

# NATIVE AMERICAN RIGHTS FUND

## ANNUAL REPORT 2012

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*“Our determination to survive as a distinct Indigenous peoples comes from the will of our ancestors. They suffered unspeakable crimes to their spirits and bodies, and we still struggle to beat back this legacy of genocide. To outsiders, it might appear as if the Indian wars are over. We know that is not true. Our battle today is with historical oppression and generational trauma. Seeds of doubt and shame planted hundreds of years ago continue to take root in the darkness of each new generation, winding its way through our communities... Throughout Indian country, we are standing up against the crushing effects of trauma, addiction, abuse, suicide and violence against women, men, and children. Women are gathering to openly discuss the wounding - and wellness - of our people. These important connections are happening on our lands and reservations, under arbors, by rivers, in sweat lodges, longhouses, tipis, hogans, cook-houses, conference rooms and rehab centers... We will keep gathering and keep carrying these ways forward. Most important, we cannot give up. Our grandmothers would have none of that.”*

— Beverly Cook, Wolf Clan, Akwesasne

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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, D.C.

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

DETERMINATION



# Introduction

The Native American Rights Fund (NARF) is the national Indian legal defense fund whose primary work centers on the preservation and protection of Indian rights and resources. NARF began its work in 1970 with a planning grant from the Ford Foundation and through the years has grown into a reputable and well-respected advocate of Indian interests.

Since its beginnings, NARF has worked in conjunction with many people to seek judicial and negotiated solutions to long-standing Indian grievances, uncertainties and problems. NARF's partners have included tribal leaders, tribal attorneys, government attorneys and legal services attorneys.

Indigenous communities now find themselves at ground zero in a fight that may well determine the survival of their way of life and as sovereign nations. A fight where it is imperative that they be given a voice and a seat at the table.

Climate change is widely recognized as the number one threat to the well-being of humanity. Indigenous peoples, who historically have left a negligible carbon footprint, are suffering disproportionately from the effects of climate change. They have few resources available to mitigate the effects of climate change and to adapt to them. Because of the threat that climate change poses to indigenous peoples, the Native American Rights Fund is committed to getting involved in the fight against it.

Indigenous cultures are woven from the many intricate strands of traditional stories that extend back to the beginning of time. Indigenous knowledge is grounded in oral traditions which recount the stories of their peoples throughout innumerable and multifaceted life experiences. These stories are constitutive of and structure the existence of indigenous nations and peoples. They tell of how life came to be and how indigenous peoples are to conduct themselves as they interact with the physical and social world. These teachings

show how people are to interact on the basis of spiritual and natural laws, with profound respect for the energetic basis and biological fabric of life. The stories of these respective indigenous nations and peoples contain vitally important knowledge and wisdom very much needed by the planet in this era of ecological deterioration, breakdown and decline.

As people of European ancestry have gradually awakened to the profound nature of indigenous knowledge, accumulated over many millennia, only recently has the realization dawned on some of them that the scientific knowledge of indigenous cultures holds information of tremendous importance for the planet. Mother Earth is definitely in crisis and indigenous knowledge of ecosystems points the way to the paradigm shift and change in lifestyle that is needed at this time – a paradigm shift of healing and revitalization for all living things. In this way, the indigenous communities can become the natural guides to restoring balance and harmony in the world.

Indigenous peoples have been expert observers noting climate and associated environmental changes for millennia. The northern tribes of Canada and Alaska, for example, have long noted the unprecedented changes in animal, bird and insect migrations. We say unprecedented because oral history in indigenous cultures has tremendous integrity; the survival of subsequent generations depends on the integrity of these "stories". The changes that these tribes are now seeing are not found in their oral histories.

The strength of the indigenous perspective builds on thousands of years of accumulated observation of the environment. The oral histories of indigenous cultures are a tremendous resource because the histories preserve information that reaches into data-sparse time periods unavailable to many modern science techniques.

Indigenous cultures, with their close ties to landscapes and ecological systems, are first-

observers of climate change and bring first-hand experience of the changes that accompany a changing climate. The changes in climate often represent life or death choices for subsistence economies.

Because the knowledge and wisdom of indigenous cultures is too often not understood by governments, indigenous peoples tend to be left out of intergovernmental discussions and processes. The inclusion of the indigenous voice significantly strengthened the IPCC Working Group II report, the US Climate Change Assessment, and the Arctic Climate Change Assessment reports. We feel that it is vitally important for indigenous people to be invited and supported to participate throughout the process. One of the unanticipated benefits may be that an indigenous perspective may help all those involved translate the science back into human terms.

In the meantime, the urgency of the issues requires that we continue to build bridges between indigenous and scientific communities, federal and state governments, and environmental organizations so that indigenous cultures can build their own research programs that build on the strengths of a rich and varied set of voices.

#### **NARF's Funding**

NARF's existence would not be possible without the efforts of the thousands of individuals who have offered their knowledge, courage and vision to help guide NARF on its quest. Of equal importance, NARF's financial contributors have graciously provided the resources to give our efforts life. Contributors such as the Ford Foundation have been with NARF since its inception. The Open Society Institute and the Bay and Paul Foundations have made long term funding commitments. Also, the positive effects of NARF's work are reflected in the financial contributions by a growing number of tribal governments like the Yocha Dehe Wintun Nation, the Seminole Tribe of Florida, the Shakopee Mdewakanton Sioux Community, the San Manuel Band of

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*"If you are not at the table,  
you are on the menu."*

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Mission Indians, the Muckleshoot Tribe, the Sycuan Band of Kumeyaay, the Confederated Tribes of Siletz Indians, the Tulalip Tribes, the Chickasaw Nation, and the Poarch Band of Creek Indians. United, these financial, moral, and intellectual gifts provide the framework for NARF to fulfill its goal of securing the right to self-determination to which all Native American peoples are entitled. Finally, NARF's legal work was greatly enhanced by the generous pro bono contributions by the law firms of DLA Piper and Patton Boggs LLP. Their many hours of work made it possible for NARF to present the best positions possible and to move forward in insuring NARF's success.

#### **NARF's Priorities**

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

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

IT  
IS  
ALL  
CONNECTED

# Executive Director's Report

In 2012, the Native American Rights Fund continued to provide legal advice and representation to Indian tribes, organizations and individuals on important Indian legal issues across the country for the 42nd year. Once again this legal assistance resulted in several nationally significant victories and developments for Native American people.

In *Nez Perce v. Salazar*, NARF was able to reach settlement agreements for thirty tribes with the federal government totaling nearly \$400 million resolving their claims for full and complete accountings of their tribal funds held in trust for them by the federal government. The case was filed in 2009 on behalf of 41 tribes and settlement negotiations began in 2010. Negotiations continue for the other eleven tribes who also hope to reach settlements soon. A similar case on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana that was filed in 2002 was also settled in 2012.

An important milestone in the Klamath Tribes' effort to secure their treaty-reserved water rights in Oregon was reached in 2012 with a state administrative law judge ruling quantifying the water rights of the Tribes and the United States as trustee for the Tribes in the full amount they claimed in two water sources. The rulings confirm that the tribal water rights are the most senior in the Klamath Basin and add to six earlier victories achieved by NARF for the Tribes in 2011. These proposed orders now move forward for consideration by the Oregon Water Resources Department's Adjudicator.

After over twenty years of work, NARF secured the first direct federal funding - \$2 million in the Department of Education 2012 appropriation - for tribal education departments on behalf of the Tribal Education Departments National Assembly (TEDNA). The funds were distributed through a competitive grant process under a new State Tribal Education Partnership program. Four tribes

who have been long time members of TEDNA were awarded grants under the program and more funds will be sought in 2013.

A Boarding School Healing Symposium was convened in 2011 by NARF working with several other groups. The Symposium brought together individuals from across the United States and Canada that have been working on various aspects of the issues to discuss the priorities and strategies to achieve both national recognition of, and apology for, the wrongs visited on Indian individuals and tribes and to obtain reparations to provide the framework for healing of these historic and enduring wrongs. The National Boarding School Healing Coalition was formed by the Symposium participants to continue this work and NARF completed the non-profit incorporation of the Coalition in 2012.

NARF successfully negotiated what we believe is the first co-management agreement in federal waters with the trawl industry on behalf of the Bering Sea Elders (BSE) Group, an alliance of thirty-nine Yup'ik and Inupiat villages in Alaska that seeks to protect the sensitive ecosystem of the Bering Sea and the subsistence lifestyle that the villages have depended upon for centuries. BSE and the trawl industry will now study the effects on the sea floor habitat, the various subsistence uses of the area and the health of the fishery to determine whether changes need to be made to the fishery.

NARF represents the Bristol Bay Native Corporation in their work on voter redistricting in Alaska. Their goal is to ensure compliance with the provisions of the Voting Rights Act requiring that the Native vote be protected. At the end of 2012, the Alaska Supreme Court held that redistricting plan used in the for the 2012 election cycle was unconstitutional. The Court ordered the Alaska Redistricting Board to devise a new reapportionment plan based on the Alaska Constitution and deviating only where necessary to satisfy the Voting Rights Act.

Since time immemorial, the eagle and other raptor birds have been an integral part and intrinsic to the traditions, culture and religion of many tribes. In recent years, the U.S. Fish and Wildlife Service and other federal law enforcement agencies have been conducting raids, confiscations and interrogations on many Indian reservations and pow-wow events in an "Eagle Feather Sting Operation." NARF is part of a working group of Indian organizations and tribal leaders addressing government intervention in the lives of Native people who work with or use eagle feathers in traditional ways. As a result of meetings between the working group and federal agencies, the Department of Justice in 2012 announced a policy regarding the enforcement of laws that affect the ability of members of federally recognized Indian tribes to possess or use eagle feathers. In a helpful way, the policy specifically defines the types of conduct that will not be subject to prosecution.

NARF's Indian Law Support Center, which works with the 32 basic Indian legal services programs around the country, once again helped secure federal funding under the Indian Tribal Justice and Legal Assistance Act to supplement funding for Indian legal services programs for their representation of Indian people and tribes which fall below the federal poverty guidelines. In 2012, both civil and criminal grants were awarded to NARF in the amount of \$850,659 and \$875,000 respectively for distribution to Indian legal services programs.

We thank all of you who provided us with assistance in 2012. Our victories and accomplishments on behalf of Indian country in 2012 would not have been possible without your help. We hope that you will continue your support of our efforts to address the major legal challenges facing Native Americans.

**John E. Echohawk**  
Executive Director

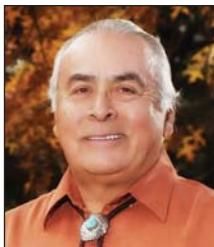


*John E. Echohawk  
Executive Director*



# LEADERSHIP

## Chairman's Message



**Jerry Danforth**  
Chairman,  
Board of Directors

During the past year, the Native American Rights Fund (NARF) has continued its mission of providing legal counsel throughout Indian country. Every year new cases begin, existing cases continue, and hard-fought cases that have been on the legal battlefield for years come to an end.

The NARF attorneys providing legal counsel for legal cases throughout Indian country are to be commended for their demanding and steadfast convictions. Likewise, NARF staff members should also be commended for their day-to-day contributions to the success of NARF.

