establish education departments, develop education codes, and work with the state to improve education for tribal students. NARF will assist with this work.

In October 2020, TEDNA was awarded a grant from the US Department of Education to work with five tribes and two schools in Oklahoma and research the effectiveness of expanding choices of education services to support over 1,000 tribal secondary school students. TEDNA will subcontract with NARF for training and technical assistance on this project.

### *Rosebud Sioux Tribal Education Code Revision Project*

In 1987 NARF accepted the request of the Rosebud Sioux Tribe to develop a precedent-setting tribal education code to regulate all K-12 schools on its reservation. The Rosebud Sioux Tribe adopted its Education Code in 1991. In 2015, the Rosebud Sioux Tribe received a grant from the Department of the Interior to revise its 25-year-old Education Code. In October 2020, the Tribal Education Committee approved a final draft of the proposed revised Code. The formal approval and enactment of the proposed revised Code continues under the Tribe's process.

## PROMOTE HUMAN RIGHTS

### *Leech Lake Band of Ojibwe Education Code*

NARF represents the Leech Lake Band of Ojibwe in drafting a comprehensive education code. Development continues with community meetings upcoming.

### INDIAN CHILD WELFARE ACT DEFENSE

The Indian Child Welfare Act (ICWA) was passed by the US Congress in 1978 in response to the disproportionate numbers of American Indian and Alaska Native children being removed from their families by state agencies and state courts and placed in non-Native foster or adoptive homes or residential institutions. Congress found that many of these removals and placements were due to state officials' inability or unwillingness to understand tribal cultures and societies. The removals were extremely detrimental to the children, their families, and tribes.

In 2016, the Bureau of Indian Affairs (BIA) issued regulations and guidelines for the implementation of ICWA. The past several years have seen a dramatic increase in the number of legal challenges brought by opponents of ICWA, all with the goal of undermining ICWA and tribal sovereignty. The ICWA Defense Project is a partnership formed to protect the rights of children, families, and tribes in ICWA proceedings nationwide. The most prominent case right now is *Brackeen v. Bernardt* (formerly *Brackeen v. Zinke*).

In October 2018, Judge Reed O'Connor of the US District Court for the Northern District of Texas ruled that both ICWA and the 2016 ICWA regulations are unconstitutional. The arguments Judge O'Connor relied on to hold ICWA and the regulations unconstitutional are contrary to the Constitution, congressional intent, and decades of well-established federal Indian law. Tribe defendants asked the United States Court of Appeals for the Fifth Circuit to stay the decision, which it did, and initiated the appeal. NARF worked closely with partners to coordinate amicus briefs, including a tribal brief, which was signed by 325 tribes and 57 Native organizations. The Fifth Circuit held oral argument in March 2019. We are delighted to report that in August 2019, the Fifth Circuit overturned the district court's opinion and affirmed the constitutionality of ICWA. On October 1, the Individual Plaintiffs and the State Plaintiffs petitioned the Fifth Circuit to rehear the case en banc and, unfortunately, rehearing was granted. NARF coordinated the amicus briefing strategy for the rehearing. We had 486 tribes and 59 tribal organizations sign on to the amicus brief. The Fifth Circuit heard oral argument in January 2020. We are awaiting a decision though we are unsure how COVID-19 issues may delay the court's internal processes.



Finally, NARF has been heavily involved in recent efforts in Alaska to transfer more control over the state's child welfare system to tribes through a compacting process. The Alaska Tribal Child Welfare Compact was signed in October 2017. It allows tribes to enter into an agreement with the state to provide services and functions that currently are provided by the Alaska Office of Children's Services. For fiscal year 2021, there are five scopes of work available to tribal co-signers.

### VOTING AND CIVIL RIGHTS

#### *Native American Voting Rights Project* (<https://vote.narf.org/>)

The Voting Rights Project refers to all the voting rights work that NARF does. We used to have just one or two cases at a time and one project, but this work has expanded dramatically in the past few years. The goals and objectives of this work fall under this priority because we view voting and representation as a human right in any democracy.