The complexity, depth, and expansion of services and businesses in Indian country have grown to new levels in modern-day time. With this growth, also comes new and increased controversy over a myriad of issues – many that lead to legal battles. Today the need for NARF to serve those who are unable to afford legal counsel has never been greater. It has become increasingly clear in the growth in organizations that challenge the sovereign right of Indian tribes to self-govern. Many of these organizations provide financial support to non-tribal entities to sponsor the fight against tribal government. At NARF, we need your support.

In this message, I would like to call attention to another component of the NARF organization that plays a vital role – the Board of Directors. The faces and names on the NARF Board continue to change year after year. Candidates selected to serve on the Board usually come from recommendations of the incumbent Board members and staff persons. The recommendations are reviewed by NARF's Nomination Committee and ultimately selected by action of the full Board of Directors. Board members serve a two-year term, and may serve up to a maximum of three, two-year terms.

The NARF Board approves the annual budget, reviews and accepts audit findings, and approves staffing changes, to name a few responsibilities.

In addition to providing direction on the type and number of cases to undertake, Board members also serve on sub-committees for auditing, fund raising, evaluations, and nominations. Board members are ambassadors for NARF throughout Indian country, carrying the NARF message and encouraging financial support for the organization.

I'm happy to introduce the current members of the Board: **Virginia Cross**, *Chairwoman Muckleshoot Indian Tribe*, has served since 2009; **Barbara Smith**, *Supreme Court Justice, Chickasaw Nation*, has served since 2009; **Julie Roberts-Hyslop**, *President, Native Village of Tanana*, has served since 2011; **Natasha Singh**, *General Counsel, Tanana Chiefs Conference*, has served since 2010; **Mark Macarro**, *Chairman, Pechanga Band of Luiseño Indians* has served since 2010; **Marshall McKay**, *Chairman, Yocha Dehe de Wintun Nation*, has served since 2009; **Buford Roland**, *Chairman, Poarch Band of Creek Indians*, has served since 2010; **Moses Haia**, *Director, Native Hawaiian Legal Corporation*, has served since 2011; **Peter Pino**, *Tribal Administrator, Pueblo of Zia*, has served since 2012; **Ron His Horse Is Thunder**, *former Chairman, Standing Rock Sioux Tribe*, has served since 2008; **Stephen Lewis**, *Lt. Governor, Gila River Indian Community*, has served since 2012; **Gary Hayes**, *Chairman, Ute Mountain Ute Tribe*, has served since 2012, and myself, **Gerald Danforth**, *former Chairman Oneida Indian Nation Wisconsin*, has served since 2008.

The members of the Board respectfully request that all of Indian country contribute financial assistance at whatever level is possible. We must sustain the fight for Indian tribal sovereign rights in the courts and in Congress.

On behalf of the NARF Board of Directors, I thank all who have contributed to NARF in the past and encourage you to continue giving in the future.

Yaw^Ko,  
**Jerry Danforth**  
Chairman, Board of Directors

# Board of Directors



The Native American Rights Fund has a governing board composed of Native American leaders from across the country – wise and distinguished people who are respected by Native Americans nationwide. Individual Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as their tribal affiliation,

to ensure a comprehensive geographical representation. The NARF Board of Directors, whose members serve a maximum of six years, provide NARF with leadership and credibility, and the vision of its members is essential to NARF's effectiveness in representing its Native American clients.

## National Support Committee

The National Support Committee assists NARF with its fund raising and public relations efforts nationwide. Some of the individuals on the Committee are prominent in the field of business, entertainment and the arts. Others

are known advocates for the rights of the underserved. All of the 32 volunteers on the Committee are committed to upholding the rights of Native Americans.

**Randy Bardwell,**  
Pechanga Band of Luiseño  
Mission Indians

**Katrina McCormick  
Barnes**

**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**

**James Garner**

**Eric Ginsburg**

**Jeff Ginsburg**

**Rodney Grant,** Omaha

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

**Billy Mills,** Oglala Lakota

**Amado Peña, Jr.,**  
Yaqui/Chicano

**Wayne Ross**

**Nancy Starling-Ross**

**Mark Rudick**

**Pam Rudick**

**Ernie Stevens, Jr.,**  
Wisconsin Oneida

**Andrew Teller,**  
Isleta Pueblo

**Verna Teller,**  
Isleta Pueblo

**Richard Trudell,**  
Santee Sioux

**Rebecca Tsosie,**  
Pasqua Yaqui

**Tzo-Nah,**  
Shoshone Bannock

**Aine Ungar**

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

**W. Richard West,**  
Southern Cheyenne

**Randy Willis,**  
Oglala Lakota

**Teresa Willis,** Umatilla

**Mary Wynne,**  
Rosebud Sioux

**NARF's Board of  
Directors:** First row (left  
to right) **Mark Macarro**  
(Pechanga Band of  
Luiseño Indians);  
**Natasha V. Singh**, Board  
Vice-Chair (Native Village  
of Stevens); **Julie  
Roberts-Hyslop**, (Native  
Village of Tanana);  
**Barbara Smith**  
(Chickasaw Nation).  
Second Row (left to right)  
**Peter Pino**, (Zia Pueblo);  
**Moses Haia**, Board  
Executive Committee,  
(Native Hawaiian); **Ron  
His Horse Is Thunder**,  
Board Executive  
Committee (Standing  
Rock Sioux Tribe);  
**Gerald Danforth**, Board  
Chairman (Oneida Indian  
Nation of Wisconsin); and  
**Buford L. Rolin** (Poarch  
Band of Creek Indians).  
(Not Pictured) **Marshall  
McKay**, Board Treasurer  
(Yocha Debe Wintun  
Nation); **Virginia Cross**  
(Muckleshoot Indian  
Tribe); **Gary Hayes** (Ute  
Mountain Ute Tribe); and  
**Stephen Lewis** (Gila River  
Indian Community).

# TRIBAL SOVEREIGNTY



# The Preservation of Tribal Existence

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

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

## Tribal Sovereignty

The focus of NARF's work under this priority is the protection of the status of tribes as sovereign, self-governing entities. The United States Constitution recognizes that Indian tribes are independent governmental entities with inherent authority over their members and territory. In treaties with the United States, Indian tribes ceded millions of acres of land in exchange for the guarantee that the federal government would protect the tribes' right to self-government. From the early 1800s on, the Supreme Court has repeatedly affirmed the fundamental principle that tribes retain inherent sovereignty over their members and their territory.

Beginning with the decision in *Oliphant v. Suquamish Indian Tribe* in 1978 and with increasing frequency in recent years, the Supreme Court has steadily chipped away at this fundamental principle, both by restricting tribal jurisdiction and by extending state jurisdiction. These decisions by the Supreme Court have made this priority more relevant than ever and have led to a Tribal Sovereignty Protection Initiative in partnership with the National Congress of American Indians (NCAI) and tribes nationwide to restore the traditional

*"Indian time... is now."*

principles of inherent tribal sovereignty where those have been undermined and to safeguard the core of sovereignty that remains.

This Initiative consists of three components. The first component is the Tribal Supreme Court Project, the focus of which is to monitor cases potentially headed to the Supreme Court and those which actually are accepted for review. When cases are accepted, the Tribal Supreme Court Project helps to ensure that the attorneys representing the Indian interests have all the support they need and to coordinate the filing of a limited number of strategic amicus briefs. A second component of the Initiative is to weigh in on judicial nominations at the lower court and the Supreme Court levels. Finally, there is a legislative component to fight bills that are against tribal interests and to affirmatively push legislation to overturn adverse Supreme Court decisions.

The Tribal Supreme Court Project is a joint project staffed by the Native American Rights Fund and the National Congress of American Indians. The Tribal Supreme Court Project is based on the principle that a coordinated and structured approach to Supreme Court advocacy is necessary to protect tribal sovereignty — the ability of Indian tribes to function as sovereign governments — to make their own laws and be ruled by them. Early on, the Tribal Supreme Court Project recognized the U.S. Supreme Court as a highly specialized institution, with a unique set of procedures that include complete discretion on whether it will hear a case or not, with a much keener focus on policy considerations than other federal courts. The Tribal Supreme Court Project established a large network of attorneys who specialize in practice before the Supreme Court along with attorneys and law professors

CALL  
TO  
ACTION

# The Preservation of Tribal Existence

Past Native Hawaiian  
NARF Board members  
(L to R): Kaleo Patterson,  
E Ho'oi po Pa, current  
Board member  
Moses Haia,  
Mabealani Wendt,  
Kunani Nibipali.



MOVEMENTS

who specialize in federal Indian law. The Tribal Supreme Court Project operates under the theory that if Indian tribes take a strong, consistent, coordinated approach before the Supreme Court, they will be able to reverse, or at least reduce, the on-going erosion of tribal sovereignty by Justices who appear to lack an understanding of the foundational principles underlying federal Indian law and who are unfamiliar with the practical challenges facing tribal governments.

In February 2009, the Supreme Court issued its devastating opinion in *Carcieri v. Salazar* — a case that involved a challenge by the State of Rhode Island to the authority of the Secretary of the Interior ("Secretary") to take land into trust for the Narragansett Tribe under the provisions of the Indian Reorganization Act ("IRA"). For over 75 years, the Department of the Interior ("Department") had exercised its authority under the IRA to take land in trust for all federally recognized Indian tribes and had consistently interpreted the phrase "now under Federal jurisdiction" in the IRA's definition of "Indian" to mean the present, or the time of the exercise of the Secretary's authority to approve the trust land acquisition.

But contrary to every federal judge who had reviewed the matter in the courts below, and who had deferred to the Department's interpretation of the IRA, eight of nine Justices on the Supreme Court found that the term "now" in the phrase "now under Federal jurisdiction" is unambiguous and limits the authority of the Secretary to take land in trust only for Indian tribes that were "under Federal jurisdiction" on June 4, 1934, the date the IRA was enacted. Yet the Court failed to provide any definition of the phrase, "under Federal jurisdiction."

The Court's ruling in *Carcieri* is an affront to the most basic policies underlying the IRA. The fundamental purpose of the IRA was to restore tribal homelands and to help Indian tribes—torn apart by prior federal policies of allotment and assimilation—to re-organize their governments. Therefore, in addition to the authority to acquire lands in trust for all tribes, the IRA also provides authority for the Secretary to approve tribal constitutions in order to assist tribes in their efforts towards self-determination and to establish tribal business corporations in order to help tribes become economically self-sufficient. In the short-term, the *Carcieri* decision has been

*Native Hawaiian Legal Corporation staff.*



destabilizing for a significant number of Indian tribes whose status in 1934 is uncertain. *Carcieri* invites expensive and previously unnecessary litigation over the IRA's most basic terms, allowing litigants to raise even more questions regarding the status of those tribes.

The first direct evidence of the ripple-effect of *Carcieri*, and the Roberts Court's further unraveling of Indian law, was supplied recently in the June 2012 decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe) v. Patchak*. The *Patchak* litigation resulted in two distinct holdings, both of which will have long term negative impacts for all Indian tribes. First, the Court in *Patchak* trampled over the sovereign immunity of the United States and eviscerated the once-broad protections for Indian lands under the Quiet Title Act. Second, through its finding of prudential standing, the Court widened the court room doors to most any challenge by any person who may feel "harmed" by a decision of the Secretary made under the authority of the IRA that benefits an Indian tribe.