The goal of the Voting Rights Project is Indian political power. When Indian people have enough power to determine their elected officials, or better yet to elect people from their own communities, their representatives will be truly answerable to their needs. When a congressional representative knows the tribe in her district is not big enough to un-elect her, she is unlikely to be responsive to their requests for legislation or appropriations. This is the lack of political power, and it is the

situation of the vast majority of tribes. Political power means the ability to effect positive change for the benefit of your members. Political power can be gained through media, relationships and—above all—voting. To reach its ultimate goal, this Project focuses on removing barriers to voting from the large to the small.

Our voting rights work consists of four general types, although they can overlap: litigation, the coalition, projects, and census.

#### *~Litigation*

In 2020, there were five active voting cases:

1. *Toyukak v. Treadwell* - This is an older case we won regarding the translation of ballots and voting materials into Alaska Native languages. It is still under court supervision and we will be seeking to have that order extended this fall because the State of Alaska never fully complied with the order.
2. *Brakebill and Spirit Lake v. Jaeger* - These are two companion cases challenging the North Dakota voter ID law. They were settled to the Tribes' benefit in 2020.
3. *Rosebud Sioux Tribe v. Barnett* - This case challenges South Dakota's failure to implement the National Voter Registration Act (the "motor-voter bill") and offer registration to those who use state services.
4. *Western Native Voice v. Stapleton* - This is a case challenging a state law that prevents ballot collection, which is when someone mails another person's ballot for them. This law was meant to stop nonprofits who collected ballots in Montana and increased voter turnout. We won this case in September 2020, and ballot collection is now allowed in Montana.
5. *Arctic Village v. Meyer* - This case was filed to enjoin Alaska's requirement for a witness signature on a ballot. Alaska is one of only eleven states to have this antiquated requirement but 25% of Alaska's residents, including many elders in Native villages, live alone and did not want to risk their health and lives just to secure a witness signature on their absentee ballot. We won this case at the Alaska Supreme Court and the witness signature requirement is now enjoined.

The biggest issue during the 2020 election was that a number of states and jurisdictions considered imposing mandatory mail-in voting. This will drive down voter turnout in Indian communities for the reasons described at [www.narf.org/vote-by-mail/](https://www.narf.org/vote-by-mail/).

#### *~Coalition*

In 2015, NARF created the Native American Voting Rights Coalition to organize everyone working on voting in Indian Country so we could share information, resources and strate-

gize on a nationwide basis. Members of the Coalition, led by NARF, have completed two major, original reports. The first is the largest voter survey ever conducted in Indian Country (almost 5,000 voters in five states) to help ascertain barriers to political participation. That report was published in 2018. We have also completed a series of nine field hearings across Indian Country; a report on the hearings was published in 2020 and is available at <https://vote.narf.org>.

#### *~Projects*

In 2020, NARF engaged in three voting-related projects: (1) securing polling places for the 2020 election; (2) address reform for Native voters so that they can register and receive ballots in the mail; and (3) a first of its kind, redistricting project to undo damage to Native American representation across the country.

#### *~Census*

NARF also has organized a distinct coalition that is specific to census issues. The people that work on these issues tend to be specialized and more locally focused than the nationwide voting coalition. The goal of this component is to educate Native communities about the importance of participating in the census so that their voices can be heard in future elections and ballot issues.

#### *Smith v. State*

For decades, the Alaska Court System has excluded the residents of over 150 rural villages from being called for jury service. The courts claim that it's too expensive to include rural residents; however, the exclusion of rural residents disenfranchises communities with lower incomes and that are predominately Alaska Native. Not including those communities in the jury pool results in thirty percent of Alaska Natives being excluded from participating in the justice system. It affects perceptions of the justice system—when excluded from jury service, then one only encounters the courts as a victim, witness, or defendant. And, it results in unrepresentative juries and likely disproportionate sentences.