Only Congress can clarify its intent for the Court. In the weeks and months after the Court's decision in *Carcieri*, Indian country worked hard to get legislation introduced in the 111th Congress to simply amend the IRA to return to the status quo—a "clean" *Carcieri*-

fix to reaffirm the authority of the Secretary of the Interior to take land in to trust for all federally-recognized Indian tribes. Although the House passed its version of the *Carcieri*-fix, and the Senate Committee for Indian Affairs reported out its legislation, neither bill was enacted into law by the end of the session in December 2010. At the start of the 112th Congress, Indian country moved quickly to resolve the problems being created by *Carcieri*. But the *Carcieri*-fix legislation has stalled in the 112th Congress over a few members' concerns regarding the expansion of Indian gaming and the exemption of Indian trust lands from local property taxes.

There are now 15 *Carcieri*-related challenges already pending before the courts and the Department of the Interior. NARF has provided testimony at several *Carcieri*-fix hearings before the Senate Indian Affairs Committee. Congress needs to act and send a message to the Supreme Court that they are not getting federal Indian legislation right and that their rulings are just plain wrong.

The research objective of the Judicial Selection Project evaluates the records of federal court judicial nominees on their knowledge of Native American issues. The Project's analysis and conclusions are shared with tribal leaders

# EMPOWERMENT

# The Preservation of Tribal Existence

## SOVEREIGNTY

and federal decision-makers in relation to their decision whether to support or oppose a particular judicial nomination. Given the number of federal court cases involving Native American issues, the Project works with the U.S. Senate Judiciary Committee to ensure that all nominees are asked about their experience with Indian tribes and their understanding of federal Indian law during confirmation proceedings.

As part of its outreach to Indian Country, the Obama Administration has sought the names of qualified Native American attorneys, tribal court judges and state court judges who are interested in being considered for vacancies on the federal bench. The Judicial Selection Project developed a process to identify, evaluate and promote qualified Natives for nomination to the federal bench. Currently, of the 866 federal judges at all levels of courts, none are American Indian or Alaska Native. Unfortunately, while President Obama nominated or announced his intent to nominate two Native American attorneys to federal judicial vacancies, neither nomination came to fruition due to opposition to the nominations or intended nominations expressed by members of the U.S. Senate. NARF and NCAI continue to work with the White House General Counsel Office, the White House Office of Intergovernmental Affairs and the U.S. Department of Justice Office of Legal Policy to ensure that qualified Native candidates are considered and nominated to fill current vacancies on the federal bench.

The Project is broadening its approach to developing potential Native candidates for state level judgeships. This involves targeting states with high levels of Native populations such as Alaska, Arizona, Oklahoma and Washington. The Project works with state bar associations and other interested organizations and programs to provide information and recommendations.

Another part of NARF's work under this priority is the environmental law and policy initiative. NARF has played a key role in the

implementation of federal environmental law and policy that recognizes tribal governments as the primary regulators and enforcers of the federal environmental laws on Indian lands. NARF has worked with the National Tribal Environmental Council (NTEC) on comprehensive climate change legislation. NTEC, NARF, NCAI and the National Wildlife Federation worked together and created detailed legislative proposals recognizing the role of tribal governments in proposed federal mitigation and adaptation programs to address climate change. Unfortunately, climate change legislation stalled in the Congress.

### Federal Recognition of Tribal Status

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

The Pamunkey Indian Tribe is the only tribe located in Virginia to have filed a fully documented recognition petition. Established no later than 1646, the Tribe's Reservation is located next to the Pamunkey River, and adjacent to King William County. The Reservation comprises approximately 1,200 acres and is the oldest inhabited Indian reservation in America. After years of preparing the necessary historical, legal, genealogical and anthropological evidence to fully document its petition for federal acknowledgment, the Pamunkey Indian Tribe, located on the Pamunkey Indian Reservation, Virginia, filed its petition with the Office of Federal Acknowledgment (OFA) on October 14, 2010. The Tribe received OFA's letter of Technical Assistance (TA) in April, 2011 and a response to the TA letter was filed in July 2012. In late July 2012 the OFA informed the Tribe that its petition was moved to the top of the "Ready" list and active consideration commenced August 2012. A proposed finding by the Assistant Secretary-

*Traditional Native Hawaiian ceremony for NARF Board members and NARF staff.*



Indian Affairs is expected by August 2013. NARF has represented the Tribe in this effort since 1988.

In February 1997, the Branch of Acknowledgment and Research (BAR) placed the Little Shell Tribe of Chippewa Indians of Montana federal recognition petition on active review status. In July 2000 the Assistant Secretary for Indian Affairs published a preliminary Determination in favor of recognition. In October 2000 a technical assistance meeting was held with the Office of Federal Acknowledgment (OFA) to outline a program of action to strengthen the petition prior to the final determination. Substantial work was done to strengthen the Tribe's petition and the final submissions were made in February 2005. Active consideration of the Tribe's new material began in August 2007, and OFA conducted a three week site visit in October 2007. OFA had previously indicated it would reach a final determination by the end of calendar 2007. This deadline was not met; the date was moved to the end of July 2008. Before that date arrived, the Assistant Secretary granted

OFA new deadlines of January 2009 and then July 2009. OFA granted itself an extension of time to September 2009, and then a further extension to October 2009. In October 2009, the Acting Assistant Secretary issued a Final Determination against recognition of the Tribe, overruling the decision in the Preliminary Determination. The stated rationale for Final Determination was the unwillingness to go along with the "departures from precedent" which the previous Assistant Secretary found to be justified by historical circumstances. In February 2010, the Tribe filed a Request for Reconsideration with the Interior Board of Indian Appeals (IBIA). The IBIA allowed interested parties, if any, to file opposition briefs by July 2010. No one filed an opposition brief. It is unclear how long the IBIA will take to rule. The Senate Indian Affairs Committee held hearings on the recognition process in April 2011 and July 2012 at which the Tribe and NARF testified concerning Little Shell's experience with the process and defects of the process. The Tribe continues to pursue legislative recognition.

# TREATY RIGHTS



# PROTECT INDIAN LANDS



# The Protection of Tribal Natural Resources

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

## **Protection of Indian Lands**

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

NARF has been retained by the Eastern Shoshone Tribe of the Wind River Indian Reservation to analyze the legal implications of the Surplus Land Act of March 3, 1905, as it may have affected the boundaries of that Reservation. NARF is working with the Tribe's Attorney General and the Shoshone Business Council on a variety of fronts to secure the vindication of the boundary. The Shoshone Tribes and Arapaho Tribes, through their respective attorneys, are also cooperating in an application to the United States Environmental Protection Agency (US-EPA) for delegation of "treatment in the same manner as a state" (TAS) in the administration of certain Clean Air Act programs. The determination supporting delegation to the Tribes from US-EPA will require that US-EPA determine the location of the boundary of the Reservation. The TAS Application has been published by US-EPA and they have received comments. The Tribes filed their Response to the comments in March 2010. US-EPA also requested a written opinion from the Department of the Interior Solicitor on the boundary of the Wind River reservation. We are awaiting US-EPA's decision about the application of delegation of certain Clean Air

*"Our roots are deep in the lands where we live. We have a great love for our country, for our birthplace is here. The soil is rich from the bones of thousands of our generations. Each of us was created in these lands and it is our duty to take great care of them, because from these lands will spring the future generations of our peoples. We walk about with great respect, for the Earth is a very Sacred Place." — Sioux, Navajo and Iroquois Declaration – 1978*

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Act programs that are dependent on the determination of the boundary.

NARF represents the Hualapai Indian Tribe of Arizona in preparing and submitting four applications for the transfer of 8 parcels of land owned in fee by the Tribe into trust status. The Tribe is located on the south rim of the Grand Canyon in Arizona and claims a boundary that runs to the center of the Colorado River. In addition, NARF assisted the Tribe with the transfer of lands gifted to the Tribe at Cholla Canyon Ranch. Because there were title concerns, NARF prepared a trust which the Tribe adopted and into which the lands were transferred. In addition, NARF is working on placing these lands taken into trust but the United States will not take action until title to the Ranch has been cleared of any claim arising from questions related to transfer of title to the Tribe from a private trust. NARF is working with a local firm and the attorney for the Trust to clear title to the Ranch. We also assist the



# The Protection of Tribal Natural Resources

## LAND RIGHTS

Tribe with work as assigned from time to time, most recently related to the development of a local water supply and an agreement with Mohave County.

In *Chalkitsik, et al v. United States*, the Tribe brought suit seeking judicial review of 25 C.F.R. Part 151 as it pertains to federally recognized tribes in Alaska. This regulation governs the procedures used by Indian tribes and individuals when requesting the Secretary of the Interior to acquire title to land in trust on their behalf. The regulation bars the acquisition of land in trust in Alaska other than for the Metlakatla Indian Community or its members. After nearly three years of no action by the federal court, the case was transferred to Judge Rudolph Contreras. Judge Contreras issued an Order in April 2012 requesting that the federal government respond to six additional questions in a supplemental brief in July 2012 and the Tribe filed its reply brief in August 2012. We are now awaiting a decision.

### Water Rights

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

Establishing tribal rights to the use of water in the arid western United States continues to be a major NARF priority. The goal of NARF's Indian water rights work is to secure allocations of water for present and future needs for specific Indian tribes represented by NARF and other western tribes generally. Under the precedent established by the Supreme Court in 1908 in *Winters v. United States* and confirmed in 1963 in *Arizona v. California*, Indian tribes are entitled under federal law to sufficient water for present and future needs, with a priority date at least as early as the establishment of their reservations. These tribal

reserved water rights are superior to all state-recognized water rights created after the tribal priority date. Such a date will in most cases give tribes valuable senior water rights in the water-short west. Unfortunately, many tribes have not utilized their reserved water rights and most of these rights are unadjudicated or unquantified. The major need in each case is to define or quantify the amount of water to which each tribe is entitled through litigation or out-of-court settlement negotiations. Tribes are generally able to claim water for any purpose which enables the Tribe's reservation to serve as a permanent homeland.

NARF has represented the Nez Perce Tribe in Idaho in its water rights claims in the Snake River Basin Adjudication (SRBA) litigation and settlement phases for many years. Congress enacted and President Bush signed into law the Snake River Settlement Act in 2004. NARF continues to work with the Tribe on a very limited basis to secure final approval of the settlement by the state water court and on the federal appropriations process. The Tribe, the United States, the State, and private water interests are negotiating and drafting a final unified decree that will be the capstone document closing the SRBA. It is anticipated that the final decree will be signed by the judge in 2013.

NARF represents the Klamath Tribes of Oregon who hold reserved water rights in the Klamath River Basin to support their treaty hunting, fishing and gathering rights with a time immemorial priority date, as well as water rights to satisfy the agricultural purposes of the Klamath Reservation. The Tribes' reserved water rights for these purposes are currently being quantified in a statewide water adjudication. This involves asserting and defending the Tribes' claims as well as prosecuting many contests filed by non-Indian junior water users.

In December 2011 and April 2012 the state administrative hearing judge issued Proposed Orders in the Tribe's cases quantifying the water rights of the Tribes and the United States in the full amount they claimed. As this was a

*NARF Executive Director  
John Echohawk and  
NARF Board Chairman  
Jerry Danforth.*



tremendous victory, under Oregon's general stream adjudication process, the Proposed Orders are not final rulings, but are the Administrative Law Judge's proposals to the Oregon Water Resources Department's Adjudicator. In 2013 the Adjudicator will issue a Findings of Fact and Order of Determination (FFOD) that will define not only the water rights of the Tribes, but the rights of all water claimants in the KBA. Upon its issuance, the water rights decreed in the FFOD become enforceable. Then the Tribes will likely face a sequence of challenges in Klamath County Circuit Court and possibly subsequent appeals courts. Nevertheless, the Judge's rulings in the Proposed Orders mark a very significant victory for the Claimants, one that puts the Tribes and the BIA in the best position possible for the next stages of the Adjudication.

After almost 30 years of advocacy work, the Tule River Indian Tribe in California, represented by NARF, successfully settled its water rights in November 2007 by signing a Settlement Agreement with water users on the South Fork Tule River. The Settlement Agreement secures a domestic, municipal, industrial, and commercial water supply for the Tribe. The Tribe now seeks federal legislation to ratify the

Settlement Agreement and authorize appropriations to develop the water rights through the creation of water infrastructure and reservoirs on the Tribe's Reservation. Bills introduced in the House of Representatives and Senate in 2007, 2008 and 2009 did not pass. With the current Congress we are engaged in strategy meetings with the California congressional delegation about the possible introduction of a water settlement bill early in 2013. Additionally we continue to work with the U.S. Bureau of Reclamation on necessary studies for the feasibility and design of the Tribe's water storage project.

In June 2006, the Kickapoo Tribe in Kansas, represented by NARF filed a federal court action to enforce express promises made to the Tribe to build a Reservoir Project to serve its Reservation. The Nemaha-Brown Watershed Joint Board #7, the Natural Resources Conservation Service of the United States Department of Agriculture, and the State of Kansas made these promises to the Tribe over a decade ago. In the intervening years these parties have been actively developing the area watershed resources, resulting in the near depletion of the Tribe's senior federal water rights in the drainage.

CLIMATE CHANGE



# The Protection of Tribal Natural Resources

## WATER RIGHTS

Moreover, according to the U.S Environmental Protection Agency the remaining water supply for the Reservation is in violation of the Safe Drinking Water Act of 1974. The Kickapoo people are unable to safely drink, bathe or cook with tap water. There is not enough water on the Reservation to provide basic municipal services to the community – the Tribe is unable to provide local schools with reliable, safe running water and the fire department cannot provide adequate fire protection due to water shortage. The proposed Reservoir Project is the most cost-effective and reliable means by which the Tribe can improve the water supply.

By August 2007 the parties expressed an interest in taking a break from the litigation to explore mutual benefits from settlement. The United States, the State and the local watershed district all concede the existence of the Tribe's senior Indian reserved water rights; the real issue is the amount of water to satisfy the Tribe's needs, and the source or sources of the water. In March 2011 the watershed district rejected a Condemnation Agreement that the Tribe and the State had approved. That agreement would create the mechanism for condemning the property needed for the water storage project. The Tribe and other parties have since returned to litigation to focus on discovery against the watershed district. In addition, the parties hope to get the condemnation component resolved by the federal government.

### **Protection of Hunting and Fishing Rights in Alaska**

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

On January 5, 2005, the State of Alaska filed a lawsuit in the U.S. District Court for the

District of Columbia challenging the final rule implementing the mandate in a prior Alaska Native subsistence case, *John v. United States*. The prior case, in which NARF represented Katie John, an Alaska Native, established that the United States must protect subsistence uses of fisheries in navigable waters where the United States possesses a reserved water right. In this new lawsuit, the State challenges the Federal agencies' implementation of the mandate by arguing that the reserved waters doctrine requires a quantification of waters necessary to fulfill specific purposes. Katie John immediately filed a motion for limited intervention for purposes of filing a motion to dismiss for failure to join an indispensable party. The United States filed a motion to transfer venue to the U.S. District Court for the District of Alaska in February 2005. Judge Collyer entered an Order in July 2005, transferring the case to the federal court in Alaska. The case was then consolidated with *John v. Norton* (below). The issues in the two cases were bifurcated for briefing with the State's claims addressed first. In May 2007, the district court entered an Order upholding the agencies rule-making process identifying navigable waters in Alaska that fall within federal jurisdiction for purposes of Title VIII's subsistence priority.

In 2005, Katie John, represented by NARF, filed a lawsuit in the U.S. District Court for the District of Alaska challenging Federal Agencies' final rule implementing the prior Katie John mandate as being too restrictive in its scope. Katie John alleges that the Federal agencies should have included Alaska Native allotments as public lands and that the federal government's interest in water extends upstream and downstream from Conservation Units established under the Alaska National Interest Lands Conservation Act. The State of Alaska intervened and challenged the regulations as illegally extending federal jurisdiction to state waters. In 2009 the Court upheld the agencies' final rule as reasonable. While rejecting Katie John's claim that the agency had a duty to identify all of its federally-reserved water rights

in upstream and downstream waters, the court stated that the agency could do so at some future time if necessary to fulfill the purposes of the reserve. The case was appealed to the U.S. Court of Appeals for the Ninth Circuit where oral argument was held in July 2011. One of the panelists, Judge Betty Fletcher, passed away in August 2012, and her docket was assigned to Judge Canby. We are now waiting for the Appeals Court's decision.

In *Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham v. Evans*, NARF represents five Chugach villages that sued the Secretary of Commerce to establish aboriginal rights to their traditional-use areas on the Outer Continental Shelf of Alaska, in Cook Inlet and the Gulf of Alaska. In 2002 the federal district court ruled against the Chugach. NARF appealed to the U.S. Court of Appeals for the Ninth Circuit which in 2004 en banc vacated the district court's decision and remanded for determination of whether the Tribes can establish aboriginal rights to the areas. In August 2009 the court held that although the five Chugach Tribes had established that they had a "territory" and had proven they had used the waters in question, the Tribes could not hold aboriginal rights as a matter of law. The Chugach appealed to the Ninth Circuit en banc panel which has retained jurisdiction over this case. Oral argument was heard by the en banc panel in September 2011. In July 2012, a 6-5 majority of the Ninth Circuit en banc panel affirmed the district court's ruling that the Tribes failed to establish entitlement to non-exclusive aboriginal rights on the OCS.

The majority concluded that the Villages had satisfied the "continuous use and occupancy" requirement of the test for aboriginal rights, which is measured in accordance with the particular ways of life, customs, and habits of the tribe seeking to establish aboriginal rights. The majority determined that the district court's findings that the Villages' ancestors had hunted and fished on the OCS seasonally and while traveling to outer islands was consistent with their way of life as marine hunters



and fisherman, and thus satisfied this requirement. However, the majority concluded that the Villages did not satisfy the "exclusivity" requirement of the test. Exclusivity is established when a tribe shows it used and occupied a territory to the exclusion of other Indian groups. Five judges signed on to a vigorous dissent which agreed with the majority that the Tribes had satisfied the continuous use and occupancy requirement but strongly disagreed with the majority's conclusion that the exclusivity requirement was not satisfied. NARF has filed a petition for certiorari in the United States Supreme Court and the government is expected to file its opposition in late January 2013.

NARF Board member  
Ron His Horse Is Thunder  
and NARF senior attorney  
Richard Guest.

### Climate Change Project

Global warming is wreaking havoc in Alaska. In recent years scientists have documented melting ocean ice, rising oceans, rising river temperatures, thawing permafrost, increased insect infestations, animals at risk and dying forests. Alaska Natives are the peoples who rely most on Alaska's ice, seas, marine mammals, fish and game for nutrition and customary and traditional subsistence uses; they are thus experiencing the adverse impacts of global warming most acutely. In 2006, during the



# The Protection of Tribal Natural Resources

# FISHING RIGHTS

NARF Board meeting.



Alaska Forum on the Environment, Alaska Native participants described increased forest fires, more dangerous hunting, fishing and traveling conditions, visible changes in animals and plants, infrastructure damage from melting permafrost and coastal erosion, fiercer winter storms, and pervasive unpredictability. Virtually every aspect of traditional Alaska Native life is impacted. As noted in the Arctic Climate Impact Assessment of 2004, indigenous peoples are reporting that sea ice is declining, and its quality and timing are changing, with important negative repercussions for marine hunters. Others are reporting that salmon are diseased and cannot be dried for winter food. There is widespread concern about caribou habitat diminishing as larger vegetation moves northward. Because of these and other dramatic changes, traditional knowledge is jeopardized, as are cultural structures and the nutritional needs of Alaska's indigenous peoples. Efforts are continuing to convene Congressional hearings on climate change impacts on indigenous peoples.

In *Native Village of Kivalina v. Exxon Mobil*, NARF represents the Native Village of Kivalina, which is a federally recognized Indian Tribe, and the City of Kivalina, which is an Alaskan municipality, in a suit filed on their own behalf

and on behalf of all tribal members against defendants ExxonMobil Corp., Peabody Energy Corp., Southern Company, American Electric Power Co., Duke Energy Co, Chevron Corp. and Shell Oil Co., among others. In total there are nine oil company defendants, fourteen electric power company defendants and one coal company defendant. The suit claims damages due to the defendant companies' contributions to global warming and invokes the federal common law of public nuisance. The suit also alleges a conspiracy by some defendants to mislead the public regarding the causes and consequences of global warming. In October 2009, the District Court granted the Defendant's motion to dismiss on the basis that Kivalina's federal claim for nuisance is barred by the political question doctrine and for lack of standing under Article III of the Constitution.

In September 2012, the US Court of Appeals for the Ninth Circuit rejected the Tribe's appeal. The Court held, in a very short and cursory opinion, that the federal Clean Air Act defines the full scope of all federal remedies for air pollution and, since there is no monetary damages remedy under the Clean Air Act, there is no monetary damages remedy under

federal common law. Writing a separate opinion, Judge Pro noted that the most recent case law from the Supreme Court – the Exxon Shipping case (i.e. Exxon Valdez oil spill case), holds the opposite; in his concurring opinion Judge Pro struggles to make sense of the law since older case law would deny Kivalina's claims while Exxon Shipping says that a federal environmental statute does not bar a federal common law claim for monetary damages. Based on the separate opinion by Judge Pro, a petition for rehearing en banc was filed in October 2012. We are now awaiting a decision.

As ocean temperatures rise due to climate change, marine mammals and fish are moving north. Commercially valuable fish that have traditionally been in the Gulf of Alaska are shifting toward the Northern Bering Sea and the large scale fishing fleets are planning to follow them and expand their operations into this highly sensitive ecosystem. These fleets employ bottom trawling, a highly destructive practice in which weighted nets are dragged inches above the sea floor, removing everything in their path. Nevertheless, the North Pacific Fishery Management Council (NPFMC) currently allows bottom trawling in the Central Bering Sea and it is having a profound effect on sensitive habitat and local Yup'ik communities. In addition, NPFMC has begun a process to consider whether to allow these fleets to expand into the Northern Bering Sea, home to threatened species like the walrus, endangered species such as the Steller sea lion and the spectacled eider, and many isolated Yup'ik and Inupiaq villages who have been the stewards of this diverse ecosystem for centuries.