In February 2017, NARF filed an amicus brief before the Alaska Court of Appeals in support of Appellant Smith's arguments that costs savings alone are not a sufficient government interest, under an equal protection and due process analysis, to exclude thirty percent of the Alaska Native community from serving on juries. In March 2019, the court held that it was an error to refuse Smith an evidentiary hearing on the issue of whether the transportation and housing of prospective jurors from two Native villages would pose an unreasonable expense. The case was sent back to the Superior Court for specific findings and is now back before the Court of Appeals.



## INTERNATIONAL RECOGNITION OF INDIGENOUS PEOPLES

### *United Nations Declaration on the Rights of Indigenous Peoples*

Since 1999, NARF has represented the National Congress of American Indians (NCAI) in the international arena to protect indigenous rights. In September 2007, the United Nations General Assembly overwhelmingly adopted the Declaration on the Rights of Indigenous Peoples (Declaration). The Declaration recognizes that indigenous peoples have important collective human rights in a multitude of areas, including self-determination, spirituality, cultural and linguistic heritage, and lands, territories, and natural resources. It sets minimum standards for the treatment of indigenous peoples and can serve as the basis for the development of customary international law.

NARF's most recent actions on behalf of the NCAI have focused on the participation of indigenous institutions at the United Nations (UN). Until now, indigenous peoples have had to appear in most UN bodies as non-governmental organizations, which is precisely what they are not. Indigenous

peoples' representatives from around the world, including one from NCAI, met in November 2016 to discuss areas of consensus. Informal consultations with member states began in December 2016 and continued through July 2017. This series of consultations concluded without any real movement on the issue, but the UN General Assembly committed, in September 2017, to continue to consider the issue for the next five sessions.

In 2018, the Human Rights Council began to establish an appropriate status for indigenous peoples representatives and institutions to participate. Discussions continued through 2019 and was taken up at a meeting held in Ecuador in January 2020. It was intended to have meetings on this issue in April 2020, but that meeting was canceled in light of the global pandemic.

### *UN Declaration on the Rights of Indigenous Peoples in Domestic Law Project* (<https://un-declaration.narf.org/>)

NARF and the University of Colorado Law School (CU Law) are engaged in a project to guide the implementation of the United Nations Declaration on the Rights of Indigenous

Peoples (Declaration) in the United States. Guided by traditional values, contemporary challenges in Indian Country, and the needs of future generations, the goal of the project is to realize the promises of the Declaration in the US.

The project held a conference in March 2019 to share experiences implementing the provisions of the Declaration. The event generated substantial input and valuable discussion. A Project website was launched in May 2020. In mid-2020, working with UCLA's Native Nations Law and Policy Center's Tribal Legal Development Clinic, we also began developing a UN Declaration Implementation Toolkit. We are planning to finalize the toolkit and launch a series of related webinars in early 2021.

#### *Organization of American States Draft Declaration on the Rights of Indigenous Peoples*

The Organization of American States (OAS) has been working on an American Declaration on the Rights of Indigenous Peoples for over twenty-five years. NARF has been representing NCAI on this matter. The General Assembly of the OAS approved the American Declaration on the Rights of Indigenous Peoples in June 2016. The American Declaration goes beyond the United Nations Declaration on the Rights of Indigenous Peoples in several respects including addressing treaties, the rights of children, and the rights of peoples in voluntary isolation. The United States commented it had been a persistent objector to the text and could not be bound by it. In 2019, NARF joined a coalition of indigenous representatives calling for the OAS to fully carry out its plan to implement the American Declaration. After in-person meetings were cancelled, a virtual dialogue was held in October 2020.

#### *World Intellectual Property Organization*

NARF represents NCAI in the ongoing negotiations for an international instrument to protect intellectual property, including Traditional Knowledge, Genetic Resources and Associated Traditional Knowledge (GRAATK), and Traditional Cultural Expressions (TCE). The United States has been participating in these negotiations at the World Intellectual Property Organization (WIPO) since 2000. Since 2009, the negotiations have centered on the draft text of the three potential instruments concerning TK, GRAATK, and TCE.

In May 2017, NARF and the University of Colorado Law School (CU Law) hosted a drafting session on the TCE instrument. Some of that text was introduced into the WIPO draft. In October 2017, the new WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) mandate and work plan were approved by the WIPO General Assembly.

Building on that experience, NARF and CU Law hosted another drafting session in May 2018 focusing on the GRAATK instrument. In June 2018, NARF spoke on the IGC Indigenous Panel on "Practical Measures Relating to Intellectual Property and Genetic Resources: Databases and Contracts – Indigenous Peoples' and Local Communities' Perspectives." A NARF article summarizing the 2018 WIPO IGC negotiations was published in The Indigenous World 2019 ([https://www.iwgia.org/images/documents/indigenous-world/IndigenousWorld2019\\_UK.pdf](https://www.iwgia.org/images/documents/indigenous-world/IndigenousWorld2019_UK.pdf)).

IGC 40 took place in June 2019. The text focus was the TK and TCE texts, and the session included negotiations on the work program for the 2020/2021 biennium. The Indigenous Caucus obtained recommendations from the Committee to the WIPO General Assembly to update a 2016 technical review and convene an Indigenous expert workshop. Progress also was made funding indigenous participation. The WIPO General Assembly approved the proposed 2020-2021 mandate and work program during its annual meeting in fall 2019. NARF published an article about the 2019 WIPO negotiations in The Indigenous World 2020 ([http://iwgia.org/images/yearbook/2020/IWGIA\\_The\\_Indigenous\\_World\\_2020.pdf](http://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf)).

In February 2020, at the NCAI Winter Session, federal agencies participating in the WIPO negotiations, attended a listening session that NARF organized. Also in 2020, virtual meetings of past participants in the Indigenous Caucus were held throughout 2020, to discuss interim activities that could be pursued while waiting for negotiation sessions to resume. The group is preparing Genetic Resources text to submit to the IGC Chair. More recently, the WIPO Secretariat invited NARF to speak at a virtual seminar in January 2021.

The WIPO Traditional Knowledge Division and the US Patent and Trademark Office agreed to work with NARF and CU Law School on developing two short webinars for US tribes on intellectual property issues US. The webinars occurred September 2020 and are available on the NARF website.



# Hold Governments Accountable

Within the unique trust relationship between the United States and Native nations is the inherent duty for all levels of government to recognize and enforce the laws and regulations applicable to Native peoples. NARF is committed to *hold governments accountable* to Native Americans.

## TRUST FUND MATTERS

### *Pembina Chippewa v. United States*

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. Starting in August 2007, the parties engaged in alternative dispute resolution proceedings in the Court of Federal Claims. In July 2015, the parties reached agreement on a monetary amount for a potential settlement of the Plaintiffs' claims in this case. In March 2018, the parties reached agreement on the non-monetary components of a potential settlement. In December 2020, the parties began the process of seeking court approval of the settlement.

### *Intertribal Council of Arizona v. United States*

In April 2015, NARF filed on behalf of the Intertribal Council of Arizona (ITCA) a breach of trust case against the United States seeking damages for mismanagement of the Arizona Intertribal Trust Fund (AITF). The AITF was established by Congress in 1988 to compensate Arizona tribes for the closure of the Phoenix Indian School. The school's closure allowed the Department of the Interior to exchange the school's land for privately owned lands of the Barron Collier Company in Florida. The Phoenix lands were more valuable than the Florida lands, and Congress approved the land exchange only if the difference in value of the properties went to the AITF

and a trust fund for the Navajo Nation. Collier partially paid the property value, but then gave notice that they would no longer make payments. The lawsuit seeks to hold the United States liable for the remaining payments into the AITF. After failed negotiations, ITCA filed an amended complaint in April 2018, which the United States moved to dismiss. The court granted virtually the entire motion, dismissing all but a portion of one of ITCA's claims. In early-2019, ITCA appealed to the US Court of Appeals for the Federal Circuit. In February 2020, the Court of Appeals heard oral argument. In April 2020, they issued a decision. It stated that two ITCA claims were properly dismissed, but a third claim, that the United States failed to hold sufficient security for the trust fund payments, should not have been dismissed and should go forward.