The Bering Sea Elders Group (BSE) is an alliance of thirty-nine Yup'ik and Inupiaq villages that seeks to protect the sensitive ecosystem of the Bering Sea, the subsistence lifestyle, and the sustainable communities that depend on it. NARF has designed a comprehensive plan to help this group of Alaska Native villages in their efforts to protect the area and



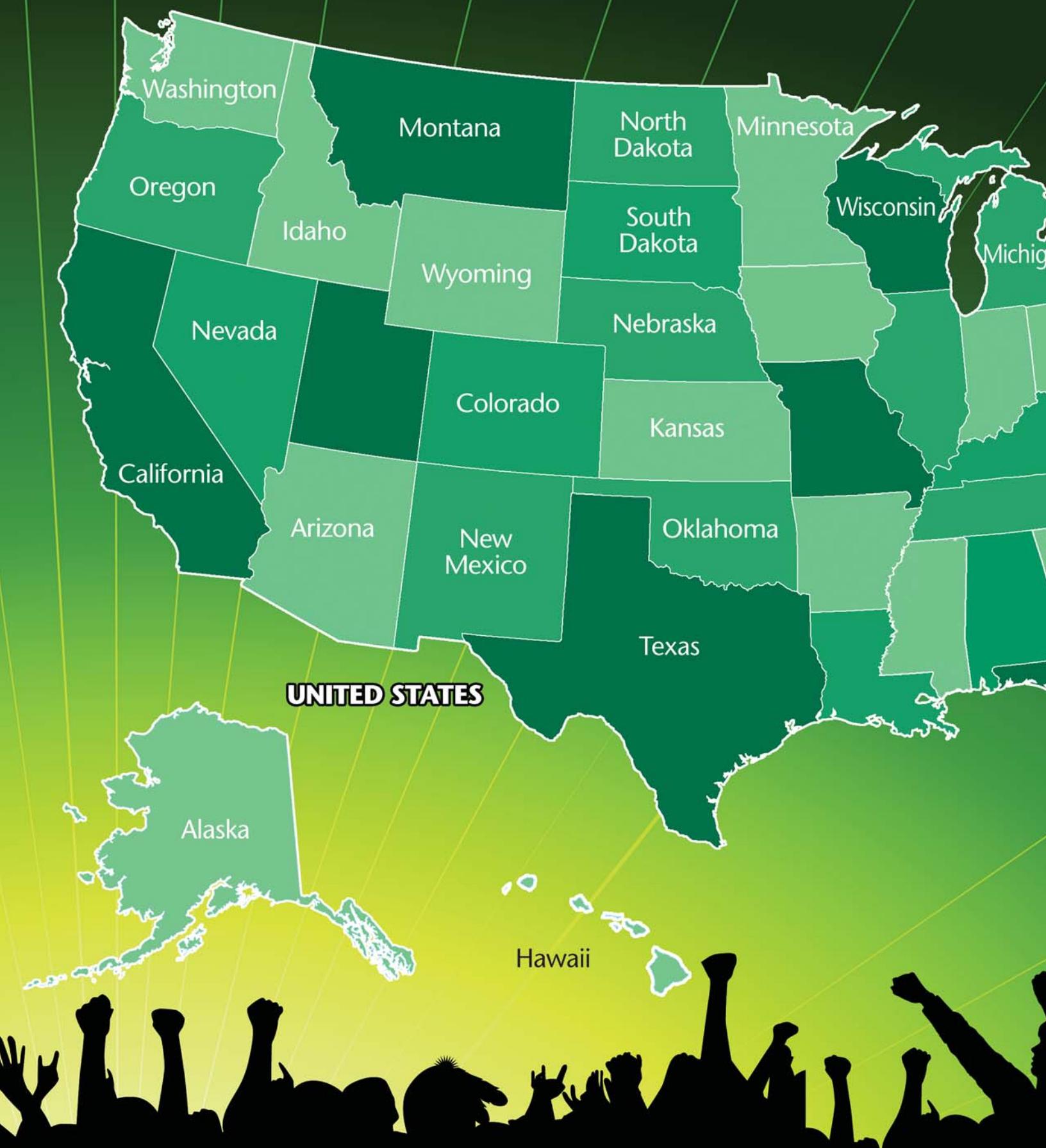
become more engaged in its management. NARF has been working with the Elders Group on both issues and we have: (1) researched potential aboriginal rights that the Elders Group and its constituent tribes may possess based on their long term exclusive use and occupancy of the area, (2) prepared the Elders Group for negotiations with the trawl fishermen, and (3) assisted the Elders Group with its participation in the NPFMC process.

NARF has successfully negotiated what we believe is the first co-management agreement in federal waters with the trawl industry. BSE and the trawl industry will now form a workgroup to study the effects on the seafloor habitat, the various subsistence uses of the area, and the health of the fishery. Based on that information, the workgroup will then make recommendations about changes that need to be made to the fishery. BSE is currently in the process of selecting their work group representatives and the group is expected to meet for the first time in the Spring of 2013.

*NARF senior attorney  
Don Wharton.*



# MAJOR ACTIVITIES 2012 - NARF CASE MAP





## ALASKA

### NARF ANCHORAGE OFFICE

Akiachak Native Community – Land into Trust

Native Village of Atka – Tribal Trust Funds

Aleut Community of St. Paul Island – Tribal Trust Funds

Chilkoot Indian Association – Land into Trust

Chalkitsik – Land into Trust

Chitochina Tribe – Subsistence

*Churyung v. Alaska* – Indian Child Welfare

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

Ivanof Bay Village – Sovereign Immunity

Kaltag Tribe – Indian Child Welfare

Native Village of Kasigluk – Voting Rights Act Suit

*Katie John v. Norton* – Subsistence

Kenaitze Indian Tribe – Tribal Trust Funds

Native Village of Kivalina – Global Warming Project

Native Village of Kwrigillingok – Voting Rights Act Case

Gwich'in Steering Committee – Environmental/Subsistence

Native Village of Nulato – Indian Child Welfare

Ninilchik Tribe – Subsistence

Noocksack Indian Tribe – Tribal Trust Funds

Qawalangin Tribe – Tribal Trust Funds

Tanana – Tribal Sovereignty

Tlingit and Haida Indian Tribes – Tribal Trust Funds

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

Native Village of Tuntutuliak – Voting Rights Case

Village of Tyonek Village – Subsistence & NAGPRA

Native Village of Venetie – Subsistence

Voting Rights Act Suit

## ARIZONA

Hualapai Tribe – Boundary Issue and Tribal Trust Funds

Kaibab Paiute Tribe – Tribal Trust Funds

## CALIFORNIA

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

Rincon Luiseno Band of Indians – Tribal Trust Funds

San Luis Rey Indian Water Authority – Tribal Trust Funds

Tule River Tribe – Water, Tribal Trust Funds

Yurok Tribe – Tribal Trust Funds

## COLORADO

### NARF HEADQUARTERS BOULDER, COLORADO

Ute Mountain Ute Tribe – Tribal Trust Funds

Valmont Butte – Sacred Site Issue

## IDAHO

Nez Perce Tribe - Water Rights, Tribal Trust Funds

## KANSAS

Kickapoo Tribe – Water Rights and Tribal Trust Funds

## MINNESOTA

Bois Forte Band of Chippewa – Tribal Trust Funds

Leech Lake Band of Ojibwe – Tribal Trust Funds

Minnesota Chippewa Tribe – Tribal Trust Funds

Prairie Island Indian Community – Tribal Trust Funds

White Earth Band of Chippewa Indians – Tribal Trust Funds

## MICHIGAN

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

Sault Ste. Marie Tribe of Chippewa – Tribal Trust Funds

## MONTANA

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

Confederated Salish and Kootenai Tribes – Tribal Trust Funds

Little Shell Tribe - Recognition & Tribal Trust Funds

## NEBRASKA

Santee Sioux Tribe – Tribal Trust Fund

## NEW MEXICO

Mescalero Apache Tribe – Tribal Trust Fund

Pueblo of Zia – Tribal Trust Funds

## NEVADA

Summit Lake Paiute Tribe – Tribal Trust Funds

## NORTH DAKOTA

Spirit Lake Dakotah Nation – Tribal Trust Funds

Turtle Mountain Reservation - Tribal Trust Funds

## OKLAHOMA

Cheyenne-Arapaho Tribes – Tribal Trust Funds

Pawnee Nation – Education, NAGPRA & Tribal Trust Funds

Sac & Fox Nations – Tribal Trust Funds

## OREGON

Klamath Tribes - Water Rights & Tribal Trust Funds

Confederated Tribes of Siletz Indians – Tribal Trust Funds

## SOUTH DAKOTA

Oglala Sioux Tribe - Environmental

## TEXAS

Alabama-Coushatta Tribe - Land Claim

## VIRGINIA

Pamunkey Tribe – Tribal Recognition

## WASHINGTON

Samish Indian Nation – Tribal Trust Funds

Shoalwater Bay Tribe – Tribal Trust Funds

Skokomish Tribe – Tribal Trust Funds

Spokane Tribe – Tribal Trust Funds

Tulalip Tribes – Tribal Trust Funds

## WASHINGTON, D.C.

### NARF WASHINGTON, D.C. OFFICE

Tribal Supreme Court Project

## WISCONSIN

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

Lac Courte Oreilles Band of Ojibwe – Tribal Trust Funds

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

## WYOMING

Eastern Shoshone Tribe - Land Issue

## CANADA

Northern Lakes Pottawatomi Nation - Land Claim

## INTERNATIONAL

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

# INDIGENOUS MOVEMENTS

HUMAN RIGHTS



# The Promotion of Human Rights

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Although basic human rights are considered a universal and inalienable entitlement, Native Americans face an ongoing threat of having their rights undermined by the United States government, states and others who seek to limit these rights. Under the priority of the promotion of human rights, NARF strives to enforce and strengthen laws which are designed to protect the rights of Native Americans to practice their traditional religion, to use their own language and to enjoy their culture. NARF also works with Tribes to ensure the welfare of their children. In the international arena, NARF is active in efforts to negotiate declarations on the rights of indigenous peoples.

## **Religious Freedom**

Because religion is the foundation that holds Native communities and cultures together, religious freedom is a NARF priority issue.

Legal work continues on a number of Native American Graves Protection and Repatriation (NAGPRA) implementation issues. NARF continued a decade-long effort as a member of the Colorado Commission of Indian Affairs to work out agreements and protocols with the Colorado State Historical Society for the repatriation and reburial of hundreds of Native American human remains, both culturally affiliated and unaffiliated. Part of the work also involved the development of a protocol for the future identification and disposition of Native American remains disturbed on state or private lands, which specifies a process for consultation with interested tribes and for the reburial on site of those remains whenever possible.

The massive Chuitna Coal project threatens to destroy a vital salmon habitat stream that the Tyonek Native Village utilizes for subsistence fisheries. After agreeing to assist the Tribe in protecting its subsistence fisheries resources, legal research established that much more was at stake as recent field surveys and excavations found numerous house pits, cultural features, and religious remains in the project area. Under such circumstances the

*“What really is needed is greater awareness by the broader American public... of the continuity of Indigenous Peoples within the American social political fabric... and reconciliation for the historical and ongoing wrongs that have occurred... With greater awareness, people can take actions that are appropriate to their local circumstances.”*

—James Anaya, UN Special Rapporteur for Indigenous Peoples Rights

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National Historic Preservation Act requires that the federal agency tasked with jurisdiction immediately contact the impacted Tribe to seek consultation regarding the protection of the historic resources. Under existing law Tyonek should be granted the opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. NARF has engaged an expert and has been working with the Tribe's Council, the State Historic Preservation Office, the National Park Service and others to effectively engage the Army Corp of Engineers on National Historic Preservation Act issues. NARF also met in Washington, D.C. with top agency personnel in October 2012 and received significant commitments from EPA, NOAA, Department of the Interior, NPS, NHPC, and the White House Counsel on Native American Affairs to monitor the process and ensure that tribal consultation is adhered to.



# The Promotion of Human Rights

NARF Pow Wow



NARF has been assisting the Denver area Native American community and interested tribes for almost a decade to give voice to the need to clean up and preserve a prominent geologic feature just to the northeast of Boulder, Colorado. Valmont Butte is an ancient volcanic uplift that sits prominently on the outskirts of town, just overlooking the north fork of Boulder Creek. In pre-contact times it was the location of Ute and then Arapaho village sites. Use and occupation of the area is known to go back at least 10,000 years in antiquity. The property, owned by the City of Boulder since 2000, is known to contain substantial prehistoric materials, including burial areas. The Butte has also until recent years been the site of an active sweat lodge. There is an abandoned mill on the property, and tailings from the fifty-plus years of milling activities are now contained on the eastern end of the property about forty acres in size. The City purchased the property to locate a composting facility or fire training center. The tribes and the local Native community

successfully opposed these facilities. In recent years, the effort has been to monitor the development of the City's proposed cleanup plan and also to secure a County landmark designation for the Butte and surrounding acreage.

NARF represents the Kaibab Paiute Tribe in their dispute with the King County Water District and the Army Corps of Engineers who are preparing to build a dam over a burial ground that is known to contain the remains of almost 100 people. The Water District and the Corps have not finished their study to determine exactly how many people are still buried there, and the Kaibab do not want the dam built or the reservoir filled until the full extent of the burials are known and steps can be taken to protect the site and the people.

The Native American Rights Fund is part of a working group of Indian organizations and tribal leaders to address government intervention in the lives of Native people who work with or use eagle feathers in traditional ways.



# CULTURAL RIGHTS

Since time-immemorial, the eagle and other raptor birds have been an integral part and intrinsic to the traditions, culture and religion of many tribes, pre-dating U.S. colonization. The U.S. Fish and Wildlife Service (FWS) and other federal law enforcement agencies had been conducting raids, confiscations and interrogations on many Indian reservations and pow-wow events, in at least 14 states of the western United States under what purportedly is referred to as an "Eagle Feather Sting Operation."

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

The working group met with the FWS and the Department of Justice (DOJ) in 2009 to express tribal concerns about raids that were conducted by the FWS, FBI and other law enforcement officials who seized feathers and demanded documentation. Under federal law, only Native people can possess eagle feathers through gifts or inheritance, or from a government-run repository near Denver which issues permits specifically for individual birds or parts, generally after lengthy waits.

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

The National Congress of American Indians (NCAI) adopted a resolution supporting the establishment of Tribal Advisory Group to the U.S. Fish and Wildlife Service in order to

provide consultation on the policies, regulations and procedures for the acquisition, possession, gifting, crafting and use of eagles and other migratory birds by tribal members. It was also resolved that NARF shall serve as a central clearinghouse for the cases appertaining to the "Eagle Feather Sting Operation" being conducted by the FSW and other federal law enforcement agencies. NARF and NCAI continued meetings with the FSW and other federal law enforcement agencies to discuss and seek solutions as to the effects and impacts of eagle feather confiscations and to discuss the drafting of an all-inclusive bill to "fix" the gap between current law and administrative policies, regulations and procedures.

As a result of these efforts, the Department of Justice announced in October 2012 a department-wide, internal policy regarding the enforcement of laws that affect the ability of members of federally recognized Indian tribes to possess or use eagle feathers. The policy provides that, consistent with the Department of Justice's traditional exercise of its discretion, a member of a federally recognized tribe engaged only in the following types of conduct will not be subject to prosecution: possessing, using, wearing or carrying federally protected birds, bird feathers or other bird parts (federally protected bird parts); traveling domestically with federally protected bird parts or, if tribal members obtain and comply with necessary permits, traveling internationally with such items; picking up naturally molted or fallen feathers found in the wild, without molesting or disturbing federally protected birds or their nests; giving or loaning federally protected bird parts to other members of federally recognized tribes, without compensation of any kind; exchanging federally protected bird parts for federally protected bird parts with other members of federally recognized tribes, without compensation of any kind; and providing feathers or other parts of federally protected birds to craftspersons who are members of federally recognized tribes to be fashioned into objects for the eventual use in tribal religious or cultural activities.



# The Promotion of Human Rights

## EDUCATION

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

### Indian Education

Recent developments mark a historical shift in Indian education law and policy by taking the first step in accomplishing “educational tribal sovereignty.” NARF, other Indian organizations and tribes have been advocating for systemic changes to American Indian/Alaska Native (AI/AN) education. Changes that would increase involvement of tribal governments, educators, parents, and elders in what AI/AN students are taught, how they are taught, who teaches them, and where they learn. Tribal control of these core issues can amount to educational tribal sovereignty.

NARF represents the Tribal Education Departments National Assembly (TEDNA). TEDNA is a national advocacy organization for tribal education departments and agencies (TEDs/TEAs) that works to strengthen the legal rights of tribes to control the formal education of tribal members. NARF started TEDNA in 2003 with a group of tribal education department directors from Indian tribes across the country. Since its inception, NARF has hosted National meetings with TEDNA to 1) identify obstacles impeding educational tribal sovereignty, 2) develop policy initiatives to address such obstacles, and 3) advocate and provide technical assistance on such policy initiatives.

After over 20 years of work, NARF and TEDNA secured the first source of direct federal funding – \$2 million – for tribal education departments (TEDs) in the Labor, Health, and Human Services Fiscal Year 2012 Appropriations Bill to be distributed via a competitive grant process under a new State Tribal Education Partnerships (“STEP”) Program. The STEP program authorizes eligible TEDs to participate in a pilot project that allows TEDs to operate federal education programs in schools (public and Bureau of Indian Education) located on Indian reservations. STEP grants

were awarded to the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, the Navajo Nation, and the Chickasaw Nation. All of these tribes have been long time members of TEDNA. Currently, TEDNA is working on the FY’13 budget and has been assured by the Labor, Health, and Humans Services Subcommittee on Appropriations that funding for the STEP program will be included in its draft FY’13 appropriations bill.

During the 19th and into the 20th century, pursuant to federal policy, Native American children were forcibly abducted from their homes and put into Christian and government run boarding schools. The purpose was to “civilize” Indians and to stamp out native culture. It was a deliberate policy of ethnocide and cultural genocide. Cut off from their families and culture, the children were punished for speaking their native language, banned from conducting traditional or cultural practices, shorn of traditional clothing and identity of their native culture, taught that their culture and traditions were evil and sinful, and that they should be ashamed of being Native American. Placed often far from home, they were frequently neglected or abused physically, sexually and psychologically. Generations of these children became the legacy of the federal Boarding School Policy. They were returned to their communities, not as the Christianized farmers that the Boarding School Policy envisioned, but as deeply scarred humans lacking the skills, community, parenting, extended family, language, and cultural practices of those who are raised in their cultural context.

There has been scant recognition by the U.S. federal government that initiated and carried out this policy, and no acceptance of responsibility for the indisputable fact that its purpose was cultural genocide. There are no apparent realistic legal avenues to seek redress or healing from the deep and enduring wounds inflicted both on the individuals and communities of tribal nations. Lawsuits by individuals have been turned aside, and unlike



other countries that implemented similar policies – e.g. Canada and Australia – there has been no official U.S. proposal for healing or reconciliation.

NARF, working with several other groups, convened a Boarding School Healing Symposium in May 2011 at the University of Colorado Law School. The Symposium brought together individuals from across the U.S. and Canada that have been working on various aspects of the issues to discuss the priorities and strategies to achieve both national recognition of, and apology for, the wrongs visited on individuals and communities of U.S. tribes, and to obtain reparations to provide the framework for healing of these historic and enduring wrongs. The symposium participants agreed that it was necessary to continue the work on the issue and formed a Coalition to formulate a specific strategy and framework to pursue broader support and participation.

NARF completed non-profit incorporation of the Coalition when the Certificate of Incorporation was issued in June 2012 by the Navajo Nation's Business Regulatory Department. The initial meeting of the Corporation was held in September 2012, the board and its officers were elected, and the Bylaws and an Amended Corporation were adopted. NARF and the Coalition representatives are continuing to work to raise awareness and funds to pursue a framework for reparations related to Boarding School trauma suffered by generations of victims.

#### **Civil and Cultural Rights**

From the embryonic days of our Nation, Indian tribes have long struggled against the assimilationist policies instituted by the United States which sought to destroy tribal cultures by removing Native American children from their tribes and families. As an example, the federal government failed to protect Indian

CIVIL  
RIGHTS



# The Promotion of Human Rights

## CHILD WELFARE



children from misguided and insensitive child welfare practices by state human service agencies, which resulted in the unwarranted removal of Indian children from their families and tribes and placement of those children in non-Indian homes. Statistical and anecdotal information show that Indian children who grow up in non-Indian settings become spiritual and cultural orphans. They do not entirely fit into the culture in which they are raised and yearn throughout their life for the family and tribal culture denied them as children. Many Native children raised in non-Native homes experience identity problems, drug addiction, alcoholism, incarceration and, most disturbing, suicide.

In order to address these problems facing tribes as a result of the loss of their children, the Indian Child Welfare Act (ICWA) was enacted by Congress in 1978. It established minimum federal jurisdictional, procedural and substantive standards aimed to achieve the dual purposes of protecting the right of an Indian child to live with an Indian family and to stabilize and foster continued tribal existence. Since that time, there have been misinterpretations and, in some cases, outright refusal to follow the intent of the law by state agencies and courts.

State services frequently do not reach village Alaska. Tribal courts must therefore handle most cases involving the welfare of village children. State recognition of those tribal court proceedings is therefore critical to assure that proceedings which occur in tribal court are then respected by other state agencies. Otherwise, adoptive parents may not be able to participate in state-funded assistance programs, to secure substitute birth certificates necessary to travel out of state, to enroll children in school, or to secure medical care.

Following the Alaska Supreme Court's March 2011 decision upholding tribal authority to initiate children's proceedings, NARF has been working with the Alaska State Attorney General's office to formalize policy and protocol to implement the *Tanana v. State* decision. In addition to policy revisions that will be inserted into the State's Office of Child Services manual, a committee is developing a proposed Rule that would provide a procedure for Tribes to petition state courts to have tribal court decrees registered and enforced by state law officers. This work has been put on hold, however, until the Court has an opportunity to address the questions at issue in the *Parks v. Simmonds* case.

After numerous hearings in the *Parks v. Simmonds* ICWA case, the Minto Tribal Court terminated the parental rights of the parents and granted permanent custody of a child to the Simmonds. Mr. Parks sued in state court, claiming, among other things, that the tribal court has no jurisdiction over him and that his right to due process was violated when the Minto Court – in accordance with its traditional practices and procedures – did not permit Mr. Parks’ attorney to present oral argument. Based on these arguments, Mr. Parks claims that the tribal court termination order is not entitled to full faith and credit under ICWA. The Simmonds argued that the termination order is entitled to full faith and credit and they moved to dismiss the state court action, but this motion was denied by the state court in November 2010. The state court reasoned that failure to allow an attorney to present oral argument did violate Mr. Parks’ due process rights. The Simmonds petitioned the Alaska Supreme Court for review. The petition was granted in March 2011 and the case was remanded to the trial court for it to make specific factual findings and legal conclusions. Briefing on remand was concluded in May 2011 and oral argument was held in December 2011. The trial court issued findings and concluded in part that tribal courts may not have jurisdiction over nonmembers outside of Indian Country, and also suggested that tribal courts must permit oral argument. The Simmonds filed another petition for review with the Alaska Supreme Court asking that numerous aspects of this decision be overturned. In July 2012, the Alaska Supreme Court granted the petition for review and the Simmonds’ principal brief was filed in December 2012. Oral argument is anticipated to be held in late spring.