### *Repeal of the Klamath Tribe Distribution of Judgment Act*

The Klamath Tribe retained NARF to seek repeal of the Distribution of Judgment Fund Act, which was adopted as part of the legislation that terminated the Tribes' government-to-government relationship in 1954. The relationship was restored in 1986, but the remnant legislation was not repealed. Senators Merkley and Wyden introduced S.46 to repeal the act. S.46 was adopted by the Senate and forwarded to the House. The House Subcommittee on Indigenous Peoples of the United States held a hearing; NARF provided testimony in support of adoption and responded to follow-up questions. S.46 now goes to the full Interior Committee for mark-up; then to the full House for consideration.



# Develop Indian Law



NARF is firmly committed to sharing its legal expertise in support of Indian rights. NARF maintains several projects to *develop Indian law and educate the public about Indian rights, laws, and issues*. NARF staff also participates in numerous conferences and events to share their knowledge and expertise in Indian law.

## Indigenous Peacemaking Initiative (<https://peacemaking.narf.org/>)

Indigenous peacemaking is a community-directed conflict resolution process that addresses the concerns of all interested parties. The peacemaking process uses traditional rituals such as the group circle and Clan structures to involve the parties to a conflict, their supporters, 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 to prevent future occurrences and conflicts. The mission of NARF's Indigenous Peacemaking Initiative (IPI) is to promote and support Native peoples in restoring sustainable traditional dispute resolution practices. Our priorities, based on surveys of tribal justice system professionals, are: (1) collecting and making available online materials from tribal peacemaking efforts and peacemaking in general; (2) providing technical assistance to tribes that request it; (3) providing trainings in tribal peacemaking; and (4) providing advocacy supporting tribal peacemaking. The project is guided by an advisory committee of traditional peacemaking experts and practitioners.

The IPI team continues to be very busy. In February, the team provided training to University of Denver Sturm College of Law staff and students. Trainings and technical assistance for tribes are a primary focal point for the project, but several in-person trainings and meetings were cancelled due to the pandemic. However, our efforts continued online. In March, IPI participated in a virtual gathering advancing restorative justice in communities of color. In April, we co-sponsored the 10th annual Global Cyberconference on Dispute Resolution. In July, IPI presented at "Building Better Child Welfare Courts

Together" for state and tribal court staff and child welfare workers from New Mexico. In August, we partnered with peacemakers around the country on "Peacemaking Colloquium: Shift Out of the Box and into the Circle." In September, IPI conducted an introduction to peacemaking for the Oglala Lakota Children's Justice Center. In October-November, we provided technical assistance to three tribal peacemaking programs as they sought to expand their work. And in December, IPI staff conducted a training for newly-elected tribal officials at the Pueblo of Isleta

## Native American Journalists Association Media Guides

The Native American Journalists Association (NAJA) produces media guides—typically, a one-page information sheet—with the goal of improving the quality of news coverage of complex Native American issues. Beginning in 2020, NAJA and NARF formed a partnership for media guides addressing legal issues. NAJA identifies the subject for each guide and produces an initial draft; NARF provides legal review, to ensure any legal claims or representations are accurate. The first NAJA-NARF guide was completed in July 2020, after the US Supreme decided *McGirt v. Oklahoma*. The guide was cited by several news outlets in their coverage of the case.

## The National Indian Law Library (<https://narf.org/nill/>)

The National Indian Law Library (NILL) is the only publicly available law library in the United States devoted to Indian law. In addition to the service that it provides to NARF's attorneys, the library is an invaluable resource supporting Indian Law and educating the public on Indian Law issues. The library's website recorded 268,000 users and 347,000 sessions in 2020. The website averaged approximately 22,000 users per month, with a high of 28,000 in July 2020. Additionally, each week, NILL provides free updates through the Indian Law Bulletins. More than 9,000 subscribers receive the email bulletins. Throughout 2020, NILL has worked with the University of Wisconsin, the Open Law Library, the Stockbridge Munsee Community, and the Pueblo of San Ildefonso to develop a new platform for publishing tribal laws.