The Native Village of Kotzebue requested NARF’s assistance to ensure that state courts abide by the Tribe’s pre-adoption placement preference under ICWA. One of the primary legal questions at issue is the proper burden of proof that the state Office of Child Services must meet in order to move a child from one



placement to another. This case settled on in March 2012 when the Office of Children’s Services agreed to maintain placement with the Tribe’s pre-adoption placement. NARF is now representing Kotzebue in drafting an amicus brief to be filed in a similar case where the burden of proof question is still at issue. That brief was filed in April 2012 and we are waiting a decision.

NARF represents the Bristol Bay Native Corporation (BBNC) in their work on redistricting. Their goal is to ensure compliance with the provisions of the Voting Rights Act (VRA), and specifically the provisions requiring that the Native Vote is protected. The Alaska Supreme Court held that the original redistricting plan at issue was unconstitutional under the Alaska Constitution and remanded it back to the superior court to be remanded to the Alaska Redistricting Board. The Board devised an Amended Proclamation Plan and filed that in the trial court in April 2012. Six different Native organizations (including NARF on behalf of BBNC) filed objections to the Amended Proclamation Plan and described

NARF Pow Wow

# The Promotion of Human Rights

## VOTING RIGHTS

why they felt it should not be approved by the court, but the Alaska Supreme Court approved the use of the redistricting plan for the 2012 elections. In December 2012, the Alaska Supreme Court held that the current plan – the one that was used for the 2012 election cycle – is unconstitutional under the Alaska Constitution and ordered that the Redistricting Board start over and devise a new reapportionment plan based on the Alaska Constitution and deviating only where necessary to satisfy the Voting Rights Act.

In August 2012, the State of Alaska filed a lawsuit in the District of Columbia (*Alaska v. Holder*) asking to strike down several sections of the Voting Rights Act, both facially and as applied to Alaska. The VRA has long been considered the crown jewel of civil rights legislation so this is a strike at the heart of rights that Native people hold dear. Although the defendant is the Attorney General of the United States, NARF moved to intervene on behalf of several individual Native voters and four tribal councils in order to ensure that this right is protected and preserved. In December 2012, the federal court stayed this case in order to wait for a decision by the United States Supreme Court in *Shelby County v. Alabama*, a case that presents similar issues. NARF is submitting an amicus brief in the *Shelby County* case on behalf of the *Alaska v. Holder* clients and the Alaska Federation of Natives.

### **International Recognition of Indigenous Rights**

The development of international laws and standards to protect the rights of indigenous peoples greatly benefits Native American peoples. NARF and NCAI entered into an attorney-client relationship over a decade ago for the purpose of working in the international arena to protect indigenous rights.

NARF carries on a broad range of international work on behalf of our clients, focused primarily on three areas. The first area of work is on the United Nations Declaration on the Rights of Indigenous Peoples on behalf of

NCAI. We participated in the process to adopt the Declaration from 1999 to its adoption in 2007. Since that time, we have utilized the Declaration in our work on behalf of our clients and Indian country at large. We have engaged in educational presentations, workshops on implementation, and academic conferences concerning the Declaration. We are presently engaged in preparing for the World Conference on Indigenous Peoples which will take place in New York in 2014. We are working on developing a list of thematic issues for the Conference and will be attending regional and international conferences to prepare indigenous peoples to obtain the strongest possible outcome document.

The second area of our work is on the American Declaration on the Rights of Indigenous Peoples under consideration by the Organization of American States. We have been involved in this process on behalf of NCAI since 1999 as well. Unfortunately, there seems to be a lack of political will among the states of the western hemisphere to address this issue, given the adoption of the U.N. Declaration. Nevertheless, the project has not been abandoned and we are committed to remain engaged to obtain a Declaration that speaks to the unique situation of indigenous peoples in the Americas and to address areas not covered in the U.N. Declaration.

The third area of international work is in climate change on behalf of the National Tribal Environmental Council. We became involved with climate change domestically in connection with comprehensive climate change legislation and were soon drawn into the United Nations Framework Convention on Climate Change process. We began in 2009 in Copenhagen at the fifteenth conference of the parties – COP 15. Since that time, we have attended preparatory sessions in Bonn, Germany, Oaxaca, Mexico and Tianjin, China, in addition to COP 16 in Cancun, Mexico, COP 17 in Durban, South Africa, and most recently COP 18 in Doha, Qatar. Climate change disproportionately affects indigenous



NARF Pow Wow

peoples. Mitigation is essential, as ice is melting all over the Arctic, devastating villages and traditional livelihoods, but indigenous rights are at times vulnerable to the very process of mitigation, such as REDD (Reduction of emissions due to deforestation and degradation). At the same time, resources for adaptation, capacity building and technology transfer need to be provided to indigenous peoples in the north as well as in developing countries.

NARF represents the Pottawatomi Nation of Canada, a band of descendants from the Historic Pottawatomi Nation, which from 1795 to 1873 signed a series of treaties with the United States. These treaties provided for the payment of certain annuities. The ancestors of the present-day Canadian Pottawatomi fled to Canada following the signing of the final treaty and were never paid their annuities as promised. The American Pottawatomi bands recovered the payment of these annuities in the Indian Claims Commission (ICC), but the Pottawatomi members who now reside in Canada could not bring a claim in the ICC. In 1993, NARF brought suit on behalf of the Pottawatomi Nation in Canada in the Court of Federal Claims, by way of a congressional reference bill, to seek redress. The Nation and

the U.S. Department of Justice reached a settlement in principle and the Court of Federal Claims accepted the settlement in September 2000, and recommended the settlement to Congress in January 2001.

Attempts to pass congressional legislation approving the settlement agreement have stalled on several occasions in the 107th Congress through the 111th Congress. In January 2011, Senator Inouye introduced Senate Bill 60 for consideration during the 112th Congress. Senate Bill 60 was referred to the Senate Committee on the Judiciary where NARF worked closely with Chairman Leahy's staff in coordination with Senator Inouye's staff. NARF was successful in getting S.60 "hot-lined" out of the Senate Judiciary Committee during the lame-duck session, but we were unable to secure unanimous consent or a vote on the bill before the end of the session. With Senator Inouye's untimely death during the lame-duck session of the 112th Congress, NARF and the leadership for the Pottawatomi Nation in Canada must now determine whether and how to move forward.



# The Accountability of Governments

*"I have seen the sun burn off the early morning mist as many times as there are leaves on a dogwood tree. Just as often the stars have stood vigil over my dreams, and the seasons, with their coming and going, brought enough work to keep me from lamenting their passing. Many strange things have happened during my lifetime. Often I could not understand the changes. I have been angered by some, shamed by others, and saddened by many. But nothing can give me a greater feeling of loss than the way nature disappears to make room for people's pleasures."*

— Chief Dan George

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

In *Nez Perce v. Salazar*, NARF represents forty-one plaintiff tribes in a tribal trust funds mismanagement case: the Nez Perce Tribe; the Mescalero Apache Tribe; the Tule River Indian Tribe; the Hualapai Tribe; the Klamath Tribes; the Yurok Tribe; the Cheyenne-Arapaho Tribe; the Pawnee Nation of Oklahoma; the Sac and Fox Nation; the Santee Sioux Tribe of Nebraska; the Tlingit and Haida Indian Tribes

of Alaska; Aleut Community of St. Paul Island; Bad River Band of Lake Superior Chippewa Indians; Bois Forte Band of Chippewa; Cachil Dehe Band of Wintun Indians of Colusa Rancheria; Confederated Salish & Kootenai Tribes; Confederated Tribes of Siletz Indians; Grand Traverse Band of Ottawa and Chippewa Indians; Kaibab Paiute Tribe; Kenaitze Indian Tribe; Kickapoo Tribe in Kansas; Lac Courte Oreilles Band of Ojibwe; Lac Du Flambeau Band of Lake Superior Chippewa; Leech Lake Band of Ojibwe; Minnesota Chippewa Tribe; Native Village of Atka; Noocksack Indian Tribe; Prairie Island Indian Community; Pueblo of Zia; Qawalangin Tribe; Rincon Luiseno Band of Indians; Samish Indian Nation; San Luis Rey Indian Water Authority; Sault Ste. Marie Tribe of Chippewa; Shoalwater Bay Tribe; Skokomish Tribe; Spirit Lake Dakotah Nation; Spokane Tribe; Summit Lake Paiute Tribe; Tulalip Tribes; and Ute Mountain Ute Tribe. The case is an action in the federal district court for the District of Columbia seeking full and complete accountings of their trust funds. Such accountings never have been provided by the federal government which is the trustee for the funds.

In 2009 the Tribes represented by NARF in this case were among the over 90 tribes who worked to resolve equitably all Indian trust fund mismanagement litigation against the federal government by beginning settlement negotiations in this case and other tribal trust fund mismanagement cases. In 2010 and 2011, NARF attorneys along with attorneys for dozens of other tribes litigating trust accounting and mismanagement claims coordinated and attended many meetings hosted by the President's appointees in Washington, D.C. in preparation for settlement negotiations. In December 2011 active claims settlement negotiations on a tribe-by-tribe basis began for many tribes. To date 30 of NARF's client tribes in this case have reached settlement agreements with the United States totaling nearly \$400 million. These settlement agreements have been approved by the federal district court. Per the settlement agreements, once

the tribes receive their settlement payments their claims are dismissed with prejudice. NARF continues to represent its remaining client tribes in this case in their on-going settlement negotiations.

The 30 settlements still leaves about 11 of NARF's tribal trust cases unsettled, but NARF is confident that most if not all of these will reach settlement soon as most of them are in active negotiations.

NARF represents the Turtle Mountain Band of Chippewa in North Dakota, the Chippewa Cree Tribe of the Rocky Boys Reservation in Montana, the Little Shell Tribe of Chippewa in Montana, and the White Earth Band of Minnesota Chippewa Indians against the United States for damages for misaccounting, misinvestment, and mismanagement of the Pembina Judgment Fund (PJF), a \$50 million trust fund that the tribes were awarded by the Indian Claims Commission in 1964 and 1980. In 2006 the Tribes defeated the United States' motion to have the case dismissed. Since then, the parties have been trying to resolve the Tribes' claims primarily through alternative dispute resolution proceedings before a settlement judge from the court. In August 2009, the parties reached agreement at least for settlement negotiations on the population of "baseline" (non-investment) transactions in the PJF. Since that time the parties have been negotiating the claims of the government's investment mismanagement of the PJF and discussing numerous procedural matters in the event that agreement is reached on a settlement amount.

Since April 2002 NARF has represented the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana in its claims for historical trust accountings and damages for historical breaches of trust regarding the Tribe's trust accounts, funds and resources. In January 2009 the Tribe voluntarily joined the nationwide group of tribes litigating similar claims that sought to resolve their claims at the political level with the Obama Administration.



In March 2012 the Tribe and the United States reached a settlement agreement which was filed in April 2012 and approved by the Court in May 2012. Per the settlement agreement, upon payment to the Tribe of the agreed upon settlement amount, the Tribe's claims were dismissed with prejudice in October 2012.