# FY 2020 Financial Report

Based on our audited financial statements for the fiscal year ending September 30, 2020, NARF reports total revenue and net assets of \$16,071,348 and \$49,250,906, respectively. Due to presentation requirements of the audited financial statements in terms of recognizing the timing of certain revenues and expenses, they do not reflect the fact that, based on NARF's internal reporting, revenue exceeded expenses and other cash outlays resulting in an increase of \$1,917,584 to NARF's reserve fund.

When compared to fiscal year 2019: The decrease in public contributions is mostly due to receiving almost \$1.2 million more in bequests in fiscal year 2019 (this area can vary widely

from one year to the next). The decrease in tribal contributions is mostly due to a \$1 million donation from a tribe in fiscal year 2019 (although this contribution covers a two-year period, the total amount was required to be recognized in that year). The \$10,000 for federal awards relates to the SBA's Economic Injury Disaster payment but prior to fiscal year 2020 it has been the Bureau of Justice Assistance contracts that ended in fiscal year 2019. We have been very fortunate to obtain new foundation funding, mostly restricted to our important projects and cases.

## SUPPORT AND REVENUE COMPARISON

	2020		2019	
	dollars	percent	dollars	percent
<b>Public Contributions</b>	\$ 4,581,770	28.5%	\$ 5,182,877	39.7%
<b>Tribal Contributions</b>	1,340,800	8.3%	2,117,300	16.2%
<b>Federal Awards</b>	10,000	0.1%	660,317	5.1%
<b>Foundation Grants</b>	6,968,463	43.4%	2,712,004	20.8%
<b>Legal Fees</b>	583,904	3.6%	479,327	3.7%
<b>Return on Investments</b>	2,552,705	15.9%	1,858,413	14.2%
<b>Other</b>	33,706	0.2%	33,765	0.3%
<b>TOTALS</b>	<b>\$16,071,348</b>	<b>100.0%</b>	<b>\$13,044,003</b>	<b>100.0%</b>

## EXPENSE COMPARISON

	2020		2019	
	dollars	percent	dollars	percent
<b>Litigation and Client Services</b>	\$ 7,359,178	65.4%	\$ 8,311,609	66.5%
<b>National Indian Law Library</b>	206,046	1.8%	299,671	2.4%
<b>Total Program Services</b>	<b>7,565,224</b>	<b>67.3%</b>	<b>8,611,280</b>	<b>68.9%</b>
<b>Management and General</b>	1,033,813	9.2%	1,072,494	8.6%
<b>Fund Raising</b>	2,647,657	23.5%	2,812,050	22.5%
<b>Total Support Services</b>	<b>3,681,470</b>	<b>32.7%</b>	<b>3,884,544</b>	<b>31.1%</b>
<b>TOTALS</b>	<b>\$11,246,694</b>	<b>100.0%</b>	<b>\$12,495,824</b>	<b>100.0%</b>

Note: This summary of financial information has been extracted from NARF's audited financial statements which received an unmodified 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 2020

NARF's success relies on the generosity of our donors throughout the nation. We invite you to learn more about the benefits associated with each program listed below, please contact our Development Department at 303-447-8760.

**We gratefully acknowledge these donors for fiscal year 2020  
(October 1, 2019 through September 30, 2020).**

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**Peta Uha**—*Peta Uha in the Lakota (Sioux) language means firekeeper, an individual who makes a solemn commitment to ensure that the sacred flame—source of light, heat, and energy for the people—will be kept burning. Peta Uha is a membership program for donors making substantial annual commitments to NARF. Like the firekeepers of old, members of the Peta Uha Council demonstrate constancy and vigilance to ensure the protection of justice for Native Americans.*

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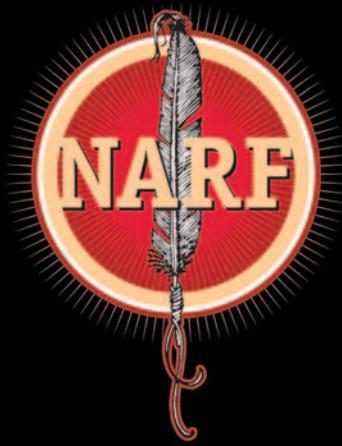
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