The Tonkawa Tribe in Oklahoma has retained NARF to represent it in its pending action in the federal district court for the Western District of Oklahoma for historical accountings of its trust funds and assets. NARF and experts retained by NARF are reviewing the Tribe's trust account data provided by the government in the context of political negotiated claims settlement.

# The Development of Indian Law

*"I believe that as Indigenous people, we have a purpose on this earth. We are the ones who must save the earth and be a light in the time of darkness."*

— Edna Little Elk

INDIAN LAW

The coordinated development of Indian law and educating the public about Indian rights, laws and issues is essential for the continued protection of Indian rights. This primarily involves establishing favorable court precedents, distributing information and law materials, encouraging and fostering Indian legal education, and forming alliances with Indian law practitioners and other Indian organizations. NARF has three ongoing projects which are aimed at achieving this goal: the Indigenous Peacemaking Initiative; the National Indian Law Library; and the Indian Law Support Center.

## Indigenous Peacemaking Initiative

The Indigenous Peacemaking Initiative's (IPI) mission is to promote and support Native peoples in restoring sustainable peacemaking practices. This project provides NARF with an opportunity to support traditional peacemaking and community-building practices as an extension of Indian law and sovereign rights. Peacemaking is a community-directed process to develop consensus on a conflict resolution plan that addresses the concerns of all interested parties. The peacemaking process uses traditional rituals such as the group circle, and 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 prevent future occurrences and conflicts.

NARF has focused its initial efforts on the creation of the clearinghouse, conducting needs assessment of peacemaker resources and developing a sustainable business model for the program. Most recently, NARF is in the process of analyzing the results of a national survey of peacemaking needs in Indian communities. Approximately 230 survey forms were filled out and returned. NARF and the Advisory Committee attended meetings in December 2012 to discuss ways to increase federal support for indigenous peacemaking systems.

## The National Indian Law Library

The National Indian Law Library (NILL) is the only law library in the United States devoted to Indian law. The library serves both NARF and members of the public. Since it was started as a NARF project in 1972, NILL has collected nearly 9,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions; legal pleadings from major Indian cases; and often hard to find reports and historical legal information. In addition to making its catalog and extensive collection available to the public, NILL provides reference and research assistance relating to Indian law and tribal law and its professional staff answers over 2,000 questions each year. In addition, the Library has created and maintains a huge web site that provides access to thousands of full-text sources to help the researcher. See [www.narf.org/nill/index.htm](http://www.narf.org/nill/index.htm).

With more than 300 participating tribes, NARF's National Indian Law Library (NILL) *Comprehensive Tribal Law Index* collection of tribal laws continues to grow. Web use statistics show that the online tribal law collection is seeing more visitors, with about 8,000 page visits per month. To accommodate this growth and increase usability, NILL has developed an

improved architecture for the online tribal law collection. The new tribal law gateway was released in August 2012 and as of October 2012, more than 180 individual tribe's pages have been launched. We plan to roll out all of the remaining tribal pages over the next several months. Each tribe will have a web page outlining exactly what tribal law materials – from codes and constitutions to tribal court opinions – are available and where they can be found.

NILL is also working with the American Association of Law Libraries, Law Library of Congress and the National Congress of American Indians on a national Tribal Law Inventory project. The Tribal Law Inventory project is part of the larger National Inventory Project which includes providing and preserving free public access to federal, state and municipal primary law. The inventory process utilizes volunteers to determine what information is available, whether this information is official and whether it is being preserved. NILL is working with its partners to determine what information about legal resources will be sought from tribes and how the information might be collected from tribal governments.

### **Indian Law Support Center**

Since 1972, NARF's Indian Law Support Center (ILSC) has served as a national support center on Indian law and policy for the national Indian legal services community and the 32 basic field programs serving Native American clients. NARF continues to perform Indian Law Support Center duties by sending out regular mailouts to Indian Legal Services (ILS) programs, handling requests for assistance and working with Indian legal services programs to secure a more stable funding base from Congress.

The Indian Tribal Justice and Legal Assistance Act of 2000 authorizes the Department of Justice (DOJ) to provide supplemental funding to Indian legal services programs for their representation of Indian

people and Tribes which fall below federal poverty guidelines. Congress appropriated \$2 million in FY 2003 under the Act, and ILSC and ILS programs worked with the DOJ to devise an allocation methodology. The DOJ's Bureau of Justice Assistance (BJA) awarded a grant of \$1,987,000 to NARF on June 7, 2004, most of which was contracted out to ILS programs with a small portion used to cover NARF administrative costs. Funding in the amount of \$1,726,626 for calendar year 2005 was appropriated by Congress for the project. Funding via 2007, 2008 and 2009 Congressional appropriations was unsuccessful. In 2010 NARF secured a line item appropriation of \$2.35 million from Congress. In FY 2011 Congress appropriated \$2.49 million for civil and criminal assistance in tribal courts. In FY 2012, both civil and criminal grants were awarded to NARF in the amount of \$850,659 and \$875,000 respectively. NARF is now working with BJA to secure additional grants from FY 2013 funding.

### **Other Activities**

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



# FY 2012 FINANCIAL REPORT

Based on our *audited* financial statements for the fiscal year ending September 30, 2012, the Native American Rights Fund reports **unrestricted** revenues of \$16,586,143 against total expenditures of \$7,643,630. **Total** revenue and net assets at the end of the year came to \$19,357,268 and \$15,981,472, 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 \$9,105,444 to NARF's reserve fund. When compared to fiscal year 2011: The decrease in Public Contributions is mostly due to a decline in bequests (this area can vary widely from one year to the next). The increase in Tribal Contributions is due to the donations from our Nez Perce v Salazar clients (who received settlement awards from the federal

government in the fiscal year). Federal Awards held steady and relates to our Bureau of Justice Assistance (BJA) contracts (the majority of which is also included in expenses since it is paid-out to sub-recipients). Foundation Grants also held steady. Legal Fee income increased slightly and mostly due to a settlement for one of our clients. The Gain on Disposal of Property relates to the sale of our Washington, DC building early in the fiscal year (we moved our office to another location in Washington DC). Along with the overall investment markets, NARF's investments performed very favorably.

Unrestricted Revenue and Expense comparisons between fiscal year 2011 and fiscal year 2012 are shown below (not including contributed services).

UNRESTRICTED SUPPORT AND REVENUE COMPARISON				
	2011		2012	
	dollars	percents	dollars	percents
<b>Public Contributions</b>	\$ 1,729,051	25.7%	\$ 1,092,316	6.6%
<b>Tribal Contributions</b>	1,754,621	26.2%	10,122,098	61.4%
<b>Federal Awards</b>	1,359,848	20.3%	1,366,143	8.3%
<b>Foundation Grants</b>	750,429	11.2%	752,707	4.6%
<b>Legal Fees</b>	1,135,010	16.9%	1,245,587	7.6%
<b>Gain on Disposal of Property</b>	-0-	-0-	1,186,853	7.2%
<b>Return on Investments</b>	(55,381)	(0.8%)	674,152	4.1%
<b>Other</b>	32,291	0.5%	35,987	0.2%
<b>TOTALS</b>	<b>\$ 6,705,869</b>	<b>100%</b>	<b>\$ 16,475,843</b>	<b>100%</b>

EXPENSE COMPARISON				
	2011		2012	
	dollars	percents	dollars	percents
<b>Litigation and Client Services</b>	\$4,871,455	68.6%	\$ 5,267,067	69.9%
<b>National Indian Law Library</b>	200,342	2.8%	250,257	3.3%
<b>Total Program Services</b>	<b>5,071,797</b>	<b>71.4%</b>	<b>5,517,324</b>	<b>73.2%</b>
<b>Management and General</b>	713,086	10.1%	731,647	9.7%
<b>Fund Raising</b>	1,315,682	18.5%	1,284,359	17.1%
<b>Total Support Services</b>	<b>2,028,768</b>	<b>28.6%</b>	<b>2,016,006</b>	<b>26.8%</b>
<b>TOTALS</b>	<b>\$ 7,100,565</b>	<b>100%</b>	<b>\$ 7,533,330</b>	<b>100%</b>

**Note:** This summary of financial information has been extracted from NARF's audited financial statements which received an unqualified opinion by the accounting firm of BKD, LLP. Complete audited financials are available, upon request, through our Boulder office or at [www.narf.org](http://www.narf.org).

# NARF Acknowledgment of Contributions: Fiscal Year 2012

We thank each and every one of our supporters for their commitment to the goals of NARF. NARF's success could not have been achieved without the generosity of our many donors throughout the nation. NARF receives contributions from founda-

tions, corporations, religious organizations, tribes and Native organizations, bequests and trusts, benefactors, private donations, and in-kind contributions. We gratefully acknowledge these gifts received for fiscal year 2012 (October 1, 2011 through September 30, 2012).

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**Peta Uha – Peta Uha** is an exclusive membership program for donors making substantial annual commitments to NARF.

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Roger Welsch  
Gary White  
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Karen Williams-Fast Horse  
Marcel Wingate  
David Yeoman  
Wayne Zengel

**NARF Employee Giving** – NARF employees commit thousands of hours to protecting the rights of tribes. They also commit their own funds to help through payroll giving.

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Jonathan Briggs  
Rose Cuny  
John Echohawk  
Kim Gottschalk  
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Lori Johnson  
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**In-Kind Donations**  
*There are many ways to support the Native American Rights Fund, in addition to cash gifts. People who volunteer their time and talents, or donate valuable goods and services, provide crucial support for the NARF mission. We would like to expressly thank the following individuals and organizations for their generosity:*  
DLA Piper  
Ann Estin  
Patton Boggs LLP  
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Ron His Horse Is Thunder  
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Christina Warner  
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Michael Holditch  
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**Native Ways Federation** – The Native Ways Federation (Native Ways) is the only workplace giving program in the United States to exclusively fund Native nonprofits that serve people and communities in Indian Country. Native Ways has been tested in the workplaces of the seven founding Native nonprofits, and has received W.K. Kellogg Foundation funding to expand the program more broadly. To learn more about Native Ways and the participating nonprofits, or to see how your company can support Indian Country through workplace giving, please visit [www.nativewaysfederation.org](http://www.nativewaysfederation.org). Your business can make a difference!

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

## Federated Workplace Campaigns

Thank you to the thousands of federal, state, municipal and private sector employees throughout the country who through their payroll deduction plans contributed \$77,370 in fiscal year 2011.

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

**Peta Uha Membership** – Peta Uha in the Lakota (Sioux) language means firekeeper. One that honors tribal members who made a solemn commitment to ensure that the sacred flame, source of light, heat and

energy for his people, always be kept burning. Like the firekeepers of old, members of the Peta Uha Council can demonstrate constancy and vigilance by helping to ensure that the critical work of the Native American Rights Fund continues to move ever forward. For benefits associated with each level of Peta Uha membership, please contact our Development Department, 303.447.8760.

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

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

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

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

the 21st Century Endowment. It allows donors to honor friends and loved ones by making an endowment gift of \$10,000 or more. By designating a gift to either endowment, you can be sure that your contribution will continue to generate annual funds in perpetuity. Endowment supporters are recognized on a special wall plaque displayed at NARF. Supporters will also receive a memorial piece for their home and be acknowledged in NARF's annual report.

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

**Matching Gifts** – Currently, more than 20 foundations and corporations nationwide make matching gifts to NARF on a regular basis. Employers match their employees' contributions sometimes doubling or even tripling their donation. Please check with your human resources office and request a matching gift form.

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



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

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

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